

APPENDIX A.
APPELLATE CRIMINAL

Before Mr. Justice Oldfield and Mr. Justice Krishnan.

NARANTAKATH AVULLAH—(Complainant).

Petitioner,

V.

Parakkal Mammu and four others (Accused),

Respondents,

**Indian Penal Code (XLV of 1860), ss. 79, 494—
Bigamy—Muhammadan husband becoming Ahmediyan,
whether an apostate—Wife marrying again, whether guilty
of bigamy—Good faith and mistake of law whether good
defences.**

The essential doctrine of the Muhammadan religion is that God is only one and that Muhammad is his Prophet; hence Ahmediyans who also hold that belief are only a sect of Muhammadans, notwithstanding the fact that they differ from other Muhammadans in some other matters of religious belief. Hence on a Muhammadan becoming an Ahmediyan he does not become an apostate and his wife is guilty of bigamy if she marries another during his lifetime; **Hakim Khalil Ahmad v. Malik Israfil and Malik Israfil v. Hakim Khalil Ahmad (1917) 2 Patna L.J., 108, referred to.**

Good faith and mistake of law are no defences to a charge of bigamy. **The Queen v. Tolson (1889) 23 Q.B.D., 168, distinguished.** The opinion of Holmwood, J., in **Abdul Ghani v. Azizul Hug (1912) I.L.R., 39 Calc., 409, dissented from.**

The High Court will entertain a revision against an acquittal even at the instance of a private party when the question is one of public importance involving the personal status of a large section of a community.

Petitions under sections 435 and 439 of the Code of Criminal Procedure, praying the High Court to revise the judgment of V. P. Row, Sessions Judge of North Malabar Division, in Case No. 12 of the calendar for 1920.

The complainant preferred this Revision Petition against the acquittal of the accused.

The facts are given in the judgment of Krishnan, J. Zafrulla Khan of the Lahore Bar and M. C. Parthasarathi Ayyangar and P. V. Venugopala Ayyar for

Muslim Libel Case.

petitioner. This revision though against acquittal is competent as it affects the status of a big sect of Muhammadans. Ahmediyans are only a sect of Muhammadans. Their religion does not differ in essential particulars from Muhammadanism. The essential doctrine of Muhammadanism is the belief that God is one and that Muhammad is His Prophet. The other differences between the two sects are not vital; see *Hakim Khalil Ahmad v. Malik Israfil and Malik Israfil v. Hakim Khalil Ahmad*(1), *Maula Baksh v. Amir-ud-din*(2), *Amir Ali's Muhammadan Law*, Vol. II., pages 36, 111 and 112; *Tyabji's Muhammadan Law*, page 57. *Abdur Rahim's Muhammadan Jurisprudence*, pages 253, 249. *Wilson's Anglo-Muhammadan Law*, page 9, *Ata Ullah v. Azim Ullah* (3), *Abdul Razak v. Aga Mahomed Jaffer Bindamin*(4). Believing in good faith that the husband became an apostate by turning an Ahmediyan is no defence to the charge of bigamy. *Reg v. Sambhu Raghu*(5), *Emperor v. Bai Ganga*(6), *Mst Nandi v. The Crown*(7), *Gour's Penal Law*, Vol. II., page 2248. He distinguished *Abdul Ghani v. Azizul Hug*(8).

Public Prosecutor (J. C. Adam) for the Government remained neutral.

C. Madhavan Nayar for accused.—Revision against acquittal is incompetent except in matters of grave public importance. The accused is not guilty since she acted in good faith, after taking expert opinion from competent Muhammadan religious teachers; see section 79, Penal Code. Ahmediyan faith is different from Muhammadanism. The one differs from the other in at least six important particulars and is inconsistent with it.

[The six particulars are noted in Mr. Justice Krishnan's judgment.]

JUDGMENT.

Oldfield, J.—We are asked to revise the acquittal of the fifth respondent on a charge of bigamy punishable under section 494, Indian Penal Code, and of the other respondents on subsidiary charges. The petitioner is the complainant who prosecuted as fifth respondent's husband; and the Public Prosecutor who has had notice, has under

-
- | | |
|---------------------------------------|--|
| (1) (1917) 2 Patna L.J.; 108 | (2) (1920) I.L.R.; 1 Lahore, 317. |
| (3) (1890) I.L.R.; 12 All: 494 (F.B.) | (4) (1894) I.L.R.; 21 Calc; 666 (P.C.) |
| (5) (1876) I.L.R.; 1 Borm; 347 | (6) (1917) 19 Bom.L.R.; 56 |
| (7) (1920) I.L.R.; 1 Lahore, 440. | (8) (1912) I.L.R.; 39 Calc; 409 422. |

Appendix A.

instructions taken no part in the proceedings. We should not ordinarily proceed at the instance of a private party in revision of an acquittal; and we do so here only because we are satisfied that a question of public importance relating to the personal status of a substantial part of the Muslim community is raised.

The question is whether petitioner's adherence to Ahmediān tenets made him a "murtad" or apostate from Muhammadanism. If it did, it had, it is not disputed, the effect of dissolving his admitted marriage with fifth respondent; and such dissolution prior to her remarriage with third respondent is her first and principal defence to the charge. The reply attempted is that Ahmediyas are merely a sect of Muhammadans, their divergences from ordinary Muhammadanism not involving abandonment of that creed or making them schismatics. Some objection has been taken to our entering on this controversy in revision, by petitioner on the ground that it is purely one of fact since only his religious views and their orthodoxy are in question, and by respondents on the ground that it relates only to degrees of orthodoxy which the Court has no business to estimate. But although I feel the difficulty involved in an attempt to deal with matters with which I am necessarily unfamiliar and although I appreciate the improbability that our decision can commend itself to those with whom personal associations and devotional sentiment must weigh more than the materials on which we have to proceed, the issue cannot be avoided. For it is one of mixed law and fact inasmuch as it relates substantially and ultimately to the personal status, which petitioner's religious views determine and to say that only degrees of orthodoxy are in dispute is to beg the question whether the Ahmediyas' deviation from Islam is such as entails abandonment of any essential thereof.

The lower Court has attempted very little by way of direct ascertainment whether the deviation does so, its conclusion appearing really to rest on the finding that the Ahmediyas are regarded as apostates by orthodox Muhammadans and the principle that

"what the doctrine and faith preached in the Koran are is to be decided, not according to the interpretation put on it by individual persons, but according to the interpretation generally accepted and adopted by Mussalmans as a whole."

And this test, *securus judicat orbis* may in appropriate circumstances have its value. But to apply it fairly,

Muslim Libel Case.

we must make sure that the judgment relied on is really general and had been reached by the community as a whole and that it has been reached after due deliberation and the passing of sufficient time for the disappearance of the prejudice which new beliefs must always incur. Ahmed, whom the Ahmediyans follow, died, we were told, in the Punjab in 1908; and in the fifteen years, which have passed, it is difficult to suppose that Islam or even Islam in India can have come to any mature conclusion on his teachings. In fact it has not been shown that it has done so. For, of 4th, 6th and 7th defence witnesses whose evidence alone is relied on, the first is the son of the Government Kazi of Madras, who was formerly an Assistant Kazi and Arabic Professor in a private Madrassa in this city and describes himself as now chief priest in a district in the Nizam's Dominions, whilst the other two are a kazi and a musaliar or religious leader in Malabar. The evidence of the second attracts suspicion to the extent of his acquaintance with Ahmed's writings and the third said that there was "no one in the Muhammadan world, whose opinion on religious matters was binding on the conscience of Mussalmans." These persons are not shown and do not appear to have more than a local influence and reputation; and there is nothing before us except their assertions, in some instances of doubtful value. In the question propounded to the father of D.W. 4, in the fatwa Exhibit I, "Religious decrees of learned men of Arabia and India" declaring Ahmed and his followers apostates, are referred to; but none is specified either in the question or answer, and none was produced at the trial. In these circumstances it has not been established that the Muslim community either generally or in India has reached any decision which we can regard as conclusive.

