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"A Bid for Freedom of Faith and Its Price."

MOHAMED ALI

AND

KARACHI TRIAL

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BOMBAY.

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INTRODUCTION.

Mohamed Ali's heroic fight in defence of freedom of Religion will ever remain a brilliant and memorable chapter in the history of Islam and India. The Trial, with the weight of genius of Mohamed Ali thrown in, has proved to be a landmark in itself like many an event in the past career of Mohamed Ali. Those who had the privilege and the good fortune to watch the proceedings of the case will never forget the presence of mind, the perseverence, the graceful stubbornness, the ready and quick retort and brilliancy of wit exhibited by Mohamed Ali and his masterful marshalling of facts and display of forensic abilities intermixed with the most eloquent and persuasive manner of a religious preacher. He often extracted a forced and occasionally spontaneous applause and admiration even from his opponents in the shape of suppressed smiles and laughter, to say nothing of the raptures of those who were his adherents and admirers. His defence, by making Queen Victoria's Proclamation of 1858 and other successive proclamations of British Sovereigns as a buttress, was a magnificient and telling performance. Never before have these Proclamations been quoted with greater dexterity, effect and solemnity than on this occasion and all the essence contained therein brought to the surface by penetrating perception and skill. Perhaps also never before has such a successful attempt been made to reclaim this Proclamation of Queen Victoria's from oblivion and to accord it due recognition as the real Magna Charta of India. And, perhaps, also never before has the bureaucracy quailed and winced more than under the frontal onslaught of Mahomed Ali who, as a wonderful tactician, by boldly challenging the Judge to acquit or convict, forced him into a corner and finally compelled him to declare the mockery of such proclamations. God had destined a reputed Civilian Judge to undermine and to demolish with a stroke of pen the fabric built up by the labours of a generation of astute civilians, on which the allegiance of His Majesty's British subjects was so far loosely hung. To meet Mohamed Ali's argument and to save the solemnity of Proclamations, by declaring that they cannot protect anything done under colour of religion was a most flimsy and feeble performance, taking into consideration the staring facts of the case which had clearly raised a most important religious issue and which had received the approval and sanction of no less than 500 Ulema of India.

No State trial in the East has ever before evoked and excited public interest to such a pitch nor has such a trial of late any parallel in the East or even the West. These papers consisting of Mahomed Ali's statement before the Magistrate, together with his address to the Jury and his Note and Memorandum prepared in Karachi Jail, are presented to the public side by side with the summing up of the Judge and the judgment in the case. They represent the whole case for the Crown and defence in a nutshell and will be found to be highly interesting. Islam is engaged in a life and death struggle in India as well as all over the world. These papers will enable the reader to find out the nature of the evil which the Mohamedans of India and their compatriots, the Hindus, have been forced to combat. The whole administration of this country by the bureaucracy is on its trial and has already been shaken to its very foundation And GOD-willing we shall soon see the dawn of a New Era in which the forces of righteousness will soon gain a sure victory.

A few words in the end require to be devoted to expose the judicial incompetency revealed during the trial. The idiosyncracies of the Magistrate and the illegal procedure adopted may be overlooked in this short introduction as they have been sufficiently exposed in the statements and addresses of the prisoners made and delivered during the sessions Trial. But the curtain must be lifted fully from the final stages in which such a reputedly learned Judge grievously blundered. The Judge had the misfortune of trying an admixture of charges most of which were to go before the very same Jury as assessors with the exception of one important charge of conspiracy read with Sec: 131, I.P.C. which had to be solely determined by that jury as jury. The jury charge having failed ignominiously and the accused having secured an acquittal, the charge to the jury which contained all the facts in the case ceased *ipso facto* to have any effect as a portion of judgment. The learned Judge, instead of taking the trouble of writing a separate judgment on the charges triable with the assistance of assessors on which he convicted and sentenced the prisoners, contented himself merely by pronouncing an order of sentence. To call it a judgment in a case is nothing but a Misnomer. Nor is it a judgment in law according to Section 367 Criminal Procedure Code which lays down clearly and imperatively that every judgment shall contain the points of determination and the reasons thereof. But the judgment consisting of two typed

pages contains no points of determination or any reference to the evidence adduced in the case and merely serves as an order of sentence which is generally passed in cases triable by Jury. This so-called judgment was pronounced on 1st November 1921, while signed on the 4th Nov., when the judge had become *functus officio* as a Sessions Judge, and could not sign the judgment as Judicial Commissioner of Sind, taking shelter behind the provision of special rules in force regarding delivery and signing of judgments. On the 4th November another interesting episode occurred. The Public Prosecutor made an application to the Court for review of judgment as the judge, according to the Crown Prosecutor, had also failed to record judgment under Section 120 B, read with Sec. 115, I.P.C. The learned judge admitted having committed the mistake "due to bad accoustic properties of the court," but refused to convict the accused on this charge, because the main and substantial charge of Conspiracy under Sec: 120 B, read with Sec: 131, I. P. C. had resulted in an acquittal. The Public Prosecutor's application was a gentle reminder to the Judge that he had forgotten to write any judgment at all even on charges on which he had convicted and sentenced the accused. To bring his order of sentence pronounced on 1st Nov., in conformity with provisions of Sec: 367, Criminal Procedure Code, the Judge added the following note to his judgment on 4th November :—

> "N. B.—The charge to the jury is to be attached and read as part of the judgment and any copy of this judgment is to include a copy of the charge."

The addition of such a note to a judgment, which was already delivered, and was merely waiting for signature, in the absence of the prisoners, was entirely unwarranted, illegal and *ultra vires*. The Judge after delivery of the judgment could merely correct a clerical error but could not subtract from or add anything to the judgment already pronounced. Nor had he any authority to add such a note as he had ceased to be Sessions Judge in the case after having pronounced his judgment and, if permitted by rules, could merely sign the judgment on that date and no more. The addition of the note makes even the order of sentence entirely illegal. Besides, the addition of the note does not any more make it a judgment and bring it within the provisions of Sec: 367, Criminal Procedure Code, because the facts given in the charge to the jury cannot be made to do service for points of determination in the case and the reasons given thereon. The function of the charge to the jury is merely to marshall facts for the opinion of the jury and nothing contained therein is finally determined by the Judge in regard to the case and, therefore, cannot, if made even to form part of the judgment, serve the purpose for which the note was added. Moreover the moment the jury brought in a verdict of "Not guilty", on the charge to the jury and the judge accepted the verdict and acquitted the prisoners of that charge, the charge to the jury ceased to perform its function. That charge to the jury was merely a part and parcel of the order of acquittal recorded by the Judge in the case, and, therefore, could not serve to become part and parcel of that portion of the case on which the Judge convicted and sentenced the accused, after taking the opinion of the jury as assessors.

The learned Judge ought to have recorded a separate judgment in the case on charges on which he wanted to convict them, but that has not been done. Therefore, the result is that the Karachi prisoners are suffering a wrongful confinement and illegal detention and not undergoing a legal term of imprisonment, for which every official from the lowest to the highest deserves to be mulcted in heavy damages

MOAZZAM ALI.

CENTRAL KHILAFAT COMMITTEE OFFICE.

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ERRATTA.

Page.	Line.	
1	11	Read "I" in place of "It."
,,	12	Read "cross-Examination" in place of "Examination."
,,	40	Read "For the haven" after "in preparation."
,,	47	Read "settling" in place of "setting."
,,	48	Read "affairs" in place of "matters."
,,	50	Read "lied" in place of "said."
,,	60	Read "in" in place of "it."
,,	72	Read "Madani" after "Mohajir."
,,	74	Read "winding" in place of "binding."
,,	78	Read "lied" in place of "tried."
,,	83	Read "in" in place of "to."
,,	85	Omit "It seems to me that" and read "it" in place of Government.
,,	86	Omit "has been made deliberately" and read "be" before "to."
,,	88	Read "It seems to me that unless Government has been deliberately" and omit "and."
2	12	Read "in" in place of "to."
,,	62	Read "much" in place of "such."
,,	63	Read "them" after "renounce."
,,	77	Read "wrought" in place of "brought."
,,	81	Read "Karma" in place of "Karam."
3	1	Read "alike" after "disclaim."
,,	12	Read "his" in place of "their."
,,	46	Read "referring" in place of "referred."
,,	52	Read "subjects" in place of "subject."
,,	80	Read "precious" in place of "previous."
,,	80	Read "By whose convictions" before "are."
,,	97	Read "becomes" in place of "become."
,,	104	Read "humility" in place of "humanity."
,,	119	Read "commanded" in place of "command."
,,	124	Read "utter" after "in."
4	32	Read "aught" in place of "ought."
,,	38	Read "unwilling" in place of "willing."
,,	50	Read "—a—" after "work."
,,	115	Read "was" after "government."
5	70	Read "religion" in place of "religions."
,,	76	Omit "the" and read "some" in place of "same."
,,	82	Read "he" in place of "to."
6	10	Read "cease" after "with."
,,	22	Read "Me" in place of "He."
,,	25	Read "unto" in place of "into"
,,	31	Read "from" after "astray."
,,	76	Read "entereth" in place of "enter."
,,	104	Read "had" before "brought."
,,	107	Read "with non-muslims" after "relations."
,,	113	Read "no" after "category."
,,	133	Read "dwellers" in place of "dwelling."
7	5	Read "hath" in place of "has."
,,	17	Read "opposeth" in place of "oppose."
,,	21	Read "and" before "with."
,,	40	Read "from whom" after "and."
,,	40	Read "takest it away. Thou Exaltest whom Thou wilt and whom Thou wilt Thou" after "Thou."
,,	64	Read "survitors" in place of "survivors."
,,	71	Read "God" after "and."
,,	73	Read "Ye" after "do."
,,	78	Read "party" in place of "part."
,,	102	Read "unto" in place of "into."
7	115	Read "whatever" in place of "whatsoever."
,,	116	Read "Whatever" in place of "whatsoever."
,,	119	Read "spare" in place of "share."
,,	125	Read "but" in place of "not."
,,	130	Read "say; die in your wrath" before "God."
,,	131	Read "breasts" in place of "hearts."
,,	135	Read "whatsoever" in place of "whatever."
8	1	Read "directly" in place of "directy."
,,	19	Read "soon" in place of "so."
,,	21	Read "have" in place of "hear."
,,	29	Read "lowly" in place of "lovely."
,,	44	Read "as" in place of "and."
,,	53	Read "in" before "what."
,,	54	Read "deserving" in place of "denerving."
,,	61	Read "to you; they said, we believe" after "themselves."
,,	63	Read "what" in place of "that."
,,	65	Read "to" in place of "in."
,,	84	Read "which is precisely the case here" after "Apostle."
,,	89	Omit "be" after "and."
,,	103	Read "statement" in place of "Government."
,,	122	Read "On the clearest and most emphatic commands contained in the Holy Quran which prescribes the severest sanctions and" after "based."
9	8	Read "had prepared" after "and."
,,	27	Read "hand" in place of "head."
,,	27	Read "I will not stretch forth my hand against thee to slay thee" before "verily."
,,	29	Read "ordained" in place of "obtained."
,,	34	Read "he" in place of "as."
,,	48	Read "hath" in place of "athh."
,,	65	Read "for murder" after "punishment."
,,	66	Read "as punishment for adultery, and as punishment" before "for."
10	2	Read "drew" in place of "draw."
,,	2	Read "sword" in place of "word."
,,	27	Read "the" in place of "this."
,,	43	Read "good" before "is".
,,	51	Read "prosecutes" in place of "prosecuted."
,,	61	Read "away" after "passed."
,,	63	Read "pilgrimage" in place of "pilgrims."
,,	81	Read "hurmat" in place of "hurma."
,,	81	Read "noun" in place of "non."
,,	83	Read "turn" in place of "burn."
,,	90	Read "desires" in place of "desire."
,,	90	Read "us" in place of "as."
,,	99	Read "should" before "bring."
,,	119	Read "apostasize." in place of "apostatize."
,,	120	Read "boast" in place of "bosta."
11	64	Read "are" in place of "or."
,,	91	Read "tolerant" in place of "torant."
,,	114	Read "what" in place of "that."
,,	130	Read "meant" after "not."
12	7	Read "be repentant" after "Government."
,,	27	Read "your" in place of "our"
,,	71	Read "it" before "as."
,,	89	Read "it" after "get."
13	39	Read "too" after "man."
,,	70	Omit "book" after "is."
15	28	Read "juridical" in place of "judicial."
,,	45	Read "it" in place of "us."

