

IN THE SUPREME COURT OF SOUTH AFRICA
(CAPE OF GOOD HOPE PROVINCIAL DIVISION)

CASE NUMBER: 10058/82

DATE: 5.11.1985

In the matter between:

- 1. AHMADIYYA ANJUMAN ISHAATI - ISLAM LAHORE (SA) 1st Plaintiff
 - 2. ISMAIL PECK 2nd Plaintiff
- and
- THE MUSLIM JUDICIAL COUNCIL (CAPE) AND OTHERS Defendant

MR. KING: May it please your Lordship, I appear with my learned friend, Mr. Prest, for the plaintiff. (10)

MR. DESAI: May it please your Lordship, I appear on behalf of the defendants, my Lord. My Lord, prior to the commencement of the proceedings, I wish to indicate to the Court at this stage the attitude of the defendants. At the outset I wish to state that no disrespect is intended to the Court. I merely intend to express to the Court the strongly felt opinions of the defendants in this matter. I express them at the outset because they've a direct bearing on the further proceedings in this matter. My Lord, this case has a long history and throughout these proceedings the defendants, by way of exceptions and various other interpleaders, have attempted to avert a trial, simply because that reservations as to the jurisdiction in their eyes of this honourable Court to determine who is a Muslim. The relief sort - the declarator sought is a determination by this Court as to the Ahmadis being regarded as Muslims. All the other ancillary relief sought has a direct bearing on the determination of that question. The matters were brought to finality - or the issue was more clearly - clearly chrystallised in a judgment of your Lordship's brother, Mr. Justice Berman, in a judgment deli-

vered on the 24th day of July, 1985. On the - page 18 of that judgment, Mr. Justice Berman said:

"Indeed, it appears to me that the resolution of the question whether the Ahmadis are Muslims or not will well be more fairly and dispassionately decided by a secular court such as this than by some other tribunal composed of theologians."

Now, this led to the present. It ^{crystallised} the issue for determination by Muslims. Effectively - the effect of the judgment was that this Court as a secular Court, as a non-Muslim Court, could determine for Muslims who is a Muslim. My clients were then placed in the position as theologians, as persons trained in the law - persons trained in Islamic law, to decide what the attitude of a Muslim should be in an issue such as this. The immediate reaction since then has been to canvass opinion throughout the country. Your Lordship sees in front of your Lordship here, sitting behind me, the Muslim leadership - virtually the entire South Africa. The question was put to them as to whether a non-Muslim Court could decide who is a Muslim. They were unanimous in their opinion that Islamic - that a non-Muslim Court cannot, for Muslims, decide who is a Muslim. As a follow-up to this, my clients canvassed the opinions of the international Muslim community. I have in front of me telexes and telegrams from 71 Muslim organisations throughout the world. In effect, your - my Lord, may I say that the defendants do not accept, in their eyes, the right of this Court to determine who is a Muslim. It is an opinion shared by hundreds of millions of Muslims throughout the world. I say this in regard to the telexes and telegrams which are in front of me. But as I indicate to the Court, they arrived from as far afield as the North Americas, various

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parts of North America, the 150 Muslims of Indonesia, the millions of Muslims in Indiaⁿ, in Pakistan, in Japan, in France, in Senegal, the telegrams and telexes come in various languages. They come in English, they come in Arabic, they come in ~~Urdu~~^{Urdu}, they come in French and the common point of view throughout the Islamic world is that for Muslims they cannot accept a determination from a non-Muslim judge as to who is a Muslim. The effect of the international opinion and I say and I think the - my opponents in this case, if they have studied Islam with degree, that one of the binding forces (10 of Islamic law is international opinion. It's known in Arabic as an ^{Ijma} Isma and we believe on the basis of the documents in front of us that we - that there is a strong - that we've international opinion on this matter and we indicate to your Lordship that it is a unanimous point of view, throughout the Islamic world that extends from all parts of the world that this Court cannot, for Muslims, decide who is a Muslim. Now, to ^{Cryst} chrySTALLISE this what it in effect means that for Muslims a decision by a non-Muslim Court as to who is a Muslim, is not binding on their conscience. If I may repeat that. The (20 effect of what I have said is that a decision by a non-Muslim Court as to who is a Muslim is not binding on their conscience. In other words, a Muslim is precluded, by virtue of his religious beliefs, from accepting a determination from a non-Muslim Court, as to who is a Muslim. In the light of this, flowing from the ^{Cryst} chrySTALLISATION of the matter in Berman, J's judgment, following from the international opinion and national opinion of Muslims, the brotherhood of Islam, as reflected in this - these millions - these opinions coming from organisations representing hundreds of millions of (30 people. The defendants in this matter find themselves in this

somewhat awkward position in that they cannot submit to the jurisdiction of this Court to determine who is a Muslim. As believing Muslims, they are bound by their faith and the - they are bound by what their Muslim brothers throughout the world think and the consensus is that this is not a proper forum for determining who is a Muslim. In the circumstances, my instructions are, they indicate the law and if I may say so, the defendants wish no longer to participate in these proceedings in these circumstances. With the greatest of respect to the Court and recognising the duty of this Court, the (10) Muslims - the defendants in this matter and as I've indicated - I've taken the liberty to indicate - from the indications which I have from the persons representing the Muslim community in this country, of the support they have from the international community, that the defendants cannot, with respect, submit to the jurisdiction of this Court to decide who is a Muslim. In the circumstances, my instructions are that defendants wish no longer to proceed in the - to participate in these proceedings. The effect of this in law is that they wish - they withdraw their defence in this matter. (20)

COURT: Are you formally doing that or are you - is that just - you're leading that as the consequence of what you are saying?

