

Evidence for Defence.

Bashir Ahmad Mallal

Did Daud Shah claim that Mirza was a prophet?— I asked him and he said no. He said he had worked with Khwaja Kamal-ud-Din and had nothing to do with Mirza.

Does Muhammad Ali of Lahore claim that Mirza was a Prophet?—He strongly denies that Mirza was a Prophet.

When was that?—In 1921.

Does Khwaja Kamal-ud-Din claim or deny that Mirza was a Prophet?—He very strongly denies.

His Lordship:—Have you heard that a translation of the Quran is forbidden?—This is the first time in this case that a translation of the Quran into another language is said to be forbidden. The Arabs say that their language is too perfect to be translated. There was a school who said that prayers must be said in the language of the Quran. This question was put to Syed Ameer Ali. Although it is permitted to say prayers in a language other than Arabic, it is not prayer.

Bashir Ahmad Mallal sworn states:—"I am the managing clerk of Messrs. John G. Campbell & Co. I am one of the persons referred to in the alleged libel."

Mr. Mundell:—Did you publish the letter entitled 'Pharisees of Islam' in the newspaper?—Yes.

Before these proceedings were commenced were you the person mentioned in the first letter written to the defendants?—Yes.

What was your reason for not joining as a party to these proceedings?—Because I was advised by Mr. Campbell not to be a party to these proceedings.

Were you the first secretary of the Anjuman-i-Islam?—Yes. I am even so now.

Are you the editor of "The Muslim"?—Yes. In fact, I was the first editor.

Were you the writer of the article upholding the "Light of Lahore"?—Yes.

That article is in sympathy with the Ahmediyya Movement?—Yes.

Are you in sympathy with the Ahmadies?—Yes.

Are the Plaintiffs in sympathy with the Ahmadies?—I should think so. They are in sympathy with those who have the welfare of Islam at heart.

Have you made a study of your religion?—Yes, and to the best of my ability.

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You are the person who is responsible for the sale of Ahmediyya books?—Yes. I went to India and they requested me to bring some of the books.

Cross-Examined:—

Mr. Campbell—What was the reason for the advice not to be a party to these proceedings, was it to assist in this case?—Mr. Campbell, my position would be cleared on the Judgment of this case.

When you said about Ahmediyya books, which party of the Ahmadies did you refer to?—I mean those written by Moulvi Muhammad Ali's party. I have nothing to do with the Quadiani people.

Do you believe that Mirza was a prophet?—No, not for a moment. I certainly believe that Muhammad was the seal of prophets.

Now, referring to the article 'What is Islam' at the end of each copy of the Islamic Review, do you agree to the statements mentioned therein?—Yes, I agree with the statement on prophets, also statement on the Quran and the seven beliefs.

Do you believe in all the fundamentals of Islam as stated in that article?—Yes.

Are these fundamentals orthodox?—It seems to me to be unorthodox.

Is this article 'What is Islam' published in every issue of the Islamic Review?—Yes, it is published at the end of practically every copy of the Islamic Review.

Are the Ahmediyyas striving to spread Islam?—Yes. They are a great missionary sect of the Muhammadan religion.

Are you in sympathy with them?—Yes, on this account.

Are you in sympathy with the followers of Mirza's son?—Not at all.

Have you made a study of the books of Mirza?—Yes, some of them.

Have you studied the books of Mirza's son?—His son goes further than that. I don't agree with his teachings.

"Ahmad and His Claims" was produced.

Have you seen this book before?—Yes.

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Is the author of this book a follower of Muhammad Ali?—No. He represents Mirza's son's sect. It is absolutely distinct from the sect headed by Muhammad Ali.

Are the teachings of that man Allahdin accepted by you?—I do not agree with him at all.

Do the plaintiffs agree with these teachings?—They do not agree with them at all. They hold the same views as I hold.

Are you an Ahmadiyya?—No.

Do you follow any sect?—No. I am a Mussalman. I belong to the Sunnat-Jama'at in the interpretation of Mr. Sarwar.

Do you claim the right of private judgment?—Yes. I exercise private judgment in the matter of the interpretation of the traditions.

Will you accept the traditions of any particular sect unreservedly?—No, but I unreservedly accept the authority of the Quran.

Did you find that you were held up to contempt by this pamphlet?—Yes, when it was brought to my notice by being published. I do not understand Tamil but wherever I went people called me Qadiani and Kaffir.

His Lordship:—If a Mohammedan is called a Kaffir what effect does it have?—My Lord, if the law allow me, I would kill the man. It is the most unpleasant thing to call a believer an unbeliever. I hold my religion above my kith and kin and if a man tells me I do not hold true beliefs it is the most serious thing he can say.

Mr. Campbell:—Do the books you sold attack the fundamental principles of Islam?—No. They are books which propagate the religion of Islam. They uphold and seek to spread the fundamental beliefs of Islam.

Re-examined:—

Do not those books you sold propagate the views of the Lahore Ahmediyyas?—Yes.

Do you know the booklet called "Call of Islam" and the form of pledge in the book called "Ahmediyyan Movement"?—Yes.

What is your opinion with regard to the form of pledge?—I am non-sectarian and have no opinion as to the form of pledge.

What does it refer to?—It refers to the promised Messiah and Mahdi.

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Do you think that sympathy with the Ahmediyan Movement involves the acceptance of Mirza as the promised Messiah?—I do not think so. I have discussed the matter with the Ahmadees and they have said, 'If you believe, it is all right; if you don't believe that part, you can still help us.'

But Mohamed Ali claims that Mirza was the promised Messiah?—Yes, but I would not swear positively that Mirza himself claimed that.

Do you accept the traditions?—I only accept the traditions which corroborate the Quran. I do not accept those contrary to the Quran.

Are not traditions "books from God"?—"Books from God" means the revealed books i.e. the Bible and the Quran and does not apply to the traditions.

What does "messengers of God" refer to?—It refers to those prophets mentioned in the Quran.

Have you to believe in all of them?—Some mentioned in Quran in which you must believe and other prophets anterior to prophet Muhammad not mentioned in the Quran which you may possibly believe in.

Do you believe that Jesus is dead?—I strongly believe that Jesus is dead.

Do you believe in any other prophet after Muhammad?—No.

Do you believe in a prophet in Barroz?—No.

Was there a split between the two classes of Ahmediyas?—Yes.

When was that?—In 1914.

Were there not two people who claimed for the Khalifate?—I do not think so.

Have you read this book 'Ahmad and His Claims' by Abdullah Allahdin?—No.

Have you read the teachings of Mirza?—Yes, in Urdu and Persian.