ERRATTA—(*contd.*)

Page.	Line.	
15	121	Read "unoften" in place of "often."
,,	121	Read "you" in place of "on."
,,	125	Read "precisely" in place of "peculiarly."
16	2	Read "it" in place of "in."
,,	39	Read "me away" in place of "mmaway."
,,	44	Read "was" in place of "has"
18	15	Read "Englishman" in place of "Gentleman."
19	92	Omit "do."
20	35	Read "exhorts" in place of "exerts."
,,	36	Read "dehorts" in place of "exhorts."
,,	68	Omit "being."
23	59	Read "did" in place of "dit."
,,	84	Read "*Baresarkar*" in place of "baresar."
,,	100	Read "of" in place of "to."
,,	101	Read "billets" in place of "bullets."
,,	116	Omit "of."
,,	116	Read "of" after "smelling."
24	1	Read "large" in place of "arge."
25	121	Read "is" after "It."
26	15	Read "Malianwala," in place of "Jalianwala."
,,	114	Read "party" after "shooting."
27	37	Omit "me" after "intervenmg."
,,	46	Read "that" after "think."
28	27	Read "this" in place of "the."
29	80	Read "Matdah" in place of "Matiah."
,,	84	Read "hath" in place of "that."
30	103	Read "these" in place of "there."
,,	122	Read "seducting" in place of "seduction."
33	47	Read "sought" in place of "thought."
,,	77	Read "your" in place of "you."
,,	82	Read "faiths" in place of "faith."
34	26	Read "Thine" in place of "There."
51	2	Read "None" after "compassionate."
,,	68	Read "largess" in place of "largeness."
,,	70	Read "a" in place of "and."
,,	74	Read "feckless" in place of "freckless."
,,	90	Omit "of" after "leave."
,,	90	Read "unexposed" in place of "exposed."
,,	97	Read "absolutely" in place of "absolute."
52	13	Read "numerous" in place of "enormous."
,,	38	Read "may or" after "man."
,,	75	Read "depraved" in place of "deprived."
,,	149	Read "realm" in place of "real."
53	39	Read "pull" in place of "put."
,,	51	Read "lost" in place of "last."
,,	65	Read "off" in place of "of."
,,	77	Read "them" in place of "then."
,,	91	Read "larceny" in place of "carceny."
,,	94	Read "hie" in place of "see."
,,	95	Read "sicvolo" in place of "sicvoto."
,,	121	Read "though" in place of "through."
,,	151	Read "Agra" in place of "Ahra."
54	19	Read "far" in place of "for."
,,	24	Read "Anglo-Indian" in place of "Anglo-India."
,,	25	Read "same" in place of "some."
,,	46	Read "thousandth" in place of "thousand."
,,	56	Omit "for" before "redress."
,,	64	Read "our" in place of "out."
,,	84	Read "censurer" in place of "censure."
,,	87	Read "who" in place of "will."
54	96	Read "censurers" in place of "censures."
,,	98	Read "his" after "of."
,,	103	Read "way" in place of "why."
,,	143	Read "publicly" in place of "publicity."
55	8	Read "Methaq" in place of "method."
,,	36	Read "Mawalat" in place of "Mawala."
,,	44	Read "that" in place of "the."
56	67	Read "what" in place of "that."
,,	81	Read "—Not two as Mr. Kennedy chooses to specify leaving the apostacy and desertion"—after "adultery."
,,	89	Read "Surai-al-Maida" in place of "Sura-i-Maida."
,,	89	Read "forty" in place of "fourth."
,,	93	Read "no merit in the judge's belated and laboriously achieved" after "therefore."
,,	103	Read "last" in place of "best."
,,	121	Read "long" in place of "loan."
,,	122	Read "and" in place of "are."
,,	128	Read "or Ijma" after "consensus."
,,	129	Read "of" after "source."
57	16	Read "jetsam" in place of "esteem."
,,	52	Read "of" after "that."
,,	54	Read "proscribed" in place of "prescribed."
,,	61	Read "or" in place of "of."
,,	99	Read "strangely" in place of "strongly."
58	26	Read "but" in place of "about."
,,	29	Read "had" before "ever."
59	26	Read "is" before "this."
,,	85	Read "that" after "Sun."
,,	89	Omit "the king as.".
,,	116	Read "and" after "anticipate."
,,	123	Read "the" before "coming."
60	10	Read "just" in place of "jest."
,,	66	Read "both" in place of "but."
,,	68	Read "bare" in place of "before."
,,	90	Read "his" in place of "him."
,,	92	Read "certain Muslims as punishment for their wilful killing of" after "of."
61	43	Read "Can this brotherhood of Muslim and" before 'Muslims.'
,,	86	Read "Ali" in place of "All."
62	19	Read "Ashari" in place of "Ahmed."
,,	26	Read "Khalifa" in place of "Khilafat."
,,	29	Read "atleast" in place of "atlast."
,,	36	Read "so" in place of "as."
,,	60	Read "Khalifa" in place of "Khilafat."
,,	66	Read "wishes" in place of "wished."
,,	98	Read "like" in place of "take."
,,	126	Read "continued" in place of "contained."
63	30	Read "thee" in place of "thou."
,,	82	Read "with" in place of "when."
64	47	Read "Sura-i-al-Haj" in place of "Sura-i-Haji."
,,	63	Read "Khalifa" in place of "Khilafat."
,,	88	Read "at" after "recognize."
65	34	Read "to" after "exposed."
66	9	Read "Nazar" in place of "Hazar."
,,	27	Read "there" in place of "here."
,,	64	Read "assistance" before "I."
,,	141	Read "noisy" in place of "rowdy."
67	57	Read "Aziz" in place of "Aib."
,,	89	Read "or" in place of "at."
68	118	Read "your" in place of "young."
69	47	Read "beg" in place of "bega."

IN THE COURT

OF

CITY MAGISTRATE, KARACHI.

THE KING-EMPEROR

versus

MAHOMEDALI & OTHERS

Examination of Accused No. 1, Mahomedali.

Q.—What have you to say about the case?

A.—As a Non-Co-operator I have taken no part in the proceedings before this Court except to endeavour to understand the case as it was being unfolded from day to day I allowed whatever evidence was given to move on oiled castors without attempting to make any reference to the relevancy or admissibility of the evidence, according to your cannon of evidence. It did not intervene in the proceedings with any examination of the witnesses and permitted my friend the Counsel for the Crown to discharge that function also for me whenever he could not get an answer entirely to his satisfaction. The only part that as Non-Co-operators with this Government we have allowed ourselves to take in any proceedings when we are brought to a Court is to submit a statement of facts not with a view to defend ourselves but to explain such things, as might cause confusion to any one imperfectly acquainted with those facts.

So far as the present case is concerned I had no necessity whatever even of making this statement except perhaps with a view to cut short the circumbulations of a number of needless witnesses who were brought in to prove the obvious but who may have succeeded only in making it obscure. I came to Karachi with my brothers and others I certainly put up at the Kanayashala with a score of other people; and while I was there thousands of persons came in and went out, mostly during the day, and sometimes also at night to the great inconvenience of my brother and myself. But one must put up with these things in preparation of rest in which I am now immured. Since it was not a prison, I frankly admit I went out of the Kanayashala and also returned to it, sometimes in the company of my brother oftener without him, and seldom in the company f my friend Dr. Kitchlew who was evidently busy in setting some provincial and local matters of his own. I will only say that I never came back at 1-30 a.m. as one poor witness has said perhaps because his duty began at 12 midnight, and he had to show something for it. At that quiet hour I happened to be conspiring with my brother, conspiring in the literal sense, when he was breathing heavily, not to say snoring, and I must have been doing the same, though perhaps not in entire agreement which is necessary for the purposes of Section 120B of I.P.C Whatever conspiracy we were engaged it was generally carried on in broad day light

I admit that I presided over the last Khilafat Conference held at Karachi, and that I drafted a resolution with regard to the possible reopening of British hostilities against the Angora Government as I had done at Gokak in the Belgaum District. I admit I read out that resolution to the Conference, and I introduced the proposer, whom I rejoice to see as my fellow-prisoner, my revered master, Maulana Husain Ahmed Sahib Mahajir, *i.e.*, one who has emigrated to the last resting place of our Revered Prophet on whom be peace and God's benediction. I also made certain concluding remarks before binding up the proceedings in connection with that resolution, and I asked those who were in support of that resolution, which was really a solemn covenant, to stand up and bear witness to their support of it. But it is not true as witness after witness has tried that this was the only resolution which was passed by supporters standing up. At least two other resolutions were passed in a similar manner and reported to the newspapers of the day. I cannot think why this purposeless lie was told. It seems to me that unless Government has been made deliberately to maintain the sacred tradition of the Crown prosecutions in this country, and to misunderstand the drift of that and similar resolution at Gokak it is the aim of the Government to put false stress upon the army part of the resolution as its justification for betraying once more the word, it had given through the mouth of the Viceroy regarding our prosecution. But

that is its own concern and I have little to do with it beyond expressing my gratefulness that for once it has come out into the open and has challenged Islam in India to do what it can in defence of the faith.

It was clear to everybody at the time of the Gokak and the Karachi Conferences that it was only a matter of touch-and-go with regard to the reopening of hostilities by the British against the defenders of Islam and its Khilafat whom the British Government had done everything to its power to destroy, and to get destroyed in characteristic fashion through third parties.

Indian Musalmans who had given warning after warning to the Government were fast losing patience and we feared that the peace of India might be disturbed in vain attempts by the more ardent, if not the more impetuous, among our co-religionists in this country, to compel this Government to respect their religious obligation and save the Khilafat.

We realised our responsibilities to God and men and diverted the wandering attention of excited Musalmans into a fruitful channel. We warned the Government of two things, firstly, of the commencement of the Civil Disobedience in concert with the Congress, and secondly, in December next at the forthcoming session of the Indian National Congress, of the Declaration of the Indian Freedom and establishment of a Republic in India.

These two were to be contingent on the reopening of hostilities by the British, whether secretly, or openly whether directly or through the Greeks, against the remnant of the temporal power of Islam. Every newspaper in the country, Co-operater or Non-Co-operator, discussed the question of Indian Republic looming in the distance, but I do not know if any one discussed in the public the question of the Indian army which as is clear from the wordings of both the resolutions, was only incidently involved. Five hundred of the most distinguished Ulemas of the Musalmans in India had several months previously issued a most clear and unambiguous religious pronouncement with regard to Non-Co-operation, including questions of membership of the Legislative Council, practice at the Bar, Education in Government and Aided Schools, Titles and Honorary Offices, and, of course, service under Government whether as soldier or civilian.

If it was said that the Karachi and Gokak Conferences were held mainly to ask these poor title-holders who had purchased their titles by the sale of such honour and hugged them to their bosoms to renounce, it would have been hardly more ridiculous than this belated attempt to discover a conspiracy to tamper with the loyalty of "our loyal troops." I say hardly more ridiculous, for, whereas, I despair of these title-holders, I have every hope from "our loyal soldiers."

Government have not spared them the humiliation of paying them a compliment even in its last *communique* regarding our intended prosecution and the extent to which that compliment is well deserved, is also the extent of the demoralization brought in a religious people by an irreligious Government; and if that compliment has been truly paid, I make the abject confession, that it is our Karam when our misdeeds and our neglect of our poor brothers in the Army is coming home to chastise us in the hour of our need.

But we cannot neglect our hunger-stricken unsophisticated brothers any longer, and although I was absolutely ignorant of the existence of the leaflets sent to Musalmans in the Army, called officers only by way of euphomism, I am glad that the Association of the Ulema is at long last carrying the message of God to the Indian Army. I may correct myself here as I am informed that the Jamiat-ul-Ulma denies having issued these leaflets to the Ind n Army, but I trust they will soon convert the forgery into a fact.

In 1858, when there had been a mutiny in this country involving the Indian Army, of which the main issue was a religious one, Queen Victoria, who assumed the reins of administration for the first time, issued a Proclamation in order to pacify and reassure the people.

There is a curious little incident worth mentioning about the Proclamation. Among the titles of the ruling sovereign of England is the significant title "Defender of the Faith," and the Prime Minister of those days, perhaps as adroit as the Prime Minister of these days, was in hopes that in the Indian translation this significant title would appear as "*Protectress of Religion*" generally. But he was told by experts in vernacular that it was just the title to convey to the Indian mind the idea of the special Head and Champion of a Creed antagonistic to the creeds of the country. So Lord Derby was inclined to omit it; but when he sought the opinion of the Queen herself she absolutely refused, and at the Queen's own suggestion Lord Derby himself redrafted the Proclamation, and the very first para therein relating to the obligation of the Queen towards the people of India, which, she says, "By the Blessings of Almighty God we shall faithfully and conscientiously fulfil" relates to our religions and runs as follows:—

"Firmly relying Ourselves on the truth of Christianity, and acknowledging with

gratitude the solace of religion, we disclaim the right and the desire to impose our convictions on any of our subjects." Yet for two days and a half my friend the Public Prosecutor has been trying to impose convictions. I don't know whose, but certainly not ours upon six good Musalmans, and one very good Hindu.

The Proclamation adds "we declare it to be our Royal Will and pleasure that none be in any wise favoured, none molested or disquieted by reason of their religion, faith or observances; but that all shall alike enjoy the equal and impartial protection of the law," which I hope we are going to do.

It goes on to say "And we do strictly charge and enjoin all those who may be in Authority under us that they abstain from all interference with religious belief or worship of any of our subjects on pain of our highest displeasure." The first Authority mentioned in the Proclamation is the Governor General himself, and I understand that it is with his concurrence that we have been molested and disquieted by reason of our religious faith, and to other convictions now sought to be imposed upon us now, will be added perhaps several convictions under the Indian Penal Code.

The last sentence of the Proclamation was drafted by the Queen herself. Referring to the people she says "In their prosperity will be Our strength, in their contentment our security and in their gratitude our best reward. And may the God of all Power grant to Us to those in Authority under Us strength to carry out those Our wishes for the good of our people."

So important as the basis of the British Indian Constitution has this document been considered that when 50 years had passed, the Queen's son and successor, King Edward VII, issued another Proclamation on the 50th Anniversary of this great event in the course of which he said, that it had opened "a new era," and referred to the interval of half-a-century between the two Proclamations: he said "We survey our labours of the past half-century with clear gaze and good conscience." And further on he states that "No man among my subject has been favoured, molested or disquieted by reason of his religious belief or worship. All men have enjoyed protection of the law. The law itself has been administered without disrespect to creed or caste or to usages and ideas rooted in your civilisation.

When the present sovereign of India ascended the throne he issued a letter to the Princes and people of India on the 24th May, 1910, in the course of which he says, referring to the two proclamations from which I have cited, "These are the charters of the noble and benignant spirit of Imperial rule and by that spirit, in all my time to come, I will faithfully abide."

But if this is the protection of the law that we are to enjoy, no sovereign can survey the labours of his Government any longer "with the clear gaze or with good conscience" and these poor charters will only serve to mock" "the noble and benignant spirit of Imperial Rule," which seeks to impose heathen convictions on a believing people and will lead them to look upon God as a figure of speech and not as the one real fact of our daily existence.

For after all, what is the meaning of the previous prosecution, are we to be guided we the Musalmans and Hindus of India? Speaking as a Musalman, if I am supposed to err from the right path, the only way to convince me of my error is to refer me to the Holy Quran or to the authentic traditions of the Last of the Prophet, on whom be peace and God's benedictions or the religious pronouncements of recognized Muslim divines, past and present, which purport to be based on these two original sources of Islamic authority. And I contend that I am not in error to-day because all religious authority demands from me, in the present circumstances, the precise action for which a Government that does not like to be called Satanic, is prosecuting me to-day.

If that which I neglect, become by my neglect a deadly sin and is yet a crime if I do not neglect it, how am I to consider myself safe in this country? I must be either a sinner or a criminal and like a British Prime Minister of easter origin, like the Secretary of State and Viceroy to-day but with more than his humanity, I like to be "on the side of the Angels."