MR. DESAI: I recognise that as the consequence of what I am saying and in the circumstances the - my instructions are to withdraw the defence in this matter. Would your Lordship - unless your Lordship wishes to hear me further on any other particular point, I ask to be excused from this Court room.

MR. KING: My Lord, before my learned friend excuses himself, may I be permitted to make a comment?

COURT: Yes.

MR. KING: My Lord, we are prepared to overlook the discourtesy of the fact that we have not been previously apprised of this decision save only for one aspect of it. And that is that I must now, with respect, tell your Lordship, in my learned friend's presence, that we intend to ask for costs on the attorney/client scale in the light of what has now transpired. My learned friend, in the course of his address to his Lordship, has taken the liberty of traversing somewhat - somewhat further than one would ordinarily do. I make no complaint of that. These are unusual circumstances and it's (10) an unusual decision. I would like, however, in order to set the record straight at this early stage, to say to your Lordship that I shall submit, for your Lordship's consideration, a series of judicial decisions in other jurisdictions from countries with considerable Muslim population on this precise issue where, in fact, the Courts in India, in what is now Pakistan, in Singapore, just to mention a few, have in fact - in Mauritius, have deliberated upon this issue in one or other context so that I would suggest and I shall, in due course, suggest to your Lordship that having regard to (20) the history of the dispute between this particular movement which I represent and the body of Muslims who can conveniently be described as the Sunni Muslim - and having regard to the history of that dispute, I question the validity of the basis on which this withdrawal has been motivated and I say that again, my Lord, in the context only because I'm not entering the lists as to what or what is not proper in these circumstances. Only in the context of the special order as to costs which we shall be seeking. This issue ...

COURT: Are you suggesting that in these other forums that - (30) where the matter was considered that the defendants or ...

MR. KING: It was entered on ...

COURT: Muslims did not participate on the same basis ...

MR. KING: No, they did.

COURT: That they're not participating here or they did participate?

MR. KING: They did. This point was never - was never taken. As far as the judgments are concerned, the matter was fully argued. What - what is a Muslim - what is a (indistinct) - who has the right of entry into a mosque. Does - cases dealing specifically with this Ahmadi organisation, have been (10 fought out over a period of 50 - 60 - 70 years in various jurisdictions. I'll give your Lordship all of that. All I'm saying at the moment, my Lord is, with respect, that we would now, with your Lordship's leave, wish to proceed. We are before this Court to seek certain relief. Obviously the nature of the evidence would be appreciably shortened in the light of the fact that the matter is now unopposed but this - these issues are still before this Court. His Lordship, Mr. Justice Berman, heard an argument based specifically on the submission that a secular Court did not have jurisdiction. He (20 held that it did. There's a great deal of authority in South African Courts but where questions of status and questions of property are concerned going back, I believe, to Lord De Villiers, that the secular Courts will regard it as part of their ordinary duty in administering the law of the land to hear these matters. No disrespect whatsoever is intended, of course, to the sensibilities, religious and otherwise, of the defendants. My Lord, however, this matter is before your Lordship and we ...

COURT: The trouble is that theological and temporal matters (30 overlap and ...

MR. KING: Well, yes.

COURT: And this is the dilemma and the problem.

MR. KING: You see, my Lord, when - when a man comes to this Court as the Court with jurisdiction and he says 'I want you to declare me a Muslim. I want you to order the newspapers under the control of the defendants to desist from publishing defamatory matter. I want a right as a Muslim ...' and I'll give your Lordship the law for this, 'And I want the right as a Muslim - a believer, to enter a mosque which theologically and otherwise is open to all Muslims and I want the right, in (10 due course, to be buried amongst my own people.' Those are the rights which are sought today and if the representatives of the defendants have taken the view that it is not a matter in which they, for the reasons my learned friend has given, wish to participate in in these proceedings then, with respect my Lord, that is their decision. But the plaintiff will not be deterred from seeking what is rightfully his in a Court of law. As your Lordship pleases.