To what sect do you belong?—I belong to the Sunnat Jama'at as defined by Hafiz Ghulam Sarwar.

Do you identify yourself with the tenets of any of the four Imams?—No.

Are the Shias included in the Sunnat Jama'at?—No, they will not come in.

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Hafizudin Shirajudin Moonshi

Are Ahmadiyyas not Qadianis also?—No. Ignorant people call Ahmadiyyas generally as Qadianis.

What is the percentage of educated Muslims in Singapore?—I do not know. I will not swear to that.

Have the followers of Mohamed Ali been called kaffirs?—Yes, by fanatical Mullahs or priests and the ignorant people follow them.

Are they upset by being so called?—If they are like other Muslims they could be.

Do the followers of Mirza's son call other Muslims who don't follow him Kaffirs?—I do not know.

Here is a book written in 1909 by Khwaja Kamal-ud-Din. At page 109 he refers himself as one of the followers of Khalifa Messiah, is that true?—Yes.

Has Mirza's son anything to do with the Woking Mission?—No. He is building his own mosque in London.

Hafizudin Shirajudin Moonshi:—sworn states: "I am secretary to the Mohammedan Advisory Board which exists to advise the Government on matters relating to the Mohammedan religion and social customs."

Was the question of banning the Quran of Muhammad Ali opened before that Board?—The question of banning of Muhammad Ali's translation of the Quran was discussed at a meeting.

Witness produced letter to the Government and the reply thereto.

Have you got any fatwahs banning Muhammad Ali's translation of the Quran?—Yes, I have a fatwah from the Deoband University. It has been translated into Malay and into English.

His Lordship:—Who is at the head of this Board?—It has a European chairman.

His Lordship ruled that the advice given by the Board which has a European chairman was inadmissible.

This witness was not cross-examined.

Ona Shaik Mohamed: sworn states, "I live at No. 22, Sungei Road and am a cattle dealer."

Do you remember the visit of Daud Shah?—Yes.

Where did he stay?—At Mr. Akisamalim's house at No. 19, Campbell Lane.

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Ona Shaik Mohamed

Do you remember when he left Singapore?—Yes.
I sent a telegram and had a reply.

The telegram and reply were tendered but ruled inadmissible.

Mr. Mundell:—My Lord, the case for the defence is closed subject, of course, to being given a chance later to prove a fatwah from the Deoband University.

Mr. Campbell:—My Lord, I do not propose to call any evidence.

Mr. Mundell addresses the Court:—

May it please Your Lordship. The defence raised generally in matters of this action is fair comment and justification in so far as matters referred to in the alleged libel are matters of fact rather than matters of comment. Generally in such cases the question which arises is whether the comment is fair and the law is stated in Halsbury as appears on page 699 of Volume 18, paragraph 1282:—

“Nothing is more important than that fair and full latitude should be allowed to writers upon any public matter, whether it be the conduct of public men or the proceedings in Courts of Justice or in Parliament, or the publication of a scheme or a literary work. But it has always been left to a jury to say whether the publication has gone beyond the limits of fair comment on the subject-matter discussed. A writer is not entitled to overstep those limits and impute base and sordid motives which are not warranted by the facts.”

It is for Your Lordship sitting as a jury to say whether it is a fair comment. In paragraph 1285 there reference is made to *Hunt v. Star Newspaper Co.* (1) Lord Justice Moulton's judgment in that case is a fair statement of the law.

In the subsequent paragraph the author goes on to say what is a fair comment.

Paragraph 1288 states that the comment must be fair and gives a number of statements on what is fair; that it must not mis-state facts, it must be a reasonable inference from facts. It must not be actuated by malice.

I would refer Your Lordship to *Odgers on Libel* (5th Edition). The law is stated in this book at pages 193, 195, 196 and 217. Page 195 gives the essential characteristics

(1) *Hunt v. Star Newspaper Co.* (1908) 2 K.B.D. 309.

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of fair criticism. Page 196 deals with the defence of an action of libel or slander.

His Lordship:—Is this a matter of public interest? Is what they teach a matter of comment?

Mr. Mundell:—I would refer to passages in the judgment of Lord Justice Moulton in *Hunt v. Star Newspaper Co.* and also to that of Lord Justice Atkinson in the same case.

Mr. Mundell reads out those passages:—

“But if fact and comment be intermingled so that it is not reasonably clear what portion purports to be inference, he will naturally suppose that the injurious statements are based on adequate grounds known to the writer though not necessarily set out by him.”

“Finally, comment must not convey imputations of an evil sort except so far as the facts truly stated warrant the imputation.”

“Any other interpretation would amount to saying that, where facts were only sufficient to raise a suspicion of a criminal or disgraceful motive, a writer might allege such a motive as a fact and protect himself under the plea of fair comment.”

Lord Justice Atkinson says in his judgment in the same case as follows:—

“A personal attack may form part of a fair comment upon given facts truly stated if it be warranted by those facts—in other words, in my view, if it be a reasonable inference from those facts.”

“*Joynt v. Cycle Trade Publishing Co.* is to the same effect. In this case the established facts might not warrant the personal charge made against the plaintiff of being ‘a quack of the rankest species,’ if that charge necessarily implied ‘incomplete or want of skill’ on his part, but if, on the other hand, the libel bears out the meaning contended for by the defendant—and, as I have already said, I think it is reasonably susceptible of that meaning,—then the question whether the imputation was a fair comment in that it was warranted by the established facts was quite another matter, and should have been left to the jury to determine.”

On page 197, Dr. Odgers explains what is a comment. He says:—“A comment as we have already stated, is the

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expression of the Judgment passed upon certain alleged facts by one who has applied his mind to them and who while so commenting, assumes that such allegations are true. (Campbell v. Spottiswoode 3 B. & S. 769: 32 L.J. Q.B. 185.)”

I do not think I need read the rest of the page but accept this portion. We find it actually so that they are Quadianis. It is not addressed to the plaintiffs as Quadianis.

As to what is a matter of public interest Dr. Odgers deals on page 216 so far as this is concerned.

On page 291 the author deals with communications made in self-defence and says, “But when the attack has been made on a public occasion or in the press the defendant is entitled to give equal publicity to his reply. He is privileged in addressing his defence through the same channel which has conveyed the attack.”

I submit that applying this portion of the matter dealt with to the present case there is no question that this matter which was a matter of publication was a matter of public interest.

Pages 703, 704 and 705 in Halsbury state the law as to what is a matter of public interest.

I would refer to Spencer Bower's Actionable Defamation (2nd Edition) wherein the author deals at page 75 and the following pages on what is the subject of public interest.

