

Judgment.

Deane J.

Twelfth Day—Friday, 19th March, 1926.
**IN THE SUPREME COURT OF
THE STRAITS SETTLEMENTS.**

SETTLEMENT OF SINGAPORE.

Suit No. 513 of 1925.

Between

MEERAN LEBBAIK MAULLIM AND K. C. MARICAN
Plaintiffs.

and

J. MOHAMED ISMAIL MARICAN AND THE STRAITS
PRINTING WORKS

Defendants.

Coram: Deane J.

JUDGMENT OF DEANE J.

In this case the Plaintiffs who say they are Mohamedan Tamils claim from the Defendants damages for a libel which they say the Defendants published concerning them in a certain handbill in the Tamil language which was distributed in Singapore in May 1925. One of these documents is attached to the Statement of Claim with a translation of it made by an interpreter on behalf of the Plaintiffs; a more intelligible translation however has been supplied by the first Defendant, which for convenience sake has been divided up into paragraphs and it is this document which with Plaintiffs' consent will be generally used when reference is made to the alleged libel although it will be necessary occasionally to use the other translation for purposes of comparison. In paragraph 7 of the statement of claim the Plaintiffs referring to the words of the alleged libel state: "The said words are intended to and represent the Plaintiffs to be disseminators of false doctrines, deceivers, misguided illiterate fools, hypocrites, liars and unbelievers behind whom it is unlawful in Mohamedan law for any Muslim to pray, to whom no Muslim woman should be joined in marriage, from whom any Muslim woman married to them is **de facto** divorced and whose bodies should not be interred in any Muslim burial ground," and paragraph 8 alleges "By reason of the premises the Plaintiffs are held up to the hatred, contempt and ridicule of their fellow Mohammedans and have suffered in their credit and reputation."

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In their statement of defence the first Defendant admits the circulation of the handbill among Mohammedan Tamils, he denies the correctness of the Plaintiffs' translation and says that the words complained of are incapable of the meaning attributed to them and are no libel; he states that the handbill was circulated without malice towards the Plaintiffs as fair and honest comment on a matter of public interest and for the benefit of the public. In the alternative he pleaded, if and so far as the words complained of were not fair and honest comment on matters of public interest written and published as pleaded above, but were allegations of fact, they were in fact true. With reference to plaintiffs' claim to be Mohammedan Tamils, he says that if the Plaintiffs are Quadianis or Ahmadiyahs they are not orthodox Muslims. The points to be settled first it would seem therefore are:—

1. The meaning of the handbill and is it on the face of it defamatory carrying the results attributed to it by Plaintiffs?
2. Is it fair comment made without malice on a matter of public interest?
3. In the alternative is it true?

The first question is simply one of the interpretation of language since there is practically no contest about the translation except in one or two small points. If the words used are in fact on the face of them libellous, the onus is on the Defendant to justify them; otherwise the Plaintiffs will be entitled to succeed. In order however fully to understand the language used it is necessary to be acquainted with the circumstances under which the handbill was issued and to know something of the controversy of which it is the outcome.

In the year 1838 there was born in the village of Quadian in the Punjab of a Mohammedan family a boy called Mirza Ghulam Ahmad. About the year 1880 he began to teach Mohammedanism and at first was welcomed as an earnest and zealous Mohammedan. Later on by the personal claims which he advanced he alienated orthodox Mohammedan sentiment and when he died in 1908 there was raging around him a conflict which has had many reverberations of which this case is one of the latest. What those claims were may be gathered from one of his latest utterances. In the Review of Religions November 1904 page 410 he is reported as having said: "My advent in

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this age is not meant for the reformation of the Mohammedans only, but Almighty God has willed to bring about through me a regeneration of three great nations viz: Hindus, Mohammedans and Christians. As for the last two I am the promised Messiah so for the first I have been sent." The last claim to be the Hindu Avatara was made only towards the end of his life, and has had no results. Nearly the whole of his preaching life however was devoted to proving that he was the Muslim Mahdi and the Christian Messiah and that in him Christianity and Mohammedanism united and culminated. Now the general Muslim conception of the Mahdi is that of a man of blood who will lead a holy war of extermination against the unbelievers, the very antithesis of the character of Christ. On the other hand there are groups of Mohammedans who believe that the Messiah and the Mahdi are one and the same person, and that Jesus is the promised Mahdi. In support of this view Mirza argued that the traditions which speak of the Mahdi as a man of blood are all forgeries and that the Mahdi (or Guided one) will be a man of peace. There seems to be a great deal in the contention that the word JIHAD which in later or commercial Arabic gradually gathered round itself the connotation of a 'bloody war' in classical Arabic merely meant a "striving" without any such connotation, and it is on this fact that the contention that the struggle which the Mahdi will engage in is wholly spiritual and in consonance with the character of Christ is based. Since the death of Mirza his followers have divided into two sections; one calling itself Ahmediyas or followers of Ahmed under the leadership of Mohamed Ali of Lahore who upholds Mirza's claim that he was the Messiah and Mahdi; the other known as Qadianis led by Mirza's son who are said to claim that Mirza was a prophet.

