

“Call to the path of thy Lord with wisdom and goodly exhortation,  
and argue with people in the best manner.” (Holy Quran, 16:125)

# *The Light*

AND

## **ISLAMIC REVIEW**

Exponent of Islam and the Lahore Ahmadiyya Movement  
for over eighty years

**October – December 2010**

In the spirit of the above-cited verse, this periodical attempts to dispel misunderstandings about the religion of Islam and endeavors to facilitate inter-faith dialogue based on reason and rationality.

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احمدیہ انجمن اشاعت اسلام لاہور

◆ Ahmadiyya Anjuman Isha'at Islam Lahore Inc., U.S.A. ◆

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*The Light* was founded in 1921 as the organ of the AHMADIYYA ANJUMAN ISHA'AT ISLAM (Ahmadiyya Association for the Propagation of Islam) of Lahore, Pakistan. *The Islamic Review* was published in England from 1913 for over 50 years, and in the U.S.A. from 1980 to 1991. The present periodical represents the beliefs of the worldwide branches of the Ahmadiyya Anjuman Isha'at Islam, Lahore.

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The main objective of the A.A.I.I.L. is to present the true, original message of Islam to the whole world — Islam as it is found in the Holy Quran and the life of the Holy Prophet Muhammad, obscured today by grave misconceptions and wrong popular notions.

Islam seeks to attract the *hearts and minds* of people towards the truth, by means of reasoning and the natural beauty of its principles.

Hazrat Mirza Ghulam Ahmad (d. 1908), our Founder, arose to remind the world that Islam is:

**International:** It recognizes prophets being raised among all nations and requires Muslims to believe in them all. Truth and goodness can be found in all religions. God treats all human beings equally, regardless of race, nationality or religion.

**Peaceful:** Allows use of force only in unavoidable self-defence. Teaches Muslims to live peacefully under any rule which accords them freedom of religion.

**Tolerant:** Gives full freedom to everyone to hold and practise any creed or religion. Requires us to tolerate differences of belief and opinion.

**Rational:** In all matters, it urges use of human reason and knowledge. Blind following is condemned and independence of thought is granted.

**Inspiring:** Worship is not a ritual, but provides living contact with a Living God, Who answers prayers and speaks to His righteous servants even today as in the past.

**Non-sectarian:** Every person professing Islam by the words *La ilaha ill-Allah, Muhammad-ur rasul-ullah* (There is no god but Allah, and Muhammad is the Messenger of Allah) is a Muslim. A Muslim cannot be expelled from Islam by anyone.

Hazrat Mirza Ghulam Ahmad taught that *no* prophet, old or new, is to arise after the Holy Prophet Muhammad. However, *Mujaddids* will be raised by God to revive and rekindle the light of Islam.

**About ourselves**

Ahmadiyya Anjuman Isha'at Islam Lahore has branches in many countries including:

U.S.A.	Australia
U.K.	Canada
Holland	Fiji
Indonesia	Germany
Suriname	India
Trinidad	South Africa
Guyana	Philippines

**Achievements:**

The Anjuman has produced extensive literature on Islam, originally in English and Urdu, including translations of the Holy Quran with commentaries. These books are being translated into other languages, including French, German, Spanish, Dutch, Russian, Chinese, and Arabic. The Anjuman has run several Muslim missions around the world, including the first ever in Western Europe.

**History:**

**1889:** Hazrat Mirza Ghulam Ahmad founds the Ahmadiyya Movement.

**1901:** Movement given name *Ahmadiyya* after Holy Prophet Muhammad's other famous name *Ahmad*.

**1905:** Hazrat Mirza appoints central body (Anjuman) to manage the Movement.

**1908:** Death of Hazrat Mirza. Succeeded by Maulana Nur-ud-Din as Head.

**1914:** Death of Maulana Nur-ud-Din. Ahmadiyya Anjuman Isha'at Islam founded at Lahore as continuation of the original Anjuman. Maulana Muhammad Ali elected as Head.

**1951:** Death of Maulana Muhammad Ali after fifty years of glorious service to the cause of Islam. Maulana Sadr-ud-Din (d. 1981) becomes Head.

**1981-1996:** Dr Saeed Ahmad Khan, an eminent medical doctor and religious scholar, led the Movement, at a time of intense persecution.

**1996-2002:** Prof. Dr Asghar Hameed, a distinguished retired University Professor of Mathematics, and learned Islamic scholar, served as Head.

**2002:** Prof. Dr Abdul Karim Saeed Pasha elected Head.

## The Ahmadiyya Case, Twenty-Five Years Later

Revisiting the South Africa court case in light of  
contemporary Muslim attitudes

By Fazeel S. Khan, Esq.

*“Surely We have granted thee a great victory”  
(48:1)*

### An Overview of the Ahmadiyya Case

The term “Ahmadiyya Case” commonly refers to the court case between the Lahore Ahmadiyya Movement in South Africa and other Islamic organizations and Muslim religious leaders in that country. The central issue in the case was whether members of the Lahore Ahmadiyya group are Muslims. This issue was generated due to the defendants denying members of the Lahore Ahmadiyya Movement the rights granted to members of the Islamic faith, namely, attending mosques for prayer and burying their dead in Muslim graveyards. In addition, the court was petitioned for an order enjoining the defendants from continuing their concerted campaign of defamation against members of the Lahore Ahmadiyya Movement (which the defendants engaged in by way of publishing and distributing material stating members of the Lahore Ahmadiyya Movement were not Muslims).

Despite the support of the powerful international anti-Ahmadiyya lobby and the expertise of numerous “scholars” from Pakistan at the defendants’ disposal, on November 20, 1985 the final Judgment from the Court, by the grace of God, was found in favor of the plaintiff(s).<sup>1</sup> The Plaintiffs courage to challenge the established Islamic institutions, and their faith to be steadfast in this cause, was ultimately rewarded. Indeed, the Ahmadiyya Case was a great civil rights victory; a minority Muslim group that was openly discriminated against could now lawfully avail themselves of the rights all other Muslims in the country enjoyed.

The extent of the victory, however, was not limited to the benefits received by the particular plaintiffs in the case. The victory also came in the form of having the opportunity to compile a comprehensive rebuttal to the widespread false allegations attributed to the founder of the Ahmadiyya Movement, Hazrat Mirza Ghulam Ahmad. This rebuttal, derived from the scholarly research presented as evidence by Lahore Ahmadi scholar Maulana Hafiz Sher Muhammad, was compiled in book form by Dr. Zahid Aziz<sup>2</sup> and published by the U.S. branch of the Lahore Ahmadiyya Movement under the title “The

Ahmadiyya Case”. The book “The Ahmadiyya Case”<sup>3</sup> contains a factual background about the case, the Judgment from the Supreme Court of South Africa, and the detailed evidence from the founder’s own writings submitted at trial by the learned Maulana Hafiz Sher Muhammad. It provides an invaluable resource for anyone interested in understanding the true claims of Hazrat Mirza Ghulam Ahmad and the actual beliefs of Lahore Ahmadiyya Movement. In this Commemorative Issue of the Light and Islamic Review we reproduce the Judgment from the Supreme Court of South Africa, authored by Justice D. M. Williamson. The Judgment clearly identifies the issues underlying the case, provides an extensive review of the evidence submitted at trial, and puts forth an analytical assessment of the foregoing that is informative, convincing and enlightening.

### Revisiting the Ahmadiyya Case, Twenty-Five Years Later

Revisiting the Ahmadiyya Case, twenty-five years later, offers a valuable occasion for reflection on the changes that have occurred in Muslim thought and circumstances during this past quarter-century period. These changes, in turn, provide the prospect for a renewed assessment of the integrity and value of the Lahore Ahmadiyya Movement, its beliefs, and objectives. For instance, the following points may be considered.

#### 1. Unity and Definition of “Muslim”

In recent times, the Muslim world has acknowledged that disunity within its own fold is probably its greatest obstacle to advancement. It is now widely accepted that the practice of many Muslims scholars and organizations in devoting time and energy to declare other Muslims as “kafir” (i.e. unbeliever) over minor differences of opinion is the single most damaging activity in this regard. As a result, the benefit of “intra-faith” bridge-building has become a major consideration for many Muslims organizations. In order to counter the campaigns by extremists who are bent on creating divisions within the Muslim *ummah* by their strict/radical interpretations and intolerant perceptions of others, we see concerted efforts being made by Muslim organizations to establish a simple definition of “Muslim”. The rationale underlying these efforts is that there is much value in Muslims uniting on common principles and viewing differences on secondary issues as simply part of the diversity within the large camp that Islam encompasses. The most prominent effort in this regard is the “Amman Message”<sup>4</sup>. This endeavor, performed under the auspices of King Abdullah II, is accepted by Muslim entities (both state and private) from just about every region and school of thought. It lays the foundation for unity amongst

Muslims by providing a widely endorsed condemnation of the practice of *takfir* (i.e. Muslims declaring other Muslims as non-Muslims) and providing a broad definition of “Muslim” that focuses on the undisputed fundamental requirements and not interpretations of secondary issues.