Islam recognizes one sovereignty alone, the sovereignty of God which is supreme and unconditioned, indivisible and inalienable.

This can be seen from the following discourse of the Prophet Yousef, on whom be peace with his fellow-prisoners, in the XII Chapter of the Holy Quran, "Oh my fellow-prisoners, are sundry Lords better, or the One All-controlling God? Ye serve not besides Him, other than the names that ye have named, ye and your fathers. God hath sent down therefore no warrant There is no Government but God's, He hath command that ye serve none but His Oneself. This is the right religion; but the greater part of men know it not."

I am afraid it is even more true to-day, when every poor Subedar Major in the Western Command rushes up in consternation to the Commanding Officer when he receives a verse from Quran and an authentic tradition of the Prophet, calling upon him to do his first duty, the duty that he owes to His Maker.

This sovereignty of God was carried on in His name from time to time among various tribes and people by prophets sent down to them. When Mahomed on whom be peace and God's benedictions, departed from the world, as the Last of the Prophets, after having brought the Final Message of God's Peace to all mankind, he was followed by his Khulafa, or successors, who were entitled Commanders of the Faithful

They continue the succession to this day, the present Commander of the Faithful, according to our creed being His Imperial Majesty the Sultan of Turkey. The only allegiance that a Musalman whether civilian or soldier whether living under a Musalman or under a non-Muslim Administration, is commanded by the Quran to acknowledge, is his allegiance to God, to His Prophet and to those in authority from among the Musalmans, chief amongst the last mentioned being, of course, th. t Prophet's successors or Commander of the Faithful. But to these latter his allegiance, unlike his allegiance to God and His Prophet, is a subordinate and conditional allegiance, as the following verses from the IV Chapter of the Quran entitled "Nisa" or "Women" will clearly indicate "O ye Faithful obey God, obey the Prophet and those who are in authority from among you, and if ye dispute regarding ought, refer it unto God and his Prophet, if you believe in God and the Last Day. This is better and the fairest determination. "That is to say, even if the Commander of the Faithful, *i. e.* the Successor of the Prophet, command the Musalmans to do anything that he is willing to do, he is not only entitled, but required to refer the matter in dispute between himslef and the highest human authority that he recognizes to-day to the arbitrament of the Holy Quran and the authentic Traditions of the Prophet. This is the central doctrine of Islam which is summed up in the well-known Kalma or Creed "La-i-Laha Ill-Allah Mahomed-ur-Rasul Allah."

This doctrine of unity is not a mathematical formula elaborated by abstruse thinkers; for abstruse thinkers but a work day belief of every Musalman, learned or unlettered. It was to test the clearness and purity of this belief that Khalifa Umar one day turned to the congregation assembled in the Mosque for the Service he was conducting, and asked them what they would do if he, who was by far the greatest conqueror among the successors of the Prophet commanded them to do anything that was against the commandment of God and the Tradition of the Prophet. The only proper answer for a Muslim to give to such a question was given by Hazrat Ali, who himself became the Khalifa subsequently, that if Hazrat Umar did command such an infraction of the Law of God, he, Ali, who had sworn allegiance to him as the Khalifa, would unhesitatingly cut off his head. I believe a similar contingency arose in the course of British Rule not in India but in England, when the Puritans chopped off the head of a King who very much believed in the Divine Right of Kings.

Musalmans have before this also, and elsewhere too lived in peaceful subjection to Non-Muslim Administration. But the unalterable rule is, and has always been, that as Musalmans they can obey only such laws and orders issued by their secular rulers as do not involve disobedience to the commandment of God, who, in the expressive language of the Holy Quran is the "All rulling Ruler." These very clear and rigidly definite limits of obedience are not laid down with regard to the authority of *Non-Muslim Administrations only.* On the contrary, they are of universal application, and can neither be enlarged nor reduced in any case. Neither His Highness the Nawab of Rampur, my own sovereign nor his H.E.H. the Nizam, not even H.I.M. the Sultan of Turkey dare demand from his Muslim subjects obedience to such commands of his as transgress the Law of Islam.

A further exposition of this principle is proved by the following among the other authentic Traditions of the Prophet. It says "for a Musalman to hear is to obey whether he likes what is ordained or does not like it; provided it does not ordain aught that constitutes divine disobedience. If it constitutes divine disobedience, there is neither hearing nor obeying." Again "No obedience is due in aught that constitute divine disobedience. Obedience is due only in that which is righteous." The same idea is expressed in another Tradition of the Prophet, the logic of which is invincible: "No obedience is due to a creature of God in aught that involves disobedience to the Creator Himself."

Due warning of the ultimate consequences to which the Anti Khil fat and nti-Islamic policy of Mr. Lloyd George's Government driving the Musalmans of India was given by the Indian Khilafat Delegation of which I had the honour to be the Head, both in writing, when the last mentioned Tradition was cited more than once, and also in the course of the interview which the Delegation had with him at 10, Downing Street on the 19th March, 1920. There is, therefore, nothing in the action of Indian Musalmans generally, or of ourselves particularly, that should have come as a surpirse to Government. We owed a duty to God and we owed a duty to Empire, and in the last resort, when the demands of the Imperial Government came into direct conflict with the demands of the Universal Government of God, as Musalmans we could only obey God, and I am endeavouring to do so to the best of my humble capacity.

A Musalman's affection and disaffection are alike regulated by Divine pleasure and displeasure. As the Prophet said: "Love is in God, and hate is in God." So long as the Musalmans of India had not been forcibly driven to believe that British Government was the Enemy of God and the Enemy of Islam, they remained loyal to it through thick and thin, and their loyalty was carried to such lengths that it was often made and not always without reason, a reproach to them by sister communities in India. But they have been now convinced of the hostility of the Government to their faith as well as to their country, by the policy pursued for more than a decade by the Government with regard to Islamic States, and particularly the Khilafat, to which every Musalman owes allegiance as part of his creed. During the last war, which so far as the Khilafat is concerned has not yet ceased, pledges solemnly given by Government regarding the freedom of the Holy Places of Islam (*which are territories and not buildings*) from attack and molestation, and the retention by the Khalifa of his Capital in Constantinople and of Thrace and Symrna, have been broken with the same light-hearted ease with which the religious obligations of the Musalmans, on the fullest respect for which Muslim loyalty has always been based, were disregarded, when they were compelled to fight against the Muslim armies of the Khalifa. This was done even after his declaration of Jehad, and our hunger-stricken and terror-stricken warriors were packed off to fight in what responsible Ministers themselves, including the Prime Minister, and that Pinch-back Napoleon, Mr. Wintson Churchill, then Minister of Marine, characterised as a Crusade.

That Crusade still continues, and new Christian recruits have been enlisted by Government to carry the Crusade into the homelands of the Turks in the person of Greeks who were not even at war with Turks. Government which became responsible for the Greek invasion of Turkey in contravention of the terms of the Armistice, and has in many ways, both open and secret, assisted them, is also responsible for the shameless and nameless atrocities which they have indubitably perpetuated on the showing of Allied Commission of enquiry themselves.

If Indian Musalmans had a more effective force at their command to try conclusions with Government they would have been obliged to-day by the Islamic Law, if they chose to remain Muslims, to declare a Holy war against it and this dispute of ours would have been in course of settlement in a very different place from the Khalikdina Hall. In the regrettable absence of such force, such of them as can arrange to leave the country are required by the same law to migrate to a safer land, where no Public Prosecutor could molest or disquiet the religious, though, of course, only with a view to return to it after they had freed their country and made it safe for the undisturbed worship of God.

In June, 1920, the Central Khilafat Committee, in accordance with the Law of Islam and in consultation with the same leading compatriots of ours and of other faiths, decided upon a course of action which gave the Musalmans hope of early, emancipation, without having to wage war against Government or migrate to another country.

(Mr. Mahomedali agreed to would put in a further statement hereafter to supplement this. This was at the suggestion of the court.)

Q.—Whether the copies of the Gokak resolution (one in English and one in Urdu) were found in your kit ?

A.—These two Exhibits 72 & 73 were found from my kit and they belong to me. The Urdu is drafted by me and the English is my old translation drafted by me. The Verses are also in my handwriting but not composed by me. I admit that that is the resolution passed at Gokak. There is no reason for me to admit that the translation of the 6th Resolution given in Government order is correct. But I admit that a resolution in similar terms as given in Government order was passed in the Karachi Conference.

(Sd.) S. M. TALATI.
28-9-21.

Note:—When this statement was closed on 28th September, 1921 accused Mahomedali said he had said all he had to say on the resolution passed at the conference and had also dictated 6 pages of political and religious position about these resolutions but said that he had still 14 pages of political and religious matter to dictate. On that he was asked by the Court to put in a typed statement which will be kept on record and will be considered. The Court typist was specially sent to go and do it at the jail but Mr. Mahomedali now says that the statement is not yet ready. Statement already given by the accused has very little to do with the case itself and is only meant as a political speech or lecture for the public. The rest will also be in the same strain as it is part of the religious and political discussion which has very little to do with the breach of Section of the I. P. C., I therefore don't consider it necessary to delay the framing of the charges till that suplementary statement is received though it will be put on record whenever it is received and I accordingly frame the charges to-day.

(Sd.) S. M. TALATI.
29-9-21.

But in June 1920, the Central Khilafat Committee in accordance with the Laws of Islam and in consultation with some leading compatriots of ours of other faiths decided upon a course of action which gave the Musalmans hope of early emancipation without having to wage war against Government or to migrate to another country. They resolved that they would, to begin with, cause to co-operate with Government and in this way, while incidentally helping to paralyse the administration they would no longer be a party to such hostile action as Government still continued to take against the Khilafat and Islam. This plan of Non-Co-operation was based on the well known Islamic doctrine of "Tarki Mawlalat' for which there is ample authority in the Holy Quran itself, not to mention the numerous authentic Traditions of the Prophet on the subject. Only a few passages from the Holy Quran are here cited :—

"O,ye, Faithful! if ye go forth in defence of my religion and out of a desire to please He, take not My Foe and your foe for your friends, rushing into friendly relations with them; since they deny or reject which had come into you of truth : drive forth the Apostle and yourselves because ye believe in God your Lord; ye privately show friendship unto them; verily I well know that which ye conceal and that which ye discover and whoever of you doth this, hath already gone astray the even path. If they get the better of you, they will be foe unto you and they will stretch forth their hands and their tongues against you with evil, and they ardently desire that ye should become once more unbelievers. Neither your kindred nor your children will avail you at all on the Day of Resurrection; God will separate you from one another and God doth behold what ye do. Ye have an excellent example in Abraham and those who were with him when they said unto their people, verily we are clear of you and if those that ye serve besides God we have renounced you; and enmity and hatred is begun between us and you for ever until ye believe in God alone—except Abraham, saying unto his father, verily I will beg pardon for thee; but I cannot obtain aught of God in thy behalf O Lord, in Thee do we trust and unto Thee do we turn and unto Thee is the eventual coming. O Lord suffer us not to be put to trial by the unbelievers (*i.e.* by the terror of their persecution) and forgive us, O Lord, for Thou art the Mighty, the Wise. Verily we have in them an excellent example unto him who hopeth in God and the Last Day; and who so turneth back, verily God is Self-Sufficient and Praise-worthy. Peradventure God will establish friendship between yourselves and such of them as ye now hold for enemies; for God is Potent and God is inclined to forgive and Merciful. As to those who have not warred against you on account of your religion nor drove you forth out of your homelands, God forbiddeth you not to deal kindly with them and behave justly towards them, for God loveth those, who act justly. But as to those who have warred against you on account of your religion and have dispossessed you of your homelands and have assisted those who drove you forth, God forbiddeth you to enter into friendship with them, and whosoever of you enter into friendship with them those are wrong-doers. O ye faithful enter not into amity with the people against whom God is wrath; they despair of the life to come even as the infidels despair of the resurrection of the dwellers in graves." (Sura-i-Mumtahina, "She who is tried," Chapter 60th).

These verses, it may be here mentioned, were revealed when, on the eve of the conquest of Mecca a companion of the Prophet, Hateb-ibni-abi Baltaa, had by letter which was intercepted, sought to advise the Meccan infidels to be on their guard, merely because he wished thereby to induce them to treat his family, which was still at Mecca, with some kindness. The verses laying down a very different course of conduct with regard to the relations of Musalman with a different class of Non-Muslims to those warring against Islam, are said to have been revealed with reference to the action of Hazrat Asma the daughter of Hazrat Abubakr and a sister of the Prophet's wife Hazrat Ayesha, who had gone so far in her renunciation of her own mother who was still an unbeliever that she had not only refused to accept the presents which her mother brought to her, but had even denied her admittance. Both these incidents indicate the rigidly fixed limits of a Muslim's relations, distinguishing clearly between such Non-Muslims as war against them on account of their religion and dispossess them of their homelands, and such others as do not. Since the British Government so obviously falls in the first category, non-cooperation or friendly relations with it are possible for a Musalman.

Few more passages from the Holy Quran will be cited here on the subject just to indicate that there is no lack of them. In Sura-i-Mujadilah, ("She who disputed," 58th Chapter) the following verses occur "Hast thou not observed those who have taken for their friends a people against whom God is incensed? They are neither of you nor of them and they swear to a lie knowingly O God hath prepared for them a grievous torment, for verily evil is that they do. They have taken their oaths for a cover and under cover of their perjuries they have turned people aside from the path of God wherefor a shameful torment awaiteth them. Neither their wealth nor their children shall avail them aught against God. These shall be companions of fire *i.e.* (dwelling in Hell); they shall abide therein

for ever. On the day when God shall raise them all they will swear unto Him then as they swear unto you now, deeming that it will avail them. Are they not—yes they are—the liars ? Satan has gained mastery over them, and hath caused them to forget the remembrance of God ; these are Satan's party ; What. shall not the Party of Satan be doomed to perdition. Verily those who oppose God and His Apostle shall be placed among the most vile. God has written this decree; verily I will prevail, I and my Apostle; verily God is Strong and Mighty. Thou shall not find a people who believe in God and the last Day to bear affection towards him who oppose God His Apostle, even although they be their fathers or their sons or their brethren or their nearest kin. On the hearts of these hath God graven the Faith with His own spirit hath He strengthened them ; and He will lead them into the gardens beneath whose shades the rivers flow, to remain therein for ever ; God is well pleased with them and they are well pleased with Him ; these are God's Party and is not , of a truth, the Party of God destined to prosper "

Surely in view of these passages there can be no ambiguity about a true Muslim's Co-operation or Non-Co-operation with those who are ranged in opposition to God and His Apostle.