This failing, discussion has turned on the character of the divergences between the teaching of Ahmed and the orthodox creed. The former are enumerated, it is not disputed, correctly by the lower Court. But as regards the latter the parties are at variance, petitioner contending that the formula "There is one God and Muhammad is His Prophet" is exhaustive; respondents contending that we must take account of other doctrines sanctioned by the Koran or other authorities. Petitioner in support of his contention relies on the judgment of Mahmood, J., in *Queen-Empress v. Ramzan*(1), those of Edge, C.J., and Mahmood, J. in *Ata-Ullah v. Azim-Ullah*(2), and on *Maula Baksh v.*

(1) (1885) I.L.R.; 7 All; 461 (F.B.) (2) (1890) I.L.R.; 12 All; 494.

Appendix A.

Amir-ud-din (1), as showing that monotheism and belief in Muhammed as God's prophet are the only essentials. But it is clear that the question in those cases was only between one sect and another of the general body of Muhammadans as to the right to worship in a mosque or the validity of a wakf, not as it is here, between orthodoxy and alleged schism. To decide between them, something more is evidently required than the bare formula referred to above. For, the latter portion of it cannot be taken as requiring a belief only in the history or legend of Muhammad without reference to the acceptance of his message and ascertainment of its terms and of the legitimacy of the constructs placed on them later, of which in fact in the case of the Ahmediyas respondents complain. The materials for a conclusion which the parties have provided are the evidence of the witnesses already mentioned, the fatwa Exhibit I, a book M.O. I, "The claims and teachings of Ahmed" and a pamphlet M.O. V, "What distinguishes Ahmedees from non-Ahmedees." No reliance was placed before us on the works exhibited as M.O's. II, III, IV.

It is first to be observed that the Ahmediyas statedly at least, emphasize their adherence to the Islamic formula. In M.O. V., Ahmed's principles are stated in his own words, beginning:

"We are Muslims by the Grace of God; Mustafa, the Holy Prophet of Arabia is our leader and guide. The wine of our spiritual knowledge is from the cup of the Book of God, which is called the Koran. Every Prophethood has found its culmination in that Messenger of God, whose name is Muhammad. The revelation and inspiration that we receive have not been granted us independently, but it is through him that we have received this gift;" and the pamphlet goes on like the manifestations of other religious developments, to state the distinctive features of Ahmed's teachings as a return to the early fervour of the recipients of the original revelation, an abandonment of worldly affairs and political greatness for the earlier and more spiritual methods of propagating the faith and an eradication of the errors, into which Moslems from time to time have fallen. And similarly in M.O. I, the first chapter maintains Monotheism and the supremacy of the Koran and there are (page 106), extracts from the latter under headings

Muslim Libel Case.

“The Almighty God declares that Islam is the perfect and chosen religion.” “The Almighty God commands every soul to follow no other religion than Islam;” and “Muhammad is the Prophet of God for all the nations of the world.”

The form moreover to be signed an initiation (page 104) runs

“I bear witness that there is no God but Allah. He is one, having no partner, and Muhammad is the servant and Messenger of God.”

All this would seem to involve a plenary acceptance of Muhammadanism and in fact the respondents' objection is to the Ahmediyan additions to it and their alleged inconsistency with it. But I have in my opinion been shown no distinct authority as to which doctrines of Islam are regarded as fundamental or the extent to which additions to them, deviations from them or inconsistencies with them are permitted. Seventh defence witness no doubt said generally that any Mussalman who took away from, added to, or tampered with the Koran was a murtad and 4th defence witness, that among sects the differences were not in matters of faith, but in ritual; and there is also the judgment of Mahmood, J., in *Queen-Empress v. Ramzan* (1), in this sense. But 4th defence witness also explained his description of some sects as murtads on the ground that their deviations from the teaching of the Koran were on fundamental points, refusing however to regard the Shiyas' disbelief in the first three Caliphs as a deviation from the faith at all. That private judgment and analogical deduction are in appropriate circumstances and to a greater or less extent, legitimate methods of ascertaining the law is recognized in the text books; (*Amir Ali's Muhammadan Law*), Vol. II, pages 11 to 14, (*Abdur Rahim's Muhammadan Jurisprudence* 25); and we have not been shown how they are not also legitimate in theology so long as fundamental principles are maintained and the question is only of the development, to which every creed must be subject, so long as it retains life and growth and adapts itself to altered conditions. This in fact is enough to justify the Ahmediyans in their faith in the six alleged deviations from orthodoxy as enumerated by the lower Court. For their abandonment of the sword for peaceful argument as the method of propagation of Islam has been inevitable since the cessation of militant conditions and the permeation by

(1) (1885) I.L.R.; 7 All; 461 (F.B.)

Appendix A.

Muhammadans of countries to whose law they owe allegiance; and their refusal to acknowledge the spiritual supremacy of the Sultan of Turkey cannot, if only for chronological reasons, be fundamental.

The remaining four points of divergence referred to by the lower Court are set out in its judgment, the evidence and Exhibit I, unfortunately in very general language, which was not made more specific before us. But they amount, as I understand them, to assertions that Muhammad and other earlier recognized prophets, for instance Jesus Christ, have not been the sole channels of communication between God and Man; that others, for instance Buddha, Rama and Krishna have been bearers of the divine message; and that the last of such messengers was Ahmed himself who is to be identified with the prophet "who will come after me and whose name will be Ahmed" referred to in Koranic verse quoted in Exhibit I; and there is also imputed to the Ahmediyans a novel doctrine that Jesus Christ is still dead and buried and not in heaven. As regards this doctrine it is sufficient that it is presented in Exhibit V (page 49) the only source of information available, as founded on the interpretation of the Koran and tradition and that it has not been shown how rejection of any dogma, which is fundamental or affects the position and supremacy of Muhammad or has been defined by any final or general authority is involved. As regards the remaining points, it is obvious and the references in the latter part of 4th defence witness's evidence indicate that much must depend on the sense, in which the expressions used by Ahmed are understood and the significance of his teaching as a whole. If, for instance, he did (and we have not been referred to any particular passage) speak of Krishna and Rama as heavenly messengers or avatars, the corrective is given in the far less definite claim at page 160 in Exhibit V.

"I do not say it to please anybody, but God has revealed to me that Krishna and Rama were also righteous servants of God and had true connexion with Him;"

and if he did identify himself with the Promised Messiah, he explained at page 143 that

"the perfect follower of God's revelation cannot be called an independent prophet, for this is a disrespect towards the prophethood of Muhammad"

Muslim Libel Case.

and in the note on page 144 that

“no prophet, who is also a law-giver, can appear after the Holy prophet, even from among his followers. For this door is completely closed.”

That Ahmed identified himself with the Ahmed whose advent is foretold in the verse above referred to, can involve no unorthodoxy, much less rejection of any fundamental tenet, unless what we have not been shown, all speculation as to the fulfilment of Koranic prophecy is forbidden; and the quotation in Exhibit I. from the Alamgiri Fatwa must be inconclusive in the absence of information as to its context or the method, by which its author would have reconciled it with the Koranic text. Reference has been made to the extent to which Ahmed statedly accepted and proceeded from the fundamental tenets of Islam. It was then for respondents to show that his additions to and divergences from them involve their abandonment; and it is not possible on the materials before us to hold that they do so. It is satisfactory that a similar conclusion was reached in *Hakim Khalil Ahmad v. Malik Israfil and Malik Israfil v. Hakim Khalil Ahmad*(1). It follows that petitioner is not a murtad and his marriage with 5th respondent is subsisting.