The first section has displayed great missionary activity in its effort to interpret Mohammedanism in a manner which will reconcile its teachings with modern thought. A translation of the Koran into English has been prepared by Mohamed Ali; it produces militant religious publications such as the Islamic Review and Light, and one of its members Mr. Kamal-ud-din has founded a Muslim Mission in England now located at Woking which has had some success, among its converts being a member of the English House of Lords. In 1921 Mr. Kamal-ud-din had visited Singapore on his way to England with the result that soon after his departure on 19th August 1921 an

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Association was formed in Singapore called the Anjuman-i-Islam. The organ of this Association called the 'Muslim' in its foreword Volume 1 No. 1, described the Anjuman-i-Islam as a branch of the Moslem Mission Working "Whose funds should be used for the benefit of the Working Moslem Mission and for the distribution of the Islamic Review and other Moslem literature amongst Non-Moslems. On page 6 of the same volume the objects of the Anjuman-i-Islam are said to be:

1. To circulate Islamic literature of purely religious nature among Non-Moslems and others and spread Islamic Teachings.
2. To help the Moslem Mission Working in furthering its cause.
3. To open a Moslem reading room. Later on a proviso is inserted that "The literature for circulation will usually be chosen under the guidance and on the recommendation of the Director who will always be the head of the Moslem Mission Working."

On page 22 of the same issue of the "Muslim" is set out a list of members of the Anjuman-i-Islam in which the names of the Plaintiff's appear.

As I have indicated above Mirza encountered great opposition from orthodox Muslims during his life which took form *Inter alia* in numerous "FATWAS" issued by Mohammedan Associations in India denouncing him as a Kafir (unbeliever), Dajjal (Antichrist), Murtadd (Apostate) and other abominations. His followers whether Ahmediyas or Quadianis have inherited his unpopularity and are lumped together indiscriminately by their opponents as Quadianis. Accordingly when the Anjuman-i-Islam was started as a branch of the Moslem Mission the attention of the orthodox party seems to have been roused and some dissension arose. Thus Mr. Mahmood bin Hadji Dawood a leading Mohammedan, and friend of Mr. Sarwar the present District Judge of Singapore and a leader of Singapore Mohammedans not only by reason of his position but owing to his deep learning in Arabic when asked by the latter as Patron to join the Anjuman-i-Islam, refused to do so in spite of his friendship on the ground that the Moslem Association had stated that the translation of the Koran by Mohamed Ali contained mistakes while the Secretary of the Anjuman-i-Islam Mr. Bashir Ahmed Mallal upheld it as a true translation.

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No open breach however at first took place between the two parties. Early in 1924 Mr. Sarwar went on furlough and lecturing in Hong Kong was reported to have stated that Moulvi Mohammed Ali's translation was the best of all English translations of the Koran and that the eminent Moulvi was an honest follower of Islam and had rendered noble services to the faith. On 5th March, 1925 one Hafiz Mohammed Hassan B.A., L.L.B. an Ahmadiya arrived in Singapore to take up the charge of the Anjuman-i-Islam and "The Muslim." He was accompanied by Moulvi Ahmed and Merza Wali Ahmed Beg Ahmediya Missionaries and published in the Muslim (13) a message from the Moslems of Lahore in which he appealed for support for the Woking Mission and made the following statement "You have not to fight against enemies only but your own misguided brethren who do not understand the spirit of Islam, and do not let others understand it. To them religion is nothing but a collection of ceremonials. Beware of Moulvis with smattering knowledge of religion and continue to work unhampered by any impediment whether internal or external."

Relations between the two parties grew worse after this and when a photograph was published in an English paper showing Mr. Sarwar praying at Woking behind the son of Mirza, the murmurs had grown so loud that Mr. Sarwar on his return to Singapore visited Mr. Dawood and asked him "Where is the Moulvi who is staying with you and creating trouble with regard to the Quadianis?" Mr. Dawood remonstrated with him for praying behind a man who ought to be considered a Kafir; and Mr. Sarwar after some conversation evidently thinking that Mr. Dawood had a certain amount of reason on his side wrote him on 3-1-1925 that at a tea meeting which was to take place on the next day under the auspices of the Anjuman-i-Islam he proposed to announce that "We have nothing to do with either Quadian people or Khwaja Kamal-ud-din, and I propose to stop the sale of the books published by the Lahore Anjuman-i-Islam of which Moulvi Mohamed Ali is the head." This tea party was duly held but the outcome was anything but peace. To use the words of Mr. Sarwar "The announcement was made in the 'presence of Mr. Dawood. He however brought to the meeting two fanatics, the man from the North West frontier (of India) and the man from Egypt, who began to abuse me and Khamal-ud-din and others and if I had not been extremely patient and