Again, in Sura-i-Al-i-Imaran (the Third Chapter of the Holy Quran entitled " The Family of Amran ") the following passages occur :—

" Say, O God, Possessor of all Dominion! Thou givest dominion to whom thou wilt, and Thou wilt Thou dost abase ; in Thy hand is good; verily Thou art over all things Potent. Thou causest the night to pass into the day, and Thou causest the day to pass into the night ; Thou bringest the living out of the dead and Thou bringest the dead out of the living and Thou givest sustenance to whom Thou wilt without measure. Let not the Faithful take Infidels for their friends rather than the Faithful ; who so shall do this, hath not to hope from God unless indeed ye entertain a dread of them but God warneth you to beware of Himself for unto God is the eventual coming. Say; whether ye hide what is in your breasts or whether ye declare it, God knoweth it ; He knoweth whatever is in Heaven and whatever is on earth for God is over all things Potent. On the day when every soul shall find present unto it the good that it hath wrought and also the evil that it hath wrought, it shall long that between itself and that evil were wide space ; and God warneth you to beware of Himself, for God is Gracious unto His survivors. Say ; if ye love God, then follow me ; God will love you and forgive you your sins for God is Forgiving and Merciful. Say ; obey God and the Apostle ; but if ye go back then verily God loveth not the infidels . . . . Say: O people of the Book ! Why do ye reject or deny the signs of God ; and is witness of that which ye work . Say : O people of the Book ! why do hinder him who believes from the path of God; ye seek to make it crooked and yet ye are its witnesses ; but God is not unmindful of what ye do. O ye faithful, if ye obey any part from among those who have received the Scripture they will turn you back infidels after your very faith ; and how can ye become Infidels when the signs of God are recited unto you and among you is His Apostle ? But whosoever holdeth fast by God is already guided to a straight path. O ye Faithful, fear God as He deserveth to be feared and die not till ye also be true Believers. And hold ye fast by the cord of God, all of you, and break not loose from it; and remember the favour of God towards ye, how that when ye were enemies, . He cast affection of each other into your heart and ye became brethren by His favour ; and ye were on the brink of a pit of fire and He delivered you thence ; thus doth God make clear unto you His signs that ye may be guided. Let there be a people among you who invite the God and enjoin the Just and forbid the Wrong ; and these are they who are destined to prosper. And be not like unto those who are divided and fallen into variance after manifest proofs have been brought into them ; these! a terrible torment doth await them. On the Day when faces shall turn white and faces shall turn black ; and as to those whose faces have turned black God will say what, after your belief have ye become infidels? Taste then the torment for that ye have been unbelievers. And as to those whose faces shall have become white, they shall be witin the mercy of God ; therein shall they abide for ever. These are the signs of God ; we recite them unto thee in truth ; and God willeth not injustice to the worlds. And to God belongeth whatsoever is in Heaven and whatsoever is on earth and unto God shall all affairs return . . . .

O, ye, Faithful! contract not intimacies among others than yourselves they share you not the infliction or harm ; they long for your ruin; hatred hath already appeared from out of their mouths, but what their breasts conceal is still more inveterate ; we have already made plain unto you the tokens thereof, if ye will not comprehend. Behold, ye love them but they love ye not, ye believe in the Book, the whole of it ; but when they meet you they say ; we believe ; and when they are apart they bite their fingers' ends at you in wrath ; God truly knoweth the very recesses of your hearts. If good befalleth you it grieveth them, and if evil afflicteth you they rejoice in it ; but if you be steadfast and fear God their strategem shall in no way harm you ; for God encompaseth whatever they work ".

These passages refer directy to the people of the Book, such as Jews and Christians, and they lack neither in clearness nor in emphasis, nor indeed in the irrefutable logic of the arguments therein employed. I will cite here only one more passage wherein Jews and Christians are specifically mentioned :—

"O,ye,Faithful! take not the Jews and the Christ ans for your friends; they are friends the one to the other; but who so among you taketh them for his friends he surely is one of them; verily God guideth not the unjust people. So shalt thou see the diseased, at heart speed away unto them and say; 'We fear lest we, get involved in some change of fortune;' but happily God will bring about the victory of some event of His Own ordering; then so shall they repent them of the imaginings they hear secretly harboured in their minds. Then will the Fatihful say; 'What? are these they who swore by their most fervent oath, that they were surely with you; vain their works; and themselves shall come to ruin.' O, ye, Faithful! should any of you desert His religion, God will then raise up a people whom He will love and who will love Him; lovely towards the Faithful, haughty towards the Infidels; for the cause of God will they strive or contend (*i.e.* wage Jehad) and not fear the censure of any censurer; this is the grace of God on whom will He bestoweth; and God is Vast Omniscient. Verily your friend is God and so is His Apostle and so are the Faithful who keep up prayer and pay the alms of obligation and who bow down before God. And whosoever take God and His Apostle and the Faithful for friends they truely were the Party of God and the Party of God are destined to dominate. O, ye, faithful! take not such of those who have received the Scriptures before you and scoff and jest at your religion, or the infidels, for your friend but fear God if ye be Faithful. Nor those who when ye call to your prayer make it an object of raillery and derision; this they do because they are a people who understand not. Say! O People of the Book! do ye not disavow us because we believe in God and in what hath been sent down to us and what hath been sent down aforetime and the greater part of you are transgressors thereof Say, shall I denounce unto you a worse than this denerving of the retribution which awaiteth them with God; they whom God hath cursed and with whom He hath been wrathsome of them hath He changed into apes and swine and they who serve Taghout (the Devil) they are in the worst plight and have gone far astray from the right path. When they presented themselves; but Infidels they came in unto you and Infidels they went forth; God knoweth best that they conceal. Many of them shalt thou see hastening together in sin and transgression and to eat what is unlawfully acquired; shame on them for what they have wrought. Had not their Rabbis and doctors of law forbidden their uttering what is sinful and their eating of that which is unlawfully acquired; evil indeed is that which they have wrought" (Sura-i-al-Maidah, the 5th Chapter of the Holy Quran entitled "The Table" or "The Food")

There are besides these many more verses in the Holy Quran itself, not to mention the Traditions of the Prophet every one of which forbids a Musalman, on pain of the wrath of God and the most grievous torments of Hell, to maintain relations of amity and friendship, much less rendering assistance to or co-operating with such non-Muslims as are at war with Muslims, and oppose God and His Apostle. Indeed so rigid is the Law of Islam in this behalf that Musalmans are forbidden even to assist *each other* in aught that is unrighteous. Says the Holy Quran: "Assist each other in righteousness and be God-fearing, but assist not each other in sin and transgression".

These being the limits of co-operation even among Musalmans themselves, how is it to be supposed that co-operation will be permissible with Infidels waging war against Islam and the defenders of Islam as Government is doing to this day, and co-operation too in waging that war itself? Five hundred of the most distinguished Ulemas of Islam in India issued a judicial pronouncement against it months before the Karachi Khilafat Conference was even thought of by anybody in India. But all of a sudden, when the shameless effort of Government to twist our Government regarding nón-violence into a recantation and abject surrender for fear of prosecution failed so ignominiously through the persistence of Mahatma Ghandi, the incidental mention of the army in the Angora Resolution of the Karachi Conference was pounced upon by Government as subsequent to the Gandhi-Reading interviews, and lo! and behold! the Fatwa of the Ulema was declared forfeited to His Majesty after perhaps half a million copies thereof had been distributed all over India by various provincial and local bodies in addition to the central organisations themselves. Not by such tricks, I submit, can three hundred and twenty millions be ruled in the twentieth century.

And on what is the Fatwa of these five hundred divines based? On the repeated testimony of the Prophet's most authentic traditions. I do not think I can do better than cite both without argument or comments of my own, for none is really necessary.

Here are some six passages from Holy Quran :—

1. "It is not for one of the Faithful to kill another but by mischance"—and

hereafter follow the severe penances prescribed even in cases of such mischance (Sura-I-Nisa, Chapter IV).

2. "But whoever shall kill one of the Faithful wilfully his recompense shall be Hell; for ever shall he abide therein; God shall be wrath with him, and shall curse him, and prepare for him a great torment." (Idem.)

3. "O ye Faithful! devour not each other's substances falsely except that it be trading among you by your own consent; and kill not your own people, verily God is unto you merciful. And whoever shall do this of malice and wrongfully, we will soon cast him in fire, for unto God is this easy. If ye shun the great things that are forbidden we will blot out your faults, and we will lead you into Paradise with honourable entry." (Idem).

4. "After recounting the story of the first killing, the murder of a brother by a brother, the crime of Cain inspite of Abel's declaration of his own doctrine of non-violence, the doctrine of every Moslem in like circumstances, "Even if thou stretch forth thy head against me to slay me; verily I fear God, the Lord of the Worlds", the Quran says; "For this have we obtained unto the children of Israel that whoever slayeth another soul unless it be for man slaughter or for spreading disorder in land, it is as though he slew all mankind; and whoever saveth a life it is as though as saved all mankind alive. (Sura-i-Matdah, Chapter V).

5. "And (the servitors of the Beneficient God are) they who call on no other gods with God, nor slay the soul God hath forbidden to be slain, except for just cause and commit not fornication, for he who doeth this shall meet the reward of sin (that part of Hell which is known as Asam). Doubled unto him shall be the torment of the Day of of resurrection, and therein shall he remain, disgraced for ever." (Sura-i-All-Furqan Chapter, XXV.)

6. "And slay not a soul whom God athh forbidden you to slay except for just cause" .... (Sura-i-Bani-Israel, Chapter XVII.

If we turn to the traditions of the Prophet, they are so numerous, and each and every one of them so clear and emphatic, that it becomes exceedingly difficult which to choose and which to leave out. Nevertheless I shall attempt a selection, and the following should suffice, the first cited here being the Tradition that explains what alone is "just cause" for which a Moslem is permitted to slay another:—

1 "Shedding a Moslem's blood is not permissible except in three cases, when a life is taken for a life (i.e as punishment for a renegade deserting his side".) (This is to be found in the most authentic collections of Bukhari, Moslem, Tirmizi, Abu Daud, Nasai and others).

2. "A Moslem is he from whose tongue and hand a Moslem remained immune". (Bukhari-B, Moslem-M, Abu-Daud AD, Tirmizi-T, &c.)

3. "To abuse a Moslem is wrong doing; and to war against him is *Infidelity* 'Kfr' (B: M: T: AD: Nasai-N: Ibn-i-Maja-IM.)

4. "He who bore arms against us is not from among us", *i.e.* is not a Moslem any longer (B: M: T: AD:).

5. "Even if the inhabitants of all the heavens and all the earths were accessories in the slaying of a single Moslem, God will certainly push them all into the fire." (T: Behaqi BQ-Tibrani-TB).

6. "Whosoever assisted in the slaying of a Moslem even with a half a word, shall meet God with this written between his eyes: "Despairer from God's Mercy (*i.e.* he shall receive no portion of God's abounding Mercy)". (IM: B Q: Asbahani.)

7. "The murder of a Moslem is greater in the sight of God than the disappearance (*i.e.* destruction) of the world (N: BQ:)

8. "The disappearance of the world (*i. e.* Destruction) is a lighter matter to God than the murder of a Moslem." (M. N. T. I M.)

9. "God may, it is to be hoped, forgive every sin, but not the man who died while still an infidel, nor the man who killed a Moslem wilfully." (AD: Ibn-i-Haban: N: Hakim).

10. "Whosoever killed a Moslem without discriminating between killing for just cause or without it, God will accept from him neither his discharge of obligatory duties nor optional devotions" (AD).

11. "Every Moslem's life, and honour and property are *haram* (unlawful, forbidden for every other Moslem." (M.)

12. "There are seven doors to Hell, one of which is for those who draw word on my followers." (T)

13. "The major sins are associating another with God, disobedience towards parents, slaying of a soul that is forbidden and perjury." (B : M : & C.)

14. "Let him who can see to it that there is not between him and Heaven even a handful of a Moslem's blood, even as much as a fowl's which is killed for food, for whensoever such a man will present himself before any of the gates of Paradise, God will interpose Himself between him and Paradise. (TB : BQ :)

15. "Whosoever went forth drawing his sword against my followers, striking alike the good and the bad, sparing neither the Faithful nor those in alliance with them (literally, not fulfilling the pledge in the case of those to whom a pledge was given) is not of me nor am I of him. (*i. e.* he is not a Moslem and the Prophet too has no concern with him.)." (M)

16. "When two Musalmans quarrel with each other and use their swords, both the Slayer and this slain shall be cast into the Fire". When the people said, "O Prophet of God, the reason for the slayer being cast into the Fire is plain but why the slain as well? The Prophet replied, "Because he had intended to kill his companion." (B : M: T: & C.)

I shall cite two more Traditions which I had purposely left out hitherto because they need special emphasis. Ibni--Maja gives the following *Hadees*, related by that Prince of Traditionists, Hazarat Abdulla, son of Hazrat Omar :—

> "I saw the Prophet of God circumambulating the Ka'ba saying the while : How good art thou (O Ka'ba), and how is thy air! How great art thou, and how great is thy sanctity! But by the Lord in whose hand is the soul of Mahomed! *certainly the sanctity of one of the Faithful in the sight of God is greater than thine own, the sanctity of his goods and of his blood.*"

And this infidel Government prosecuted six Musalmans and a Hindu of a recognised sanctity for calling upon Musalmans to respect the sanctity of Moslem life and Moslem property that is greater than the sanctity of Holy of Holies, after having outraged the sanctity of both!