MR. DESAI: My Lord, if I may just shortly respond to one or two of the allegations made by my learned friend. Firstly, as (20 to the wish to be buried amongst my own people. It has always been the attitude of the Muslim community at large that the Ahmaddis are not our own people. Secondly, there is the question of discourtesy. No discourtesy was intended to anybody. The history of this matter has been marked by acrimony. Perhaps by the differing points of view adopted by the respective attorneys in this matter and I - up till yesterday - had no communication from who was appearing in fact for the plaintiffs. No discourtesy was intended and if there was - if the implication is that - I apologise for that. We had no pre- (30 indication of who was appearing for the plaintiffs. And as

far as the question is concerned, attorney and client costs, my Lord, the defendants are prepared to bear any penalty which they - this Court may seek to impose for their religious beliefs and convictions.

COURT: Well, the plaintiff is merely notifying you of their intended application. It's just that ...

MR. DESAI: But - but if such application is made ...

COURT: That depends - that remains to be decided at the end.

MR. DESAI: We are in your Lordship's hands in that regard.

COURT: No, I appreciate that. (10

MR. DESAI: My Lord, may we ask at this stage to withdraw from these proceedings?

COURT: Yes - no, I understand, there's absolutely no discourtesy. I understand the position. It's a difficult one. You may certainly withdraw.

MR. DESAI: I am indebted to your Lordship.

COURT: It would perhaps be wiser to take a short adjournment. Will you call me when the Court is ready to proceed? I'll adjourn for a few minutes.

COURT ADJOURNS (20

ON RESUMPTION

COURT: Yes, Mr. King.

MR. KING: May it please your Lordship. The absence of the defendant does not, I believe, relieve the Plaintiff of the necessity to place before your Lordship a fair measure of evidence so as to provide the foundation for the order which is sought. Before doing that, may I address your Lordship in general terms on what the issues are.

COURT: Yes.

MR. KING: As far - no, well it's ... (30

COURT: I have not had an opportunity of reading all these

manuals. I got them at far too late a stage.

MR. KING: It's quite a formidable task. I may say, my Lord, that when the evidence of the expert witness is given, which is going to really be the nub of the evidence - I'll call the plaintiff shortly, just in a confirmatory capacity, his evidence which he will give in Urdu, through an interpreter whom we have, who I'll ask your Lordship to approve in due course, his evidence has been committed to a series of very full notes, almost in lecture form, which I think will - I shall hand in a copy to your Lordship, which will save the need, I think, for a very full note to be taken. But that I shall do in due course. We'll deal with these sections one by one. Now, my Lord, turning to the issues, in the light of an order of this Court given in certain preliminary proceedings, there is now only one plaintiff who is Mr. Ismail Peck, who is the gentleman sitting immediately in front of me, to the left, who is a member of a movement known as the Ahmadiyya Anjuman Ishaati - Islam Lahore (South Africa) and who we will refer to in it's sort of anglocised version as the Amdi movement. Ah - ma - di movement. He sues in a member - as a ...

COURT: Which is the correct pronunciation?

MR. KING: Well, I'll leave that to the expert.

COURT: Oh.

MR. KING: It's Achmadi.

COURT: Achmadi.

MR. KING: Yes. We call it - it's anglocised itself into Amdi. Now, he sues as a member of that association. The first defendant is ex facie the papers, the Muslim Judicial Council, which is a body allegedly of Muslim theologians. The second defendant are the trustees of the mosque situated just diagonally across the road on the corner of Long and Dorp

Streets in Cape Town. The third defendant is the trustees of the Malay portion of a cemetery known as the Veigekraal cemetery in Athlone ^{and there is sought against} and there is sought against one or other or all of these witnesses certain specific relief. The first and I suppose predominant issue because from the decision on that, I think all the other issues will find their solution, is an order declaring that the members of the Ahmadi movement are Muslims and as such are entitled to all the rights and privileges which pertain to Muslims. Then, as against the first defendant particularly, the Muslim Judicial Council, there is sought an order interdicting them from disseminating and publishing defamatory matter. The nature of the defamatory matter appears from certain publications which are annexed to the pleadings, the tenor of which, I can tell your Lordship, is that the members of this particular movement and I may say, my Lord, that it's representatives in Cape Town are very few in number. It has a presence in Pakistan and more particularly in Lahore, which is the movement's headquarters and in various other countries in the world - the Western world - but it's presence in Cape Town is limited, I think I can fairly say, to the members of a few families. But that's not - that's just by way of general information. So, an order is sought declaring that these people - the plaintiff in particular as a member of this movement, is a Muslim. An order is sought interdicting the publication of defamatory matter in the sense that they are described in the publications of the Muslim Judicial Council or in publications in which the Muslim Judicial Council is quoted, as being Murtad^d or infidels or non-Muslims or Kafir - which is a non-believer - apostate - Murtad^d is really an apostate - Kafir is an infidel. And then, my Lord, more specifically, an order is sought declaring that

the members - the second plaintiff in his capacity as an Ahmadi, is entitled to admittance to the mosque and there some reliance is placed upon the original deed, in terms of which the mosque was founded and more particularly a section which reads that:

"This mosque shall be Muskid Sahmi - that is free for the use of all persons professing the Muslim faith."