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kept people quiet there would have been broken heads that day." The result of the meeting was that the Anjuman-i-Islam refused to denounce the Ahmediyas or Khwaja Khamal-ud-din and matters remained in STATU QUO. The discussion had however had this much of result that in the 'Muslim' of April 1924 volume 3. No. 4 page 63 there appeared the following announcement in large type "The Muslim has nothing to do with the Ahmadiya Movement" and although one of the objects of the Anjuman-i-Islam was to supply funds to be used for the benefit of the Moslem Woking Mission and for the distribution of the Islamic Review edited by Khwaja Kamal-ud-din and other Moslem literature no funds were sent for the purpose. In April Mr. Dawood Shah said to be an Ahmadiya Missionary from Southern India arrived in Penang with the object of collecting funds to assist him in completing in Tamil a translation of the Koran based upon Mohamed Ali's. The opponents of the Ahmadiya movement were on the alert and 3 Moulvis arrived from India to oppose him. That this opposition was strong is clear because on April 29th Mr. Bashir Ahmed Mallal the Secretary of the Anjuman-i-Islam published in the Malaya Tribune under the heading "The Pharisees of Islam" a defence of Mr. Dawood Shah in which he took occasion after setting forth the merits of that gentleman to remark "How do these Moulvis stay the progress of Islam? They publish and circulate the most acrimonious and scandalous leaflets which are maliciously false comments upon the personal character of those whose ambition is to preach Islam in the light of reason. They will lead the ignorant people into the belief that the principles of these preaching of Islam are adverse to those inculcated in the Holy Koran. I have confidence that the educated Muslims will look upon such propaganda with contempt; but there is a large section of people who place implicit faith in the Moulvis and who will be amenable to these erroneous beliefs.' He then vindicates Mr. Dawood Shah from the charge said to have been spread against him by the Moulvis of having claimed that he was a prophet (Nabi) and states that on the contrary his (Dawood Shah's) belief was that Mohammed was the last prophet, that the door of prophethood was closed after him, that the Koran is the last book of God and that anyone who claims to be a Nabi or Rasool (prophet) after Mohammed is a Kafir and is out of the pale of Islam and that one who accepts any such person as Nabi after our prophet is also a Kafir.

On 4th May the three Moulvis published an open challenge to Mr. Dawood Shah (Ex. 44) alleging that he belonged to the Quadian denomination and that his tenets and dogmas were contrary to those of Sunat Jumat, and calling upon him to attend at the mosque to prove his contentions. The two Plaintiffs each of them issued notices (leaflets) in support of Mr. Dawood Shah and in criticism of the attitude of the Moulvis and on 20th May the alleged libel was issued by the first Defendant. He himself has told us that it was prepared entirely by the Moulvis; and that he issued its statements of facts and of opinion entirely on the faith of what he was told by them. "They were my priests and I had to believe them and took what they said." He was shown he says authorities in Arabic and another language in support of their contentions but as he understood neither language he cannot be taken to have relied upon these. Thus the document, although issued in the name of the 1st Defendant who assumes responsibility, should always be read bearing in mind that it is really the case of the Moulvis against the party who had denounced them as ignorant and blind leaders.

Now having examined the circumstances under which the alleged libel was issued let us examine the language of it:—

It is headed: AN EXHORTATION TO THE QUADIANI 'Mr B. Dawood Shah Sahib of Nachiar-kovil, Mr. Meerran Lebbaik Mu'alim of Nagai (Negapatam) (one of the Plaintiffs) and others.,

Here only Mr. Dawood Shah is referred to as a Quadiani. Then follow three paragraphs which although not in inverted commas are general propositions as to what constitutes a Kafir and how he should be treated, which have been taken in substance if not verbatim from Mohammedan religious books and no doubt command general assent among Mohammedans.

Then paragraph 4 goes on, 'Hence in accordance with the decision of the Sunnat Jamat world that the Quadiani sects are Kafir we have come forward to explain and correct the Kufirstic (heretical) tendencies which are being imbibed (got) unwittingly by Mr. Dawoodshah Sahib of the Quadiani sect, which for the sake of achieving its purpose, raves and roams about falsely calling itself Ahmadiya, Sunniya or Hanafiyya as may suit the occasion and by his associates in Singapore viz: Meeran Lebaik Mua'llim Ibu maidossi Naina Mua'llim, K. C. Marrikan and Bashir Ahmad Mallal.'

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This is a statement that the Sunnat Juma-at world has decided that the Quadiani sects are Kafir and that therefore the writers have thought it necessary to expose the fallacies which are unknowingly being imbibed by Mr. Dawood Shah the Quadiani and by his associates in Singapore of whom two of those mentioned are the Plaintiffs. The writers while conceding that Mr. Dawood Shah and his associates know not what they do they "imbibe unwittingly" take at the same time the opportunity to hurl invectives against the Quadianis for falsely calling themselves by different names to suit their own purposes.

In paragraphs 5 to 20 the Moulvis are developing the case against their opponents in Singapore by a further series of general statements mostly quotations. They discuss who are Kafirs; those who adopt willingly or unwillingly Kufur (infidelity) or the symbols of it whether they act from stupidity or obstinacy or irresponsibility; those who object to the creeds or laws laid down by the Koran, to the Hadis (traditions) and "Ijma" (the majority of Ullmas); those who careless of their own faith lead the ignorant astray by false teaching; the worst of all Kafirs being those who slight the prophets, whose penitence cannot be accepted and whose penalty is death; those who doubt that such persons are Kafir; those who slight the Ulmas (learned in Arabic) who alone are entitled to be called Moulvis. Next follows a statement that the translation of the Holy Quran into Non-Arabic script is forbidden and that if the ignorant who assume the air of learned men are taken as teachers the followers cannot be saved.