Interestingly, the defendants in the Ahmadiyya Case, only twenty-five years earlier, were intent on establishing a narrow and restrictive definition of “Muslim” so as to exclude members of the Lahore Ahmadiyya Movement from the *ummah*. A major part of the Case dealt with the plaintiffs providing evidence as to the simple definition of “Muslim”, as accepted by the most authoritative sources in Islam and now widely endorsed by Islamic entities the world over. The position advanced by the Lahore Ahmadiyya group in the Ahmadiyya Case is now not only being approved as accurate in terms of its authenticity, but absolutely necessary for the advancement of the Muslim world. Most fascinating is the fact that two of the defendants’ “experts”, Mufti Taqi Uthmani and Prof. Mahmoud Ahmad Ghazi, eventually endorsed the *Amman Message*, a liberal proclamation that is inherently incompatible with the extreme positions offered by the defendants during the Ahmadiyya Case.

## 2. *Interpretation of Jihad*

It is hard to believe that anyone would disagree with the assertion that since 9/11 the Muslim world has become energized in the way of clarifying what the term *jihad* means. Numerous fatwas, statements, press releases were issued making clear that the word *jihad* is not synonymous with the term “holy war”. In fact, due to this concerted campaign, many Muslims in the West, especially the younger generation, believe that *jihad* being interpreted as primarily a “spiritual striving” is something that has always been accepted by all Muslims who are not extremists or terrorists. Unfortunately, this is not true, and the Ahmadiyya Case is a testament to this. Only twenty-five years ago, the defendants and their experts adamantly argued that members of the Lahore Ahmadiyya Movement could not be Muslims because they rejected the interpretation of *jihad* in the sense that it is a religious duty for Muslims to engage in holy war with unbelievers. This was actually asserted as a “defense” to the plaintiffs’ cause of action (i.e. they claimed they were justified in holding members of the Lahore Ahmadiyya Movement as non-Muslims because they did not accept this view of *jihad*). Certainly, such views, as espoused by the defendants and their scholars, are rejected today by all Islamic organizations and individual scholars who have any credibility whatsoever. Again, the position

advanced by the Lahore Ahmadiyya Movement has now been accepted as correct and the position of the defendants has been unanimously rejected.

## 3. *Islamic law and Secular Courts*

Quite recently, attempts at creating anti-sharia legislation in the U.S. have generated extensive opposition by Muslims from all quarters. Various counter-measures to deter such bills from banning the use/application of sharia law in courts are being pursued. It is understood that the anti-sharia bills are merely a manifestation of fear-based politics and that the use of Islamic law in courts is necessary at times, just as the Christian Canon law or Jewish Kashrut law has its place. Singling out Islamic law as a particular form of religious law to be separated from the resources upon which a secular court may consider has mobilized the Muslim populace to defend their religious rights from such disparate treatment.

However, when it became apparent to the defendants in the Ahmadiyya Case that they had no religious ground to stand on in defense of their discriminatory actions, they relied on the assertion that a secular (non-Muslim) court could not decide the issue at hand because only Islamic institutions could consider Islamic laws and apply evidence from Islamic sources. The defendants’ (and their scholars’) position is obviously diametrically opposed to the policy objectives of the numerous Islamic organizations in the West that are currently striving for the exact opposite. Again, the arguments put forth by the anti-ahmadiyya lobby during the Ahmadiyya Case are proven meritless and contrary to the interests of Muslims living in Western countries.

## 4. *Acceptance by Premier Islamic Institutions*

Inter-connected with the Islamic Law vs. Secular Court dichotomy expressed by the defendants, it was asserted that the first defendant (i.e. the Muslim Judicial Council) and other international bodies of Islamic ecclesiastical opinion to which the MJC was affiliated were more competent to resolve the religious issue at hand. One of the Islamic institutions the defendants referred to was Al-Azhar in Cairo, Egypt. Within the past twenty-five years, though, the premiere Islamic institution of Al-Azhar has maintained a close relationship with Mrs. Samina Malik (Vice-President of the U.S. branch of the Lahore Ahmadiyya Movement) and, due to the efforts of Mrs. Samina Malik, the Al-Azhar Research Academy has certified a large number of Lahore Ahmadiyya publications books which provide extensive dissertations on Islamic beliefs and practices. It has also facilitated the acquiring of translators for rendering the Lahore Ahmadiyya literature into the Arabic lan-

guage. In fact, the late Grand Imam, Sheikh Muhammad Sayyid Tantawi, the highest religious authority in the Sunni Muslim world, personally coordinated the contacts necessary for the printing of the Lahore Ahmadiyya literature translated in Arabic from Egypt itself. And most ironic is the fact that when the late Sheikh Tantawi was compiling a detailed reply to a controversial comment made by Pope Benedict concerning the Holy Prophet Muhammad, he quoted from Maulana Muhammad Ali's book *The Religion of Islam* when elaborating on the topic of *Jihad*, the very topic the interpretation of which the defendants in the Ahmadiyya Case cited as a reason for claiming members of the Lahore Ahmadiyya Movement were not Muslims! Once again, the passage of time itself demonstrates the illegitimacy of the defendants' positions.

### Conclusion

The Ahmadiyya Case is a historic event that clears Hazrat Mirza Ghulam Ahmad of the common charges leveled against him and vindicates the beliefs and positions of the Lahore Ahmadiyya Movement. It is indeed a civil rights victory, one that offers hope to all religious minorities who are subjected to prejudicial attitudes and discriminatory actions by dominant faith traditions. The Ahmadiyya Case will always be remembered as an illustration of how devotion to truth and passion for justice can result in changes to prevailing conditions. Regardless of whom the particular parties involved in the Case were, or what their specific positions entailed, the lesson learned from this event is that truth ultimately triumphs and history will bear witness to it. Certainly "victory is only from Allah" (8:10), but the principle individual from whose efforts this victory was achieved was the late Maulana Hafiz Sher Muhammad, chief expert witness for the plaintiffs. On a personal note, it was the Ahmadiyya Case and the example of Maulana Sher Muhammad's zeal in this noble cause that inspired me to study law and devote my career to civil rights work. May Almighty Allah reward him abundantly for his incomparable sacrifices, for being an inspiration to countless others, and for providing a catalyst for change in modern Muslim thought. Ameen. ■

- 1 The action commenced with two Plaintiffs: 1) the Lahore Ahmadiyya branch of South Africa, and 2) Mr. Ismail Peck (a member of the South African branch of the Lahore Ahmadiyya Movement). Although the case continued with Mr. Peck being the sole plaintiff (as explained more fully in the Judgment), the term "plaintiffs" is being utilized since the interests of both parties were aligned and their positions uniform.
2. Dr. Zahid Aziz served as interpreter for Hafiz Sher Muhammad and translated much of the evidence from Urdu into English in the case.

3. The book can be viewed online at <http://www.muslim.org/sa-case/intro.htm>.
4. Can be viewed at: <http://www.ammanmessage.com/>. The Lahore Ahmadiyya Islamic Society (i.e. the U.S. branch of the international Lahore Ahmadiyya Movement) also endorsed the Amman Message; the endorsement letter was accepted by the Jordanian authorities and published on the official Amman Message website at: <http://ammanmessage.com/newEndorse.pdf>.

## The Ahmadiyya Case Judgment

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

CASE NUMBER: 10058/82

DATE: 20.11.1985

### In the matter between:

AHMADIYYA ANJUMAN ISHAAT ISLAM  
LAHORE (SA)  
ISMAIL PECK

Plaintiffs

and

THE MUSLIM JUDICIAL COUNCIL & OTHERS

Defendants

**WILLIAMSON J:** Originally two plaintiffs sued in this action. They were, as first plaintiff the Ahmadiyya Anjuman Ishaat Islam Lahore (SA), a voluntary association of Muslims constituted in terms of a written constitution whose members are commonly known and referred to as Ahmadis, and second plaintiff one Ismail Peck. Ismail Peck is a member of the first plaintiff association and sued in his individual capacity as well as in his capacity as a member of such association.

The defendants are, firstly, the Muslim Judicial Council (Cape) described as a voluntary association of certain Sheiks, Imams and theologians; secondly, the trustees of a mosque situated at the corner of Long and Dorp Streets, Cape Town, to which I shall refer as the mosque and, thirdly, the trustees of the Malay portion of the Vygekraal Cemetery, Athlone, Cape.