This conclusion makes it necessary to consider the further defence accepted in the alternative by the lower Court that the respondents are entitled to acquittal, because they acted without *mens rea* and in the honest belief that the marriage was dissolved. This is unsustainable. For there is not really any question here of the doctrine of *mens rea* or of the application of section 79, Indian Penal Code, since the respondents acted under a mistake of mixed law and facts; *The Queen v. Tolson*(2) being distinguishable on that ground. I am with all respect unable to follow the authority relied on by the lower Court, the judgment of Holmwood, J., in *Abdul Ghani v. Azizul Huq* (3) and must hold that, whatever weight the good faith of respondents might deserve, if the proper sentence to impose were in question, it is irrelevant to their liability to conviction.

The case however is before us in revision and with reference to the last clause of s. 439, Criminal Procedure Code, the only course open to us is to order a retrial. Mr. Zafrullah Khan for petitioner does not ask us to take this course, since he desires only to obtain an authoritative

(1) (1917) 2 Patna L.J.; 108. (2) (1889) 23 Q.B.D.; 168.

(3) (1912) I.L.R.; 39 Calc; 409.

Appendix A.

settlement of the questions argued. Further proceedings are in my opinion unnecessary since respondents acted in a mistake but honest belief as to the law and only nominal sentences would be the result. In these circumstances and for this reason the petition is dismissed.

Krishnan, J.—This is a Criminal Revision Petition filed by the complaint against the order of acquittal, by the learned Sessions Judge of North Malabar, of the accused, in Sessions Case No. 12 of 1922, of whom the 5th accused a Mopla woman was charged with bigamy under s. 494, Indian Penal Code, and the rest with abetment thereof. The Sessions Judge found that the 5th accused was lawfully married to the complainant but that he subsequently joined the new sect of Ahmediyans and that thereupon after obtaining the opinions of certain Muhammadan theologians that his act amounted to apostacy and severed the marriage tie, she married a second time the third accused in the case. She had also pleaded that the complainant had actually divorced her but that plea was found against by the judge and has not been renewed before us. On these findings the question to be decided was whether her second marriage amounted to bigamy and that depended on the further question whether the act of an orthodox Muhammadan in joining the Ahmediyan sect amounted to apostacy under Muhammadan law or not; for it is conceded on both sides that one of the recognized consequences of apostacy by a Muhammadan is to sever his marriage tie with his wife. All the authorities are agreed on that point. The learned Sessions Judge has upheld the contention of the accused that her husband did become an apostate by joining the Ahmediyans. He has also held that even if that view was wrong, the woman acted with due care and caution and *bona fide* believed that her first marriage had come to an end in law and that she was free to marry again and therefore she was not guilty as there was an absence of *mens rea* or guilty intention. He thus acquitted all the accused on those two grounds and we have to consider in revision the correctness of his views on the two points.

Before doing so it is necessary to mention that a preliminary objection was taken by the learned counsel for the accused to our hearing the petition on the ground that no revision lies against an order of acquittal. It cannot however be said that the High Court has no power to interfere in revision with an order of acquittal for there is no such restriction in the sections of the Criminal Procedure

Muslim Libel Case.

Code which deal with our powers in revision (sections 435 and 439). On the other hand clause (4) of s. 439 contemplates orders of acquittal being revised, for it lays down a restriction on what the High Court can do on such a revision. It enacts that the Court cannot convert a finding of acquittal into one of conviction. This Court, however, as a matter of sound and recognized practice has always refused to revise orders of acquittal at the instance of private parties except in very exceptional cases. This, however, is in my opinion one of those exceptional cases as it raises two important questions of law, one of them of great interest to the new and growing class of Ahmediyans and to the Muhammadans in general, and the decision of the case turns entirely upon the decision of those two points of law and not on any appreciation of evidence. In these circumstances we have decided to overrule the objection.

Turning now to the question of apostacy raised, it is undoubtedly a question of Muhammadan theology to say that deviation from the recognized doctrines of Muhammadanism would amount to apostacy; but as civil rights and legal status of parties are based on its decision, we must decide it ourselves. The accused has called three witnesses of the orthodox party who assert themselves to be men learned in Muhammadan theology and who say that the adoption by a Muhammadan of the tenets of Gulam Ahmed Mirza the founder of the sect of Ahmediyans amounts to apostacy under the law; but we cannot accept their opinion as settling the question as argued for the accused, particularly as they are interested as orthodox Muhammadans in denouncing the members of the new sect as unbelievers and as they have not given satisfactory reasons for their opinions. As pointed out by Sir Abdur Rahim in his Muhammadan Jurisprudence, page 250, some people are too prone to charge others with unbelief and treat them as heretics. But the correct law is that when heretical doctrines are opposed to clear and indisputable texts they would amount to unbelief and not otherwise. Consensus of opinion as a source of law or the doctrine of Ijma is not universally recognized among Muhammadans; but even if we take consensus of opinion as a proper source of law there has not been, as pointed out by my learned brother, such a lapse of time since the founding of the new sect of Ahmediyans as to have developed any such general consensus of opinion regarding the status of its members. We must therefore consider the doctrines of Ahmediyans and see whether their adoption by Mohammadans would

Appendix A.

amount to heresy and make them apostates or murtads and put them outside the pale of Muhammadanism. It may be observed that in doing this we must take the doctrines as propounded by Ahmed himself and accepted by his followers and not the distorted version of them as given by their opponents. It is accepted by the complainant that the Ahmediya doctrines are correctly stated in a small pamphlet by Mr. Sher Ali, B.A., and published by Sadr Anjuman Ahmediyya of Qadian, Punjab, entitled "What distinguishes Ahmadees from Non-Ahmadees" filed as an exhibit in this case. M.O. 5. The creed of Ahmed is set out in it on pages 2 and 3. It begins by saying

"We are Muslims by the Grace of God; Mustapha (the Holy Prophet of Arabia) is our leader and guide. The wine of our spiritual knowledge is from the cup of the Book of God which is called the Quran."

A perusal of what is stated in the pamphlet shows clearly that the Ahmediyans subscribe to the *Kalmo* that there is no God but one God and Muhammad is his prophet, and unreservedly accept the prophethood of Muhammad and the supreme authority of the Quran. In fact it would seem that they differ from the orthodox Muhammadans only in some six points which are set out in the pamphlet and also by the learned Judge in his judgment.

They are briefly stated as follows:—

1. While both parties believe that God has been speaking to his prophets in the past the Non-Ahmadies hold that Muhammad was the last prophet with whom God spoke and since then He has not spoken to and will not speak to any until the end of time. The Ahmadies on the other hand believe that God continues to hold communion with His holy servants now as in the past.

2. While both sides accept that Muhammad was Khatamun-Nabiyyin (the seal of the Prophets) they differ as to its interpretation. Ahmadees say that it means that no new prophet can arise except as a follower of Muhammad and bearing his seal and not that no new prophet can arise at all as the Non-Ahmadies hold.

3. Ahmadees admit into the list of prophets before Muhammad world-teachers such as Zoroaster, Budha, Krishna and Ramachandra and this they say is according to the Koran but Non-Ahmadies refuse to acknowledge them as prophets. Of course the Ahmadies hold that Ahmed was himself a prophet of God but unlike the

Muslim Libel Case.

earlier prophets he got his prophethood through Muhammad who was made a prophet-maker by God.

4. Ahmadies believe that Jesus Christ was actually crucified, but he did not die on the cross. He came out alive and went to Kashmir and died and is buried there. Whereas the Non-Ahmadees hold that Jesus was bodily carried away to heaven by God before crucifixion. The Ahmadees think that the prophecy of the second advent of Jesus is to be fulfilled not by Jesus coming back in person but by his spirit entering another man and they believe this has been fulfilled by the advent of Ahmed himself.

5. While the Non-Ahmadees believe that the promised Mahdi will carry on a holy war or Jihad and spread Islam by the sword, Ahmadees repudiate this doctrine and hold the promised Mahdi and the Messiah are the same and that he will spread Islam by arguments and heavenly signs and not by violence. They accept Ahmed as that Messiah.

6. Ahmadees deny the claim of the Sultan of Turkey to the Caliphate and hold that every Muslim is is bound to remain loyal to the Government under which he lives and which protects him.