Then having in the previous paragraphs stated how people become Kafir the Moulvis proceed to sum up. They have already stated that the Sunnat Juma-at have decided that the Quadianis are Kafir; now they add the additional statement that the 73 sects have come to the same conclusion. Then they boldly declare that the same authorities regard Dawood Shah Sahib, Meeran Lebbaik, Bashir Ahmed Mallal, K. C. Marrikan &c. as judged by their words, acts, beliefs and perverse publications as belonging to the Quadiani party which is outside the pale of all Islam. No distinction here is made between Dawood Shah and the Plaintiffs; they are all united in the condemnation as Quadianis.

Then follows denunciation of the Quadiani sectaries. They are unmindful of the faith being brought to naught; they frighten the public and publish vicious creeds with a

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view to (or according to the other translation "and thereby") rob them of their money by their ravings; when challenged to discuss these things by intelligent people who understand them, they meet the challenge by false slander, and giving clever pretexts to excuse themselves from entering into debate, dupe people and pretend to be dull-witted. Having a smattering of English they write clever press articles; in which they indulge in vile calumnies while pretending to pose as ministers of justice. They encourage delation to our righteous Government; their occupation is the invention of lies and tricks; and indulgence in derision is the part they play.

In the concluding paragraph the Plaintiffs are advised before people on all sides pass remarks such as the above to present themselves before the assembly of the learned (Ullmas) confess the Islamic creed, repent and obtain absolution for their sins.

Now it seems to me that read in the light of this paragraph the document cannot be construed merely as advice to Plaintiffs to avoid being mixed up with the Quadianis or that the denunciation used in the document is mere general abuse of the Quadianis and does not refer to Plaintiffs. Rather it seems to me that the writers meant that abuse to apply and contemplated that other Mohammedans would apply it directly to the Plaintiffs.

Paragraphs 23, 24, 25 and 26 follow so directly on paragraph 22 and are so connected with it as to leave in my mind no reasonable doubt that the Quadiani sectaries referred to are the same persons who have just been declared Quadianis and that the charges contained in all those paragraphs are charges against the Plaintiffs personally, and further were meant by the writers to be so understood. When the first 21 paragraphs also are read with paragraph 22, they amount in my opinion to an elaborate argument to prove that the Plaintiffs have been held to be Kafir and outside the pale of Islam.

If I am correct in this interpretation of the leaflet there can be no doubt that a serious libel on the Plaintiffs has been published. It is a publication which bears a meaning in relation to the Plaintiffs calculated greatly to injure their reputation and to diminish the willingness of others to associate with them. I suppose every one will concede that it is a libel on the face of it to charge a man with robbing people of their money; or with duping people by pretending to be dull-witted, or with being vile calumniators,

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or with promoting delation to the Government, or with inventing stories, lies and tricks. Such charges impute dishonesty treachery and duplicity, and brand the person charged with them as unfit to associate with honourable men. The charge also of being a Kafir or unbeliever is perhaps the most serious one that can be brought against a Moslem, one which holds him up to the hatred and contempt of all Muslims. A Kafir under the Mohammedan law cannot inherit, his marriage with a Muslim woman is *ipso facto* dissolved, and he is looked on as an inveterate enemy and traitor.

The first question then, namely, Is the handbill defamatory on the face of it and does it carry the results attributed to it by the Plaintiffs, must be answered in the affirmative.

The defences of the first Defendant viz. that it is fair comment on a matter of public interest or in the alternative that the statements contained in it are true must next be considered.

To deal with the plea first that it is fair comment on a matter of public interest. It must be allowed first, I think that this was a matter of public interest; the orthodoxy of Mr. Dawood Shah who was collecting money in Singapore to publish his Tamil translation of the Koran was undoubtedly a matter that interested all Mohammedans who were asked to subscribe. He had been supported by the Plaintiffs in public handbills and the Defendant if he took the opposite view was quite at liberty to uphold his opinions and to criticise for the honest purpose of informing the public. The occasion therefore was privileged and the document has to be examined to see whether it keeps within the limits of what is called "fair criticism." In *re McQuire v Western Morning News* (1903) 2 K.B. page 100 it was established on a consideration of the cases in which the question of what was fair criticism was discussed that unfairness includes everything which passes out of the domain of criticism itself, or putting it in another way the term "fair" was intended to exclude those elements which took the 'criticism out of or prevented it from falling within the privilege of the occasion.' Fair comment must mean that which purports to be and is wholly comment and "not such as in itself to disclose malice" to use the words of Collins M. R. an unfair comment must mean either alleged comment which on the face of it is not comment, or not wholly so, or which EX FACIE discloses actual malice,

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or real comment of which the immunity is taken away by extraneous evidence of obliquity of motive in publishing it. The comment in order to be fair must be actuated by "no motive other than those of a pure expression of critic's real opinion" to use the words of Bowen L. J. in *Merivale v Carson* (1887) 2 Q.B.D. page 275. From this it may be deduced that:

1. The defamatory matter must be an expression of opinion—not an allegation of facts.
2. The opinion expressed must be the critic's real opinion, in other words, the criticism must be honest.
3. The expression of opinion must be pure that is to say it must not be adulterated with ingredients foreign to the office of criticism, personal imputation &c.
4. It must appear that the publication was not actuated by malice or by any other motive than the expression of the defendant's critical opinion.