And similarly, my Lord, in respect of the order which is sought declaring that the plaintiff, Mr. Peck, has a right of (10 burial in the Muslim cemetery, reliance will additionally be placed on the original deed of grant at the hands of King Edward VII, in terms of which the cemetery was set aside for the use of Muslims and Coloured people. We're not concerned in this case with the issue of Coloured people. But, those are additional legal grounds which will be addressed to your Lordship - or advanced to your Lordship. Essentially, what the plaintiff says - he says:

"I am a Muslim ... "

And he says so on the basis, first of all, that he subscribes (20 to the Khalima - K H A L I M A - we'll hand up a glossary which is in the course of preparation to your Lordship, in which he confesses that there is no God but Allah and that Muhammad is His messenger - Muhammad being known in Muslim terminology as the holy prophet, the last prophet of the prophets, the author of various sayings and pronouncements which have been collected in the document called the Hadith, which is second only to the Holy Quran as an authoritative book of the Muslim faith. And he says, Mr. Peck, in addition to that, he says:

"I believe in the fundamental doctrines of Islam

which are often referred to as the five pillars of the Islamic faith. The first of these is bearing witness that there is no God but Allah ..."

COURT: Should I make notes of this or will this be ...

MR. KING: No, my Lord, it'll all be - all be dealt with in great de ...

COURT: Dealt in due course.

MR. KING: I'm really directing your Lordship's attention to the issues. There's no need to ...

COURT: You're painting the whole picture for me generally. (10
Yes.

MR. KING: I'm endeavouring to do so.

"Acknowledging the second pillar, that the prophet Muhammad is ... "

It's put in different terminology in different publications, but in essence -

"Acknowledging the prophet Muhammad is the messenger of Allah, the last of the prophets, the final prophet. The maintenance of prayer, according to the laid down rituals." (20

At certain times of the day Muslims pray.

"The giving of alms - Zakaat - for the relief of the poor and the pilgrimage ... "

or hadj, if that can be afforded, and the observance by fasting of the month of Ramadan - Ramadan, which is the ninth month of the Muslim year. Now, it is the plaintiff's case, which will be testified to by the expert, Hafiz Sher Muhammed, and will be attested by, my Lord, by many writings of learned scholars on the Islamic faith. Will also be evidenced by judgments which, as I indicated earlier to your Lordship, have (30
been given in different Supreme Court forums from time to

time, where this has been proclaimed. There will be reference to an interesting document. I just mention this again en passant, which is the report of a judicial commission of enquiry held into certain disturbances which occurred in the Punjab - in the North, which is now Pakistan - where this movement and - is found in some strength, presided over by a gentleman, Mr. Justice Munir, who subsequently became the chief justice of Pakistan and he and another learned judge presided over into which - where this matter was gone - not directly on the question of who or what constitutes an Ahmadi, (10 but the whole general issue and history of the disturbances which have occurred over the years, involving the members of this movement in - in a very detailed and I would say, with respect, very convincing report. I may mention, my Lord, to give your Lordship some sort of indication of the depth of hostile feeling which this movement has we believe unjustly created in the attitudes of the majority of traditional Muslims, that the gentleman who I think can fairly, by an outsider, be said to have been - 'cause he died just last month - quite the most prominent man that the state of Pakistan has, (20 to date, produced. ^{Zafirullah Khan} Sir Zafirullah Khan, who was president of the General Assembly of the United Nations, the President of the World Court and an occupier of a large number of very responsible positions, who was a - what is known as a Quaddiani. I'll give your Lordship that in a moment. Just to digress momentarily, there is within what is broadly speaking the Ahmadi or Amdi movement, there are two divisions. There are the Lahore branch or the Lahoris, represented by these gentlemen in front of me, who are - and the plaintiff - and there is a rather larger branch of followers of the same founder, who (30) style themselves the Quaddianis, because the founder of the

movement, Mirza Ghulam Ahmad, came from the district of
 — Qadadian. Now, Sir ^{Zafriulla Khan} Zafrila Kahn was a Qadadiani. I shall
 show your Lordship - or endeavour to do so by reference to
 — evidence. First of all, that the Qadadianis are, so to speak,
 further removed in certain important respects from the Sunni
 or majority Muslim. Because they have the majority, by no
 — means are they all the Muslims. There are ^{igh} ~~Shia~~ Muslims -
 there are 70 odd sects of Muslims within Islam.