These are said to be the main differences. I agree with my learned brother in thinking that these differences not sufficient to justify us in holding that the Ahmadies are not Muhammadans but apostates. As already stated they accept the *Kalma* the prophethood of Muhammad and the authority of the Quran. These undoubtedly are the essential conditions for a person to be a Muhammadan and they are complied with by the Ahmedees; that would seem to make them Moslems governed by the Muhammadan Law. Sir Ameer Ali says in his book on Mohammadan Law, 4th Edition, Vol. II, page 36, that

“Any person who professes the religion of Islam, in other words, accepts the unity of God and the prophetic character of Muhammad is a Moslem and is subject to the Mussalman Law. So long as the individual pronounces the *Kalma* of Tauhid, the *Credo* of Islam, it is not necessary for him or her to observe any of the rites and ceremonies or to believe in particular doctrines which imply Imam Orbelict” and again on page 112.

“Every person who acknowledges the Divine Unity and the messengership of the Arabian prophet is regarded as within the pale of Islam; nothing more is required.”

Appendix A.

To the same effect is the opinion of Sir Abdur Rahim in his *Muhammadian Jurisprudence*, page 249, where he says the Islamic faith consists in acknowledging the authority of one God the Law-giver and the truth of Muhammad's mission as his prophet. Similar expressions of opinion are found in the judgment of Mahmood J., in *Queen-Empress v. Ramzan*(1), and in *Ata-Ullah v. Azim-Ullah*(2), which was a case relating to the sect of Wahabis; though the decisions in those cases referred to worship in a mosque, they are of value to show how eminent Muhammadan lawyers have looked upon the question as to who are Muhammadans. Besides these cases the learned counsel for the petitioner has brought to our notice one recent decision in which the very question raised before us as to the status of Ahmadees seems to have been raised, viz., the case of *Hakim Khalil Ahmad v. Malik Israfil and Malik Israfil v. Hakim Khalil Ahmad* (3). It was expressly ruled there that the sect known as Ahmadees are Muhammadans notwithstanding their pronounced dissent on several important matters of doctrine from the orthodox Muhammadan faith. In view of these authorities which I accept, it follows that a Muhammadan does not become an apostate by merely accepting the doctrines of Ahmadees. The Ahmediyans are in my view only a reformed sect of Muhammadans.

If we examine the six points of difference set out above between the Ahmadees and the Non-Ahmadees none of them seem to refer to any essential principles of Muhammadanism or to conflict with the Quran. The point that has been most pressed before us is that Ahmed having set himself up as a prophet has by that very act become an apostate and his followers as followers of an apostate are also apostates. No authority has been cited for this contention. We cannot act on what D.W. 4 says in his answer (Exhibit I) is stated in the *Fatwa Alamgiri*. The original passage has not been shown to us nor has it been shown that it applies to a case like the present where the prophethood of Muhammad is unreservedly accepted.

For the above reasons I have come to the conclusion that the complainant never became an apostate and that his marriage with the 5th accused was subsisting at the time of her second marriage. We have now to consider

(1) (1885) I.L.R.; 7 All; 461 (F.B.) (2) (1890) I.L.R.; 12 All; 494 (F.B.) (3) (1917) 2 Patna L.J.; 108.

Muslim Libel Case.

whether the plea of good faith and absence of *mens rea* is established in the case and is a proper defence to the charge. It is said that the accused acted in good faith because she obtained the opinion of D.W. 4 and others that she was entitled to re-marry and her learned counsel has relied on *The Queen v. Tolson*(1), and on s. 79 of the Indian Penal Code. Now in this matter I think we must be guided more by the wording of the section of the Code than by the English Law. Section 79 only excuses a person who by reason of a mistake of fact, and not by reason of a mistake of law, in good faith believes himself to be justified by law in doing the act in question. So far as I can see there is no question of fact on which the 5th accused made any mistake. It was purely one of law whether the fact of her husband becoming an Ahmadee made him an apostate in law and severed her marriage tie. Her acting on the opinion of others is thus no answer to the charge against her though, as observed by my learned brother, it may be considered in mitigation of sentence. The English case cited is distinguishable on the ground that there the mistake was one of fact. The opinion of HOLMWOOD, J., in *Abdul Ghani v. Azizul Huq* (2), relied on by the Sessions Judge cannot with all respect be accepted as an authority, as the learned Judge has not discussed the question or referred to any authority and has not noticed the difference between the effect of a mistake of law and of a mistake of fact. Sherfuddin, J., who sat with him put the case on the ground that the marriage which was broken by the husband becoming a Christian could not be held to be subsisting during the period of *iddat* when the second marriage was contracted and therefore no charge for bigamy would lie. On the other hand it has been held in Bombay in *Reg v. Sambhu Raghu*(3), and again in *Emperor v. Bai Ganga*(4), that believing in good faith that the accused was justified in re-marrying is not a defence to a charge of bigamy but can be considered only in mitigation of sentence. This same view has been taken in Punjab: (see *Mst. Nandi v. The Crown*(5). I hold therefore that the 2nd ground of defence of the accused also fails. In the result the acquittal must be set aside but in the circumstances of this case I agree that it is not necessary to order a retrial.

(1) (1889) 23 Q.B.D.; 168. (2) (1912) I.L.R.; 39 Calc.; 409.

(3) (1876) I.L.R., 1 Bom., 347,352. (4) (1917) 19 Bom. L. R.,

56, 60. (5) (1920) I.L.R. 1 Lahore, 440.

APPENDIX B.

Copy of Statement by Abdus Said Mohamed Husain, witness for plaintiff. Karim Bibi (f) vs. Rahmat Ullah, claim about the abolition of Nikah (Nuptials) in the Civil Court of Lala Dewki Nandan Sahib, Civil Judge Grade 1, city Gujranwala, No. of Case 300, Date of commencement 1-8-12. Date of decree 28-2-13 General No. 2543. No. of Goshwara 1881. No. of Basta 73 Wazir Abad.

Statement by the witness for plaintiff.

I, Abdus Said Mohamed Husain s/o Kahim Bux caste Sheikh, (native) lawyer, age 75 years, occupation teaching secular knowledge, residing at Batala, affirm and state: Witness is a certificated theologian. Certificate was obtained at Delhi, Kahudla, Dist: Muzafar Nagar and Benaris etc. Witness is leader of the sect of Sunnat Jamaat. Witness is also a Mufti. I have land also. The Chakralwi and Ahl-i-Quran belong to the same sect. We call them Chakralwis. They call themselves Ahl-i-Quran. Ghulam Nabi alias Abdullah is a resident of Chakrala, Tasil Mianwali and he is the founder of this sect. This sect is outside the pale of Islam, because they don't believe in the Traditions of the Prophet and say that believing in the Traditions is infidelity. In the Ishaatul Quran page 42 by Maulvi Abdullah Sahib Chakralwi, published in 1320 Alhijra, this is mentioned. From line 4 to 8 the reference to this is to be found. Also in the book Brahin-al-Quran by Abdulla Sahib Chakralwi page 16 from line 13 to line 8 page 17 the same reference appears.

Anyone who is a Muslim, on him believing in the traditions of the Prophet is as binding as the believing in the Quran. Anyone who does not believe the Traditions is not deemed as a believer in the Quran. Anyone who having adopted the Chakralwi sect, refuses to believe in the Traditions of the Prophet is outside the pale of Islam like Chakralwi. But should anyone be unaware of the fact that Chakralwi disbelieves the Traditions and under this ignorance become a follower of Chakralwi as is the fashion with most ignorant people who become follower of some sects without a knowledge of the creed, they do not come under this decree and are therefore not without the pale of Islam.

But anyone after having understood the creed of the Chakralwi sect becomes a follower of it, his Nikah, for the reason of his being an apostate, becomes impermanent. XXD. I belong to Ahl Hadis sect. The Sunni sect has 2 branches, Ahl-i-Hadis and Ahl Fiqah. I am also an Ahl

Muslim Libel Case.