Now in my opinion there is very little in this document which can claim to be comment at all. If it is examined it will be seen that hardly anywhere is there an expression of the writers' opinion, on the contrary there are a number of allegations of fact which of course cannot be comment. Had the writers after setting forth the true facts drawn from the deduction that the plaintiffs were Quadianis or Kafirs such an opinion in view of the facts that have been established in this case viz. that the Plaintiffs belonged to an association the Anjuman-i-Islam which was a branch of the Woking Mission founded by Khwaja Kamal-ud-din an Ahmadiya, would I think have been comment which provided it was honest and without malice would have been entitled to immunity. In this document however the writers are most careful to express no opinion of their own. In paragraph 22 which is the paragraph which has been referred to as the sting of the libel they express no comment of their own, on the contrary there is an allegation of fact which no doubt they thought far more damning than the aforesaid authorities (by which I take it they mean the Sunnat Jama-at and the 73 sects of Islam and possibly the learned (Ulemas) regard Dawoodshah Sahib, Meeran Lebbaik, Bashir Ahmad Mallal, K.C. Marri-khan &c. as judged from their words, acts &c. as belonging

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to the Quadiani party, which is outside the pale of the Sunnat Juma-at communion and of all the rest of the Islamic sects. The other paragraphs too, 23, 24, 25, and 26 are all a series of allegations; they are not comment denouncing the effect, or tendency of the (in the opinion of the writers) false doctrines spread by the Plaintiffs but attack the motives, intentions and characters of the Plaintiffs directly; attributing to them even such a delinquency as delation to the Government which cannot by any stretch of the imagination be conceived of as relevant to a religious controversy.

Such a document departing altogether from the rule of fair comment "PARCERE PERSONAE DICERE DE VITIIS" is in my opinion "such as in itself to disclose malice" and cannot claim immunity as "Fair comment."

The last point to be considered is the defence of justification. The Defendants have pleaded that the facts alleged are true.

If they are true, that of course constitutes an absolute defence irrespective of all other consideration. If the matter published is in fact true, no amount of malice or bad faith or belief in its falsity will defeat such a plea; while if in fact it is false, no amount of good faith or belief in its truth will establish the plea. The sole question therefore to be considered is "Have the Defendants proved (because the onus is upon them) that the defamatory matter is true?" Turning to the document and dealing first with paragraphs 23, 24, 25, and 26, in paragraph 23 (a) is a statement that the Quadiani Sectaries, which I have already decided in the context means the persons named in paragraph 22, are unmindful of the iman (faith) being brought to naught, frighten the public and publish vicious creeds with a view (to use the translation supplied by the Defendants) to rob them of their money by their ravings. This of course imputes to the Plaintiffs a carelessness about the welfare of their religion which eventuates in the publication of vicious creeds and wild ravings the object of publications being to frighten and rob the public of their money. It is said by the defence that this passage refers to the publication of the translation of the Koran according to the version of Mohamed Ali, the argument being that selling a translation of the Koran which is not a true translation is really equivalent to obtain money by false pretences and therefore the word robbery may appropriately be applied thereto. Now if the writers had set

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out the facts and argued that selling such publications amounted to robbery although it seems difficult for the ordinary lay-man to understand how selling a book which the purchaser could examine before he bought could ever be robbery, it might be argued that such language was only a picturesque expression engendered of *odium theologium* and fell within the bounds of fair comment; nothing of the sort however is done; the allegation is made *simpliciter* that the Plaintiffs publish vicious creeds with a view to rob and the ordinary Mohammedan who received a copy of the document would be left with the impression in no way qualified by a statement of the facts on which the charge was based, that the Plaintiffs were thoroughly irreligious and thoroughly dishonest people. All the evidence given in this case leads me to believe that the Plaintiffs far from being careless about their religion are intensely interested in the spread of Mohammedanism; they support the Ahmadias who are certainly a most militant sect of Mohammedans the protagonists of Mohammedanism to-day in Christian countries and in my opinion it cannot be truthfully said that they are unmindful of their Iman. The very fact that they have gone to the trouble and expense of bringing this case chiefly to vindicate their character as Mohammedans is to my mind a refutation of a charge which ought never to have been made. To further impute dishonest motives of gain is to aggravate the injury. Paragraph 26 (d) is the charge of tale bearing to the Government which is imputed to the Plaintiffs. The only attempt made to justify this charge by the Defendant is in the following words taken from his evidence "With regard to tale bearing to the Government Shariff-ud-din (one of the Indian Moulvis) told me that Mr. Sarwar had reported him to the Police. So that if Mr. Sarwar who I believe belongs to the Quadani sect did that the Plaintiffs would carry tales also to the Government." It is quite clear from this that the Defendants have not and cannot prove the charge against the plaintiffs and it is merely reckless indulgence in personalities are quite unjustified.