On page 97 the author says as follows:—

“Any establishment, organization, scheme, project, undertaking, business, mercantile or professional custom, practice, system, or course of dealing of a public nature or which concerns public welfare: any meeting or assembly, which the public is invited or entitled to attend: and any speech, writing, opinion, advice, principle, practice, or act of any person in the establishment, advocacy, conduct, or administration of any of the foregoing, or otherwise in relation thereto.”

Again on page the author says, “Any other act or expression of the human will or intellect which is done publicly, or made public, or submitted to public judgment or opinion, or given to the public, or which, in the circumstances of the particular case, may be held to be a subject of legitimate interest or concern to the public.”

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I submit first of all that this matter was a matter of public interest within the meaning of the law. The defendant has gone further to prove that. According to Lord Halsbury it must be a comment and must not be a statement of facts. The facts must be true. The law generally on the defence of fair comment is stated very fully in the case of *Hunt v. Star Newspaper Co.* and in the case of *Dakyl v. Lambouchere* in the same volume of the Law Reports.

The head-note reads as follows:—

“In an action for libel based upon articles published in the defendants’ newspaper the plaintiff alleged that the articles imputed to him improper conduct in the discharge of his duties as deputy returning officer at a municipal election. The defendants pleaded justification and fair comment. At the trial the judge directed the jury that if they found the statements in the articles to be libellous and the facts truly stated, then the question for them would be whether the comment was *bona fide* and fair, or whether it tended, as alleged, to charge the plaintiff with improper conduct. No separate questions were left to the jury, and they returned a general verdict for the plaintiff with damages. Upon an application for a new trial:—

“Held, by the Court of Appeal, that the question of fair comment had not been properly left to the jury as a separate issue, and that there must be a new trial on the ground of misdirection.”

Applying that part of the judgment to the present case I submit to Your Lordship to say what meanings are to be put upon the words, which I suppose are particularly complained of:—“The aforesaid authorities regard Daud Shah, Meeran Lebbaik, Bashir Ahmad and K.C. Marican etc. as judged from their words, acts beliefs and perverse publications as belonging to the Quadiani party.” “The Quadiani sectaries who are unmindful of their faith being brought to nought frighten the public and publish vicious creeds with a view to rob the public by their ravings etc.” It is for Your Lordship to say whether these words fit the plaintiffs.

In the judgment of Lord Atkinson he says:—

“I do not for a moment suggest that the meaning thus put upon the libel by the defendant is its true meaning, but I think it would be impossible successfully to contend that it is not reasonably susceptible of that construction. or, to use the words of Lord Esher in *Merivale v.*

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Carson, that 'it could not be thought by any reasonable man to have that meaning.' If that be so, as I think it is, it was the right of the defendant to have it in some form of words distinctly left to the jury to say whether the meaning so put upon the libel by the defendant was, in fact, the meaning it conveyed to the mind of the ordinary reader."

In dealing with the case generally Spencer-Bower summarises what must be proved by the defence before a defence of fair comment can succeed. See page 101.

"It must be honest, that is to say, it must contain nothing which is not a genuine expression of the opinion actually entertained by the party defaming.

"It must be based on facts stated or assumed, and such facts, unless expressly or impliedly admitted by the party defamed, must be proved by the party defaming to be true."

Your Lordship will say the comment must be honest. It must be based on facts relevant. It must not contain matters discreditable. The comment must be from the facts proved or admitted.

I submitted in opening, with reference to the alleged libel, that the first three paragraphs are quotations from religious books. They are not in inverted commas and were not published as quotations but were expressed as an opinion by the subscriber of the publication. In matters dealing with religion I submit that persons who write upon religion to an audience or to a public who are to some extent with that religion must be assumed to have knowledge of that religion. What knowledge the Mohamedan public have of their religion does not enter into this case as a matter of evidence: to any person who takes any interest in the handbill of this kind religion must be a matter of importance. If a person who received the publication took interest in such things the publication could not be said in any way to refer to the plaintiffs; or this publication must be looked at from the point of view of the Muhammadan who took an interest in his religion. It was only intended to be published to such persons and such persons would have some knowledge of their religion and therefore the statements contained in paragraphs 1, 2 and 3, I submit, are statements of fact having regard to the proof of truth of the statements from the books on Muhammadan religion.

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I might submit that the same argument applies to paragraphs 5, 6, 7, 8, 9, 10 and 14. Paragraph 4, according to the division which I submit, may be said to be a statement of fact, "hence in accordance with the decision of Sunnat Jama'at world that the Qadiani sects are Kafir _____." With regard to that paragraph I submit that the construction to be placed upon it is the meaning which those words would convey to the ordinary person who would receive the notice and I suggest to Your Lordship that the meaning which would be conveyed to the ordinary reader of the notice would be that the four sects in general have said that the Qadiani sects are Kaffirs. I submit the ordinary reader would not put to the expression the extended meaning which Mr. Sarwar in his evidence has supplied to it or witness Mr. Bashir A. Mallal. The ordinary recipient of this publication would hold the same view.

As to the evidence that the Sunnat Jama'at have made a decision that the Qadianis are Kaffirs, I submit that there is abundant evidence in this case that it is a fact chiefly from the books which have been admitted in evidence with reference to the teachings of Muhammad Ali's party of the Ahmediyyas.

Apart from the books of Muhammad Ali in which he points out that he and his followers are called Kaffirs there were many fatwahs against Mirza himself. Apart from the evidence recorded by the Indian cases, apart from the evidence of the teachings of Ahmad and apart from the evidence of witnesses, I submit that the book by Faquhar is fairly vindictive of the Ahmadees if one reads the article on page 147 through. One sees that the article refers not only to the Qadiani section but also to Muhammad Ali's section. When one comes to an authority outside Islam one may assume that the statement is quite unbiased although the writer is a Christian. There is no object in a writer to distort the true state of affairs.

I will deal with the evidence of each witness before I deal with the evidence generally. With regard to the first witness Mr. Sarwar I have to say about his evidence that although it was given fully and as far as one can form an opinion perfectly and, Your Lordship will remember, he stated that his own brother was in Qadian with Mirza's party.

His Lordship:—I do not see that this is material.

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Mr. Mundell:—It may bias his evidence in this way. To suggest that a Quadiani or Ahmadi is a Kafir will be to reflect upon his own relatives. I have to rely a very great deal on Mr. Sarwar's evidence. Mr. Sarwar is a gentleman of broad mind and he apparently would not term a follower of Muhammad Ali a Kaffir. I do not know whether he would go so far as to call a Quadiani of Mirza's son's school a Kaffir.