COURT: Yes, I was going to ask you what the - what the struc-
 ture of Muslim was. Whether there were many sects. (10)

MR. KING: Well, there are. I'll show your Lordship books on
 that subject. But the gentlemen who were previously occupying
 this Court I think, collectively, can be regarded as the Sunni
 or more orthodox in a sense - representatives of Islam but by
 no means are they in the numerical sense, exclusive. But Sir
^{Zafriulla Khan} Zafrila Kahn was a Qadadiani and, as I say, my Lord, they are
 — further removed in certain very important respects from the
 Lahori Ahmadis who - with whom we are concerned. Such was the
 depth and strength of hostile feeling to this prominent man,
 that he was in fact forced, eventually, to resign as foreign (20)
 minister of Pakistan. I mention that just to indicate how -
 how strong is the feeling. Interestingly, my Lord, after this
 matter had, as I have indicated to your Lordship, been tested
 from time to time in the Courts in India - the North and what
 is now Pakistan, interestingly, the Pakistan parliament or
 assembly was persuaded in 1974 to legislate because the move-
 ments - the opposition to this movement quite frankly had
 failed in the Court - to legislate the members of this move-
 ment as a non-Muslim minority, which carries with it certain
 civil disabilities which it's not necessary to go into.

Simply I make the point. But, my Lord, to return now to what (30)

is in very broad terms in issue, turning for a moment, without referring your Lordship to the - to the page, to the defendants case as it appears from a finally consolidated plea which differs somewhat - and I'll argue the significance of that in due course to your Lordship - differs in it's extent, at any rate, from what was originally pleaded. But on the plea, as it finally has seen the light of day, in broad terms what the defendants say is this: they say, yes, we accept that the five pillars of Islam are fundamental to the faith - fundamental to a person being a Muslim or as it's styled in (10) Pakistan, a Muselman, but there are certain other fundamental or important doctrines non-belief in which negates the validity of a man's profession of the Muslim faith and these preceded as they are by a meaningless tag, 'without derogating from the generality of the above' amount, my Lord, to this. They say that:

"Acceptance of such principles ... "

those are the five pillars -

"Acceptance of such principles alone does not constitute the touch-stone by which a person is properly identified as a Muslim. There are many other (20) principles and beliefs, acceptance of which is essential to the true Muslim and failure to accept which constitute apostasy. Plaintiffs ... "

- Mr. Peck -

" ... fail to accept the following principles and beliefs which are essential to adherence to Islam and Plaintiffs are therefore not Muslim."

The reason, I may just mention, why the plural is used and not the singular is that originally the first plaintiff, the movement was the first plaintiff and it was held in previous pro- (30) ceedings / ...

ceedings that they did not, for reasons which are really now historical, have the necessary locus standi, so that in those circumstances although it doesn't in any way affect the determination of the case, there is a misnomer in the plea, because we have one plaintiff only. Now, what then are these beliefs which are allegedly essential to adherence to Islam? First of all, the finality of the prophethood of the prophet Muhammad, the holy prophet, in that they accept as a leader and reformer. Now, let me pause for a moment. The fact of the finality of the prophet as being crucial and fundamental to any Muslim is not in issue. (10

COURT: What does 'finality' mean?

MR. KING: That he was the last prophet, my Lord.

COURT: You mean, that there is no room in Allah's dispensation for further prophets?

MR. KING: No. There will - there are people, as - as your Lordship will hear in evidence, such as the founder of this movement, to whom certain revelations came from the Almighty, through the angel Gabriel, who is the communicator of such information - saintly revelation. Now - but they were not prophetic in the sense that they would have constituted or did constitute the founder of this movement, Mirza Ghulam ^{Ahmada} Ahmada, as a prophet after - after Muhammad. He is the last of the prophets. The holy prophecies of the Islamic faith ended with Muhammad. That is basic to the faith. (20

COURT: May I ask another question? What does the word 'prophet' mean in that context?

MR. KING: Well, my Lord, I'll leave that to the learned gentleman here. It's one of the crucial issues in this case. Because one of the accusations - your Lordship asks me - one of the accusations, if one could use that term, which is made (30

1A.28 concerning / ...

concerning the founder of this movement, is that he described himself and set himself up as a prophet after Muhammad, because he lived some - in our terms - in Western terms, some 12 centuries or so, after Muhammad. But, my Lord, the reason why this terminology was used will be explained at some length by the expert witness. It is one of the key issues in the determination of the case. And they go on, and this is what the plea says, which lends the substance to what I have just said to your Lordship, that they fail to accept the finality of the prophethood of the prophet Muhammad in that:

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"They accept as a leader and reformer, alternatively do not repudiate the teachings of one Mirza Ghulam Ahmad or Achmed, who claimed to be a prophet ... "

I'm reading from the plea -

"... and/or the Messiah and/or one who had received revelations from God."

Now, I'll come back in a moment to deal with Mirza Sahib, as I will describe him to your Lordship in due course. But the essence of the explanation of the expert witness will be by reference to the writings of the founder of the movement and to commentaries on his writing, on the writings and statements of other people not members of the movement. The evidence will be that - that Mirza Sahib never, throughout his quite long life and in all his teaching and in all his writings, ever claimed to be a prophet in the sense of a prophet coming in point of time after the last and final prophet - the holy prophet, Muhammad. The next issue which - on which evidence will be tendered is the allegation that the followers of this movement, and the plaintiff, cannot be heard to claim to be a Muslim because he fails to believe in the virgin birth and immaculate conception of Jesus Christ and as your Lordship

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will hear in the evidence, Jesus is in fact one of the prophets in terms of the Islamic faith preceding the prophet Muhammad by some five or six centuries in terms of the Christian calendar. And then, my Lord, there will be some evidence which is - perhaps has a certain amount of present-day relevance ...