Leaving that part of the document however let us deal with paragraphs 21 and 22 which are, as it were, the central feature of the libel.

Paragraph 21 states: "The 73 sects of Islam while generally holding to their respective religious opinions without discord, have all of them regarded on proper grounds

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the Quadini sects as Kafir." And paragraph 22 reads: "Apart from that finding, the aforesaid authorities regard Dawoodshah Sahib, Meeran Lebbaik, Bashir Ahmed Mallal K. C. Marrikan &c. as judged from their words, acts, ihteket (beliefs) and perverse publications as belonging to the Quadiani party which is outside the pale of the Sunnat Jumaat communion and of all (the rest of) the Islamic sects."

What exactly is the meaning of these 2 paragraphs? About the first there is no difficulty. It is a statement in so many words that "the 73 sects of Islam have all of them on proper grounds regarded the Quadiani sects as Kafir." Have the Defendants proved the truth of this allegation? There has not been one single attempt made to prove that any one of those numerous sects has ever pronounced on the Quadianis, references in books have been given in which the writers have spoken of the Ahmadiyas as outside the pale of Islam, and referred to fatwahs said to have been issued by various Mohammedan Associations in India to the effect that the Ahmadiyas were Kafir or that Mirza was a Kafir, but all these fatwahs were put forward as having been issued by the followers of the 4 imams who are compendiously referred to as the Sunnat Jama-at and it has not been proved that all the 73 sects or even that one out of that large number speaking through the proper mouth-piece has condemned the Quadianis as Kaffirs. The Wahabis for example are a very large and important sect; no evidence has been given as to their attitude. I hold therefore that paragraph 21 has not been substantiated.

Nor is the implication in the next paragraph that the Quadiani party has been declared outside the pale of Islam by the Sunnat Juma-at world proved to my satisfaction. It is quite clear from references in books and admissions made by Ahmadiyas themselves that many fatwahs were issued denouncing them as Kafir but that is not the same as saying that they have been denounced as Kafir by the whole world of Sunnat Juma-at. Since the abolition of the office of Shaik-ul-Islam in Turkey, there is no Mohammedan who can issue fatwahs binding upon the whole Mohammedan community; and in the absence of any such authority it would be rash to hold that any particular utterance represented the opinion of the whole Mohammedan world of Sunnat Jama-at. As I have already pointed out paragraph 22 does not contain an expression of opinion by the writers that in view of their words, acts &c. the 4

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persons named in it should be considered as within the Quadiani party and therefore within the condemnation by the Sunnat Jama-at and the 73 sects of that party as Kafir. It states that the aforesaid authorities have come to that conclusion. If that were indeed true the Plaintiffs would in fact have been excommunicated by every authority in Islam; no attempt has however been made to show that it is true, not one single fatwah has been produced or referred to in which these names are mentioned and their opinions and acts canvassed and condemnation pronounced against them as Quadianis. Fatwahs against Mirza are not fatwahs against the Plaintiffs and to prove that Mirza has been condemned is not to prove that these particular Plaintiffs have been condemned as Kafirs.

The only fatwah which possibly might be put forward as in any way made with reference to the opinion attributed to the Plaintiffs is the fatwah issued by the El Azhar University on the case stated by Mr. Hussain Abdin. In his letter (36 B) in which he stated the case on which he desired a ruling Mr. Abdin wrote to the Shaik (Chancellor) of the University—"I beg to state that Mirza Ghulam Ahmed of Quadian claims to be the Mahdi and the promised Messiah and that our master Jesus Salam (peace be on him) died and was not raised and shall not return; and that our mistress Mary was not virgin when she carried with Jesus Sal'am but this our master Jesus Sal'am was born from a father and mother just as others (are born) and has brothers and has commented on the saying "Exalted one" Guide "us on the path—to whom thou hast been gracious" as a prayer with which a Moslem prays Allah the Exalted one to bestow upon him just as he has bestowed upon those whom he has been gracious to and that hell is not everlasting and that it is not permitted to pray behind them who do not believe him and (things). Is a man like this a Moslim or an infidel? And is the person who helps financially in spreading abroad his teachings a sinner or not? And what is the judgment in connection with the publication of the Koran mentioned under paragraph 2 in my concluding letter dated 7th March 1924, after noting that all the above beliefs and other things are mentioned in this publication which also contains falsification in the translation in many places? A prompt answer is very much hoped for as the community here have differed in a fearful difference (fearfully)." In reply the following statement was sent by the Chancellor.