With reference to witness Sulaiman it may be that the less I speak about him the better. Although he has evidently written in a paper which supported the Ahmadies, and although he was apparently prepared to give evidence on behalf of the plaintiffs, most of his evidence is based upon the Quran.

With reference to Mr. Abidin he is a recognised interpreter and he is also the compiler of the three manuals of matters on religion published by the Government. I do not say that it will be suggested in this case that any of the witnesses has said anything but what he assumes belief. In particular the defendant, I have asked Your Lordship to believe, was in the honest belief that he was defending his religion. As to the question of evidence apart from documentary, Mr. Sarwar's evidence was to the effect that you cannot now obtain a decision of the Sunnat Jama'at world. There is no authority that can give such a decision. He admits that many pronounce fatwahs but these fatwahs according to him are not binding on Muhammadans generally. Mr. Abidin does not hold the same views with reference to the effect of fatwahs and he was insisting himself on obtaining a fatwah from the Al-Azar University with reference particularly to Muhammad Ali's version of the Quran. As to the Al-Azar University I submit that it is according to the evidence one of the leading universities or probably the University established for the Muhammadan religion. I should like shortly to refer to Pierre Loti's book "Centre of Islam" at page 61 on the Al-Azar University. Professor Margoliouth in his book on "Muhammadanism" says at page 157, "all four systems are taught in University of Islam, the Cairene Al-Azar."

What is the value of the fatwah according to Mr. Sarwar is nil. According to Mr. Abidin it may have a very great value. If there is any indication from Mirza he himself believed any fatwahs. Whatever may be said

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against fatwahs I do submit that a fatwah has just as much authority as a counsel's opinion. It may be that counsel's opinion is no authority. When you get a multiplication of opinions of counsel these opinions do carry some weight. They cannot be any doubt that there are a number of fatwahs which lay down that the Ahmadies of Muhammad Ali's party and of Mirza's son's party are Kaffirs. Whether these fatwahs amount to a decision of the Sunnat Jama'at world is another question. Mr. Sarwar in referring to India said that he thought that about 500 who claimed to be learned have denounced the Ahmadies. The persons who can give fatwahs would not appear to be even learned. I do not know whether in this respect any weight can be attached to the evidence of Sulaiman. Mr. Abidin spoke of Egypt and Java and there the orthodox Muslims hold that the Quadiani sects are Kaffirs. As to India no further evidence is required beyond what Muhammad Ali has given.

So far as Muhammad Ali is concerned Mr. Abidin gave evidence that his Quran has been banned in Egypt and that goes some way to show that in Egypt, the chief centre of the Muhammadan religion, how Muhammad Ali and his party are regarded by the Egyptian Government. There is no evidence before us as to the opinion of the Arabs. So far as the evidence goes I submit the evidence proves that the Sunnat Jama'at have decided that the Quadiani sects are Kaffirs. As to Afghanistan Your Lordship will remember that in the book of Muhammad Ali he refers to one of his followers, I think it is one of the followers of Mirza, being killed because of his belief. It is certainly referred to in "Ahmad—The Messenger" at page 327 and the following pages. So that in Afghanistan the Ahmadies were not regarded as being of the Sunnat Jama'at. Therefore as far as the evidence goes, the evidence tends to show that the statement in paragraph 4A is true in so far as it is a statement in fact. The statements in paragraphs 4B and 4C, I suggest to Your Lordship, apply more particularly to Daud Shah than to the plaintiffs and they are only referred to as associates of Daud Shah who is of the Quadiani party. I wish to dissociate paragraph 4C from reference to the plaintiffs. My submission is that it refers to the Quadiani sect and not to the plaintiffs. In the Statement of Claim paragraph 4C refers to the plaintiffs. If 4C refers to the plaintiffs it will be necessary for me to prove that the plaintiffs falsely called

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themselves Ahmadies as the occasion required. That I have attempted to prove. I submit that no person who received the true translation or construction of the publication would believe that paragraph 4C applies to the plaintiffs.

His Lordship:—What about paragraph 22 in which you say that the plaintiffs are Quadianis?

Mr. Mundell:—I say, reading that with the rest of the publication, the principal words are “judged from their words, acts, beliefs and perverse publications the aforesaid authorities regard the plaintiffs as belonging to the Quadiani party.” I submit that the document as a whole is a denunciation against the Quadianis and it will be straining the meaning of the article unnaturally to say that paragraph 22 has anything to do with paragraph 4C.

Eleventh Day, —Thursday, 4th March, 1926.

Mr. Mundell:—In the course of my address yesterday I touched upon the law. I do not wish to be any longer than is necessary. I shall have to deal in some detail with the publication. I submit first of all that paragraphs 1, 2, 3, 4C, 5, 6, 7, 8, 9 and 10 are matters of comment on the Muhammadan religion in general. So are also paragraphs 14, 19 and 20. Paragraphs 11, 12, 13, 15, 17b and 18 refer to Daud Shah. Paragraphs 4a, b and d and 21, and 22 refer to the plaintiffs and Daud Shah. Paragraphs 23, 24, 25 and 26 refer to certain Quadiani sectaries. It is for Your Lordship to tell us whether they refer to the plaintiffs.

For the purpose of a decision Your Lordship will have to consider certain questions. The first question is, What is the Sunnat Jama'at world? I looked up that point yesterday and in connection with that I would refer Your Lordship to Ameer Ali Volume II pages 6—16. My submission is that the ordinary meaning of the Sunnat Jama'at is confined to the four sects of the Sunnis. In paragraph 21 the 73 sects of Islam, I submit, refer to other Muslims generally than the Sunnat Jama'at. Anyone who reads this publication will read it in that view. Your Lordship will remember that Mr. Sarwar treated this statement as almost unnecessary. My submission with regard to paragraphs 4 and 21 is that the publication was intended to show that Muslims generally have regarded the Quadiani sect as Kaffirs on proper grounds.

His Lordship:—You have not produced any fatwah of any sect at all?

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Mr. Mundell:—I endeavour to show that Muslims generally regard the Quadianis as Kaffirs. I cannot show which of the sects regard the Quadianis as Kaffirs. The second question is, who are Quadianis? On that point I submit that the evidence all show that any follower of the teachings of Mirza is regarded as a Quadiani. The evidence which seeks to confine the meaning of Quadianis to the followers of Mirza who are of the Quadian section does not, I submit, go further than this. It says that learned people might draw a distinction and that the ignorant will make no distinction.