The last Tradition that I am going to cite here is the last word of the last of the Prophets on this subjects. Only three months before he passed, closing for ever the chapter of divine revelation, he went on his last pilgrims to Mecca where about 175,000 people accompanied him Addressing these assembled multitudes on the day of the Haj, he asked them what day it was, and the people understanding that he could not be unaware of that, and was asking it only to emphasise the importance of the occasion answered," "God and the Prophet of God know best." Then he asked what mon h it was, and they answered in like manner. Finally he asked them what city it was, and t ey answered as before. Then said the Prophet, and it is related in all the collections of the Traditions and in Books of history and in his biographies, "Beware, in truth your blood and your goods and your honour are *haram* (religiously forbidden) unto you like the *hurmat* (the non-substantive corresponding to adjective *haram*) of this day, in this city, and in this month. Beware, burn ye not into Infidels after me, *cutting off the necks of each other*". It is to this Infidelity that Government still continues to invite Moslems soldiers and when we remind them of this solemn exhortation of the Prophet on so solemn an occasion, a Government which desire as to disregard even the Prophet's dying injunction regarding the elimination of all non-Moslem control from the Jazirat-ul-Arab, prosecutes us inspite of all the proclamations of all British Sovereigns, who have solemnly disclaimed alike the right and the desire of imposing their own covictions on us.

I will only mention one fact which brings the Law of Islam home to all. The Sepoy's Mutiny, after which the Queen's Proclamation was issued, had originated with greased cartridges in which cow's and swine's grease was believed to be mixed. But Islamic law according to the best authorities which I can cite not only permits a Moslem to take swine's flesh if he is in case of refusal threatened with death, but lays it down that he would die a sinner if he refused it; but if he is threatened with death unless he slay another Moslem, *he must refuse.* He may like circumstances even recant Islam if he continues to be Believer at heart; *but he must not slay a Moslem.* And yet a Government which is so tender as to ask soldiers before enlistment whether they object to vaccination or even re-vaccination, would compel a Moslem to do something worse than apostatize or eat pork: if there is any value in the boats of toleration and in the Proclamation of three sovereigns then we have performed a religious and legal duty in calling upon Moslem soldiers in these circumstances to withdraw from the army and are neither sinners nor criminals.

(Sd.) MAHOMEDALI,
Servant of Ka'bba.

MAULANA MOHAMED ALI'S ADDRESS TO THE JURY.

Maulana Mohamed Ali before addressing the Jury turning to the Court said :

Can I have the Jury on this side ? I have not seen their faces yet. I want to seduce them like the troops (laughter in Court)

The Court directed the Jurors to change their seats accordingly, and the Judge also changed the position of his seat turning to the left directly facing the accused.

Maulana Mohamed Ali then rose amid pin-drop silence and addressing the Jury said :

GENTLEMEN OF THE JURY,

I just asked the Presiding Judge that he might permit me to see your faces because with the exception of one of your number I had not hitherto been able to see your faces. And I also said that I want to seduce the Jury. Of course, there was behind that another intention, not the ultimate object perhaps, but incidental to it, as the Public Prosecutor would say, I wanted you to act as a screen in front of the ladies now behind you, or the Public Prosecutor may add yet another charge of seduction against me (laughter), but after all I find that as a result of my effort at seduction I have turned the Judge also towards me to-day (laughter).

Gentlemen, I think I am going to take as much time as I can, so it is necessary to tell you beforehand that if I intended to defend myself or my friends and to escape from transportation for life or the gallows or the jail I don't know what the judge has in store for me it would have been absolutely unpardonable. No, gentlemen for that purpose I would not have wasted a single moment of your time or of mine.

I do not want any defence. I have no defence to offer. And there is no need of defence, for it is not we who are on trial. It is the Government itself that is on trial. It is the Judge himslf who is on trial. It is the whole system of public prosecutions, the entire provisions of the law that are on trial. It is not a question of my defence. It is a very clear issue, and I thanked the Government in the Lower Court, because for the first time it came out into the open and gave us a chance of having a decision on a very clear-cut and pointed issue. That very clear-cut and pointed issue is this: Is God's law for a British subject to be more important or the King's law—a man's law ? Call him His Majesty or His Imperial Majesty-exalt him as much as you like-show all obedience to him—show him all the loyalty you can—pay him all the respect—entertain even superstitions about him if you like but the question is—is this respect or these superstitions going to stand even for the slightest moment in the way of loyalty which every human being owes to God ? Gentlemen, I think not for my own sake, nor for the sake of my co-accused, but I think for you. It is a misfortune that there is not a single Musalman among you. Three of you are Christians, and two are Hindus. But that does not matter at all. I am speaking to human beings. I am speaking mostly to Indians. I do not know whether all of you are Indians perhaps one of you is not, though he too may have his domicile in India and may have come to regard India although an Englishman, as his home, and may therefore be regarded as an Indian. I am therefore speaking to a majority of you at least who come from a country which is imbued with the spirit of religion and which is traditionally a spiritual country and which has striven through the ages for the exaltation of the spirit as against the flesh.

Gentlemen, we hear so much of toleration in these enlightened days, and I do not think even the Public Prosecutor would contradict me if I say tht we all want toleration. The British Government has never tired of saying that it is a tolerant Government, and that British rule is firmly based on toleration. I do not think that the Government of any civilised country in this Twentieth Century could ever say that it is against toleration. But what is toleration after all ? It is this ; as a well-known man said- "Sir, I disagree most heartily with every word of what you have said but, damn it, I shall fight to the last drop of my blood for your right to say it." *That is Toleration*! That is to say, toleration is required for disagreement, it is required where people are not of the same opinion, where people hold very different views where they have wide difference. Otherwise there is no necessity for toleration. But the tolerant man tolerates all this and sacrifices everything for the maintenance of tolerance. Now, you might say, a man might hold very foolish opinions. I am sorry many men do. I think the Public Prosecutor for one holds some very foolish opinions—and we have yet got to see that kind of opinion the judge holds that would be after I am silenced—but it is not the question whether a man's judgement is right or wrong—people's judgment may be foolish—the question is this, when any person or a body of persons give you a pledge or freedom to hold your own opinions and act up to them, then I think it is their duty to abide by that pledge.

Now, Gentlemen, what the case is against us, we want the whole world to understand. After all, the result of the decision here will not be confined to the audience in the hall, or to the few scores of thousands of people in Karachi. It was said that the Resolution that was passed here was not for that small body of audience comprising a few Ulemas and a few thousand people, but it was meant for a larger audience. Now, this trial too is meant for

more that the audience here in this hall, certainly for more than the five of you. It is really ment for the whole world. We want to have our right to get the protection of the law for our religious beliefs and practices recognised. Let the Government repent and say that we have seen the error of our ways (turning to Mr. Ross Alston). These are the words which my friend Mr. Ross Alston wanted me to say as my last words, and they shall be my last words—but with regard to the action proper for the Government: (laughter). But will the Government say that? Is it going to abide by that pledge of Freedom of Faith? Or, would the Government say,—No. We are powerful, we are strong, we have dreadnoughts, we have aeroplanes, we have all this soldiery, we have machine guns, we have all this paraphernalia of destruction with us, we command tremendous power, we have beaten the most powerful nation in Europe, though, of course with the help of twentysix allies (laughter) and India's men, money, and other resources-but that's another Story Laughter—we cannot tolerate our religious opinions and acts. If they say that, we can understand that. Therefore it is not for the purpose of defending ourselves but it is to make this issue clear because it is a national issue—nay, more than that, it is an issue on which the history of the world to a great extent depends—whether in this civilised century man's word shall be deemed higher than the word of God. The trial is not "Mohamed Ali and six others *versus* the Crown", but "God *versus* man". This case is therefore between God and man. That is the trial. The whole question is—shall God dominate over man or shall man dominate over God".

Now, gentlemen, you were here though it was not intended for you—you happened to be here—when we refused to stand up when the Judge asked us to do so. We have always dissociated ourselves from and repudiated the idea of showing any disrespect to the Judges. We are not foolish enough to create any un-necessary unpleasantness or to worry the Judge or irritate him. We have no grudge against him. But the whole question was with regard to respect to a man as against respect to God. As my brother has said in the Lower Court, and as I say before you now, we do not recognise the King any longer as our king—we do not owe any loyalty to any man who denies our right to be loyal to God. I have not a word to say against the king—I have not a word against the Royal family. But where the question of God comes in as against the Government, I cannot have any respect for a Government when that Government demands from me that I must not first respect God and His laws. Therefore the whole question really is, as I have said, between God and man. The Public Prosecuter has very skilfully stated his case and when he came to our religious beliefs and the commandments of God, he was anxious to get over as quickly as possible. He was skating over thin ice! He brushed all that aside. Now I challenge him I challenge the Judge to give a decision on the point. It is not at all a question of fact with which you, gentlemen of the Jury, have to deal. If the Judge deals with the question of law in his summing up and sentences us, if the verdict of the Jury goes against us in the case in which you act as Jurors, and if he exercises his right as Judge to decide both as regards the facts and the law in the cases in which you act merely as assessors, after you give your opinion as assessors, if he sentences us disregarding our religious obligation then our course will be clear. It does not matter what punishment we are likely to get and under what section of the Penal Code we get, as there are any number of Sections 120 B, 131, 109, 505, 117 and so on.

As regards those sections and the various charges, so for as I am concerned, I was greatly confused, and I am trying to compute how many years altogether I shall get. (laughter.) I have but one life and I do not know if it can cover the many years that I shall get if I am punished according to my deserts (laughter). But that is absolutely immaterial

The whole thing is this. I want a decision from the Court on behalf of the this Government that the Courts of India cannot give any protection to a man who does the thing that I have done—though it admits that it is precisely the thing that his religion demands, His God demands from him. God is not clamouring from the house top. He is shouting from his eternally high throne—clamouring from there "Man whom I have created from just a clot of blood, whom I raised to whatever of power and glory you possess whatever you have and whatever you are, it is I who gave it to you and made all this for you—*I want you to serve Me and not a creature of Mine.*" Whatever respect I may have for the king, I may not bow before him when he asks me not to bow before my God and his commandments.

The Judge had hinted something about the beliefs of some sects. He said—Suppose a sect of the Hindus demands human sacrifice. I do not know if any religion in India demands human sacrifice. It is not a question of individual belief that was involved in our case. Then the Public Prosecutor had said we had different sects among ourselves. We quarrelled among ourselves as to which of these is right and which is wrong. Well, it is not a question of which sect is right. Do we know which religion is right and which religion is wrong? In this it is not a question of our belief alone; it is the question of the belief of every Moslem. But even if it was a case of a particular sect, do you mean to say that the

Proclamation of the Queen in 1858 required at that time that each and every one of the 300 millions of the people of India must be agreed all the heavens and the whole earth and all the planets and the Man in the moon and all the men in Mars every one must be agreed that this was the one true and correct Faith and it was then that the Queen's Proclamation provided protection? No protection would have been required for such a Faith. What is the Penal Code itself for? It is to give you the protection that I seek that I may not hurt your religious feelings. In to-day's "New Times" we find that some men—Khilafat men have been prosecuted in Calcutta because they hurt the religious feelings of *a policeman*, gentlemen, (laughter)of a police man by asking him to resign Government service. (Laughter). I have not the least doubt that these men will be condemned but you see there is a provision of law even for protecting a policeman's religious feelings. Take another case A little piece of stone which some men worship and worship with full intensity—with as much intensity as my own when I say my prayers possibly with greater intensity than mine—you do not approve of it—you heartily disapprove of it and want to remove it. But can you do it? You cannot. The law gives the man who worships it its protecion. Why does it do so? It is not because the man's religion is good but because of the man's feelings. Because the framers of the law say that it is not good religion that they seek to protect but it is the man's religious feelings. It is not the objective religion but the subjective feelings of the man that have to be protected. It is this that Lord Macaulay and others sought to protect the religious feelings of a brother—man however foolish and superstitious and wrong they may be. It is this that you have got to protect and the law provides this protection. But I base my case upon the Queen's Proclamation and the King's Proclamation. So the Judge has got to declare whether these Proclamations have any value in a Law Court or not. That picture (pointing to the picture of King Edward VII) is there to remind the Judge that he has to give us the protection of the King's law. You will take that law from him because you cannot either take the law from me or from my friend there (pointing to the Public Prosecutor). If you took your law from him you will be in perilous state, truly a sad plight (laughter). But in this case, it is not the case of any man's individual opinion or the opinion of a small number of Musalmans though you cannot hurt the feelings—the religious feelings even of these. Here it is not a question of a sect but of a religion. No person who calls himself a Musalman, can go outside this book (pointing to the Quran). Look at this translation in English. This book is full of repititions. But you see what a small book it is inspite of its repititions altogether it is book only about 500 pages. It is this book which constitutes the chief source of our religious laws. I wish to explain this so that there may not be any misunderstanding. You ought to know where my religion is to be found. I do not take it from any individual's beliefs. My religion is all contained in the first instance in this tiny volume. Then come the Traditions of our Prophet. But about this original source (pointing to the Quran) there is not one single sect of Musalmans that differs about a single syllable. Therefore, you will find that here is a solid bed-rock of our Faith about which there is no difference of opinion. In the case of the Prophet's traditions, even if one of the companions of the Prophets said that the Prophet said so, and so and if that Tradition, handed down from his campanions, is against or in contravention of anything contained in this book, no Moslem will accept that Tradition. We shall not believe anything that is attributed to the Prophet, if it is against the Quran. But if it explains it (the Quran) or supplements it (*adjuvandi causaer supplendi cause*) we may accept it. I wish to make no odious comparisons. But what I wish to point out is that the four Gospels of the Christian Scripturers, if we have is to test their authenticity (interrupted by the Court).

The Court.—I cannot allow you to go on in this way. It is not strictly relevant to the case. Are you speaking in your defence or not? What is your point?

M. M. Ali.—My point is that even the Prophet's Traditions have been authentiated with the greatest care; but their testimony too cannot over-ride the dictates of the Quran on which all sects of Islams agree. It has been said that there are sects. Well, I am not going to base my case upon any thing which is subject to the differences of Sects. I am going to base my case upon the solid bed-rock of the Quran. If you will give me the opportunity to make the Jury understand what my friend the Public Prosecutor has so lightly brushed aside altogether.

The Court.—I cannot turn this trial into a religious controversy. This is irrelevant. You cannot cite these texts here.

M. M. Ali.—They are contained in my statement in the Lower Court. They are on record. I wish to explain their bearing to the Jury. Well, if I am not allowed to explain my case I will stop.