COURT: Can I - can I just take you up on one thing. You talked about the immaculate conception ...

MR. KING: Yes.

COURT: Of Jesus Christ. There wasn't such a thing. (10

MR. KING: Well ...

COURT: It's the immaculate conception of the Virgin Mary.

MR. KING: Yes.

COURT: And the virgin birth of - of Christ.

MR. KING: It's the immaculate conception of the Virgin Mary and the virgin birth of - of Jesus Christ.

COURT: The concept of immaculate conception does not apply to Him.

MR. KING: No - no, that's perfectly correct. And as your Lordship knows, the evidence will be here that there is no particularly fixed tenet as far as the Ahmadis are concerned, but that in any event this is not some fundamental doctrine as far as the Muslim faith is concerned. Your Lordship will know that even amongst Christian theologians there are two very distinct schools ^{of thought} ~~of thought~~ concerning that particular holy concept. My Lord, then and in terms of present-day relevance, I think not without some interest, the Ahmadis are accused of, so to speak, failing in their Muslim faith because they do not believe in the Jihad or religious or holy war. And there again, my Lord, there are apparently and interestingly this issue was covered just last week, I think, in two articles in (20 (30

a local newspaper. There again, in the very broadest and non-scientific lay terms, there are two schools of thought which can perhaps, if one may colloquialise them, are given expression in the two concepts of war by the sword - struggle by the sword and struggle by the pen and the expert witness will show your Lordship that Mirza Sahib most certainly recognised the concept of a Jihad as part of the teaching of Islam. But in his own writings and by reference to the Holy Quran, which will be referred to consistently as the source document of the Islamic faith, that this was regarded as a struggle of teaching. A missionary struggle and that only in circumstances of extremity and in self-defence, was recourse to physical force justified. My Lord, I see it's time when good Christian faith normally adjourns for tea. (10

COURT: Would it be convenient time to take - yes, I'll take the usual adjournment. The Court will adjourn.

COURT ADJOURNED

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ON RESUMPTION: 11.35 AM

COURT: Yes, Mr King.

MR KING: My Lord, I was outlining very, very briefly what the main issues are. There are other incidental or peripheral issues which will emerge in the course of the evidence. Your Lordship will have observed that I have spoken somewhat indefinitely at this stage of the movement and its founder. This, too, will be covered to some extent in evidence but if I may tell your Lordship something about him. The founder of this movement, Mirza Ghulam Ahmad, was born in 1834/35 - I (10
— don't think it's entirely certain - at ^{Qadian} Qadian which is in the district of Gurdasour in the part of what was then India or British India, the area known as the Punjab. He is - his early life will be testified to by the witness, Hafiz Sher Muhammed, but he commenced writing works of theology in 1880 and his first work, and in many ways I think his major work, was in 4 volumes which took some 4 years to complete and its known - and the glossary will be handed up - as the Baharin Ahmadiyya. In 1882 he proclaimed that he had received a revelation or Ilham that God had entrusted to him a special mission and in (20 the course of the 1880s/1890 he made certain pronouncements which will be dealt with in evidence and one saw the beginnings of a defined movement or defined body of adherents to the particular brand, if you will, of Islam or the Islamic faith which Mirza Sahib propagated. My Lord, he lived into this century. He died in 1908. He also announced himself to be that person who, in terms of the Islamic faith, appears - should appear once in every century in terms of the Islamic calendar, the mujadidd or reformer who is sent by God in every century to, if one may put it a little bit crudely, keep the members of (30 the faith on their toes and....

COURT: Does Islam recognise the development of doctrine?

MR KING: I beg your Lordship's pardon?

COURT: Does Islam recognise the development of doctrine? That doctrines may develop and...?

MR KING: Yes. Oh yes, indeed.

COURT: Take different forms, different emphases?

MR KING: No, I'm told not. Perhaps I - I don't know whether there may be a misinterpretation of what your Lordship means. There is certainly, and has been from the earliest times, commentary on various aspects of the faith and revelation to certain saintly and holy men which they have in turn conveyed. Now, perhaps I'll leave it to the expert to answer that. That doesn't constitute a development of doctrine but a re-statement of it. (10

COURT: Mmm.