The third question is, Who are Kaffirs? I submit that the question as to who are Kaffirs is entirely a matter of opinion. Mr. Sarwar said that the test as to who are Muhammadans is the response to a call to prayer. I submit that there is authority for all the statements in the publication complained of. Minhaj and Talibin which was apparently relied upon by my learned friend Mr. Campbell deals with apostasy on page 436 paragraph 2. In connection with that Mr. Sarwar agreed that a person who conforms with a false claimant to prophethood will be an apostate and also a Kaffir.

I submitted to Your Lordship yesterday that the Sunnat Jama'at and the Muslims generally have regarded the Quadianis as Kaffirs. The question as to whether they had done so on proper grounds is again a matter of opinion: but for the purposes of this case one need consider whether there were grounds for declaring Mirza or his followers as Kaffirs, also for regarding both sections of his followers as Kaffirs.

With reference to Mirza I submit there is no question about the two sections of his followers basing their teachings on Mirza's teachings and I submit that from Volume IV of the "Ahmediyya Movement" and from the pamphlet "Ahmediyya Movement and What It Stands For" Mirza's son claimed that Mirza was a prophet. In connection with that I would refer to a passage at the top of page 281 "Ahmad—World Messenger." He does add at the end of this passage the possible qualification that he was spiritually as the "Barroz" of all the prophets. There is a distinct claim that Mirza, as Muhammad Ali has to deny, was a prophet, particularly on pages 270, 271, 275, 277, 279, 280 and 281 of this book.

There are numerous other passages which show that Mirza had claimed prophethood and claimed that he was

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the Promised Messiah and Mahdi. Page 31 of the "Call of Islam."

It may be said that it is fair to couple the plaintiffs and Daud Shah with the followers of Mirza's son's party. Any person who is a follower of Mirza is liable to be considered as believing all the teachings of Mirza in connection with himself and cannot complain if it is assumed that he believes those teachings.

I submit that he taught and "Ahmad" shows that he taught that persons who did not believe in him were Kaffirs. On page 84 of "Ahmad" and the following pages, Your Lordship will see, according to Mirza's son, were the teachings of Mirza in connection with those who did not follow him. Pages 86, 87, 88. Pages 90 and 91. Pages 310, 313.

It is taught that those who did not believe Mirza as a prophet are not Muslims, although they may pray and fast and follow other Islamic injunctions. I submit that the son of Mirza may have just such claim to say that Mirza was a prophet as Muhammad Ali has to deny that he was a prophet.

His Lordship:—Have you any passages which support this teaching? It does not mean that they are not Muslims?

Mr. Mundell:—At page 312 of the same book we find a passage beginning with "some people do not believe there is * * * *."

There is no question that Mirza's son says that those who do not follow the teachings of Mirza are Kaffirs. Although Muhammad Ali does not say that other persons who are Ahmadees of his section are Kaffirs he does say "there is a saying of the Holy Prophet that if anyone call any other Muslim a Kaffir a Kaffir reverts to him."

Muhammad Ali does teach that Mirza was the Promised Messiah and Mahdi. He attempts to explain away the idea that Mirza claimed prophethood by saying that Mirza was only a "barroz" but prophethood by "barroz" does not appear to be recognized and my submission is that a claimant to prophethood by "barroz" is a claimant to prophethood; that Ahmadies endeavour to substantiate the teachings of Mirza in so far as they support the death of Christ and in Jihad. My submission as to who is a Kaffir

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is a matter of opinion whoever may be the subject or referred to in connection with that expression of opinion.

His Lordship:—Perhaps it might be reduced to what I cannot get hold of in Paragraph 23?

Mr. Mundell:—I shall deal with that later. Fourthly, I submit that the question as to whether Daud Shah and the plaintiffs can be regarded as Quadianis can be settled from the evidence. Daud Shah, it cannot be denied, is connected with Muhammad Ali's party. He is the joint editor of the paper Darul-Islam with Khwaja Kamal-ud-Din and his translation of the Quran is a translation based on Muhammad Ali's translation. That fact is proved by Maulvi Ibrahim. As to what people are in fact must be judged from their acts and to some extent by their associates. The old proverb "birds of the same feather flock together" has much truth in it. The negative evidence that Daud Shah is not a Quadiani is scant. Mr. Bashir Mallal said that a person may claim to be a Muslim although he has Ahmediyyan sympathies and instrumental in propagating their teachings to which they adhered. My submission is that although he did not believe that Mirza was a prophet his (Daud Shah's) connection with the Ahmadiyyan Movement is too strong for anyone to suggest that he is not an Ahmadee as judged from Muhammad Ali's teachings.

As to the plaintiffs I submit that paragraph 22 is justified in fact: first of all, because the plaintiffs have been connected with the Anjuman from the date of its inception as has Mr. Bashir Mallal. There is no question that the Anjuman is connected with the Woking Mission. Your Lordship will remember that Mr. Sarwar suggested to the Anjuman that it should sever its connection with the Woking Mission but that the Managing Committee unanimously decided not to do so.

"The Muslim" champions the "Light" of Lahore and advertises Ahmediyyan books and Mr. Bashir Mallal was himself admittedly instrumental for bringing Ahmediyyan books in Singapore, and for having placed them for sale. He said that their beliefs are the same as his own. I have my learned friend Mr. Campbell's admission on behalf of the plaintiffs that they stand by everything said in "The Muslim" with reference to the meeting held in Singapore in which the Quadianis were denounced.

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I would refer Your Lordship to a passage in the Quran which may not perhaps point to the Ahmadees. I submit by an analogy of doubts, Chapter 5 v. 51:—"O you who believe! Do not take the Jews and the Christians for friends: they are friends of each other: and whoever amongst you takes them for a friend, then surely he is one of them: surely Allah does not guide the unjust people." I submit that the passage applies today to persons who are or who may not be true believers and my submission is that generally the plaintiffs if they champion the cause of the Ahmadiyyas cannot complain when they are called Ahmadiyyas. I submit that any person is entitled to draw an inference that anyone who champions a particular cause is a follower of that cause. The position of the Ahmadees with reference to orthodox Muslims is similar to the position of a Jew who accepted Christ as the Messiah and who believes in his teachings. He may say "I am a Jew." He may sell the bibles and other books which propagate the teachings of Christianity. He may publish handbills saying that the teachings of Christ are correct. He may still be called a Jew. He cannot complain that other Jews call him a Christian. This analogy cannot be said to be quite correct applying to Muhammad Ali's party.