The Court.—Why bring out this religious matter which has no concern with me? I do not want to limit you unnecessarily. You must confine yourself to the charges against you.

M.M.Ali.—I entirely differ from the Court in this matter. I think I am entitled to explain as to what my religion lays down without any difference of sects and to prove that this is the religion which the law protects. Tell me that the law does not protect

my religion and I am satisfied. I will sit down. I do not know how you are going to sum up the case to the Jury. Therefore before you have summed up and their verdict is delivered, I am putting this before the Jury.

The Court.—I shall tell the Jury however that the excuse that you offer is no excuse that you have done anything which is a criminal offence—that religion is no excuse for criminal offence.

M. M. Ali.—Therefore it seems to me that the summing up too is already done, before I have done with addressing the Jury. There have been so many things too previous in this trial.

The Court.—Whether you have committed the offence or not has to be decided according to the law of the land.

M. M. Ali.—There is nothing which is required by a man's religion which can be an offence in British India as long as the Proclamation holds. You cannot in this country ask a Hindu to kill a cow. Before enlisting recruits you have to take people's answers down and you bind them by a certain oath. This is the form (showing the form) upon which the soldiers are enlisted People take the oath that they will abide by their pledge. Yet not a single Hindu soldier who takes that oath will kill a cow in spite of all the allegience that he might owe to the king. Therefore if his officer commands him to kill a cow and the Hindu soldier refuses it, will he be hauled up before this Court? If the commander orders a Hindu or Musalman soldier to use cow or swine-greased cartridges—which the Hindus and the Musalman won't touch it and he refused to do it, could he be brought before any Court of Law? The Queen's Proclamation will give him the protection no matter what your Penal Code might say. So long as what I do is enjoined by my religion, no Indian Penal Code or other Penal Law can touch me because the Queen's Proclamation is there. As long as the Queen's successor is the Ruler, as long as the King's picture is here, you, the Judge, will have to take your orders from the Queen's Proclamation and the King's, otherwise I will know that the whole thing was a camouflage, and that all this talk about tolerance was sheer cant and hyporisy. Now, in this form you will see there is a question (Reads the form) "Are you willing to go whereever ordered by land or sea and allow caste usage to interfere with your military duty". I take it that every soldier at the time of enlistment has got to answer this in the affirmative and to sign this form. That does not allow the commandant to believe that the religious commandment is therefore binding on a soldier. Supposing the man is asked to kill a cow by his officer to provide bully beaf for him. The man absolutely refuses that and he quotes Scriptures and Shastras. No section of your Penal Code will ever assist the Judge or the Jury to declare that this man would be punished because he is acting according to his religion Say that he can be punished and I sit down. No, gentlemen, you have to write on every section throughout the Penal Code and every other law, the favourite pharse of the lawyers "Without prejudice", *i.e.* "without prejudice to a man's religion. You say that there are bad customs like 'Sati' which we cannot allow. Then you should declare the customs which you will allow and the conditions on which you will be tolerant. Even murder is not murder if the man's religion demands it And the Queen gave the law's protection by the Proclamation to that religion. You say there are many religions and sects in this country. Well then you should have proclaimed that such and such religions shall receive protection. You should have made it clear that on these conditions alone whosoever wants to live within this Empire will be allowed to live and be regarded as loyal subject. Whoever did not want to live within the orbit of this loyalty, that man would either have walked out of this Empire or would have kicked you out of it. My friend (the P.P.) told you that we are very sincere, that we are people who are straight-forward. I am thankful to him for this compliment. But he did this for his own purpose and I am going to use it for my purpose now. Gentlemen, you will now understand that we are not the people who are going to be easily frightened into telling untruths to escape punishment if we deserve it on the evidence led before you. Whatever evidence there is in this case is of a trivial character and I will not worry you about these trivial things. I am not going to bother about the evidence regarding the time we left the Kenyashala or returned to it or about the Subjects Committee which was led to prove our association. Association with whom? Association with my brother? In that case the Public Prosecutor could similarly have given the whole of our past history and with his chronological order should have placed the evidence before you that my brother was present at my birth; that we lived together in the same home; that he took away my pocket-money when we were in school and when I demanded back my money he beat me black and blue (laughter). This is association! (laughter). All this, gentlemen of the Jury, is trivial evidence. The main case is, does the Queen's Proclamation give protection to the Muslim religion or not. My whole contention is that if we ask the muslim soldier to give up serving in the British Army and to refuse to recruit, and ask other people not to be recruited, and we say and prove that it is to be found in the Quran, then we are immune. You cannot punish us. Where the Penal Code is not opposed to the Quran, it stands. When the Penal Code is in antagonism to the

Quran, it does not stand. It must go. That is the whole case. If I am wrong in this, let the Judge decide. I will be content. You, gentlemen, must not take what the Prosecution says about individual opinion as affecting our case, though even in that case we have got to think of the man's religious feelings. I have given you 17 or 18 out of the 34 Hadises and the six verses from the Quran cited by Maulana Husain Ahmed Sahib. From these very citations the gentlemen of the Jury and the Presiding Judge may understand very clearly what a Muslim must not do. The Public Prosecutor has talked of verses cited without their contexts. It was to avoid this that I have given long extracts from the Quran so that you may be easily able to understand the context. I say, ask any Muslim of any sect, send for anyman—even the Court Chaprasi and ask him to say if what I say is written in the Quran or not. He will easily point it out for you if he can read the Quran, and if he knows Arabic he will explain it to you. There would be no difference of opinion I challenge the Government,—I challenge the Prosecution to produce any man, to produce any judicial opinion or Fatwa to show that what we declared is wrong. There might be a difference between the Shias and the Sunnis—there *is* a difference about the Khilafat question. The Shias do not believe in the Sultan's Khilafat. There might be some difference about some other matters but there is no difference of opinion about this. As regards Non-Co-operation generally, there might be a difference of opinion There might be men who are against relinquishing honours or service or giving up grants-in-aid to schools. They say this is a matter of business not of friendship or co-operation; you may retain this grant or leave it. But after all it is a small minority that says so, and many of us have sold themselves to Government. But so far as the question of killing another Musalman is concerned there is no difference of opinion. This is the main point.

Now, gentlemen, I want to say something about the charges. It is not for you, gentlemen, not for me, to object to the misjoinder of charges. If I am to address any one on that point, I shall address the Judge. I think I am within my rights if I refer to this. But so far as you are concerned, I may tell you, gentlemen, that any number of sections 109, 117, 120B, 131 & 505 of the Indian Penal Code have been jumbled together for the purpose of creating confusion—though section 233 of the Criminal Procedure Code lays down that these several charges cannot be joined. Section 233 runs thus :—

Sec. 233.—"For every distinct offence of which any person is accused there shall be a separate charge, and every such charge shall be tried separately, except in the cases mentioned in Sections 234, 235, 236 and 239"

Sec. 234.—"When a person is accused of more offence than one of the same kind committed within the space of 12 months from the first to the last of such offences, he may be charged with, and tried at one trial for, any number of them not exceeding three."

The Court.—I do not think you should trouble yourself in reading this to the Jury. There cannot be any re-casting of the charges at this late stage.

M. M. Ali—The general rule is that the individuals should be separately tried and the charges should be separately dealt with, because if this is not done it will prejudice the accused and it will prejudice the genetlemen of the Jury I do not know why they are jumbled together, but it seems to me that all representing the Crown have criminally conspired (laughter) so that so many sections of the law have been brought in only to confuse everybody. I do not know whether any of you, gentlemen, have understood them clearly. I did not quite understand what was the first charge, and what was the second charge, what was to go before you as Jury and what was to go before the Judge and before you as Assessors. It was not quite clear until to-day. When I was being brought here from Waltair, one of the policemen escorting me in the special train asked me with what offence I had been charged. I did not know but told him that my warrant had recited Sections 120, 131, 505 and 117. The policeman drolly remarked :—

"They may apply as many as they like, for after all they are home-made sections." (laughter). I wonder if any of you, gentlemen, have played billiards. Well there are three balls in billiard and you score by hitting your ball in such a way that it hits the other two or hits another and then drops into one of the pockets attached to the table or forces the other balls into these pockets. But sometimes these cursed balls lie on the table in such a manner that you don't know what to do with them to score and this happens infernally or frequently to the beginner. Well, the advice that you will in such a case get from the mere experience is to hit hard and trust the rest to luck (laughter) and not often, on score what is called a fluke in your opponents case and a very difficult stroke, of course, in your own way? (laughter) Well gentlemen, that is peculiarly what the Prosecution has done with these charges. It has hit hard and trusts you and the judge for a score. Out of so many sections one or two may manage to stick (laughter). The whole thing, so far as I understand, is that there are two main offences with which we are charged. The first offence is an agreement constituting criminal conspiracy and the second is the attempt to commit an offence (after

interruption by the Court) agreement to commit criminal offence which makes in a criminal conspiracy, and secondly to commit an act in pursuance of that conspiracy. These are the first two charges. Then comes the question of my statement, which was likely to seduce the troops from their loyalty. Then, of course, comes the abetment by the several co-accused. I am told the only thing that will go before you as Jury will be the attempt in pursuance of that conspiracy. But I will take up the first charge first—as regards an agreement. I am not quite sure whether any of you, gentlemen, know that these Sections 120A and 120B were added to the Penal Code not so very long ago and I happened to be present in the Council Meeting in which the Conspiracy Bill was passed. I was sitting in the press gallery, during the lunch interval, when my old friend Sir William Vincent came into the hall of the Council. I was sitting with a distinguished journalist who has since become a Moderate leader and a particular friend of Government. Sir William Vincent asked me jovially if we two were conspiring. I said to him " For conspiring an agreement is necessary, and as you know only too well, I *never* agree with anybody." (laughter). And, gentlemen of the Jury, truly enough there has been no agreement. No evidence has ebeen led about agreement, whether here or in the Lower Court. " It is a matter of presumption," says the Public Prosecutor. And it is really upon " presumption" that they are going to transport me for life—to take me away from my family, to take m mway from my girls, to take me away from my wife and aged mother to take me away frtm my country, which is still more importan to me. And all this on a matter of "presumption"! Not a single witness comes in to say that there has even a discussion about it. I am not quite sure whether the Judge was filling the gaps in the evidence by asking us questions about this. Any how I said in reply that we never discussed the question about the troops. We are told by the Prosecution that the accused knew more than the Prosecution. I think that is perfectly true. As a matter of fact the Prosecution knows so very little (laughter) and they pretend to increase their knowledge with the assistance of the inventions of the police (laughter). Yes, the accused knew what the Prosecution does not. But have they not put all their cards on the table before the Committing Magistrate ?

You, gentlemen, have had a long recitation in this Court when the Clerk of the Crown read my statement made in the Lower Court. In that statement I showed very clearly the whole genesis of these prosecutions, and I hope you listened to it very carefully. It gives you the whole genesis of this case. Well, I am supposed to be a very frankman—we are very frank people. Ex-hypothesi, you will take it that we are truthful people also. So far as any agreement to tell the Muslim troops in India—even what the law of Islam is concerned, there was none beyond this resolution before you. But the day a man calls himself a Musalman he is bound to abide by what is contained in the Quran. If one single syllable of it I reject, I am not a Musalman. I may be the worst sinner. I may be no matter however so, sinful I will still be—so long as I do not reject anything out of this book—I will still be a Musalman. But the moment I reject this however, pious or otherwise I may be, I am not a Musalman. And whatever is contained in the Quran I am required by the same law of the Quran to go and preach to everybody in the world—even to non-Moslems. Take the case of my revered friend here, Maulana Hussain Ahmed Sahib. He has been teaching in Medina—he is the disciple of Maulana Mahmud-ul-Hasan Saheb, the late Shaikhul—Hind. It was from the Hejaz that he was arrested and taken to Egypt and then to Malta. He was teaching at Medina for ten years. He taught there the Prophet's traditions. Supposing he sits outside his house and he reads the Quran and he reads those very verses that " Whoever kills a Muslim wilfully will find his reward in Hell. He will abide there in forever. God will be wrath with him. God will curse him. And God had prepared for him a severe torment." Supposing when he was reciting this, a Muslim soldier was passing there. Will you say thar Maulana Hussain Ahmad has committed a crime under Sec. 505 Indian Penal Code ? If you will say this, then why all this tall talk about toleration ? Or suppose a Muslim Sepoy came to a Mosque ; would the Maulana be a criminal because he recited this verse in the service while that soldier was there ? Take another case,. A sepoy comes to him and says "Maulana. I want to know what is the Law of Islam: I am required to go to Mesopotamia to fight against the Khalifa ? Is it lawful for me to go there and fight against Musalmans?" The Maulana says it is unlawful. If he says it is lawful then he becomes a Kafer. If he keeps silent, God will curse him and the whole world will curse him. Therefore he will have to say, "No, it is not lawful". It is his duty as a religious teacher when a man comes in and asks him what is the Islamic Law, to explain to him truly the law of Islam ; but if he cannot, for fear of the Penal Code, tell the truth—then the curse of God comes in.

Take another case. The Maulana goes in a train and finds Moslems going to Mesopotamia to fight against other Musalmans and the Khalifa or against people who are waging Jehad—the Maulana tells them "It is unlawful"; this is not allowed by Islam. The Prophet says " Do not become Kafers after me by killing each other." Will you

give the Maulana no protection of the law ? You may say—well, it is alright for him to say this in his prayer. And when somebody comes and asks him what is the Islamic law, it is right for him to say so as a religious teacher But it is not his duty to go to the house-top and proclaim it from there : then it would be seduction. Then it would come under Sec. 505 and Sec. 117, or for the matter of that 121A or 121B. I say that *even that is intolerance.* Because the Quran lays down clearly who will receive salvation and who will not. (Quotes the Quran). I am quoting that small chapter of the Quran in which God swears by the world's history. In that God says—I swear by the world's history-I swear by all the time that has passed before that all are certainly in perdition but the Faithful who will do good works and tell other people to do the right thing and to have fortitude in case they are not successful.' The four conditions required for a Moslem to win salvation are contained in this the shortest chapter of the Quran. A man's salvation depends upon these : that he must have faith. Then that he must act upon that Faith. A man who believes in Islam, says his prayers, gives alms : Fasts in the Ramzan : goes to Mecca and does not hurt anybody. Do you think that he will have salvation with only this ? No ! Because the Quran says—the third step too you must take—that you must go and preach those good things to everybody You must go and propagate these doctrines. You are not born to save only yourself. You are here to save your neighbours as well. Therefore the three things that a Moslem must do are that he must believe, he must act according to his belief, and he must also propagate that belief. If a Muslim says that he believes that killing another Muslim is *haram* and yet goes and kills him, he may not win salvation. But he is nevertheless a Muslim if he really believes that he is a sinner. Of course, if he denies that it is *haram*, he rejects the Quran and then he is a Kafir. But suppose he believes that it is *haram* and does not kill another Muslim, he may not yet win salvation if he sits idly and lets others kill him. But if he is not idle and goes and tells other people also that it is *haram*—then too he may not win salvation unless he persists in his propaganda even if his efforts fail. If he fails in his propaganda and he suffers because of Sec. 505 & Sec. 117 and is sent to Jail—What is he to do ? He must show fortitude ! He may be hanged, he may be drowned, he may be quartered. But he must show fortitude and persevere in his mission. Then only will he win salvation and escape perdition. He must not try to change God's law by one single syllable. He must abide by it and face all the consequences.