### Plaintiffs' Claim

Briefly stated the plaintiffs' cause of action is that there are certain fundamental doctrines and principles upon which Islam is founded; that the plaintiffs

accept these fundamental doctrines and principles and are Muslims; that all mosques are dedicated to Allah and every Muslim, irrespective of sect or movement, has the right of admittance to any mosque no matter where it is situated for the purpose of prayer and other religious functions and that the first defendant published certain false and defamatory matter of and concerning the plaintiffs, to wit, that all Ahmadis are non-Muslims and are apostates and disbelievers and as such should be denied admittance to all mosques and also should be denied the right to bury their dead in any Muslim cemetery.

As against the second defendant the plaintiffs allege that it wrongfully refused, despite requests, to concede the right of members of the first plaintiff and the right of second plaintiff to admittance to the mosque. This, they said, was contrary to certain conditions contained in an annexure to a deed of transfer passed on 11 February 1881.

As against the third defendant the plaintiffs allege that it refused to recognise the right of members of the first plaintiff to have their dead buried in the Malay portion of the Vygekraal Cemetery. This cemetery is held in terms of a deed of grant dated 18 December 1908. This refusal, so it is alleged, is contrary to the express terms of this deed of grant.

The plaintiffs, on the above-stated facts, claimed:

Against all three defendants — an order declaring that members of the first plaintiff and second plaintiff are Muslims and as such are entitled to all rights and privileges as pertain to Muslims;

Against the first defendant — an order interdicting it from disseminating, publishing or otherwise propagating the defamatory matter complained about;

Against the second defendant — an order declaring that members of the first plaintiff and the second plaintiff are entitled to admittance to the mosque; and

Against the third defendant — an order declaring that members of the first plaintiff and second plaintiff are entitled to the same rights of burial in the cemetery as pertain to all Muslims.

At an earlier stage in the proceedings defendants excepted to first plaintiff's claim against them on the ground that first plaintiff had no *locus standi* to bring such claims. The exception was upheld and the particulars of claim, insofar as they related to the first plaintiff, were set aside. Thereupon the action was continued by second plaintiff only.

### Defendants' Withdrawal from Case

When the trial in this matter commenced on 5 November 1985 Mr *Desai*, on behalf of the three defendants, informed the Court that his clients no longer wished to participate in these proceedings and that they accordingly withdrew their defence. In doing so he explained that no disrespect was intended towards the Court but his clients felt that as Muslims they could not in conscience submit to the jurisdiction of this court, which is the ordinary secular court of this country, to decide who is a Muslim. Be that as it may, there is no doubt that where civil rights are in issue our courts have never refused to hear the matters because the resolution of the disputes about those rights may also involve decisions as to doctrinal matters or other issues of a religious or theological nature. As long ago as 1862 in the case of *Long v Bishop of Cape Town* 4 Searle 162 Lord *Kingsdown*, in delivering the judgment of the Privy Council, referred at page 179 to the plaintiff's right of:

"...resorting to a civil court for the restitution of civil rights and thereby giving to such court jurisdiction to determine questions of an ecclesiastical nature essential to their decision".

### Second Plaintiff's Case

I turn then to a consideration of the merits of second plaintiff's claims which were now advanced on an unopposed basis. Because evidence is uncontradicted it does not follow that it must be accepted by a court of law. As pointed out by *Innes* CJ in *Siffman v Kriel* 1909 TS 538:

"It does not follow because evidence is uncontradicted that therefore it is true...The story told by the person on whom the *onus* rests may be so improbable as not to discharge it".

So too in *Shenker Bros. v Bester*, 1952(3) SA 655 AD, *Greenberg JA* at page 670(G) observed:

"Similarly, the circumstance that evidence is uncontradicted is no justification for shutting one's eyes to the fact, if it be a fact, that it is too vague and contradictory to serve as proof of the question in issue".

I have not been unmindful of these considerations when assessing the evidence placed before me.

### Hafiz Sher Muhammad's Expert Evidence

As already indicated the principal thrust of second plaintiff's cause of action is that Islam is founded upon certain fundamental doctrines and principles. Second plaintiff placed before this court the evidence of one Hafiz Sher Mohammad, an Ahmadi theologian and missionary and a scholar and a person learned in mat-

ters concerning the Muslim faith and religious practices. I am satisfied that he is an expert in this field and able to speak with authority on it. Before dealing with these matters the witness gave a brief historical perspective of the Ahmadiyya movement. The movement, in the main, revolves around the life of its founder, one Mirza Ghulam Ahmad who was born about the year 1835 in what is now Pakistan and who died in 1908. During the years 1880 to 1884 he wrote his first treatise in four volumes known as *Barahin-i-Ahmadiyya*. The evidence was not only that in a revelation God had entrusted to him a special mission but that he claimed to be the Mujaddid (reformer) of the 14th century. The movement itself was named in 1900 after the name of the Holy Prophet. This was necessitated by the requirement that Muslim “sects” were required to be identified in a census which was held in 1901. After the death of Mirza in 1908 the leadership fell to one Nur-ud-din who led the movement until 1914. In that year certain differences arose between two groups within the movement. This culminated in a split within the movement. One group became known as the Lahoris and the other group became known as the Qadianis. It is to the first of these groups that second plaintiff belongs. After the split in March 1914 the leadership of the Lahori group passed to one Muhammad Ali who retained it until 1951 when Sadr-ud-din assumed the leadership. In 1981 the present leader Dr Saeed Ahmad Khan assumed office. In 1974 the constitution of Pakistan was amended and as a result the Ahmadiyyas were declared to be non-Muslims. Finally, in April 1984, a presidential ordinance was promulgated which stipulated certain penalties if an Ahmadi called himself a Muslim. Whatever the position may be according to Pakistani law the matter which falls to be determined by this Court in accordance with South African law is whether plaintiff is entitled to the relief he has claimed. This brings one to the evidence of Hafiz Sher Mohammad.

### Definition of Muslim

He dealt in the first place with what constitutes “Islam” and “Muslim” by examining meticulously the Holy Quran, the Hadith (i.e. the sayings of the Holy Prophet Muhammad) and the views of a number of Muslim scholars. The crux of this aspect of his evidence was that the religion of Islam could be summarised in the two phrases: “*la ilaha ill-Allah*” (there is no God but Allah) and “*Muhammad-ur rasul Allah*” (Muhammad is the messenger of Allah). By affirming these two precepts a person enters the fellowship of Islam. This is known as the Kalima.

While the cardinal aspect of the religion of Islam is a recital of Kalima it is quite clear that according to the teachings of the Holy Prophet a Muslim is to be recog-

nised by his practical behaviour. According to the Hadith, the Holy Prophet is recorded as having said:

“Islam is that you should worship Allah alone and do not associate anyone with Him, keep up prayer, give to charity (*Zakaat*), perform the pilgrimage (*Hajj*) to Mekka and fast during *Ramadaan*.”

According to the evidence placed before the Court, and in particular, the writings of the Hadith, there is no need to investigate deeply into the beliefs held by a person to determine whether he is a Muslim. One need only look at some aspects of his apparent conduct. If he is seen praying in the manner of the Muslim prayer, praying in the direction in which Muslims pray, or if he is heard proclaiming the Kalima, for example, then he is a Muslim.

Moreover, according to the sayings of the Holy Prophet, as recorded in the Hadith, it does not lie in the mouth of one Muslim to condemn another Muslim as a *kafir* or unbeliever. Indeed *takfir* or the condemnation of a Muslim by another Muslim as a *kafir* is strictly prohibited. This principle goes as far as to say that if a person’s faith is only one percent in extent, it does not make him a *kafir*, i.e.

“...if there are ninety-nine reasons for considering someone as *kafir* and only one reason against it, the *mufti* and the judge is bound to act according to that one reason for negating the *kufir*...”

### Hazrat Mirza’s Beliefs

The question that arises out of this evidence is whether the beliefs held by Mirza Ghulam Ahmad and the Lahori Ahmadiyya show that they are Muslims. This was the second aspect of the evidence given by Hafiz Sher Mohammad. The witness quoted extensively from the writings of the founder of the movement. Reference is made to two quotations only:

“...The gist and the essence of our religion is: There is no God but Allah, and Muhammad (peace be on him) is the messenger of Allah...”; and

“...Our religion is the same Islam. It is not new. There are the same prayers, the same fasts, the same pilgrimage, the same *Zakaat*...”