Fiqah. Ahl Fiqah has four branches, Hanafi, Shafi, Hambli and Maliki. I am a Hanafi. Besides there are other sects of Islam; Shia, Kharaji, Mutazila, Jabri, Qadriya etc. These are Major sects. Each sect is subdivided into twelve branches. I cannot call to mind the names of each branch. I remember only the names of six sects which I have given above.

Before we were given the title of Ahl Hadis by the Government we were known as Muwahid. We were also known as Ghairmuqallid (non-conformists). But we disliked the term. We are also called as Wahabi. But we disliked the term, and I petitioned to Government that we should not be called as Wahabis. Since then the Government has ordered that in the Government documents this (our) sect should not be mentioned as Wahabi. Since then the Government has used the title of Ahl Hadis. Because we believe in one God, the only object for adoration and believed in no other object worthy of worship we were called Muwahid (unitarians). We were called Ahl Hadis because we acted upon the Traditions and this practice has been in vogue from ancient times.

Hanafi, Shafai, Malki and Hambli sects deemed our sect the Ahl Hadis as Ghair Mugallid (Non-conformist) and therefore they gave us the name of Ghair Muga-llid.

One man, by name Abdul Wahab, has lived in Arabia. He opposed the Government of that country, whom Muhammad Ali King of Egypt subdued. People represented to Government that our sect was connected with Abdul Wahab and that the sect called Wahabi is a rebellious sect and follower of Abdul Wahab. Abdul Wahab lived about 60 or 70 years ago. Our sect has its beginning in the second or third century of the Hijra. Before this the name of this sect was Mussalman. Previously there was no other sect. All the sects came into existence afterwards.

In the beginning all men were known as Mussalman. The sect called Shia came into existence two hundred years of the Hijra. The name Shia was applied because they called themselves as belonging to the sect of Ali. Shia means sect. The sect Shafai attaches itself to Muhamed bin Idris Shafai who obtained this name through his ancestor Shafai. This sect also came into existence two hundred years afterwards. I don't remember the exact date. I cannot say which of these sects was the first.

Appendix B.

The first sect was Hanafi. After a short time the Malik sect which is attached to Imam Malik. Then the sect of the Hambli which follows Imam Ahmad bin Muhamad bin Hambal. All the followers of Islam in the beginning had one sect and it was a time of peace and there was no strife among them. It was a time nearer to the time of the prophet and of the companions of the Prophet and their followers and consequently there was peace. There was no disunion so that one may calumniate or oppose others. After this when there was selfishness and the innovations in the creed came into existence, people through love and confidence in their particular leaders attached themselves to them and sects were formed. All these sects regard the Quran as the Word of God. All these sects regard the Traditions like the Quran. There is a sect called Ahmedi. It has come into existence a short time ago. Since the claim by Mirza Ghulam Ahmad Qadiani, of Messiahship and Mahdi this sect also regards the Quran and the Traditions as of equal authority. There is another sect Babi or Bahai. It is a branch of Shia sect. They too regard the Quran as Word of God. It is not known whether they believe the Traditions as true. All the sects who have been mentioned above are never declared by our sect Kafir. The Chakralwi sect who go by the name of Ahl-i-Quran believes in the Quran nominally, in fact they do not believe in the Quran. It is impossible and impracticable to believe and practise the Quran without the Traditions. The Traditions means the saying, the act and Taqir of the Prophet. Taqir means anything said or practised or heard by the Prophet and maintained by him and is not disapproved by him. The Quran, which was revealed to the Prophet and was brought down by Gabriel, is beside the Tradition. It is called Wahi Matloo (Revelation) and the Tradition is said non-wahi Matloo. This definition is not mentioned in any verse of the Quran. It has been inferred from facts. I cannot say who made this definition, but it has come down from the beginning of the century.

Nor do these words Wahi Matloo and Wahi-Ghair-Matloo appear in the Traditions. But they have been inferred from the blessed words of the Prophet as these two divisions. The reference is to be found on page 21 book Mishkat. The famous books of Tradition are six and besides these there are other books of Tradition, Sahih Bukhari, Sahih Muslim, Jamay, Tirmazi, Abduddaud, Ibn

Muslim Libel Case.

Maja, Nasai, Sunan, Dar Qatni Fatrai, Said bin Masnoon, Masnad Mohamed Hambal, Mota by Imam Malik, Masnad Shafai, Masnad Imam Azam, etc., etc., In our sect and in all the sects there is no difference of opinion in the purity of Sahih Bukhari and Sahih Muslim. In the other books, some Traditions are Sahih (True), some (Hassan) good, some Zaif (weak). And Hasan and Zaif Traditions are not deemed as forged.

There are some books of Tradition which contain Sahih Zaif (True Weak) Hasan and spurious Traditions. But the Traditionists have sifted all the Traditions and separated the forged ones. The book called Firdaus Delhi contains spurious Traditions. The Compilation of the Traditional books was begun in the first century. They were compiled from written documents and oral statements. The written documents from which the compilation was made are not now in existence, just as the documents from which the Quran was compiled are not now in existence. The Shias do not regard the books of Tradition of the Sunnis as true, and likewise the Sunnis do not regard the books of tradition of the Shias and the Kahwarij's as true. But every sect does believe in one or other books of Tradition except the Chakralwi sect. In my opinion there is no such book of Tradition in which all the sects believe.

In my opinion Traditions have been invented, but they have been discriminated. There is no Tradition whose invention has not been declared by the Traditionists. I have not heard from any Shias nor seen in any of their books a statement that Sahih Muslim and Sahih Bukhari contain invented Traditions Hasan (good) or Zaif (Weak). But they do not regard them as true. They do not regard all the Traditions as true. They regard some as true. None can find out whether such and such a book of Tradition is true or weak without the aid of commentary and books dealing with the truth or invention of Traditions.

Among some Traditions which have been declared by the Ahl-Hadis (followers of Tradition) as inventions are those which bear upon the commentary of the Quran.

It is impossible to regard the Traditions of the Bukhari and Muslim which have been regarded as True by Ijma (concordance of the believers) and general consent as invention. In my opinion there was no reward offered for the attempt in the beginning to prove the traditions as true. Abdul Karim Ibn Mafaraq Zandiq (Atheist),

Appendix B.

when ordered to be slain declared that he had invented several thousands of traditions, in which he had made Halal (lawful) haram (unlawful) and unlawful lawful. But by the Grace of God all these traditions (marginal note says that the word cannot be read) had been sifted. This is to be found in Hujatan Nakirl (?).

No True Traditions can contradict the Quran, and any traditions which is not in agreement with the Quran is not true.

I know of no one who at the time of the Prophet invented statements and ascribed them to the Prophet.

No Traditions can abrogate a verse of the Quran. Every follower of Islam regards the Quran as a complete book, except the Chakralwi sect who are consummating the Quran themselves.

There are such ordinances in Islam which are not mentioned in the Quran but they have been uttered by the Prophet of God, on whom be peace. The Almighty God purposely left such ordinances out and left them to the Statement of the Prophet.

Should any one fail to see the Traditions, still, the Quran is sufficient for him, for it is stated in the Quran that: whatever the Prophet says he does so with Our authority and therefore accept it. Such a one's not following the tradition is to go against the Quran.

As if he refuses to believe in the Quran. See Commentary of Chakralwi. Page 112.

No one becomes Kafir by practice but by creed and denial. With me the true religion in all the world is Islam, and since the inception of the world the Islamic rules have been in existence, and the branches in Islam have existed since Mohamed became Prophet and taught Islam to the people.

There are three principles of Islam; believing in the existence of God with His Perfect attributes without an associate, believing in the Ordinances which God's Messengers brought and practising them, and believing in the reward and punishment in the next life.

The definition of faith is thus mentioned in the Quran; the Prophet and the believers believed in that which was brought down to them from God and that everyone believed in God, and His Angels and His books

Muslim Libel Case.

and His Messengers, and they believed in the last Day. In every country, in principal towns, messengers went. God has mentioned some and has not mentioned others. But the condition of faith is that all prophets though their names are not mentioned must be believed in and deny not anyone of them. All the Prophets are equal in Mission, but there is difference in rank.