Gentlemen, it is not such an easy thing to go to Paradise and claim the embraces of the *Houris*. An Urdu poet says: (" It is to step boldly towards the sacrificial altar of Love. People imagine it is easy to be a Musalman." By clipping one's moustache and growing a long beard and muttering prayers one does not become a Muslim. He has got to do all those things but he has got to do many other things besides, because we are required to do all these things by our religion. It is not enough that I should not go to war. I have got to go and induce other Muslims also not to go to war to fight their brothers. I shall induce him in every possible way. I must take the rifle out of his hand—but not by force, not by compulsion but by clearly expounding our religious law We are saved only when we have saved these people from going to fight and kill other Musalmans.

Gentlemen, a military gentleman like Col. Gwyer in this case, went to Bombay. His name is Col. Beach. On the 20th October, so a telegram in the Pioneer tells us, this gallant officer who had gone down from Army Headquarters, Simla, met the members of my profession—perhaps to seduce them from their duty (laughter)—editors of local newspapers and news agencies in a round table conference and among other things what this military officer said was the following : With reference to the arrest of Ali Brothers, though the matter is still *sub judice* (and it seems to me that from the Viceroy down to this Military officer all at Simla are privileged to do that) (laughter). (Reads from a paper) " Refering to the arrest of the Ali Brothers, Col. Beach speaking as a soldier said that it would be worthwhile asking those who are trying to seduce soldiers to consider for a moment if a soldier who once turns a deserter would be loyal to any other cause to which he was won over". That was Col. Beach speaking as he tells you, as a soldier. Well done, Col. Beach (laughter) A most sound doctrine and a remarkably good logic for a soldier (laughter). But speaking not as a soldier but as a Musalman may I ask who is the seducer? Every child born into this world, is first a soldier of God and it is men like Col. Beach and Col. Gwyer who are the seducers that seduce him from his first duty and his sole allegiance. May we not equally ask these Beaches and Gwyers, if God's soldiers who once turned deserters would be loyal to them and to their cause to which they had been won over ? A man's first duty is to his God. The Quran tells us that before men's souls were put into their bodies they were asked by God, (" Am I not your Lord ") and they answered in unison "Aye". Well, hang all the souls, gentlemen. There was all the agreement that you need for a criminal conspiracy under Sec. 120A & 120B (laughter). No, gentlemen, it is your Beaches of the Army Headquarters of Simla and your Gwyers of the Western Command that seduce soldiers from their duty. If you have *any* faith,

if you have any belief in God then your first duty, your prior allegiance is to God. Is it not the duty of Christians who believe in Christ? Is it not the belief of the Hindus—is it not a Hindu's first duty—to obey Lord Krishna? Still we talk of allegiance to Kings—still talk of loyalty. An Englishman—not a Musalman but a Christian Mr. H. G. Wells wrote a book after the war—a sort of allegory of the whole British nation—I do not know whether any of you has read it. It is called "Mr. Brittling sees it through" and what does he say? What does Mr. Brittling, who is supposed to be the average gentleman, see through that terrible war? He says that religion is the first thing and it is the last thing. A man who does not begin with it and who does not end with it has not lived a true life—has not found the true meaning of life. His only allegiance—his only duty is to God. He might have his scraps of honour, he may have his fragments of loyalty; but when it comes to the test of loyalty to God, allegiance to God—all these fragmentary loyalties, all these scraps of honour, they are like a mere scrap of paper passed through fire that shrivells up and is scattered to the four winds or merely blackens a man's hand as so much dirt. That is what an average Englishman has seen through this war and publicly said. And it is after this war that God's law is to be bruised aside for us in India because man's law—120B & 131 & 505 & 117 is to prevail over God's law. When I have Swaraj I will see to it that I do not let any one seduce my fellow countrymen from their true loyalty. But so long as I want to reside in British India I claim the protection of the Queen's Proclamation. If I were a Hindu I would have said the same thing. What was Christ supposed to have said—(interrupted).

(The Court rose for the day in the midst of the sentence.)

M. M. Ali:—Well, gentlemen, the Court stops me at 'Christ'. I shall tell you to-morrow what Christ is supposed to have said.

[The Court adjourned for the next day.]

PROCEEDINGS OF 27-10-21.

(MAULANA MAHOMED ALI'S ADDRESS TO THE JURY—*Continued.*)

The Court sat at 11 A.M. as usual. Maulana Mahomed Ali continuing his address to the Jury, said:

Gentlemen of the Jury, I was explaining to you that the Proclamation of the Queen made in 1858 confirmed by the late King Edward in the Proclamation made on the fiftieth anniversary of the Queen's Proclamation and also confirmed by a letter addressed to the Princes and People of India by King George after his accession to the throne—gave the protection of the law to his Majesty's subjects in British India with regard to their religious beliefs and religious practices, and I was telling you that was the whole of our case. And that whatever may be an offence according to the Penal Code, or for the matter of that any other Code, if any person—be he Hindu or Mussalman or Christian—does a thing which his religion requires him to do, then even if that is an offence under the Penal Code or any other law that is enforced in British India, that law cannot stand in his way and he cannot be punished The law gives him its protection as stated in these three Proclamations. But it is not his words that you are to take; he has got to prove it that his religion requires it. He has got to explain it. As I have told you yesterday, this trial is really a very important trial because after all the clear issue involved in it is whether God's law is to prevail or whether man's law is to override God's law—whether the Queen's Proclamation has any value—whether the King's solemn Pledge has any value—or not, whether the Judge is bound by it, whether the Jury is bound by it or not. It will not be possible for me to explain my case when the Judge has summed up. I do not know how he is going to sum up. But it is on this point that the Judge's summing up will be of importance. You cannot take the law either from the Public Prosecutor or from me. But you have got to take it from the Judge. But at the same time I ask you to understand, gentlemen of the Jury, that if you to-day deny a Hindu or a Mussalman or a Christian his right to do his duty to God, to do what his Faith enjoins him to do under pains and penalties—though not of this world but of another, a future world—if you do not allow him to do what his religion demands of him to do, then I say, you yourselves will be a party to the destruction of religious freedom enjoyed in this country and given by the Queen's Proclamation. It is not a question of a particular faith—it is not a question of the Hindu Faith or the Christian Faith or the Muslim Faith or the Jewish Faith. Every Faith even that of sceptic—even that of an atheist has to be protected but the freedom of all these people will be taken away and I ask you, will you be a party to this? I was telling you yesterday that Mr. H. G. Wells has said in his book "God, the invisible King" and also in another book of his, a novel "The Soul of a Bishop". He writes—a saying has been attributed to the Master Jesus Christ on whom be peace "Render unto Caesar what is Caesar's, and render unto God what is God's." And then he asks who is the Caesar that wants to share this world with God? What is Caesar's that is not at the same time God's? The world is not divided into two parts—one God's and the

other Caesar's. No, there are not the two kings of Brentford." God is the sole Ruler. And if the king or any other human creature, be he the head of a Republic or the Judge or a member of the Jury,—demands from you anything, he must demand for God and through God. If they demand from you anything which is against God, then that demand is not to be satisfied. It is God alone whose demand is to be satisfied. This, says Mr. H. G. Wells, is coming to be the universal Modern Religion. Whether it is that or not, it is certainly the religion of every Muslim. It is not a question of my individual faith—my own whims and idiosyncracies,, I challenge the Government—I challenge the Public Prosecutor to produce any man in this trial—to produce any man to say—any Musalman who could say that, inspite of what God says, if the Government of the day says "you must not do this" although his religion requires it, any Mussalman who could say "Well, in that case, I must follow the Government". And a Musalman who says that, I say openly he is not a Musalman. And I believe that this is also true of the Hindus, Christians and Jews—true in the case of every one who believes in God.

Therefore you have got to see to this that every Musalman who lives in British India—anywhere that a Moslem dwells—he is under the protection of the Queen's Proclamation. He is to follow the law of the land but without prejudice to his faith. When we were interned we said the same thing to the Viceroy as we are telling you now. When they wanted to release us from internment, but on certain conditions, that we shall do this and not do the other, we said we shall agree to those conditions, but without prejudice to our faith". Again as long ago as the 9th July, 1919, we sent a letter through the Superintendent of Betul Jail, where we were confined, to the Viceroy. Therein we said—"But since Government is apparently uniformed about the manner in which our Faith colours and is meant to colour all our actions, including those which, for the sake of convenience, are generally characterised as mundane, one thing must be made clear, and it is this: Islam does not permit the believer to pronounce an adverse judgment [against another believer without mere convincing proof; and we could not, of course, fight] against our Moslem brothers without making sure that they were guilty of wanton aggression, and did not take up arms in defence of their faith". (This was in relation to the war that was going on between the British and the Afghans in 1919). "Now our position is this. Without better proof of the Amir's malice or madness we certainly do not want Indian soldiers, including the Musalmans, and particularly with our own encouragement and assistance, to attack Afghanistan and effectively occupy it first, and then be a prey to more perplexity and perturbation afterwards—these were Mr. Montagu's own words and leave it to us to add one more appeal to the many already made so frantically and so utterly helplessly, for the evacuation of Moslem territory and for sparing the remnants of the temporal power of Islam". And we said—"This is only a repetition in brief of that which we have stated clearly enough and at considerable length in our representation of the 24th April to your Excellency and for this we have ample authority in our religion." I pass on.

"In the presence of the Magistrate and the Police officer who used to attend the Friday Service at Mosque we more than once made that position clear. If, said we, His Majesty the Amir desires to enlarge his dominions at the expenses of our inoffensive country and seeks to subjugate its population that has never wished him ill, then we do not only do not advocate assistance being given to him by Indian Mussalmans but we will most zealously advocate and lead the stoutest resistance against such wicked and wanton aggression. This is precisely what in Sept. 1917, we had told the Hon'ble the Raja Saheb of Mahmudabad who hadvisited us at Chindwara and had referred to the possibility of foreign aggression; and he had thereupon wired to Simla to the Hon'ble Mr. Jinnah apparently for communication to the Government that he was entirely satisfied about our political attitude. We do not want a change of masters but we do want the speedy establishment of a government responsible to the united people of India, and we hoped we have made the matter clear beyond the possibility of any doubt or misunderstanding."

"But if on the contrary His Majesty the Amir has no quarrel with India and her people and if his motive must be attributed, as the Secretary of State has publicly said, to 'the unrest which exists throughout the Mahomedan world, and unrest with which he openly professed to be in cordial sympathy, that is to say, if impelled by the same religious motive that has forced us to contemplate Hijrat, the alternative of the weak, which is all that is within our restricted means. His Majesty has been forced to contemplate Jehad, the alternative of those comparatively stronger, which he may have found within his means, if he has taken up the challenge of those who believe in force and yet more force, and he intends to try conclusions with those who require Musalmans to wage war against the Khalifa and those engaged in Jehad; who are in wrongful occupation of the Jazirut-ul-Arab and the holy places; who aim at the weakening of Islam; discriminate against it; and deny to us full freedom to advocate its cause; then the clear law of Islam requires that in the first place, in no

case whatever should a Mussalman render any one any assistance against him ; and in the next place if the Jehad approaches my region every Musalman in that region must join the Mujahidin and assist them to the best of his or her power."

" Such is the clear and undisputed law of Islam ; and we had explained this to the Committee investigating our case when it had put to us a question about the religious duty of a Moslem subject of a non-Moslem power when Jehad had been declared against it, long before there was any notion of trouble on the Frontier, and when the late Amir was still alive."

" One thing more has to be made more clear as we have since discovered that the doctrine to which we shall now advert is not so generally known in Non-Moslem and particularly in official circles as it ought to be. A Musalman's faith does not consist merely in believing in a set of doctrines and living up to that belief himself : he must also exert himself to the fullest extent of his power, of course without resort to any compulsion, to the end that other also confirm to the prescribed beliefs and practices. This is spoken of in the holy Quran as *Amr-bil-maroof* and '*Nahianil munker*'; and certain distinct chapters of the holy Prophet's traditions relate to this essential doctrine of Islam. A Musalman cannot say: 'I am not my brother's keeper', for in a sense he is and his own salvation cannot be assured to him unless he exerts others also to do good and exhorts them against doing evil. If therefore any Mussalman is being compelled to wage war against the Mujahid of Islam, he must not only be a 'conscientious objector' himself, but must, if he values his own salvation, persuade his brothers also at whatever risk to himself to take similar objection. Then and not until then, can he hope for salvation. This is our belief as well as the belief of every other Mussalman and in our humble way we seek to live up to it; and if we are denied freedom to inculcate this doctrine we must conclude that the land where this freedom does not exist is not safe for Islam."