This evidence leaves no doubt that the basis upon which the religion of Islam is founded is the basis of the beliefs of Mirza and of the Lahori Ahmadiyya. Mirza stated his own convictions and those of his followers thus:

“We believe that whoever takes away from or adds to the Islamic *Shariah*, even to the extent of

an atom, or discards what is obligatory and permits what is forbidden, is without belief, and has deviated from Islam. I admonish my people that they should believe in the holy Kalima from the bottom of their hearts, namely that there is no god except Allah and Muhammad is Allah's Messenger, even till they die, that they believe in all the prophets and all the revealed books whose authenticity is established from the Holy Quran and that they accept as obligatory fasting, prayer, poor-rate (*zakaat*) and pilgrimage and all that has been prescribed as obligatory by the Exalted Allah and His Messenger, and that they accept as forbidden all that has been forbidden and thus follow Islam in the true sense. To sum up, it is obligatory to believe in all those matters on which there was consensus in belief and practice of the pious ones of the olden days of Islam, and which are considered to be Islam by the consensus of *Ahl-i-Sunnat*."

### Cases Defining "Muslim"

The witness then referred to certain Mohammedan authorities on the subject of who are Muslims and in particular whether Ahmadis are Muslims. I was told that the essential doctrine of the Muslim faith, the Kalima or credo of Islam, namely that there is but one God, Allah, and that Muhammad is his Messenger, and that this belief and a belief in prayer, fasting, *zakaat* (the giving of alms) and the Hajj, or pilgrimage (if this can be afforded) has frequently been recognised by courts in Mohammedan countries and by learned writers on the Mohammedan law as being the touchstone by which to identify a person as a Muslim. The various authorities referred to clearly support this contention. I was also referred to decisions of foreign courts which though in no way authoritative are yet instructive in that they support the general contention advanced by Second Plaintiff. I refer to a few of them.

Amongst the decisions reference may be made to the following: *Narantakath v Parakkal* (1922) 45 Indian Law Reports Madras 986. Coram: *Oldfield & Krisshnan JJ*. The headnote reads:

"The essential doctrine of the Mohammedan religion is that God is only one and that Muhammad is his prophet; hence Ahmediyyans who also hold that belief are only a sect of Muhammedans, notwithstanding the fact that they differ from other Muhammedans in some other matters of religious belief. Hence on a Muhammedan becoming an Ahmediyyan he does not become an apostate."

Then there is the case of *Maullim & Another v*

*Marrikan* (Case No 513/1925) Supreme Court of the Straits Settlements (Singapore). I quote from the judgment of *Deane J*:

"The overwhelming evidence in this case is that the fundamentals of Mohammedanism are believed in by the Ahmediyas who are also therefore entitled to be called Muhammedans and not Kafirs and that the points on which they differ from the orthodox are on the traditions which have never been considered fundamental."

A further case is *Hakim Khalil Ahmad & others v Malik Israfil and Others* 1917 Vol 37 Indian Cases (Patna High Court) p 302. Coram *Sir Edward Chamier CJ and Roe J*. The following passage appears:

"Members of the Ahmadiya sect of Qadian are Mohammedans; the court below have given...reasons for holding that the plaintiffs are Mohammedans, notwithstanding their pronounced dissent from orthodox opinion in several important articles of faith."

And then finally *Airyasha Koreshi v Hishmatullah Koreshi* (1972) Vol XXIV All Pakistan Legal Divisions (Karachi) p 653. Coram: *Imdadally H Agha J*. The headnote reads —

"A Muslim became a Bahai and after remaining so for a number of years reverted back to Islam by renouncing the Bahai faith and reciting the Kalima. *Held*: mere recital of the Kalima was enough for a person to become a Muslim; no other formalities or rituals were necessary."

The learned Judge is reported (at p 657) as saying:

"For becoming a Muslim all authoritative books of Islam are agreed that if a person believes in the unity of God (Allah) and Muhammad (may peace be upon him) to be His prophet and also says that he is a Muslim then he becomes a Muslim and no other formalities or rituals are to be gone through by him."

### Rebuttal of Defense Case

The defence having been withdrawn by the Defendants it was incumbent upon the Second Plaintiff to prove his case as set out in the pleadings. There was, strictly speaking, no need to meet the case as pleaded by the Defendants. Nonetheless Second Plaintiff did not content himself with the proof of his own case; he proceeded to meet the case as pleaded by Defendants and in particular he met the defences raised by the Defendants that for various stated reasons concerning their belief, Ahmadis were not



Muslims. The first such defence was that Ahmadis did not accept and believe in what is known as the finality of the Holy Prophet and that their founder, Mirza, had proclaimed himself to be a prophet after the Holy Prophet. This was the third aspect of the evidence tendered by the witness Mohammad.

*Hazrat Mirza Affirms Finality of Prophethood*

This aspect was referred to as the issue of *Khatam an-Nabiyyin*, i.e. the belief in the Holy Prophet Muhammad as the Last and Final Prophet. Once again the witness quoted extensively from the writings of Mirza in order to establish that the founder himself and the members of the movement believed that the Holy Prophet Muhammad was the *Khatam an-Nabiyyin*. I refer only to the following:

“...I believe that the Holy Prophet, peace be upon him, is the *Khatam* of the prophets...”;

“...I believe in the Holy Prophet, peace be upon him, being the *Khatam an-Nabiyyin*...”; and

“...I believe in God and His Messenger, and I also believe that the Holy Prophet, peace be upon him, is the *Khatam an-Nabiyyin*...”

The witness then proceeded to analyse the writings of Mirza in order to establish the meaning which he attributed to the term *Khatam an-Nabiyyin*. He wrote

“...The Holy Quran does not permit the coming of any messenger after the *Khatam an-Nabiyyin*, whether an old one or a new one...”; and also

“...Our Holy Prophet, peace be upon him, being the *Khatam an-Nabiyyin* is a bar to the coming of any other prophet...”

Having established precisely what the founder believed concerning the finality of the prophethood and having analysed the precise meaning of his declared beliefs, the witness went on to examine his writings with the view to establishing that he himself, all his life, denied any claim to being a prophet. Referring to the writings of the founder, the witness quoted —

“...It is total slander by Muhammad Husain to ascribe to me that I deny miracles and that I lay claim to Prophethood, and that I do not consider the Holy Prophet to be the *Khatam al-anbiya*. God forbid...no, on the contrary, God is witness that I believe all these things...”;

“...I make no claim to Prophethood. This is your mistake, or you have some motive in mind...”;

“...Ignorant opponents allege against me that this person claims to be a prophet or apostle. I make no such claim...”; and again

“...In confronting the present Ulema, this humble servant has...sworn many times by God that I am not a claimant to any Prophethood...”

*Revelation to Muslim Saints*

At the same time there is no doubt that Mirza Ghulam Ahmad did claim to have received revelation from God. The witness accordingly dealt with the whole question of revelation in Islam with particular reference to its continuation among Muslim saints. This was the fourth main aspect of his evidence.

Relying on the authority of the Holy Quran he was at pains to point out that the distinctive characteristic of true religion is that it invites the acceptance of a living God who listens to the prayers of the distressed, removes their troubles, and speaks to His servants. Every follower of the faith can make the verbal claim that Islam takes man to God. However, to call people of the world towards God on the basis of one's personal experience and attainment, is the work of only those who are purified by God Himself, and are perfect followers of the Holy Prophet Muhammad. Developing the theme of revelation in Islam, the witness indicated that with the prophethood having ended with the Holy Prophet Muhammad, the guidance which mankind was to receive reached its completion. He then posed the questions: is it the case that, with the completion of the guidance, the link between the Creator and His creatures has been forged permanently, and all men in future will attain to God from birth? Or, will people still drift away from God and lose the right path, even after the finality of the prophethood? Who will take the place of prophets to establish the link between God and the lost people when people can go astray despite the existence of perfect teachings?

He then went on to show, on the basis of Quranic authority, that, as the Holy Prophet called people to God through the light given to him by revelation, so will those of his followers who receive the light of revelation establish the link between God and his creatures on the basis of revelation. Such persons are called saints of God; and the revelation they receive is not prophetic revelation (*wahy nubuwwat*) but saintly revelation (*wahy wilayat*).

Thereafter, the witness dealt with the modes whereby God revealed himself. It is unnecessary to deal with this subject in any detail other than to make the observation that even in the modes of revelation a

distinction is drawn between revelation which is common to saints and prophets and revelation which is exclusive to prophets. This last-mentioned mode of revelation (*wahy nubuwwat*) came to an end with the Holy Prophet Muhammad but divine communication among Muslims continues in the form of *wahy wilayat* and such revelation was regarded by the Holy Prophet as part of Prophethood.