MR KING: And I think basic doctrine in the sense of what constitutes a Muslim has remained unchanged throughout certainly. But after Mirza's death the movement continued and under the leadership of various people one who will feature largely in the evidence as a very learned man, a translator of the Holy Quran and the writer of many other learned works, Maulana Muhammed Ali whose works will be referred to and, my Lord, the chronology - I don't think, with respect, I should go through it in detail because it will emerge from the evidence, save only to emphasize what I have already mentioned, that in March 1914, some 6 years after the death of the founder of the movement, there was a split or division in the movement on matters of doctrinal interpretation which resulted in this group, again colloquially referred to as the Lahori branch of the Ahmadiyya movement, under the leadership of Maulana Muhammed Ali, splitting from the larger group who are known - still known as the/..... (20 (30

2a.6

^{Qadiani}
 as the Kadyani branch or group in the Ahmadiyya movement and I shall show your Lordship by reference to the evidence that, as I have said, a fault which is adverted to in quite a lot of the earlier writing or an error has been perpetuated in these proceedings that certain of the beliefs of the ^{Qadiani} Kadyani have been attributed to the Lahori. The ^{Pakistani} Kadyanis are quite separate. There is in fact a ^{Qadiani} Kadyani presence here in Cape Town but they have nothing - I repeat with respect, nothing to do with these proceedings. My Lord, then one will hear of - or one will be reminded of the historical fact that in 1947 the State of (10) Pakistan was officially created and that that - within what became Pakistan that this movement or group had its headquarters.

COURT: Yes.

MR KING: Had its headquarters. The new leader of the movement was elected in 1951. In 1953 there were disturbances - popular disturbances in the Punjab which resulted in this judicial commission of enquiry. It's interesting again as illustrating the strength of hostility which is capable of being generated against this movement and its followers. One might think that it has a political undertone. I don't know that it's necessary (20) in the light of what has transpired that one should have to go into that in any great detail, if at all. But this report by Justice Munir is interesting and instructive. There will be reference to it quite early on in the evidence because one of the matters which he investigated - the learned judges investigated was precisely what, in the opinion of ^{Sunni} Suli Ulam^a, holy men or learned theologian, constituted a Muslim and his Lordship finds in the report that there is really a remarkable absence of consensus amongst the traditional Muslim thinker as to what constitutes a Muslim and he concludes, although it (30) was not part of his Lordship's brief, so to speak, to make any
 2a.9 finding/.....

finding and he doesn't do so, but he concludes from that that to castigate or to label some other movement or sect, not that we would regard ourselves as a sect here, as non-Muslim is to embark in itself on very dangerous ground because even amongst those who cry loudest of others that they are not Muslims there is little, if any, unanimity as to who is and what constitutes a Muslim. The history of this movement, my Lord, and I say this advisedly, seems to be a history of religious intolerance and religious persecution of their members and their movement.

This learned gentleman sitting here who will give evidence who (10 is a Pakistani to his fingertips will tell your Lordship what the disabilities are under which he and those who believe as he does have to live in that Muslim State. He will also tell your Lordship, and it's pertinent to what was said by my learned friend before his clients withdrew, he will also tell your Lordship that the persecution of the ^{Ahmadi} Umdī is by no means universal in the Muslim world. That there are many countries and he has been and lived because he is essentially a missionary in some of them where the movement, although small, is allowed to go about its business and is recognised as a movement within (20 the greater Islam. Interestingly, and it testifies to what his Lordship, Mr Justice Munir in fact found, there are any number of variations within the body of Islam, different groups, different sects, some large, some small, hold differing beliefs on matters of ritual perhaps, of liturgy perhaps, of doctrine perhaps, but there is a strain running through them all and we believe and we will submit that the ^{Ahmadi} Umdī fall within them, of essential belief in what is necessary to constitute a person - a Muslim. There is a large body, as your Lordship knows, of Muslims. For instance in Iran. Now, they are known as the (30 Shiya rather than the Sunni and this will be touched on in the

evidence. Your Lordship will hear that there are certain basic differences of belief going back right to the lifetime of the Holy Prophet himself and his companions - his contemporaries which distinguish the Shiya from the Sunni but they are nonetheless Muslims. There are distinctions, my Lord, as your Lordship knows which pertain to Catholic and Protestant, to Anglican and Methodist, to Baptist and Adventist. They are all Christians and there's room for all of them and so we shall submit to your Lordship it is the case amongst the Muslims. However that may be, my Lord, I shall show and hand up to your Lordship, as I have indicated, numerous judgments from learned judges, some of whom have taken an attitude which I should have, I think, in any event have submitted to your Lordship as one possible approach to this matter, that if a Court is satisfied that a man bona fide professes himself to be a Muslim that would satisfy the Court and that really the essential truth of validity of his belief, unless it can be patently shown to be non-existent, is in the final analysis a matter between him and God. But there are other Courts which have gone in rather more detail into the matter on the doctrinal basis. Almost without exception and certainly I think I can say, my Lord, that as far as superior Courts are concerned without exception over many years - the findings - and I haven't got all the cases but I have books on Muhammedan law which I shall make available to your Lordship - authoritative treatises where these cases are referred to - the members of this movement have been held to, by reason of their beliefs, qualify as Muslims. On some occasions that has resulted in their admissions to mosques which is one of the issues here. On other occasions the issues has had to arise on such matters as bigamy, as to whether a Muslim (30) — who became and ^{Ahmade} Umdī could no longer be regarded as married to his wife and/...