And the Ordinances preached by the previous prophets were regarded as necessary to be practised, whether they were in books or in leaves or uttered by word of mouth, they are called Hadis (Tradition). The word "Books" does not contain Hadis.

Anyone who in the Quran has been promised Paradise will be called a Muslim. In the Quran the best of creatures are called those who believe and do good. (The meaning of belief has been given above).

The definition of Din (practice) in the Quran is Islam and Iman (Faith) is the same thing whose definition has been given above. The Din Qaiyam (Everlasting Religion) and Islam mean the same thing.

The meaning of Din Qaiyam is: That nature of Islam on which God created the people. Do not change this nature. This is the Din Qaiyam.

There is no discrepancy in any verse of the Quran. The Quran does not mention the unlawfulness (of eating the flesh) of donkey. There is a mention in the Traditions that the Prophet has declared: I declare donkey as haram.

The meaning of verse 6: 196 is: I do not find in the revelation sent to me anything haram (unlawful) to an eater except that it be dead body, or flowed blood or the flesh of pig. The object by this is, that, according to the revelation of the Quran, excluding the three things, there is nothing unlawful. In one of the verses of the Quran it is said: O Prophet why dost thou forbid to thyself that which God has made lawful for thee, i.e. Why dost thou abjure. By this is meant that honey about which the Prophet told his wife that he would not eat in future. In this the Prophet did not declare any lawful thing as positively unlawful but he forbade its use to himself alone. God did not like the thing and the Prophet was forbidden of this practice. This story does not occur in the Quran. But the reason for its revelation was this and from that this (story) has been inferred.

Appendix B.

There is an injunction in a verse of the Holy Quran that no one should say from himself that anything was lawful or unlawful (because) this would mean to attribute lies to God. This verse refers to those who without the authority of God or of the Prophet declare things lawful or unlawful according to their own opinion. The verse does not refer to the Prophet of God.

The injunctions of the Quran are equally binding on the Prophets, if in them other people have not been especially mentioned.

The simple sinner is he who be sorry for his deed and regard it as impermissible. And any one who regards bad deed as permissible he is not only a sinner but becomes a Kafir. This definition is not mentioned in the Quran, but is inferred from it. And the definition of a Kafir is mentioned in the Quran. Kafir is he who disbelieves in all the injunctions of (Shariat) the revealed law. And an apostate is one who after believing refuses to believe in any injunction of the revealed law. The words of the Traditions are the Prophets own words. Wherever the reporter has a doubt he declares it.

Some Sectaries of Ahmadi and Hanafi sects have given fatwahs of infidelity on my sect falsely. An answer has been published to this, declaring it a false accusation.

Re-Examination. After the Prophet no one can become a Muslim unless he believe in the Prophetship and other ordinances of the Prophet.

The Ordinances of Muhammad mean the Traditions.

4-8-12, Signature in English,

DEWKI NANDAN SAHIB.

Signature in Urdu Aboo Said

MUHAMMAD HUSAIN.

Wazir Abad Station.

It is evening now, therefore the case should come on 21-8-12. The parties wishing to put in more questions to do so within the time.

4-8-12.

Signature in English

LALA DEWKI NANDAN SAHIB.

APPENDIX C.

Copy of Final Order of Civil Court presided by Lala Dewki Nandan Sahib Munsif 1st class city Gujranwala; No. of Case 300, Date of Commencement 1-6-12; Date of Decision 28-2-13; General No. 2543. No. of Goshwara 1881, No. of Tasil, 73, Vazirabad.

Karim Bibi (f) daughter of Mohamed Amin, caste Blacksmith, residing at Nizam Abad, Tasil Wazirabar, Dist. Gujranwala,

Plaintiff.

Rahmatulla son of Abdulla caste blacksmith, residing at Nizam Abad, Tasil Wazirabad, Dist. Gujranwala.

Defendant.

Claim for abolition of Nuptials (Nikah) on the ground of apostacy and change of religion and disrespect to the Prophet.

Judgment—Maulvi Abdul Hak and Baboo Abdul Aziz counsel for plaintiff and the defendant with Lala Sardarimal, Wakil, are present.

The plaintiff has brought a claim for the abolition of the Nikah. The gist of her statement is that the defendant has for seven or eight months deserted the religion of Islam and joined the religion of Chakralwi and has been using words of insolence and disrespect to the prophet of Islam, owing to which he has gone out of the pale of Islam. As the defendant is an apostate, therefore the plaintiff's nuptials is revocable.

The gist of the statement of the defendant is I have never ill-treated or practised cruelty on the plaintiff. I am a Muslim. I never deserted the religion of Islam and Chakralwi is not a religion. I follow the religion of Islam and believe with true heart in the prophet Muhammad. I have never been insolent. I am not an apostate. The claim by the plaintiff is rejectable.

The Court fixed the points at issue thus:—

Has the Defendant given up the religion of Islam and become an apostate and therefore is the Nikah revocable?

The plaintiff produced 9 witnesses, Abdul Hamid, Mohamed Hussain, Abdul Hakim, Mohamed Ida Ibrahim, Karim Bux, Allah Ditta, Allah Ditta Mohamed Din and the Defendant.

Muslim Libel Case.

The Defendant produced five witnesses, Mohamed Mustakim, Mohamed Fazil, Omar Shah, Nabi Bux and the plaintiff.

Though the Defendant denies that he belonged to the Chakralwi sect, yet if it be admitted that he does belong to it, the thing to be considered is whether the Chakralwi sectaries or the defendant by joining this sect have become apostates and outside the pale of Islam and that the (defendant) is no longer a Muslim and therefore his nuptials cannot continue.

The Defendant says that he is a Muslim. He believes in the Quran. "I regard the Prophet as true etc. etc." It should now be seen whether one who regards the prophet as true and believes in God and believes in the Quran as the word of God and practises it is a Muslim or not. The difference lies only in this whether disbelief in the traditions causes one to be outside the pale of Islam.

The Plaintiff's witnesses learned theologians of Islam say that all the traditions are not correct, some are true and some not. They moreover say that one sect regards some traditions as true and the same traditions are declared as incorrect by another sect. And as the correctness or incorrectness of the traditions depends upon the opinion of each sect it cannot be said that such and such a tradition is correct or incorrect. This matter depends upon the opinion of each sect. The traditions which are regarded as true by the Shias are not regarded as true by the Sunnis, and those which are regarded by the Sunnis as correct are not so regarded by the Shias. Therefore one who disbelieves in the traditions does not go outside the pale of Islam, because Shias are included in the pale of Islam. The Ahmadiyas are included in the Hanafi sect, and every sectary declares another sectary Kafir. Moreover Maulvi Mohamed Husain the witness for plaintiff is a Hanafi and is a Kafir according to the Ahmediya sect as he himself caused this to be written in his statement. And similarly according to Maulvi Abdul Hakim Sahib, witness for the plaintiff, the followers of the Ahmadi sect are Kafirs, who are the followers of Mirza Ghulam Ahmad, whereas according to Maulvi Mohamad Husain they are not Kafirs. Therefore it is clear that it has been the practice of one follower of a sect to declare follower of another sect Kafir. In fact none is Kafir. Maulvi Mohammad Husain the witness says that no true Tradition is opposed to the teachings of the Quran, and

Appendix C.

any tradition which does not agree with the Quran is not true. And the defendant regards as true the traditions which agree with the Quran. He does not deny the Traditions. His excuse is only this: I admit all the true traditions, and those that are not true I deny. To distinguish between the true and untrue traditions is a right which every sect exercises according to its own particular opinion, as stated by the witness Maulvi Mohamed Husain, the obedience to God and the prophet (means) believing in the Quran and to conform one's deeds in accordance with it.