According to the Holy Quran this type of revelation came to non-prophets, such as Moses' mother, Mary, the mother of Jesus and the disciples of Jesus. It also came to the companions of the Holy Prophet, both during his life and afterwards. In his systematic and orderly manner the witness worked his way through the writings of numerous Muslim religious authorities, scholars and writers. An analysis of these writings makes it quite clear that revelation is one of the characteristics of the chosen ones of God; and that subsequent to the Holy Prophet this revelation came to non-prophets by way of saintly revelation.

“...The door of prophethood is closed after the Holy Prophet Muhammad, and shall not be opened for anyone till the Day of Judgment. However, revelation (*wahy, ilham*) remains for the saints, which does not contain the Shariah in it...”

The witness referred to the work of a present-day theologian, Allama Khalid Mahmud, who is opposed to the Ahmadiyya movement, and who wrote —

“...News of the unseen, visions and revelations are also received by some non-prophets. Saints of God are informed of news of the unseen...God Himself grants the privilege of His communication, without the person reaching the rank of prophet...”

The fifth aspect of the evidence of the witness dealt with the concept of *Muhaddas* who is a saint or a non-prophet who receives revelation. He explained that the word *Muhaddas* admitted of two types of meaning: literal and technical. In its literal or linguistic sense the word *Muhaddas* did not convey the significance of relating news of the unseen, but merely relating something; as to its technical meaning in Islamic theology Mirza himself wrote —

“...The muhaddas...has the honour of being spoken to by God. Matters of the unseen are disclosed to him. His revelation, like that of prophets and messengers, is protected from the interference of the devil. The real essence of the Law is disclosed to him. He is appointed just like the prophets and, like them, it is his duty to proclaim himself openly...”

#### Use of Word Nabi for Saints

The witness then explained the use of the words “*nabi*” (Prophet) and “*rasul*” (messenger). As before, the witness distinguished between the *literal* or linguistic meaning of the words and the *technical* meaning thereof.

The *literal* meaning of the word “*rasul*” is “to be sent”, i.e. “...A person who is sent is called *rasul* in Arabic...”

The technical meaning of the word “*rasul*” conveys something different. Mirza explained the meaning thus —

“...According to the explanation of the Holy Quran, *rasul* is he who receives the commands and beliefs of religion through the angel Gabriel...”

As with the word “*rasul*” (i.e. messenger), so Mirza, like other Muslim theologians, attributed to the word “*nabi*” (prophet) two meanings, i.e. a literal and a technical meaning. The literal meaning of “*nabi*” and “*nubuwwat*” is as follows:

“...*nubuwwat* means to make prophecies...”; and again

“...He who discloses news of the unseen received from God is called *nabi* in Arabic...”

The technical meaning conveys something different —

“...In the terminology of Islam, *nabi* and *rasul* mean persons who bring an entirely new law, or abrogate some aspects of the previous law, or are not included among the followers of the previous prophet, having a direct connection with God without benefit from any prophet...”

These were the meanings attributed to the words “*nabi*” and “*rasul*” by Mirza and these meanings accorded with the meanings given to them by the Muslim religious elders over the centuries. All the prophets of the past fulfil the technical meaning. Mirza, however, applied to himself only the literal meanings, and throughout his life denied applying to himself the technical meanings. Such literal use of these terms (*nabi, rasul*) is not against Islamic law and theology. The witness referred to various writings of Mirza to emphasise this point; for instance, and I quote —

“...These words (i.e. *nabi* and *rasul*) do not bear their real meaning, but have been used according to their literal meaning in a straightforward manner...”

Mirza not only distinguished between the literal and technical meaning of the words but also drew a distinction, in terms of language, between that which is “real” (*haqiqat*) and that which is metaphorical (*majaz*). The witness illustrated this difference by referring to the word “lion”. In its real sense it is an animal. In its metaphorical sense, it could mean a brave man.

Thus the terms “*nabi*” and “*rasul*” can be defined so as to connote the real prophets and messengers of God. In other words, used in that sense, the person is actually a prophet. If, however, “*nabi*” and “*rasul*” are applied to a non-prophet or saint, they are used in their metaphorical sense, i.e. a metaphorical prophet or a saint.

As before, Mirza took pains to explain the meaning which he attached to the words, e.g. —

“...By virtue of being appointed by God, I cannot conceal those revelations I have received from Him in which the words *nubuwwat* and *risalat* (prophethood) occur quite frequently. But I say repeatedly that, in these revelations, the word...*rasul* or *nabi* which has occurred about me does not carry its real meaning...”

Moreover, the meanings attributed to the words were not peculiar to Mirza. Saints in the Muslim world prior to Mirza were also given the titles “*nabi*” and “*rasul*” in their divine revelations in a metaphorical way, and no one took them to have become prophets.

It is quite apparent that Mirza intended no more than that he considered himself to have fallen into the category of saints (*wali*) and not into the category of prophets.

#### Hazrat Mirza's Claims

Indeed, the witness went on to analyse Mirza's claims in the light of the beliefs of the great religious authorities in Islamic history. It is clear on the evidence that when the words “*nabi*” and “*rasul*” are used in the literal sense or by way of metaphor for saints (*wali*) and reformers (*mujaddid*) that does not make such persons prophets. It is equally clear on the evidence that Mirza at no time claimed real prophethood, but always used the words “*nabi*” and “*rasul*” about himself in the metaphorical sense. He gave clear and explicit explanations of these words and made their literal, technical, metaphorical and real meanings quite clear. Mirza's claims can be summarised as follows:

He denied receiving *wahy nubuwwat* and affirmed receiving *wahy wilayat*.

He denied the use of prophet (*nabi*) in its technical

sense and affirmed the use of the term in its literal sense.

He denied that the term *muhaddas* could be applied to him in its literal sense and affirmed that he was a *muhaddas* in the technical sense.

He denied being an actual or real prophet and affirmed being a metaphorical prophet.

When one examines these claims against the background of the religious environment into which Mirza came there appears to be nothing untoward or sinister in such claims. They are consistent with the spiritual thought prevailing in that environment. The witness convincingly demonstrated this by referring to a wealth of writings of the saints and scholars of the Islamic religion.

The next aspect of the evidence of the witness related to the terminology of Islamic mysticism as it applies to saints. He explained the meaning of such terms as

*fana fir rasul* (one who is ‘lost’ in the Holy Prophet Muhammad)

*zill* (an image or reflection)

*burooz* (a manifestation)

*masil anbiya* (like unto prophets) and

*ummati wa nabi* (follower with prophetic qualities).

Mirza used these terms; he explained them and he applied them to himself. An analysis of the use of these terms makes it clear that what Mirza was claiming was not prophethood but rather a prophet by way of image or manifestation i.e. a picture or reflection and not the real thing itself. It was stated that Mirza's heart was like a well-polished mirror in which the image of the Holy Prophet Muhammad can be seen, or in other words, the Holy Prophet was the original and Mirza was the *zill* (reflection) or picture. According to the sufis (Muslim mystics) the Prophet is the original and the saint (*wali*) is the *zill* or reflection.

Moreover, it is manifestly apparent that Mirza firmly believed that the Holy Prophet was the Last of the Prophets, and that after him no prophet is to arise, whether new or old. With the finality of prophethood, religion and religious laws reached perfection, and therefore the chain of prophets was cut off. No prophet will now come.

At the same time, whenever people stray far from God and lose faith in Him, in order to revive faith and to re-establish man's relation with God, God raises up saints and reformers. This is in accordance with

the teachings of the Holy Quran and the Hadith. These are known by various titles, such as *khalifa* (deputy to the Holy Prophet), *wali* (saint), *mujaddid* (reformer) and *muhaddas* (recipient of revelation, though not a prophet). These persons are also referred to as *fana fir-rasul* (effaced in the Holy Prophet), *masil anbiya* (the like of prophets), *zilli nabi*, *buroozi nabi* and *ummati wa nabi* (prophet by way of reflection, or manifestation, or follower and prophet). These terms do not describe prophets but are synonymous for saints.

Despite the lengths to which Mirza went to explain his beliefs and the terminology which he used, he came under criticism and attack. It was alleged that he claimed to be a prophet. This was denied by one of Mirza's followers. This led to him publishing in 1901 a treatise known as "Correction of an Error". The gravamen of the publication was to explain the terminology which he had used and to reiterate that he was not a prophet in the real sense of the word but only a reflection or manifestation of the real thing. He did not purport to correct any error on his part but to correct those who were in error concerning his claims. This publication was questioned by an opponent of Mirza; a follower of Mirza replied; this reply is contained in the document styled "Clarification of Correction of an Error". Yet again, the continuing theme was repeated, and I quote —

"...After the Holy Prophet Muhammad, the doors of prophecies have been closed...But one window...is open. That is to say, the window of self-effacement in the Holy Prophet (*fana fir-Rasul*), or perfect successorship to the Holy Prophet which is known in other words as *burooz* (manifestation)."; and again

"...Ignorant opponents raise the allegation against me that I claim to be a *nabi* (prophet) or *rasul* (messenger). I make no such claim..."