wife and that when his wife remarried whether she was committing bigamy. It comes up in all sorts of shapes and guises. There is a famous libel case to which I shall refer. But, my Lord, all that is by way of historical introduction. I hope I have, in however brief and broad a form, given your Lordship some understanding of the issues that are involved. As far as the witnesses which I propose, with your Lordship's leave, to call I shall rely on the religious and doctrinal matters as I would have done in any event had there been a defence on the evidence of the gentleman in the middle here, the Hafiz - and he's (10 known as the Hafiz. It's a courtesy title to which he is entitled by reason of his profound knowledge of the Holy Quran. He knows it off by heart I am reminded by my learned friend. He, as he will tell your Lordship, is a scholar, a theologian and a missionary of this movement. He has been to various parts of the world where the movement has a presence - representation and he has come here, as he did a year ago when this case was first intended to go to trial, to place before the Court evidence which, my Lord, we believe your Lordship will require in order to arrive at a just decision and the only other witness (20 who I shall call who will be inevitably a great deal shorter will be the plaintiff, Mr Peck, who will tell your Lordship a little about himself, his membership of the movement and whatever else may be necessary, so to speak, to wrap up and complete the plaintiff's case. So, my Lord, I would like then, with that brief introduction, to commence with the tendering of evidence. The Hafiz Sher Muhammed will give his evidence, if your Lordship pleases, in the Urdu language. We have an interpreter, Dr Aziz, who is, as he will tell your Lordship in a moment because your Lordship will wish to be satisfied with his (30 proficiency, a gentleman of Pakistani origin who is and has for

some years been living in England where he holds a position at the University of Nottingham. He is - I know because he has assisted us in consultation - and one can tell these things - a man with a complete fluency in both Urdu and English. He also, which is very helpful and has been most helpful to us, has himself, coming as he does from a family of religious scholars, has himself a very good background in theological matters, not obviously comparable to that of the expert witness, but it has enabled him to translate for us with great fluency and without hesitation I have no doubt your Lordship will find that he is (10 able to do that. So, my Lord, I'm now then without further ado going to ask Dr Aziz if he will go into the witness box and I'll just lead him shortly as to his situation.

(20

DOCTOR ZAHID AZIZ/....(30

MR KING CALLS:

DR ZAHID AZIZ: (sworn, states)

EXAMINED BY MR KING:

Now, Dr Aziz, the purpose of my placing in the witness box is so that you can give evidence which will satisfy his Lordship as to both your proficiency as an interpreter between the two languages, English and Urdu^u and also, insofar as may be necessary, as to your own personal integrity because on your translation and interpretation of course will depend the accuracy and the veracity of what is communicated to you by the expert witness. So will you tell his Lordship, where were you born? Tell his Lordship something about your own personal background and history if you will? -- I was born in Lahore, Pakistan, in 1952 and I lived there till I was 11 years of age and at that stage my family migrated to England and I did most of my studies there. I did keep up the study of Urdu^u since my family is an academic family and both my parents are teachers. So although I studied in England I kept up my study of Urdu^u and in particular as regards the field of the religion of Islam. (10)

COURT: Was Urdu^u your home language? -- Yes, Urdu^u is my mother tongue, native language. (20)

Or not. Your mother tongue. Yes. -- But English also has become so due to my long residence in England, and my familiarity with Islam and issues to do with the Ahmadiyya movement arises from the fact that amongst my ancestors have been some distinguished scholars of Islam within the Ahmadiyya movement such as Maulana Muhammad Ali (?) and therefore we studied their books. So I have studied these issues in English and in Urdu/.... (3)

— Urdu. And I've done some translations of this sort previously which have been published. I've also translated into English — a complete book by Mirza Ghulam Ahmad Sahib which was serialised in one of our papers so that I consider myself competent to do this work. If there is anything you would like to know.

MR KING: What - may I just ask for the record, what are your own educational qualifications? What is your position? -- By training I'm a mathematician. I obtained a BSc honours in mathematics from London University and subsequently I did a PhD which involved mathematics and computing from the University of Manchester and after finishing my studies, since that time I've been employed at the University of Nottingham in work to do with mathematics and computing. So those are my academic qualifications. (10

And you've lived in England now for some 23, 24 years? -- Since 1963.

1963. 22 years. Yes. Have you done any interpreting before? -- Yes. Early on during our stay in England there were other immigrants from Pakistan ^{and} in India in our city who at that time could not speak English but my family happened to be almost the only family there who knew both languages and therefore on a number of occasions we assisted the police and courts in interpreting and in fact one or two occasions I did interpreting of this sort in some criminal cases. (20

Is your Lordship....?

COURT: No, I'm quite satisfied.

MR KING: Yes.

DR ZAHID AZIZ SWORN IN AS INTERPRETER