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“Whereas it is mentioned in the question that he claims to be the Mahdi, the Promised Messiah; and that Jesus was not raised and has a father and mother like other persons have and that the mistress Mary was not virgin when she carried with Jesus: and alters the Quran by omitting some words from it; and translates the Quran into English and adds this translation to the Quran, and comments on “Guide us on the straight path” as he has commented thereon; and that it is not permitted to pray behind them who do not believe him to be promised Messiah; therefore he is an infidel and not a Moslem for what (the reasons mentioned (hereinbefore) and it is neither permitted to pray behind him, nor to help him in spreading abroad his claims; and who helps him is sinner. Allah is the best knower.” Now the most that can be said of this fatwah is that it is a condemnation of the Merza Ghulam Ahmad as a Kafir and that it says that who “helps him is a sinner.” By no possibility can it be said that this authority condemned the Plaintiffs even by reference as Kafirs; the word “Sinner” I take it carries with it very different implications from those which the word “Kafir” carries. I believe that I am correct in saying that no Mohammedan claims to be sinless. But then it will be said the Plaintiffs since they support the Ahmadiyahs must be taken to have believed in their doctrines, and if they do they must necessarily be Kafirs and would be involved in the condemnation with Mirza. I am not sure that in the circumstances of this case that is a good argument. Let us test it by the case of Mr. Mohamed Ghouse Marican one of the witnesses for the defence; he also is a member of the Anjuman-i-Islam of Singapore and the author of a leaflet (34) in support of Dawood Shah, yet he did not know that the Anjuman-i-Islam was a branch of the Moslem Mission at Woking until he heard it in court in the witness box and he did not know that the Woking Mission was Ahmadiyahs: he had known Khamal-ud-din who had stayed with him in Singapore for 6 weeks and knew him as a good Mohammedan and did not know he was a follower of Ahmed. He also spoke to Dawood Shah about his beliefs in Singapore when the controversy arose about him: he states that Dawood Shah told him that he was neither a Quadiani nor an Ahmadiyah but belonged to the Sunnat Juma-at observing all the rules which a good Mohammedan observes. Here then is a man who came closely into contact with and was a close friend of both Dawood Shah and Khwaja Khamal-ud-din, yet he cannot by any stretch of imagination be believed to

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be an Ahmediya. The Plaintiffs have been no greater supporters of Dawood Shah than Mr. Mohamed Ghouse Marican, why should it be believed that because they are members of the Anjuman-i-Islam which acted as agents for the sale of some Ahmediya books and by their writings they are necessarily believers in the personal claims of Mirza Ghulam Ahmad. Mr. Bashir Ahmed Malall in the letter that he wrote to the Malaya Tribune (25) had remarked "It appears from the comments of the Moulvis that the tenets of the faith of Mr. Dawood Shah are not identical with those held by Moslems. If this is so I do not think that the worthy would believe that Mohammed (May peace be upon him) was the last prophet, that the door of prophethood was closed after him, that the Quran is the last book of God, that anyone who claims to be a Nabi or Rasool (prophet) after Mohammed is a Kafir and is out of the pale of Islam and that one who accepts any such person as Nabi after our Prophet is also a Kafir." Here was a distinct repudiation of any suggestion that Mr. Dawood Shah believed in a prophet arising after Mohammed or that he was a supporter of any such claim on the part of Mirza or anyone else. The meeting of Mr. Dawood Shah in the Town Hall was attended by the 1st Defendant himself who admits "I did not hear anything said against Islam at the meeting" and the Defendant had himself subscribed \$500 to the fund raised by Mr. Khamal-ud-Din when he visited Singapore.

In view therefore of these circumstances and bearing in mind that Mirza was born and lived his life in India remote from Singapore can the Plaintiffs fairly be saddled with the heresies imputed to him? Whether as a matter of fact the Ahmediyas are Kafirs or not does not really seem to me to be material in this case, if necessary to decide the question I should have no hesitation in deciding it as it was decided and on the same grounds as it was decided in the case of *Narantakatt Avallah v Purakkal Mamu*, Indian Law Reports Madras Series (1922) Volume XLV page 986. The overwhelming evidence in this case is that the fundamentals of Mohammedanism are believed in by the Ahmediyas who are therefore entitled to be called Mohammedans and not Kafirs and that the points on which they differ from the orthodox are on the traditions which have never been considered fundamental.

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The very fact that there are 73 sects of Mohammedans all within the pale of Islam points to the comprehensiveness of the creed and shows how alien to the spirit of it is the claim that has been advanced in this case that a man who translated the Koran and by accident omits a single word thereby becomes a Kafir, or the other claim that a man becomes a Kafir who translates the Koran into another language, since Arabic is the only language in which it is permitted to write it. This claim of course A PRIORI seems to be absurd, since it would obviously restrict the knowledge of the Koran to those who understand Arabic. Mr. Sarwar it seems to me is putting the matter in its proper light when he states he never heard of such a contention, all he knows of any such claim is that the Arabs contend that their own language is too perfect for any other to take its place.

To sum up this part of the case it has not been proved that any authority still less, all the authorities *simpliciter* or by implication judging from their words acts and beliefs have condemned the Plaintiffs as belonging to the Quadiani party and therefore without the pale of Islam. The other defamatory allegations of fact in paragraphs 23, 24 and 26 have also not been proved.

I think therefore the Defendants' plea of justification fails and that Plaintiffs are entitled to damages for the libel published about them by the Defendants.