By way of further explanation of the terms used by Mirza and in particular by way of dealing with the characteristics of a saint, the witness dealt with a subject which he termed "How a Believer becomes 'Mary' and 'Messiah'". He referred to a class of believers "pure from the beginning and protected from attacks of the devil". Due to the high degree of goodness and purity in them, God has compared them to Mary and given them this name in the spiritual world. The witness referred to various Islamic writings and showed that Muslim saints are likened to Jesus and Mary, as well as to other prophets.

Against this background the witness stated that it was permissible to liken non-prophets to prophets and

that the Holy Prophet himself likened those who were not prophets to prophets.

He then analysed the views of Mirza to show how a believer becomes 'Mary':

"...Every believer who accomplishes himself in piety and purity, is Mary in the sense of *burooz* (manifestation and spiritual representation). And God breathes into him His spirit, which becomes the son of Mary..."

Thus, when a person acquires such accomplishment in turning to God that only the spirit remains, he then becomes the spirit of God in God's view, and he is named Jesus in heaven. He receives a spiritual birth at the hand of God, which is not from any physical father: rather, it is the shadow of the Grace of God, that grants him that birth. So in fact the excellence of purification and of absorption in God is such that he attains severance from bodily darkness so that only spirit remains and he is accorded the rank of Messiah or Jesushood. Indeed Messiah is the title which was given to Jesus, meaning 'one who touches God', 'partakes of Divine favours', 'the vicegerent of God', and 'one who adopts truth and righteousness'. When the believer becomes Jesus in this sense he also reaches the perfect rank of *Mahdi* (the rightly-guided one). *Mahdi* is a title which means 'rightly-guided by instinct', 'heir to all guidance', and 'the full reflection of the Divine attributes'.

It is in this spiritual sense that Mirza claimed to be the Messiah and *Mahdi*:

"...I am a Muslim...I have come from the Lord of the heavens and the earth as a Reformer (*mujaddid*) of the religion, for the fourteenth century, having the characteristics and disposition of Jesus..."

And a further quotation —

"...In a metaphorical and spiritual sense, this humble servant is that promised Messiah, the news of whose advent is given in the Quran and Hadith..."

Evidence was also led to show that the claims made by Mirza in this regard do not infringe against Islamic law. The claim to be *Mahdi* and the like of the Messiah is permitted by Islamic Shariah. What is objectionable is to deny that the Holy Prophet was *khatam an-nabiyyin* and to claim prophethood for oneself. As already indicated Mirza believed the Holy Prophet to be *khatam an-nabiyyin* and the Last Prophet, and he held that no prophet could come after the Holy Prophet, new or old.

It is apparent that many words can have several different meanings or shades of meaning, depending on the context. Mirza in his writings seems to have explained the sense in which he uses words which have different meanings. Any fair criticism of a writer can surely only be based upon the meaning which the writer himself attaches to his terms. To attach any other meaning would only result in distortion.

One of the matters raised by Defendants in their Plea which Plaintiff elected to meet concerned the virgin birth of Jesus. The evidence in this regard was firstly, that over the centuries of the existence of Islam, Muslims have differed on the issue of the birth of Jesus. Some believe that he was born without the agency of a natural or human father, while others hold that he did have such a father. It is clear that this is not an issue of faith nor is it an essential to the religion of Islam. What is part of the faith of Muslims is the acceptance of Jesus as a prophet. Secondly, as regards Mirza, it would seem from his writings that he personally believed that Jesus was born without the agency of a human father. Thirdly, because the question of the birth of Jesus is not decided conclusively in the Holy Quran but ambiguously, he gave his followers freedom in interpreting the Quran. As a result of this freedom, some of his followers even differed from Mirza himself on some points.

On the evidence placed before the court it is clear that the virgin birth is a matter upon which Muslims differ and that such differences of interpretation are not contrary to the teachings of Islam nor are these essential to the faith of a Muslim.

#### Meaning of Jihad

Another difference raised by the Defendants was that the Second Plaintiff was not a Muslim because he does not accept the *Jihad* or religious war against unbelievers in Islam. Second Plaintiff elected to meet this defence and a considerable amount of evidence was led as to the meaning of *Jihad*. In a very comprehensive coverage of the subject the witness first of all dealt with the subject linguistically i.e. from the point of view of its root meaning. This meaning is “to strive”. Secondly he approached the subject from the point of view of the teachings of the Holy Quran. Thirdly he looked at the subject historically by referring to the Muslims in Mekka and at Madina. He then examined it against the background of the Hadith and then the Bukhari (a commentary on the sayings of the Holy Prophet). Finally he viewed the subject in the light of the writings of Muslim religious scholars.

He indicated that *jihad* and “war” are not synony-

mous. Indeed the Holy Quran itself distinguished between *jihad* and *qital* (fighting or war). Undoubtedly *jihad* can mean fighting and physical warfare. The witness stated this and referred to the situation of the Muslims in Madina. The unbelievers of Mekka decided to attack Madina to annihilate Islam and the Muslims by the sword. It was then that God permitted the Muslims to conduct *jihad* with the sword, because not to do so would have meant suicide for the Muslims. At that time the following Quranic verse was revealed —

“...Permission to fight is given to those upon whom war is made, because they have been wronged — and God is well able to help them...”

According to the evidence four conditions must be present for allowing *jihad* by the sword:

- i. fighting has to be initiated by the unbelievers;
  - ii. there must be extreme persecution of the Muslims;
  - iii. the aim of the unbelievers has to be the destruction of Islam and the Muslims; and
- the object of the Muslims must only be self-defence and protection.

But there is another meaning to *jihad*: the Hadith makes it clear that *jihad* means to exert oneself to the utmost, whether by means of one’s wealth or tongue or hands or life, whether it is against one’s desires or a visible enemy, whether its aim is to attain nearness to God or to propagate the word of God. The Holy Quran and Hadith speak of three kinds of *jihad*:

A great jihad

The greatest jihad and

A lesser jihad.

The first two are undertaken constantly, while the third which includes *jihad* by means of the sword, is only undertaken if the specific conditions are satisfied. Using the term in its wider significance one classical commentary, commenting on the Hadith, stated that the best *jihad* is to speak the word of truth to a tyrant —

“...It is the best because *jihad* with arguments and proofs is a *jihad* which is greater as compared to jihad with the sword which is a lesser *jihad*...”

The views of the Muslim religious scholars strongly support this wider meaning of the term:

“...The age of the sword is no more. Now instead of the sword it is necessary to wield the pen...”

Thus the term *jihad* has attained a far more significant meaning and a meaning different to that which the Defendants would seek to convey. It is a warfare involving the pen and the tongue instead of the sword and its objective is to capture the minds and hearts of men and not act as a physical opponent.

“...To change people’s views by means of the pen and tongue, and to bring about a revolution in their minds, is also *jihad*. And to spend money for this end, and to exert oneself physically, is *jihad* too...”; also

“...*Jihad* is derived from *jahd*, meaning literally effort and striving. In the technical sense, it is used for proclaiming the word of God, and the supremacy and success of Islam...”

Not only did the evidence establish that there was a much wider and more significant meaning to the word *jihad* than mere physical warfare, but it established also that it was not one of the Five Pillars of Islam:

“...One more point might be mentioned: *jihad* or the spiritual ‘struggle’ or ‘striving’ is not one of the Five Pillars of Islam. In proper translation it does not mean ‘holy war’ except by extension, but it has been debased by this meaning, which is a journalistic usage...”

Concerning *jihad*, Mirza made his viewpoint abundantly clear. To quote only one passage from his writings —

“...In our age the pen has been raised against us. It is with the pen that we have been caused pain and suffering. In response to this, the pen is the thing which is our weapon...”

The witness explained why it was necessary for Mirza to write about *jihad*. Many objections against Islam were advanced by Christian missionaries. One of these objections was that Islam had spread by the sword. Naturally Mirza had to reply to this criticism. Secondly, as the ideas about *jihad* which had been spread among people by the Maulvis (spiritual leader) were contradictory to the teachings of the Holy Quran it was essential to explain the correct significance of the term.