The real object before Islam is to propagate the Unity of God in the world and to abolish idolatry from the world. Therefore whoever believes in God and does not associate anyone with Him and worships only one God, is a Muslim according to the Quran. Such a one is called Muslim by God and the Prophet. Such a man cannot be excluded from the pale of Islam. See the Quran chapter 3, Alamran verse 63, and chapter 40 Mumin verse 66.

It is also stated in the Quran that not only a Muslim but even a Christian, Jew, etc. who believes in one God is not Kafir according to the Quran. See chapter 2, Cow verse 62 and chapter 5 verse 73.

To be a Muslim it is sufficient to believe in God and His Word and such person is a Muslim. See chapter 8, Anfal, verse 2.

But the matter is still carried further that if anyone accepts the Islamic Qibla (facing towards the House of God at Mecca) as his own Qibla and at the time of meeting say Assalamo-Alaikam (Peace be to you) he cannot be said to be not a Mumin (a believer) according to the Quran. See Chapt. 2 Cow, verse 136 and Chapt. 4 Women, verse 94.

Therefore in my opinion the defendant is a Muslim. The Nikah is not revoked by his abandoning one sect and joining another. Of course if he had become a Hindu or a Christian then undoubtedly his Nikah would not have continued. But as long as he is a Muslim so long the Nikah is valid and good. Ordered that the claim of plaintiff be dismissed with costs; costs of counsel Rs. 15 to be charged. 28-2-13. Signature Dewki Nandan Munsif 1st class.

APPENDIX D.

No. 115.

Opening Sheet of a Criminal case.

(To be used by Magistrates of the 1st Class).
Criminal.

Ambala District.

Proceedings in a Criminal case decided by P. L. Chandu Lal, Esqr. exercising the powers of a Magistrate of the 1st Class. No. _____—37/3.

1. Abdul Karim S/o Umar Mohamed 2. Qasim Ali S/o Buta 3. Umra S/o Ghasita 4. Abdul Rahman S/o Ibrahim 5. Abdul Ghafur S/o Rahim Bux caste Rain residents of Ambala City Mohalla Pukhta Bagh Qazirwara
_____Complainants.

versus.

B. Abdul Rahman S/o Allah Banda caste Rain late Head Treasury Clerk Mohalla Pukhta Bagh 2. Abdul Rahim S/o Allah Banda 3. Allah Bux S/o Sair 4. Jangi S/o Abdulla 5. Ramzan S/o Phaggu 6. Abdul Majid 7. Abdul Hamid S/o P. Abdul Rahman 8. Nura S/o Allah Bux 9. Munshi S/o Abdullah 10. Ahmad Hussain S/o Abdul Razaq 11. Abdul Rahim S/o Rahim Bux 12. Abdul Hamid S/o Abdul Aziz 13. Ghulam Nabi S/o Abdul Karim caste Rain residents of Ambala City Mohalla Pukhta Bagh Qaziwara—Accused. Offence Charged with law applicable Under Sec. 107 Cr. P.C.

Date of institution in Court _____—8-5-1925.

Sentence:—The accused Abdul Karim, Ibrahim, Abdul Hakim, Qasim, Abbi, Umra and Abdul Ghafur are ordered to be bound down in Rs. 500/- in two sureties for one year to keep the peace under Sec. 107 Criminal Procedure Code.

Order.

In this case, the police have sent up two parties, to be dealt with under Sec. 107 Cr. Pro. Code. Both parties are Muhamedans. One, i.e. the Sunnis, will be designated as A, and the other, i.e., Ahmadies, as B.

A consists of the following 8 persons:—

1. Abdul Karim 2. Ibrahim 3. Abdul Hakim 4. Qasim 5. Abbi 6. Umra 7. Abdul Rahman and 8. Abdul Ghafoor.

B consists of the following 4 men:—

1. Abdul Rahman 2. Abdul Rahim 3. Mohd. Ramzan and 4. Allah Bux. It appears that a Masjid called the "Pukhta Bagh" mosque was built about 100 years ago or

Muslim Libel Case.

even earlier, by public contribution in which the ancestors of both the parties contributed. There were, of course, no Ahmadis in Ambala at that time, and all were "Sunnis." Some "Sunnis" of Ambala were converted to the faith of the "Ahmadies" about 30 or 40 years ago. The total number of their community in Ambala is 17 or 18, whereas the Sunnis are about seventeen or eighteen thousand.

Both the "Sunnis" and the "Ahmadis" said their prayers without any hindrance from each other up till 1903, when a dispute arose, the "Sunnis" objecting to the "Ahmadis" right of worship in the "Pukhta Bagh" mosque. This dispute was referred to two arbitrators, namely, M. Najib Khan and Mirza Ijaz Hussain, by the then Deputy Commissioner of Ambala.

Both parties agreed to abide by the decision of these two gentlemen. They filed their award on 18-6-1903 which is to the effect that the Ahmadis are not entitled to say their prayers, as a separate congregation, behind their own Imam, but their right to say their prayers individually, in the mosque, was recognised.

It appears that though the Ahmadis have hired a building which they use for congregational worship, they have individually offered prayers in the "Pukhta Bagh" mosque always and were not resisted.

Abdul Rahman (No. 7) of group A admits the rights of the Ahmadis as claimed by them, see his application dated 16-7-25. Some of the Sunnis witnesses (D.W.1, D.W.2, D.W.3, D.W.4, D.W.5 and D.W.6) themselves admit the right of the Ahmadies to say their prayers individually in the mosque.

The party A have invited my attention to a Patna High Court Ruling (37 Indian Cases (1917) page 302) in support of their contention that the Ahmadies are not entitled to enter their mosque for the purpose of prayers. I have carefully considered this Ruling, and am of opinion that it is rather against them, for, it clearly lays down that though Ahmadis, as a congregation are not allowed to say their prayers behind their own Imam in a Sunni mosque, they may say their prayers individually in it, and this is exactly what they contend in this case which is in accordance with the arbitrator's ruling, above mentioned.

The "Sunnis" have no right to stop them from their individual worship in the mosque in question. It is the "Sunnis" who call the Ahmadis infidels. They are

Appendix D.

very much more in number and a breach of the peace is likely to occur from their side. I am of opinion that to prevent a breach of the peace the ring leaders of their community should be bound down and not the weaker community who is prevented by them from exercising its lawful right.

Notice was issued to show cause why the parties should not be bound down in Rs. 500/0/0 in two sureties, for one year, to keep the peace under Sec. 107 Criminal Procedure Code. The 8 Sunnis of Group A must in my opinion, be bound down, but one of them, namely Abdul Rahman (No. 7) has admitted the other party's claim and I discharge him.

As regards the rest, namely Abdul Karim, Ibrahim, Abdul Hakim Qasim, Abbi, Umra and Abdul Ghafur, I confirm the rule and give them 7 days time to produce the required security.

The members of the B party are discharged.
Announced.

7-10-1925.

Sd/- P. L. CHANDU LAL,
Magistrate 1st Class,
A. D. M.
AMBALA.

The accused to produce the security on 14-10-25.
7-10-1925.

Sd/- P. L. CHANDU LAL,
Magistrate 1st Class.

APPENDIX E.

IN THE COURT OF THE DIVISIONAL JUDGE AT SIALKAT.

Civil Appeal No. 145 of 1904.