The only question that remains to be decided is the amount of damages that should be awarded to the Plaintiffs. It has been represented to me that the first Defendant was actuated by no personal spite; that his motives were pure ones being merely to help his religion and that in these circumstances only nominal damages should be awarded against him. I am sorry I cannot take this view of the case. As I have indicated in the course of my judgment the libel bears upon the face of it intrinsic evidence of malice in the exaggerated nature of its statements, and also in the fact that it brings against the Plaintiffs one charge at least which has nothing to do with religion or the religious controversy in question and which could only have been imported into the matter with the deliberate intention of prejudicing the Plaintiffs in the eyes of all honourable men,, viz: the charge of being Government informers. The spy and traitor to his order have always commanded universal detestation and contempt and this

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the libel was calculated to bring upon the Plaintiffs. That the Moulvis who were the actual writers of the leaflet were actuated by no friendly feelings to the Plaintiffs and that they knew that they were doing a wrong thing is clear from the fact that they would not put their own name to the document but sheltered themselves behind the first Defendant and have now gone back to India leaving him to face the consequences. On the other hand the Defendant who allowed himself to be made an instrument of their malice cannot claim immunity on the ground that he had no personal ill will.

When all the circumstances of the case moreover are considered, the plea that Defendant had no personal ill feeling against Plaintiffs which rests solely upon his own statement that he had to take what the Moulvis said as true and further that he informed himself by being shown certain books which he did not understand does not seem to me to be well founded. Remember that he had known the Plaintiffs for some time as Mohammedans, that he himself had subscribed to Khamal-ud-din's fund, that he has attended Dawood Shah's meeting and found nothing said against Islam; that as he himself says in his evidence, he had never heard 1st or 2nd Plaintiff or Dawood Shah deny the unity of God, or that Mohamed was his prophet, and the seal of the prophets; that he never heard them deny the authority of the Koran; or say that it was wrong to pray or perform the pilgrimage to Mecca, or to give alms or that they did not believe in the Resurrection never heard that they intended to change their religion, and one wonders how in such circumstances he did not, before accepting unreservedly the statement of 3 Moulvis whom he had never seen until lately and of whose qualifications he was really ignorant, go to the Plaintiffs and ask them about the matter and hear what they had to say before he published a leaflet which reflects so seriously upon their position as Mohammedans. Add to this that he states that he only heard of the Qadiani sects when the notice was written and that the document was brought to him by the Moulvis with the names already filled in and you must draw the inference that the Defendant was entirely reckless as to the truth of the statements contained in the publication as affecting the Plaintiffs.

But if a person allows his mind to get into such a state of unreasoning prejudice that he allows himself to be swayed into making statements about others careless of

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their truth or falsity that is evidence from which malice may be inferred.

Lastly there is the conduct of the Defendants in this trial. They have pleaded justification and up to the last have insisted on the truth of the leaflet. That again is evidence of malice, which has been held sufficient to aggravate the injury. It proves that the Defendants still adhere to the untrue statements and that the libel therefore is not accidental but calculated.

For these reasons I find for the Plaintiffs and assess damages at \$5,000. There will be judgment for the Plaintiffs for \$5,000 and costs against the first Defendant. The 2nd Defendants not having appeared there will be also judgment against them with costs. Costs to be on the higher scale.

Sgd. G. C. DEANE,

Judge of Supreme Court, S.S.

Judgment of Court of Appeal.

An appeal was lodged by the 1st Defendant against the judgment of Mr. Justice Deane. No Memorandum of Appeal having been filed, the appeal was unanimously dismissed on the 15th June 1926. The following is the Judgment of the Court of Appeal.

IN THE SUPREME COURT OF THE STRAITS SETTLEMENTS, SETTLEMENT OF SINGAPORE. APPELLATE JURISDICTION.

Suit No. 513 of 1925.

Between

1. MEERAN LEBBAIK MAULLIM,
2. K. C. MARICAN,

Plaintiffs, (Respondents).

and

1. J. M. ISMAIL MARICAN, (Appellant),
2. THE STRAITS PRINTING WORKS,

Defendants.

15th, June, 1926.

The appeal of the abovenamed 1st Defendant (Appellant) against the Judgment of the Honourable Mr. Justice George Campbell Deane dated the 19th day of March 1926 coming on for hearing this day before the Honourable Sir James William Murison, Knight, Chief Justice, the Honourable Mr. Justice Alfred Vanhouse Brown and the Honourable Mr. Justice James McCabe Reay in the presence of Counsel for the Appellant (1st Defendant) and for the Respondents (Plaintiffs) and upon hearing what was alleged by Counsel on both sides THIS COURT DOTH UNANIMOUSLY ORDER that this appeal be dismissed and that

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the moneys deposited in Court to the credit of this action together with all interest (if any) thereon which shall have accrued up to the date of withdrawal be paid to the Respondents (Plaintiffs) or their Solicitors Messrs. John G. Campbell & Co., AND THIS COURT DOETH FURTHER ORDER that of the said moneys to be paid out of Court as aforesaid the sum of \$250/- deposited as security for costs be applied to pay the Respondents (Plaintiffs) the sum of \$50/- being agreed costs of this appeal and that the balance remaining be paid by the Respondents' (Plaintiffs') Solicitors to the Appellant's (1st Defendant's) Solicitors Messrs. Sisson & Delay.

Entered this 5th day of July 1926 at 3 p.m. Vol. XLII Page 340.

By Order of the Court,
(Sd.) W. A. N. DAVIES, Registrar.