In meeting these criticisms and correcting the false teachings, Mirza had necessarily to deal with *jihad* in terms of physical warfare. He made his standpoint quite clear. I quote from his writing —

“...It should be known that the Holy Quran does not arbitrarily give the command to fight. It gives the command to fight only against those people who prevent others from believing in God, and stop them from obeying His commandments and worshipping Him. It gives the command to fight against those who attack the Muslims without cause, expel them from their homes and countries, and prevent people from becoming Muslims. These are they with whom God is wroth, and Muslims must fight them if they do not desist...”

And a further quotation —

“...But in these times the sword is not used in answer, but the pen and the argument is used to criticise Islam. This is the reason why, in this age, God has pleased that the work of the sword be done by the pen, and the opponents be routed by fighting them with writing. Hence it is not appropriate now for anyone to answer the pen with the sword ...”

On the evidence placed before me it is clear that Mirza’s convictions and beliefs concerning *jihad* fully accord with the teachings of the Holy Quran and the Hadith and the religious tenets of Islam.

#### What is *Ijma*

The witness then set about answering some of the allegations levelled at the Ahmadiyya movement. The witness set his testimony against the background of the teachings of the Quran and in particular that Muslims are taught to listen to everyone but to accept only those aspects which are good. Secondly, they are exhorted to try and understand the teachings of the Quran and not just to accept them.

He then referred to the writings of Mirza and quoted from them. A few short portions are quoted:

“...Believe God to be one without partners...”

“...do good to your fellow beings and be people of good thoughts and character...”

“...do not hurt with the tongue or hand and refrain from evil and sin...”

“...be good and true advisors to all people and do not keep company with evildoers...”

“...deliberate calmly, live peaceably and give no one cause for grievance and complaint...”

It is quite apparent that there is much goodness in the writings and teachings of Mirza.

The witness explained certain misconceptions

about the attitude of the Ahmadis to intermarriage, the saying of prayers with other Muslims, and the joining of other Muslims in funeral prayers. On whatever subject he testified the touchstone of the witness was the religion of Islam as revealed primarily in the Quran and the Hadith. Thus it was when he dealt with the subject of the consensus of opinion against the Ahmadis, that he sought his authority in these sources.

He indicated that the sources of Islam were four-fold: Firstly the Quran, secondly the Hadith, thirdly reasoning, and fourthly *ijma* or consensus.

He went on to say that if there is a teaching in the Quran there cannot be an *ijma* against it. Similarly, if there is a teaching or truth to be found in the Quran or the Hadith, there is no scope for resorting to the other sources i.e. reasoning or *ijma*. He went on to enumerate three principles that emerge from Islamic writings —

the opinion of the majority is not necessarily a conclusive argument;

the opinion of the majority is not necessarily binding upon the minority;

the opinion of the majority is not necessarily evidence of the truth.

He illustrated this by referring to a majority of 99 to 1, where the 1 was truthful and the 99 were untruthful. In Islam, he said, the word of one truthful man must be accepted against the word of 99 untruthful men, although the 1 be much in the minority.

The test, he indicated, was not the majority view of opinion, but what is the truth. For this reason the Ahmadis do not accept *ijma* or the majority view, if this is against the Quran or the Hadith.

#### Fatwas of Kufr

Although the witness dealt with the subject of *fatwas* at some length, it is not proposed to deal with it here in any detail. *Fatwas* of *kufr* or “rulings of heresy” are so frequent among the various Sunni groups and are given for such apparently superficial reasons, that they do not warrant special consideration.

The conformists (*muqallid*) have issued *fatwas* against the non-conformists (*ghair muqallid*), condemning them as *kafir*; and the non-conformists have issued *fatwas* against the conformists condemning them in similar fashion. The followers of all the four Imams and the followers of the four Sufi orders have been condemned as *kafirs*; and so have the Deobandis. The Deobandis, in turn, have declared the Barelvis to be *kafir* and the Barelvis have retaliated in like manner.

Not only have various sects, of which there are a large number, had *fatwas* directed against them, but prominent men within their ranks have been condemned individually.

There are *fatwas* against prominent leaders of modern times such as Sir Sayyid Ahmad Khan, Jinnah and Iqbal; and there are *fatwas* of heresy against the early servants of Islam; such as Imam Hanifa, Imam Shafi, Imam Hanbal and so on.

#### Cases on Admission to Mosque

The witness then dealt with a Muslim’s right to enter a mosque. As was his wont he based his evidence upon the teachings of the Quran:

“...And who is more unjust than he who prevents (men) from the mosques of Allah, from His name being remembered therein and strives to ruin them? As for these, it was not proper for them to enter them except in fear. For them is disgrace in this world, and theirs is a grievous chastisement in the Hereafter...”

In Ata Ullah’s case (at p 504) *Mahmood J* is reported to have said —

“So long as a mosque is a mosque (that) so long as the plaintiffs are persons who call themselves Mohammedans and entitled to worship, there is absolutely no authority to say that any sect or any creed or any portion of the community can restrain others who claim to have the right which, to use the language of Mohammedan law, God and His Prophet gave them, from putting such right into exercise”.

In the same case *Edge CJ* is reported as follows —

“No authority has been brought to our notice to show that a mosque which has been dedicated to God can be appropriated exclusively to or by any particular sect or denomination of the Sunni Mohammedans, and without very strong authority for such a proposition, I for one could not find as a matter of law that there could be any such exclusive appropriation. As I understand it, a mosque to be a mosque at all must be a building dedicated to God and not a building dedicated to God with a reservation that it should be used only by particular persons holding particular views of the ritual. As I understand it, a mosque is a place where all Mohammedans are entitled to go and perform their devotions as of right, according to their conscience.”

(This judgment was concurred in by Straight, Brodhurst and Tyrrell JJ). See also: *Mulla on the*

*Principles of the Mohammedan Law* (Pakistan Edition 1980) at p 222, and *Fyzee, Outlines of Mohammedan Law* pp 319 et seq.

Condition 2 of the Deed of Transfer of 11 February 1881 — which is the document in terms whereof the mosque was founded — provides that the mosque shall be —

“Free for the use of all persons professing the Moslem faith.”

It is clear from the deed of grant (signed in December 1908) that the grant was made in terms of Section 6 of the Disposal of Crown Lands Act, No. 159 (1887) (Cape) which provides for the grant of land “for special public purposes.”

The effect of the grant was to vest the land in question in the trustees as a public cemetery for the benefit of certain groups of persons, *inter alia*, Muslims. See: *In re Consistory of the Dutch Reformed Church, Cape Town (1897) 14 S.C. 5, 9-10*, and also *Honore The South African Law of Trust (2nd ed) pp 36-37*.

As with the mosque, so with the cemetery, once Plaintiff establishes that he is a Muslim he is entitled to the same rights as pertain to all Muslims with regard to burial.

It is not open to the Trustees to refuse burial to a Muslim. Cf *Noordien v Moslem Cemetery Board 1965 (4) SA 174 (C)*.

Indeed, this is not Third Defendant’s case; Third Defendant asserts that it can decide whether or not Second Plaintiff is a Muslim; this is clearly unsound; not only would it be contrary to Mohammedan usage and customs, but also it would be contrary to the terms of the original grant.

As far as the right of any Muslim to approach a non-Muslim Court for a ruling concerning religious matters was concerned, the witness referred to the sayings and to the experience of the Holy Prophet. He also referred to a *fatwa* concerning the duty of Muslims to protect their mosques.

The *fatwa* indicated that to resort to violence in protection of a mosque is not acceptable. Muslims should turn to the secular authorities for a decision. He also referred to other *fatwas* where it was declared that non-Muslim judges could adjudicate on Muslim matters.

The witness referred to certain instances in the life of the Holy Prophet where he said that the angel Gabriel had revealed to him that he ought to appoint a non-Muslim as a judge to determine a particular dispute. Not only was a non-Muslim judge appointed,

but the Holy Prophet accepted the judge’s ruling.

It was quite clear from this evidence that Muslims are expected to accept the authority of the government of the country in which they live.

The witness indicated that hindrances were constantly being placed in the way of Ahmadis despite the fact that they were Muslims. If they separate themselves then they are criticised; if they go to mosques they are ejected. Their right to burial is denied them. He then asked: what must they do? All that is open to them is to approach the secular authorities for implementation of their rights as citizens and Muslims. He said that *fatwas* arouse the passions of the public and this gives rise to a deprivation of rights. He appealed to the Court for a restoration of such rights, whatever might be the attitude of other Muslims.

#### Conclusion of Expert Witness’ Evidence

The witness concluded his evidence by referring to two further matters. The first related to the obituaries of Hazrat Mirza Ghulam Ahmad and other tributes paid to him by prominent Muslims. This aspect of the evidence is not dealt with in any detail other than to say that it is quite clear that during his life, at the time of his death and thereafter, Mirza was held in very high esteem. Reference is made to one small part of a quote which seems to sum things up concerning the Founder of the movement —

“...undoubtedly the deceased was a great fighter for Islam...”