Number and date of the Original Suit		Date of institution in first Court	Date of institution of appeal.	Value of Suit and appeal for purposes of jurisdiction.	Value of appeal for purposes of Court fee.	Amount of Court fee on Appeal
No.	Date of institution in first Court					
298	7/ 3 1903	4/ 5 1904	4/ 11 1904	Suit } Appeal } Rs	Decly	Rs 10/-

1. Mirzad Ali, Son of Imam Ali Shah, 2. Maula Bakhsh, Son of Sheikh Karim Bakhsh, 3. Sardar Hussain Bakhsh, Son of Aulti, 4. Mohd: Yusaf, Son of Hussain Bakhsh, 5. Rahim Khan, Son of Bane Khan, 6. Amir Khan, Son of Gulab Khan, 7. Abdul Hafiz, Son of Munshi Amir Bakhsh, 8. Allah Bakhsh. Son of Imam Bakhsh, 9. Kheraiti, Son of Mangal, 10. Rahmat Ullah, Son of Peer Bakhsh, 11. Ch: Rahim Bakhsh, Son of Kammun, 12. Ramzan, Son of Medu, 13. Abdullah Son of Rahim Bakhsh, 14. Abdul Hakim and 15. Fazal Haye, Minors Sons of Kahi Bakhsh through Badal, their uncle, 16. Masita, Son of Mohd: Hafiz, 17. Allah Dia, Son of Amir Bakhsh, residents of Sadar Bazar Sialkot, Cantonment, Plaintiffs—Appellants

against

Maulvi Mubarik Ali, Son of Maulvi Fazab Ahmad Caste Ulma, resident of Sadar Bazar Sialkot. Cantonment, Defendant—Respondent.

Appeal filed by Diwan Charan Das, Pleader.

Appeal from the order of L. Dhanpat Rai, Sub-Judge, Sialkot, dated the 5th day of April 1904, dismissing plaintiffs' claim.

Suit for declaration that the defendant is liable to dismissal from the office of Imam of the Jama Mosque situate at———Sialkot Cantonment on account of his having become a follower of the Kadiyani Mirza and that plaintiffs are at liberty to appoint another man of their own religion in his place by ejecting defendant from the premises belonging to Mosque.

Muslim Libel Case.

Claim in appeal: For declaration that the defendant is liable to be removed from **imamat** and **mutwalliyat** of a certain mosque situate at—Sadar Bazar Sialkot Cantonment.

Appellants: By D. Charan Das, Pleader.

Respondent: By Chaudhari Nasrullah Khan, Pleader.

X

P. 1.

Judgment: This is a case in which certain Mohamadans wish to turn out the defendant from the office of Imam in the Jama Masjid in Sialkot Cantonments because the defendant has become a follower of Mirza Ghulam Ahmad of Qadian. As it is well known the Mirza claims to be the Messiah; this claim has given great umbrage to all Muhammadans excepting those who have become followers of the Mirza, and various fatwas of **Kufr** have been fulminated during the last 13 years.

The defendant does not claim now that the immoveable property in dispute does not belong to the mosque, but he claims a right to continue as the imam and to hold possession of the property as Imam and Mutwalli. It is needless therefore to consider who built the mosque and who acquired the rest of the property.

It is clear from the evidence that the defendant has been a follower of the Mirza since 1891. Plaintiffs say that defendant was formerly a Hanafi, but defendant says he formerly belonged to the Ahl-i-Hadis Sect; no decision on this point appears necessary, though if a decision were necessary I should decide in favour of the correctness of defendant's version. Defendant says he has been a follower of the Mirza ever since 1891 but plaintiffs say he reverted and only became a professed follower of the Mirza for the last time some 4 years ago. The story of defendant's reversion to his original Sect in or about 1894 rests only on oral evidence produced by the plaintiffs. The testimonial which defendant got from some of the leading Muhammadans in 1894 makes no mention of any such reversion, and though it is argued that it was simply owing to his reversion that this testimonial was written I can not see that this testimonial can be regarded as any proof of reversion. It appears rather to one that defendant was unpopular with some of the Sialkot Musalmans, but that

Muslim Libel Case.

others liked and respected him and so he got a testimonial. As to the story of Ibrahim, witness for plaintiffs about the letter he sent from Rawalpindi to ask defendant to confirm the truth of his having again become a follower of the Mirza, in the first place this witness admits that defendant sent no answer and in the second place the letter has been produced by the defendant and does not contain any reference to the defendant's having become a follower of the Mirza. It certainly does not appear to me proved that defendant ever reverted; I regard the oral evidence on the point as unreliable.

The present dispute seems to me to have arisen about 3 years ago, when defendant went off to Qadian and got employment there and proceedings were instituted in the Cantonment Magistrate's Court which resulted in an order under Sections 145 and 146 Cr. P. Code, attaching the Mosque (See order of Cantonment Magistrate, Col: Roberts, dated 16.4.02). The last part of this order was set aside as illegal by the Hon'ble: Mr. Justice Kensington (See order dated 4th November 1902) and in the Hon'ble: Judge's Order it was said that if there was any likelihood of the peace the Magistrate would no doubt consider whether the circumstances justified action under Section 107 of the Procedure Code. Then came the agreement of 8.12. 1902 in which separate hours of prayer were fixed for the Hanafis and the Ahmadis. But though this agreement seems to have avoided the disagreeableness of action under Section 107, still it was no real settlement of the quarrel, and hence the present Suit.

The real question seems to me to be whether the fact of defendant's having become a follower of the Mirza disqualifies him from the post of Imam in this mosque. Defendant himself says he would not read prayers after one who is not a follower of the Mirza, but it is not a question of what defendant alone thinks but rather of what is allowable by the Muhammadan religion. Defendant no doubt preaches doctrines which are displeasing to the great majority of the Muhammadans in Sialkot Cantonments, but the fact of its being unpopular is no proof of the falsehood of a doctrine. In the manner of reading prayers as followed by followers of the Mirza there is apparently no difference from the manner followed by other Muhammadans; the only witness who even hints at a difference seem to be Zahuruddin, witness for defendant, who says there is perhaps a difference in the manner

Appendix E.

of standing and clasping the hands, but a difference of this sort would not be any real impediment to defendant's being imam in my opinion (See 18 Calcutta P. 448). It appears to me that the alleged reversion to orthodoxy in 1894 being disbelieved, it is shewn that at least a considerable portion of the Muhammadan Community followed the defendant in prayers after it was known that he had become a follower of the Mirza in 1891, and hence I think I am right in accepting the evidence of those witnesses for the defendant who, though not themselves followers of the Mirza say that it is allowable for them to read prayers after a follower of the Mirza. At all events I hold it not to be proved that it is not lawful according to the Muhammadan religion for a Muhammadan to say prayers after a follower of the Mirza. In fact the whole case seems to me to depend on whether the Mirza is really the Messiah, as he claims to be, or an impostor and a **Kafir**. This is a matter which it appears to me impossible to decide in a judicial case. (My own private opinion is of course in no way admissible). If the Mirza is the Messiah then I should say that all his followers are the best of Muhammadans; if he is an impostor then no doubt he is an impostor and his followers have altogether gone out of the way and none of them can possibly be fit to lead the public prayers of true believers. I hold it not proved that being a follower of the Mirza disqualifies defendant from the office of Imam. It seems useless to argue that the man who built the mosque was a Hanafi; if he were alive possibly he might be an Ahmadi.

As to maladministration or misappropriation I certainly agree with the Lower Court that there is nothing in these charges. There was merely a temporary mortgage, redeemed long ago; the matter of the **tharra** appears a most frivolous charge.

As to the charge that defendant went off to Qadian and deserted his post it appears to me that he certainly went off **before** the mosque was closed by the Cantonment Magistrate's orders, but at the same time there is evidence as to his having made arrangements for his duties to be performed in his absence. Whether those arrangements were satisfactory is not clear, but I do not think that any charge of desertion of duty is proved. Had the mosque not been closed the absence at Qadian might have been only of a temporary nature, much shorter than it has now turned out to be.

Muslim Libel Case.

There is no doubt that defendant on account of his doctrines is most unpopular with most of the local Muhammadans, but I hold that no ground sufficient to warrant a decree being passed against him has been proved. I therefore uphold the Lower Court's decree and reject the appeal with costs.

3-1-05.

Sd/- W. CHEVIS,
Divisional Judge.

Judgement pronounced in presence of Ramzan, Rahim Bakhsh, Abdullah and other plaintiffs and Fazal Din, Munshi of ch: Nasrulla Khan pleader for respondent
3-1-05.

Sd/- W. CHEVIS,
Divisional Judge.