Two years ago a Congregationalist preacher Dr. Campbell who is now a curate in the Church of England preached the doctrine that Jesus Christ was no more divine than any other human being and that all were divine because all were the sons of God, but he still teaches the doctrines of Christianity. So far as Ahmadiyyas of Muhammad Ali's party are concerned they might be compared to a Jew who said that those teachings of Dr. Campbell are correct. Such a person should not complain that on that account he is called a congregationalist.

As I understand the plaintiffs' case the sting of the alleged libel lies in the paragraphs which suggest that the plaintiffs are Kaffirs. My submission is that the plaintiffs have never been called Kaffirs at all. In that again I would refer to **Lord Loreburn's judgment** in *Dakyl v. Lambouchere*, wherein he says:—"The jury were the persons to affix the true meaning to the words and to say whether or not it fitted the plaintiff. But they had not the chance if they followed the judge's direction. In the second place,

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the defendant, was, in my opinion, entitled to have the jury's decision, as to the plea of fair comment, whether or not, in all the circumstances proved, the libel went beyond a fair comment on the plaintiff and on the system of medical enterprise with which he associated himself, as a matter of public interest treated by the defendant honestly and without malice. The plea of fair comment does not arise if the plea of justification is made good, nor can it arise unless there is an imputation on a plaintiff. It is precisely where the criticism would otherwise be actionable as a libel that the defence of fair comment comes in. But the learned judge put aside that defence, and told the jury that unless a justification was proved they were bound to find a verdict for the plaintiff, and that, unless justified, the libel is not fair comment and cannot come within the region of fair comment."

In the first place my submission is that in this alleged libel we have never called the plaintiffs Kaffirs. What we have said is that the plaintiffs, judged by their words, acts and perverse publications, belong to the Quadiani sect, which is outside the Sunnat Communion and the rest of Islamic sects. It is one thing to say a man Kaffir and another thing to say that because he is a Quadiani he is a Kaffir. If we have said that the plaintiffs are Kaffirs then we have no defence to the action. If we say that the plaintiffs judged by their acts, are Quadianis, that is a great qualification of the statement. I say that it is fair comment on a matter of public interest. I ask Your Lordship sitting as a Jury to say that the proper construction of this publication is that we have said that the plaintiffs, judged by their acts, are Quadianis, and, on a matter of public interest as to whether Quadianis are Kaffirs or not, we have said that Quadianis are Kaffirs.

As to paragraphs 23, 24, 25 and 26 and particularly paragraph 23 I ask Your Lordship to look at the alleged libel in the original Tamil notice. Your Lordship will see that the last section of the notice begins with "The 73 sects of Islam—•—."

I ask Your Lordship in considering paragraphs 23, 24, 25 and 26 to consider paragraph 27 also. In connection with the meaning of the notice it would convey to the person who might receive it I ask Your Lordship to disregard the evidence of the defendant. It is no question of the defendant having to decide as to the meaning of the

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alleged libel. The question of his intention does not matter. Your Lordship will decide what meaning to attach to the notice.

My submission as to paragraphs 23, 24, 25 and 26 when read with paragraph 27 in the light of the facts subsisting is that those paragraphs do not refer to the plaintiffs.

Paragraph 23 (a) I admit refers to the Quadianis in general but paragraph 23 (b) must be read in the light of the circumstances. Your Lordship will remember from the evidence that Daud Shah came to Singapore with the object of collecting money for the publication of his Quran. If it can be said, as the defendant says, that the plaintiffs publish vicious creeds, that is fair comment that Daud Shah came to collect money to publish his Quran which may be regarded as vicious creeds and robbing people of their money with their ravings. These words may be strongly used for the translation of the Quran. They are not stronger than those one might use in a matter of public comment.

Vide Fair Comment—Odgers' page 193. "Every one has a right to comment, both by word of mouth and in writing, on matters of public interest and general concern, provided he does so fairly and with an honest purpose. Such comments are not actionable, however severe in their terms, so long as the writer or speaker truly states his real opinion of the matter on which he comments." My submission is that "by their ravings and vicious creeds" refers to the publications particularly of the Quran. My submission with reference to "with a view to robbing, etc." is that those words are nothing more than a statement that to take people's money for those books is to rob them of their money and the object of the Quadiani sectaries is to rob people by their ravings.

His Lordship:—The paragraph rather implies that the Quadianis knew that they were taking money by false pretences: that they are hypocrites, in other words.

Mr. Mundell:—I would not admit that it goes so far as to say that the Quadiani sectaries are hypocrites or that

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they knew they were going to be guilty of false pretences in getting people to subscribe to their Quran. If Your Lordship will decide that these words are too strong I would ask Your Lordship to say that this paragraph exceeds the limit of fair criticism. My submission is that read in view of the rest of the document it shows that the Quadiani sectaries would rob people of their money by their ravings. Paragraph 24, I submit, in the light of the evidence with reference to challenge particularly refers to Daud Shah.

Paragraphs 25 and 26 are invective. It may be that in view of paragraph 27 Your Lordship will hold that these paragraphs apply to the plaintiffs. It may be that those words if they do apply to the plaintiffs or some of them did not go further than fair comment. No evidence of the defence has been called to show that paragraph 26 (d) did in fact occur although that, I submit, might be an inference from the circumstances at the time. There is no question that at this time there was a high feeling against the Quadianis. Paragraphs 26 (b), (c), (e) and (f) are all comment and not unfair comment having regard to the circumstances existing at the time. I suppose that these paragraphs refer to the letters and pamphlets. Paragraph 27 obviously includes the plaintiffs according to the translation pleaded. Therefore my submission is that the paragraph although it refers to the plaintiffs qualifies the preceding remarks with reference to the Quadiani sectaries. In the ordinary construction which would be put paragraphs 22—26 are very much qualified.

Paragraphs 23—26 might refer to Daud Shah and the plaintiffs.

Taking the alleged libel as a whole I suggest that the chief point of complaint by the plaintiffs is that they are called Kaffirs: they have not been called Kaffirs. If they have been Quadianis they cannot complain. Paragraphs 23—26 read with paragraph 27 I submit that paragraph 27 qualifies the preceding paragraphs and shows that they did not intend to refer to the plaintiffs. It will be for Your Lordship to consider whether that qualification I submit does so qualify the preceding paragraphs to limit the

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application to the plaintiffs. As to the question, have the plaintiffs suffered any damage if this is a libel, my submission is this. From the earliest times in matters of religion people have been fanatical. Whenever a reformer appears, whenever he has followers, he was denounced. As time goes on it may be that the denunciation becomes less pronounced or more. I have been unable to find any case in which a person has been held liable to damages for calling another a heretic or for using similar terms. There may have been such cases but I have not been able to find them. The reason is this that in all religions personal opinion must form a very prominent part. One man says one thing and another says another thing but all are entitled to express their opinion. Every Muslim, I submit, is entitled to say that a person who does what the plaintiffs and Bashir Ahmad did, is a Qadiani, if not by profession or conviction, by belief and practice. I submit that every orthodox Muslim is entitled to say that the Qadianis are Kaffirs. That I say is a matter of opinion. There is no evidence at all that the defendant did not honestly believe that opinion.