The second matter related to the tributes which have been paid to the Lahore Ahmadiyya movement by prominent Muslims. Here too, the evidence is not dealt with in any detail and comment is confined to one short part of a letter written by Abul Ala Maudoodi (an opponent of the Ahmadis) —

“...However, the Ahmadi group is included in Islam...”

The witness concluded his evidence by saying that those who oppose Mirza do not know him, nor have they read his works.

In my estimation the witness is a man of great learning and integrity. He gave evidence before me for some six days and created an extremely favourable impression. I accept his evidence without hesitation.

#### **Second Plaintiff’s Evidence**

The Second Plaintiff, Ismail Peck, then gave evidence. It is obvious that he is a humble and sincere person. He was born in the Cape in 1928 into a Muslim family. He was brought up in a staunch Sunni



home. His parents were practising Muslims, and he, himself, observed all the practices, rituals and requirements of the religion of Islam. He believed the Kalima, accepted the other four pillars of Islam and expressed no doubt concerning the finality of Prophethood, namely that the prophethood concluded with the Holy Prophet.

In about 1957 he became a member of the Ahmadi movement and continued to regard himself as a Muslim. Indeed, he was always accepted as such until about 1965 when he was denied entry to a mosque. He expressed the desire, shared by all other Muslims, to be allowed unhindered entry into any mosque, including the mosque on the corner of Long and Dorp Streets in Cape Town. This desire, he said, arises simply out of the fact that he is a Muslim.

Similarly, he would like to be buried in a Muslim cemetery on the same basis i.e. that he is a Muslim. In particular, he would like to be buried in the Vygekraal Cemetery because his father and brother are buried there.

He testified to the fact that in May 1982 the Movement applied for a welfare organisation number to enable them to raise money for an Islamic centre. This caused the sheikhs to incite the Sunni Muslims against the Ahmadiyya movement. The pamphlets (copies of which are annexed to the pleadings) were printed and distributed amongst the Muslim community.

He said that he felt very disturbed and offended by this action. To quote his words:

“...my world came to an end...”

He went on to refer to certain personal incidents relating to the death of his mother and to his relationships with other Muslims and it is quite clear that the attitude taken by the Defendants had caused him deep hurt.

He went yet further and indicated that his very life had been threatened. For these reasons he was left with no alternative but to approach the Court. He was a manifestly truthful person and I accept his evidence.

The defamatory allegations complained of are that all Ahmadiis are non-Muslims, apostates and disbelievers; that they reject the finality of the Holy Prophet Muhammad; that they are non-believers and as such are to be denied the right to bury their dead in any Muslim cemetery; that all business and social intercourse (including marriage) with Ahmadiis is prohibited; and an exhortation to all Muslims to stand up and defend Islam against the Ahmadiis (record pages 5, 6, 122, 123, 125-128); publication is not in

issue (record page 488). First Defendant, denying that the statements are defamatory, pleads a *bona fide* belief in the correctness of their statements and a right and duty to communicate same — i.e. a qualified privilege.

The *onus* of establishing the qualified privilege is on First Defendant — it has tendered no evidence in regard thereto.

To say of a Muslim that he is a non-Muslim and an apostate is the grossest possible defamation; this has been testified to by the expert witness and Second Plaintiff has himself told the Court of the hurt which has been occasioned to him as a result thereof. cf *Levy v Moltke* 1934 EDL 296, 324 et seq.

Second Plaintiff is an Ahmadi, a member of a small group of only some 200 men, women and children in all in this country, and is clearly comprehended within the defamation and entitled to seek the Court's protection in respect thereof. See *SA Associated Newspapers Ltd & Another v Estate Pelsler* 1975 (4) SA 787 (AD); *Knupfer v London Express Newspaper Ltd* (1944) 1 All ER 495 (HC) 497-8; *Levy v Von Moltke* 1934 EDL 296, 315, and also *Gatley on Libel & Slander* (6th ed) p 141, Note 30.

Second Plaintiff does not seek damages; merely an injunction against continued publication of such defamatory matter. Clearly he is entitled to such relief. In the result Second Plaintiff has proved that he is entitled to the various orders which he has claimed.

#### **Defendants Mislead and Inconvenience Plaintiff**

I turn next to consider the question of costs. Before Mr Desai and his clients withdrew from the Court, at the commencement of these proceedings Mr King, who together with Mr Prest appeared for the Second Plaintiff, gave formal notice to the Defendants that an order for attorney and client costs would be sought. It is contended that Defendants behaved unreasonably and vexatiously in failing to communicate to the Court and to Second Plaintiff their intention to withdraw from the proceedings. Mr Khan, Second Plaintiff's attorney, gave evidence as to his communication with Defendants. I accept his evidence. I am satisfied that in the light of the discussions between the attorneys, and the exchange of correspondence, in all probability the decision to withdraw had been taken some time ago, and for reasons best known to Defendants, this was kept secret until the actual moment of its announcement in Court. The letter of 21st October 1985 (Exhibit 24) from Defendants' attorneys is in my view a deliberately misleading document. In the light of the long history of the

Defendants' strenuously conducted defence no one could have guessed what Defendants had in mind. Nor was the Court or the Second Plaintiff informed as to when the decision to withdraw had been taken, though the inference is clear that it probably was taken before the letter of 21st October was written.

The result of all this is that without doubt the Second Plaintiff has unnecessarily been put to considerable further expense in preparing for what would clearly have been a protracted and complicated trial. I view this conduct on the part of the Defendants with disfavour and it is in my opinion only just that in these circumstances I should order them to pay costs on the attorney and client scale in respect of the whole litigation.

I have considered whether I should award attorney and client costs only from a certain date but have decided against that course. The Defendants have not seen fit to explain why this decision, if it is indeed one of conscience, was not taken and communicated long ago. Summons was after all served more than three years ago, in October 1982. Mr Khan also gave evidence on certain other aspects relating to costs which satisfied me as to the reasonableness of getting experts and an interpreter from overseas.

#### **Orders Granted to Second Plaintiff**

In the result I make the following order:

As against all three Defendants, Second Plaintiff is

declared to be a Muslim and as such to be entitled to all such rights and privileges as pertain to Muslims.

As against First Defendant, First Defendant is interdicted from disseminating, publishing or otherwise propagating false, harmful, malicious and defamatory matter of and concerning members of the Ahmadiyya Anjuman Ishaat Islam Lahore South Africa, including Second Plaintiff, to wit, that such members are non-Muslims, disbelievers, kafir, apostates, murtadds, that they reject the finality of the Prophethood of Muhammad, that they are non-believers and as such are to be denied admittance to mosques and to Muslim burial grounds, and that marriage with an Ahmadi is prohibited by Muslim law.

As against the Second Defendant, Second Plaintiff is declared to be entitled to admittance to the Malay mosque situate at the corner of Long and Dorp Streets, Cape Town, held under Deed of Transfer dated 11th February 1881, and to all rights and privileges therein pertaining to Muslims generally.

As against the Third Defendant, Second Plaintiff is declared to be entitled to the same rights of burial in the Malay portion of the Vygekraal Cemetery, held under Deed of Transfer No. 3, dated 18th December, 1908, as pertaining to all Muslims.

As against all three Defendants: Costs of suit on the attorney and client scale. ■

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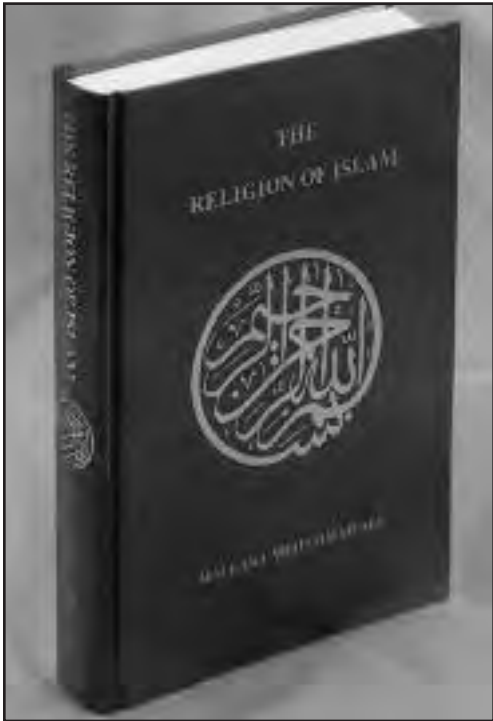
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