From the point of view of damages if Your Lordship hold that this publication exceeds the bounds of fair comment, there has been no attempt to prove in any way that the publication points to the plaintiffs except by the inference that one might draw that they are Kaffirs. The whole sting of the alleged libel is in the suggestion that the plaintiffs are Kaffirs. There is no suggestion that anyone believed that the plaintiffs themselves attempted to rob people of their money by their ravings. Special damage has not been pleaded or admitted and the only evidence of the effect of the alleged libel is that of Mr. Sarwar and Mr. Bashir Ahmad that to call a Muslim a Kaffir is the most unpleasant thing that can be said of him. If the whole sting of the libel is in this, my submission is that the plaintiffs have no cause for complaint and that they have not suffered any damage at all.

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Mr. Campbell in reply cited the case of *Campbell v. Spottiswoode* 3 Best and Smith at page 769, 122 English Reports 288.

Vide Pages 290 and 291.

Cockburn C. J., says in his Judgment in this case as follows:—

“It is said, on behalf of the defendant that, as the plaintiff addressed himself to the public in a matter, not only of public, but of universal interest, his conduct in that matter was open to public criticism, and I entirely concur in that proposition. If the proposed scheme were defective, or utterly disproportionate to the result aimed at, it might be assailed with hostile criticism. But then a line must be drawn between criticism upon public conduct and the imputation of motives by which that conduct may be supposed to be actuated; one man has no right to impute to another, whose conduct may be fairly open to ridicule or disapprobation, base, or sordid, and wicked motives, unless there is so much ground for the imputation that a jury shall find, not only that he had an honest belief in the truth of his statements, but that his belief was not without foundation.”

In the same case Crompton J. says:—

“Nothing is more important than that fair and full latitude of discussion should be allowed to writers upon any public matter, whether it be the conduct of public men, or the proceedings in Courts of justice or in Parliament, or the publication of a scheme or of a literary work. But it is always to be left to a jury to say whether the publication has gone beyond the limits of a fair comment on the subject-matter discussed. A writer is not entitled to overstep those limits and impute base and sordid motives which are not warranted by the facts, and I cannot for a moment think that, because he has a **bona fide** belief that he is publishing what is true, that is any answer to an action for libel.”

Daud Shah was in Singapore and admittedly was endeavouring to collect subscriptions in support of his paper in India. He was also engaged in the translation into Tamil of the Koran and one part of it had already been published. He proposed to hold a meeting and nine days before that meeting was actually held, Mr. Bashir A. Mallal

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sent a letter to the Press. This letter is dated the 28th April 1925 and would only reach English-speaking Muhammadans in Singapore. The next publication referred to by Mr. Mundell is dated May 5 published in Tamil by the first plaintiff. The next thing that has been proved to have happened in connection with the controversy is the issue of a pamphlet by the second plaintiff K. C. Marican dated the 10th May. The meeting was held at the Victoria Memorial Hall on the 7th May, when there were certain challenges and the libel was published after this. At the meeting the Maulvis wanted to put questions to Daud Shah but Mr. Sarwar, the chairman, would not allow the questions to be put. Mr. Sarwar was in the box but he was not questioned on the matter all.

Singapore so far as Muhammadans were concerned were considerably excited about this matter. That explains but does not justify the language used in the libel.

I do not propose to ask Your Lordship to deal with the libel in portions as Mr. Mundell has done because I think Mr. Mundell has broken it up too much. I would take it as a whole. The publication starts with "to the Quadianis" and then mentions Daud Shah, Meeran Lebbaik Muallim, K. C. Marrikan, Bashir Ahmad Mallal and others." At the beginning it is clear that it was addressed to two people. The circumstances surrounding the publication of the libel are shown by the evidence of the defendant that it was brought to him by the three Maulvis, that he allowed them to put his name on it and that he allowed them to publish it. The defendant must be taken to be responsible for all contained in it. The defendant also stated that he thought it was his duty to publish this for the sake of his religion. That perhaps explains a part of the introduction. The inference to be drawn from the others being included in paragraph 3 is that the three Maulvis were inspired by a desire to attack, not Daud Shah but the others, particularly the 2nd plaintiff from within his own family circle. That passage alone proves the fact that those three Maulvis were not inspired by the idea of defending their religion but by the desire to attack persons who were associates of Daud Shah. In paragraph 4 Daud Shah is definitely said to be of the Quadiani sect. It is quite apparent on the evidence that the defendant had no knowledge of the Quadiani sect, what it is and what are its divisions. It is doubtful whether the three Maulvis were any better informed. There is no

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evidence that they made a study of the works of Mirza or of his son or that they knew the distinction between the teachings of Muhammad Ali and those of Mirza's son.

From "the 73 sects of Islam" down to the end of the libel is one paragraph. A number of general propositions are set out and then particular conclusions are drawn. There is no ground to say that the whole of the 73 sects of Islam regarded the whole of the Quadiani sects as Kaffirs. There is no evidence that the defendant had any reasonable ground for believing the statement to be true.

The words "outside the pale of Islam" are too strong. It is bad enough to say that a man is outside the Sunnat-wal-Jama'at but to say that a man is outside the pale of Islam is doing the man a great injustice. There is not a shred of evidence that the 73 sects of Islam have no proper grounds regarded the whole of the Quadianis as Kaffirs.

As to paragraph 23(a) and the suggestion that the statement that they are unmindful of their faith being brought to nought is merely a non-libellous statement of fact, the ordinary person reading the document would infer that the passages namely paragraphs 23-26 refer to the people named in the document that they are Quadianis and Kaffirs and outside Islam altogether.

As to paragraph 27 it amounts to this. I am making these accusations against you today. Everyone will be saying the same thing tomorrow. Your only remedy is to confess your sin and seek absolution. It is a recognition of what will be the effect of the pamphlet, not a warning.

The document was clearly published for the purpose of holding these people up to contempt and ridicule, and for the purpose of having them branded as unbelievers in the eyes of all right-thinking Muhammadans.

My learned friend Mr. Mundell has suggested that malice does not enter into this case at all. I would point out that the defendant is related to a man with whom Daud Shah stayed during his visit. If one agrees that the defendant has joined the Maulvis in making that attack for the purpose of showing that one of the persons named has been attacked by one of his own relatives that is evidence of malice. It is not a strong point. I only mention it as a matter to be noted.

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The most important witnesses called for the defence are undoubtedly Mr. Sarwar and Mr. Abdeen. Mr. Abdeen's main complaint is against the accuracy of the Koran in Arabic as published by Muhammad Ali. This complaint is confined to the Arabic text for Mr. Abdeen said, "The English means nothing to me." The complaint is confined to the omission of a single Arabic word in the first edition but this was corrected in the second edition. This Koran is published for the use of English-speaking people and the omission of an Arabic word would have little significance for them. He gets the Koran banned in Egypt on that account and gets a fatwah on a case stated by him to the Al-Azar University. This fatwah would seem to show that the Al-Azar University did not know that the man who was being spoken of was dead. All that the Muhammadans need believe about Jesus Christ is that he was an apostle. Whether he is alive or dead, or whether he was born of a virgin is a matter of dispute. It is a matter of inference from the Koran.

The Arabs and Jews were closely associated at the time of Mohamed and there must have also been numbers of Christians amongst them. Their traditions naturally would creep into Muhammadan teachings.

It is curious that while commentaries on the Koran written by others have been recognised, the commentaries of Daud Shah should have been banned as perverse publications, and the author denounced for robbing people of their money.

The fact that neither Syed Mohamed bin Agil nor Syed Abdulrahman Alkaff was called although they were subpoenaed shows that the defendant has not made an honest attempt to bring before the Court all the evidence on the question as to whether the Ahmadiyyas are really Mohammedans or not.

Mr. Mundell:—Mr. Alkaff was only to be called to prove a statement made by Mr. Sarwar, which was admitted by Mr. Sarwar, so that the object of calling him was gone. When the opportunity of calling Syed Mohamed Agil came he was too ill to attend Court.

Mr. Campbell:—My Lord, as to what constitutes Apostacy I would refer Your Lordship to page 436 of Minhaj and Talibin.

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“Apostasy consists in the abjuration of Islam, either mentally, or by words, or by acts incompatible with faith. As to oral abjuration it matters little whether the words are said in joke, or through a spirit of contradiction, or in good faith. But before such words can be considered as a sign of apostasy they must contain a precise declaration:

1. That one does not believe in the existence of the Creator, or of His apostles; or

2. That Muhammad, or one of the other apostles, is an impostor; or

3. That one considers lawful what is strictly forbidden by the ijma, e.g. the crime of fornication; or

4. That one considers forbidden what is lawful according to the ijma.

5. That one is not obliged to follow the precepts of the ijma, as well positive as negative; or

6. That one intends shortly to change one's religion: or that one has doubts upon the subject of the truth of Islam, etc.

As to acts, these are not considered to be incompatible with faith, unless they show a clear indication of a mockery or denial of religion, as, e.g., throwing the Koran upon a muck heap, or prostrating oneself before an idol, or worshipping the sun.”

If a person becomes an apostate legal consequences follow—his marriage is dissolved and he is refused burial in a Muhammadan burial ground. That is the reason why you cannot call a man a thief, for being called a thief entails penal consequences for him.

The defendant is unable to prove the Plaintiffs are Kaffirs. The plea of justification has been practically abandoned. Now it is only a defence of fair comment.

His Lordship:—Is every person entitled to exercise his private right of private judgment?

Mr. Campbell:—Every person is entitled to exercise his right of private judgment. But they must not call a person heretic, provided he subscribes to the fundamental portions of their faith and has added nothing to it that which is inconsistent. The question as to whether the defendant has a right to call the plaintiffs Kaffirs must be answered in the negative. To call a man Kaffir is forbidden

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by the Mohameddan Law and by the Koran. It is not a question of taking a man's preachings and saying that on those preachings he is a believer in a doctrine which is heretical on certain authorities. But if a man is called a heretic, basing his comment on an inaccurate statement that is entirely different. What has been done by the defendant in this case is different from fair comment. He has taken a man's preachings and says that those preachings indicate such and such doctrine and that such doctrine is erroneous on the following authority. What the defendant has done is that he has made an allegation that the plaintiffs are Kaffirs, basing that allegation on inaccuracies. The plaintiffs say that he has no right to do so and the whole thing is a question of time and circumstances. The distinction to be drawn is what is and what is not fair comment. As what is comment I refer Your Lordship to page 100 of Spencer Bower on Actionable Defamation.

“Comment means and includes any kind of criticism, observation, animadversion, censure, estimate, or other matter in the nature of an expression of judgment or opinion upon the subject of public interest dealt with, whether such matter be written or oral, verbal or non-verbal, considered or extemporaneous, formal or summary, or by whatever symbols, or in whatever form, the meaning thereof is conveyed.” If a man is going to comment he must do so in a reasonable language and he must not make his comment a cloak for malice.

Vide *Parmiter v. Coupland* (1840) 6 M. & W. 105: 151 English Reports Page 340.

If you are going to call a man a heretic it is a question of time and circumstances and the manner in which you do it. If these people had said that according to the best of their opinion at the moment there was reason for the belief that the Quadiani sects are not orthodox Muhammadans and that the people who associated with them ran the risk of being held to be not orthodox Muhammadans, that would be quite all right. I agree that it would not be libellous if these people had put forward a reasoned argument as to why the Quadianis should be considered Kaffirs and said that the Quadianis and their associates are heretics, but it would have to be a reasoned argument based upon a correct representation of the Quadiani doctrines. If they had taken such care they could be held to have a **bona fide** belief in the facts and they would be entitled to

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benefit by the defence of fair comment, but the defendant started with an allegation that the plaintiffs were Kaffirs, which involves an inference that the Quadianis are people who reject the fundamental principles of the Muhammadan religion. Evidence has been given that the Ahmediyyas are Mohameddans. Without any knowledge of the matter the defendant and the three Maulvis (whose libel it really is) have falsely assumed that the Quadiani sects are Kaffirs whereas in fact at least one sect are undoubtedly Muham-maddans, although they may not be Sunnis.

On the question of damages, I submit that although there is no evidence of special damage suffered to the plaintiffs this publication has touched them very deeply. Eastern races are more sensitive on matters of this description. Your Lordship has the right to award costs on the Higher Scale irrespective of the amount of damages. I am contenting myself by submitting that if Your Lordship is satisfied that the plaintiffs have been libelled Your Lordship could show disapproval of the libel by making some award of damages.

His Lordship reserved Judgment.