Now, this was the first charge we had brought against the Government. "During the War Musalmans have been required, *in defiance of their religious obligations* " mark the words gentlemen, "to assist Government in waging war against the Khalifa and those engaged in Jehad ". And what do you think the Viceroy did ? He did not hang us under Sec. 121 waging war against the King. He did not transport us for life under Sec. 131. He simply got us out of internment and arranged that I should go to England and explain the same Islamic law there to the Prime Minister and to other members of the Cabinet! But for the same we are now being tried for Criminal Conspiracy; What is the Special offence in our case ? What becomes of the case against the thousands and hundreds of thousands-millions of people who are saying the same thing to-day ? Why are they not with us ? I have complained about the misjoinder of charges because too many accused are tried for too many offences. But you have not room enough in this Hall nay in any hall—to try each and every one of those together who say that it is his belief too—that it is his Dharma also. As I have said so often it is not a question of individual belief. It is not a question of my own individual belief. I, who lived with Englishmen, who went to England to be educated at Oxford—I who was most friendly with the English people—even I have got to say it because it is a religious duty—even I have got to say that no Musalman should serve in the British Army where he is forced to kill his own brethren for the advancement of unrighteousness. I said it then, and I say it now, that it is religiously unlawful. I said it then, I say it now, and I shall say it all the time. It does not matter, if I am hanged for it and I hope when I am dead and gone my carcase will shout out from the grave that it is the Faith of the Moslems. (interrupted)

The Court here interrupted the Maulana saying something to the effect that he would not allow a discourse on religious matters there.

M. M. Ali.—Will you not permit me to refer to the law of the Quran ? My Quran says this is the law. May I have it from you authoritatively that the law for a Muslim is not his Quran.

The Court.—The law of the Quran is not the law of the country.

M. M. Ali.—I plead justification for what I did. I am simply stating what my Quran enjoins on me to do what I have done.

The Court.—That is not the law of the land.

M. M. Ali.—What I am concerned with is this that my law is to be the first law binding on me and I say that these three Proclamations give me protection.

The Court.—I rule that against you.

M. M Ali.—I am very glad that you rule that against me. Not only has the judge ruled against the King, but recently in the Legislative Assembly a Moslem member proposed a resolution recommending to the Government that no servant of the Government and particularly no Mahomedan soldier should be asked to go against the law of his religion, and what did the Viceroy do ? He disallowed the resolution.

However, I now come to the first charge against us on which you have to sit here merely as Assessors. But in any case I can address you, gentlemen, though I have now to address you as assesors. You have been told and have seen for yourselves that not a single witness was put into the box to prove that there was at any time any agreement. My friend here asked you to take that on presumption. What a presumption: Are you going to hang us merely for this presumption for which there is not the slightest piece of evidence —absolutely none?

No man—not a single witness has said that he ever saw us, heard us or suspected us to be conspiring, agreeing to commit any offence. I was in England in the month of February 1920, and probably on the very day I was interviewing the officiating Secretary of State when a Conference was held in Calcutta—in which certain resolutions were passed. That was evidence against me: But I do not mind that. The Public Prosecutor no doubt read out Sec. 10 of the Evidence Act to you—that section tells you, he said that is admissible as evidence against me. But my very amiable friend there (pointing to the P. P.) wants you to do something more. He is a very clever gentleman. But I knew what he was aiming at. He said it was evidence admissible against me; but he meant not only that but that you ought to accept everything as gospel truth. He asks you to simply believe every bit of evidence as true and what is more, presume everything else required to prove the criminal conspiracy. Presumption has to do duty for proof and any evidence is sufficient to transport us for life. Gentlemen, I may tell you that I knew nothing about the conspiracy When my brothe went to Assam I did not know. I did not know of it until the P. P. got up and said that he would bring in a witness to prove this. It was for the first time I learnt that my brother had gone there. The rascal! He goes there without my knowledge and I am to be transported for life. That's the worst of being a younger brother: (laughter). But even that is no proof of agreement to commit a criminal offence. You cannot presume that. It must be proved and proved without a shadow of doubt. As for the Karachi Conference, my brother could have got off on the score of not having spoken. But the Public Prosecutor can fill that gap too. In Australia there was a farmer who had a son—and I am afraid—not a very clever son. People heartlessly even called him fool, and wherever his father took him, through his folly the father got into a sort of disgrace. Once the father was invited to a feast and the son wanted to go too. But the father refused. He was afraid that his son would speak and would be found to be a fool and he would be once more disgraced. The son then promised that he would not utter a single syllable. And so his Father at last consented to take the fool to the feast. The son went there and sat in a snug corner. Several persons put him several questions but the son did not, as he had promised his father, utter single syllable in reply. So when a man was putting him another question, one of the guests said—"what is the use of asking this man any question, can't you see that he is a fool"? The son immediately shouted out at the top of his voice, addressing his father who was at the other end of the table "Father, father, they have found it out! But I did not speak." (laughter). So the P. P. too has found it out that my brother was a conspirator at the Karachi conference though he did not speak (laughter). The P.P. has said that we are earnest people. By the same token gentlemen, we are truthful people. And although I am not a witness deposing on oath I say it solemnly and you and the Judge have to take my words for it that there was never at any time any discussion among ourselves about the declarations of Islamic law regarding the Moslem troops serving in the British Army. The Judge put me this question and I said that there was no discussion at any time. Why should there be a discussion about it at all? Supposing to-morrow we hold a conference of the Muslims assembled together in Karachi and declare that there is no God but one God and Mohamed is His prophet. Do you think it will be necessary for us to sit together and come to an agreement? The moment that I say that I am a Mussalman there is that agreement. But there cannot be any time limit to it. It cannot be only between February 1920 and Sept. 1921 (of course you know the addition to the period of the charge was the particular gift of my little friend there (pointing to Mr. Ross Alston). There was no mention of 1920 before the Committing Magistrate. This is 'Slight-alteration' that my slight friend has made to the charge which means twelve months more added to the period of the charge of conspiracy against us. So, believe me, there was no agreement except the agreement that we are Mussalmans Every Mussalman the moment he says that he is a Muslim, and accepts the example and the precepts of our Prophet Hazrat Mohamed—God's peace and benedictions be upon him—that very moment he agrees to this also, that it is unlawful to enlist or remain in an army which must wage war against and kill Mussalmans without just cause. And the Resolution passed at the conference of the Jamiat-ul-Ulma-it was nothing new that they resolved and declared What discussion or agreement was required for the Ulema to declare the well-known law of Islam against the killing of Mussalmans, or to sign a Fatwa or Juridical pronouncement? Similarly, what discussion or agreement did the two Mussalmans, who are our co-accused need before speaking on the Resolution

here ? They were asked to declare the Shariat and they did it. What related to the army was not a resolution ; but a declaration of law. But there was a Resolution, too, a solemn resolve and determination that if the British Government directly or indirectly, secretly or openly takes any hostile action against the Government of Angora, the Musalmans of India would be obliged to take to Civil disobedience in concert with the Congress and to make a declaration at the forthcoming Congress at Ahmedabad in December of Indian Independence and of the establishment of a Republic. Gentlemen, we had provided not only for openly hostile action against Angora on the part of British but also for secret action, not only for direct British action but also for indirect action through the Greeks. Yes, we know only too well our English diplomacy. At Oxford they define Association and Rugby football in this manner: "Soccer" is a game in which you kick the man if you can't kick the ball. In "Rugger" you kick the ball if you can't kick the man (laughter). In England, they want to down every other nation and particularly the Turks. But the rule like Rugger is that they will fight themselves only if they can't get another to fight their battle. (Renewed laughter). Gentlemen, we said that in the event of a reopening of hostilities against the Angora Government, it will be our duty in concert with the Indian National Congress, in concert with our fellow countrymen, to start—civil disobedience and that if this sort of things goes on, it will be our duty—a duty of tremendous responsibility—we did not consider it to be a light matter—it was a heavy responsibility that we determined to take—the responsibility of declaring absolute freedom and independece of India—to establish an independent Republic of India. This was not said in a light vein, as a jest or mere bluff. This was a very se.ious matter indeed. We knew what we were about. Every mother's son of us may be hanged for it. We could have been shot down instead of being brought down to this Hall and having this farce of a trial—the judge and the Jury and all this parapharnalia—instead of this lengthy circuitous route there could be a short cut—no prosecution, no judge, no jury but only a firing party at dawn led by Col. Gwyer or Col. Beach and a chatter of rifles and there would be an end of the matter. However we did declare this and in consideration of that grave matter we determined that in concert with our fellow-countrymen we would do either of these two things or both. The prosecution. however, is not for that: It is for the earlier portion of the Resolution which is cited in the order of the Government sanctioning the Prosecution. But the previous portion of the Resolution is not stated in its entirety. That Resolution says : " This meeting further plainly declares that according to the Islamic Shariat it is strictly forbidden to serve or enlist in the British Army or to raise recruits. Therefore the charge is that we declared the law of Islam and the mere declaration of the law of Muslims, if it is an offence, then, gentlemen. say so. In that case, if you declare the laws of Christianity that too is an offence. The Hindus following their own religious injunctions declared the Hindu law that is also an offence. Therefore a number of men who demand from an Indian soldier that he must not kill a cow will be guilty of agreement to commit a criminal offence, that is to say, they will be guilty of criminal conspiracy. Now, I say if this declaration is an agreement, if to declare the laws of Islam is an offence and we are guilty, then say so, gentlemen. But this is a matter which the Judge has got to decide, only you will have to give your opinion as Assessors, and it would rest with him whether he takes your advice or not. There is an Arabic proverb which says "always consult your wife but do what you think best" (laughter). I think that is the law in regard to assessors also (laughter) always consult your wife, *i.e.* the assessors, but do what you, the judge, think best (laughter.) Gentlemen, bigamy for an Englishman or a Christian is a crime and even a Mussalman can have only four wives. But the Judge in this case has five wives that are to be consulted (renewed laughter). But the Judge will do what he thinks best. I will still appeal to the Judge because he too has a soul to be saved like ours. I make no appeal to him for my own sake. I do not even appeal to the Jury for myself I appeal to them for their own sake and have said to them whatever I had got to say in the matter. You will only decide upon the facts before you and let no man say that any outside influence was brought to bear upon your decision.

Now, I come to the charge which is before you as Jury. You are the sole judge here. You are "Monarchs of all you survey" here. I would not like you to disagree in your finding. I hope you will agree whether your verdict be for us or whether you come to a finding against us. But let there be an agreement. Let it not be said that the Hindu Jurors came to this finding and the Christian Jurors came to that. Let it not be said that the gentlemen working in the Greek firm of Ralli Brothers gave this verdict and the gentleman from Forbes and Forbes and Campbell gave that verdict. You should be united. I prefer that you should be united in a matter of grave importance like this. Let yourself be guided by your own conscience because that is after all is the basic law of all Faiths. You must do the right, you must act according to your conscience. Now, on this matter I may again tell you, you are the sole monarch and the charge on which you are to give your verdict is the matter of "attempt" that is under Sec. 131 (Reads

the Section). "Whoever abets the committing of mutiny by an officer, soldier or sailor in the army or the navy of the Queen or attempts"—that's what we are charged with—"to seduce any such officer, soldier or sailor from his duty." I leave out the allegiance with which we are not charged—"shall be punished" etc., etc.

The Court.—You are charged with being members of a conspiracy which attempted to seduce the troops.

M. M. Ali.—We are charged with being members of a conspiracy, that is to say, charged with having agreed to commit a criminal offence, and in pursuance of that conspiracy, some body within this conspiracy, some fellow conspirators attempted these things. It does not matter whether we ourselves have attempted or some persons have attempted. True: Well, Mr Ross Alston of Allahabad, (the Advocate General of the United Provinces assisting the Public Prosecutor) gets some body in Allahabad who gets something printed somewhere and gets that some one to reproduce something from the Ulema's Fatwa although he is perfectly ignorant of Quran. All this has to be carefully done. He gets an ignorant Maulvi to copy it—every Musalman fear and trembles when he has got to copy anything from the Quran lest he writes something different and attributes it to God falsely the Maulvi-copies it, gets it published for Mr Ross Alston—gets it printed in Allahabad or in Lahore; he gets the same kind of envelopes; the letters are posted from different places, but mostly from Allahabad where Mr. Ross Alston comes from (laughter). And you have got to transport me for life for this: This is the thing which we are supposed to have done. What is the proof? He (the P.P). says, this is the proof. A poet says "The appearance of the sun is itself the proof of the Sun". So, in this case too, what further proof is needed? Well, the charge is that these leaflets were sent to Moslem soldiers. That they were posted mostly from Allahabad because some were posted from Cawnpore whence Maulana Nasir Ahmad Saheb, one of the accused, comes from, the Public Prosecutor attributed them to him and to us—well, Allahabad is the place where Mr. Ross Alston comes from, the place from which two C.I.D. officers who have deposed against us come—well, from that can you not have this presumption that it is Mr Ross Alston who dit it? (laughter). Well, if this thing (showing the leaflet) is sent round, is that by itlself sufficient for you—as men of any sense—you who are practically business men, is it sufficient for you to transport me for my life to take me away from my children—to take me away from my wife—to take me away from my mother—to take me away from my country which is dear to me—to take me away from God's work, simply because they were posted mostly from Allahabad? Is that or is that not the whole offence? Read it for yourselves. Search for it in the entire record of evidence. If you are conscientious your judgment must be right. You who are conscientious men,—you who cannot kill a gnat for nothing, you are not going to transport six men for life—not six men,for at last we find we are to be seven—our revered friend Jagat Guru Shri Sankaracharya * will also go with us Mussalmans because if there was no evidence against him, it was amply made up after all by the wrath of the perfectly peaceful Public Prosecutor. You saw that baresar rage yourself. Not, of course, a real storm, mind you, from such a gentle gentleman but a fairly good and imitation of one—a thing of the proscenium—something just realistic enough to give us the impression that there was a storm at last with lightening and thunder, hail and wind—all this came from my peaceful and amiable friend there (laughter). Are you going to commit all of us on the proof that there are certain envelopes and certain officers from the army received them! —Officers! Euphemism could go no further Yes, officers if courage in battle and length of service and medals—and those real medals—not of silver, hanging on their breasts, but medals fo lead bullets that found bullets in their bodies and their breasts —so far as these are concerned, really and truly officers, but yet men who have got, even as veterans and heroes of a hundred battle-plains, to salute the merest white tyro, the merest callow youth with hardly a moustache on his upper lip but only girlish peach-down because they themselves are brown and black. These are the people who come before you. They come and present before you these things, and say "a most terrible thing had happened. One verse—one incorrectly transcribed verse from the Quran was sent to us and even without opening these envelopes we scented that they were of smelling, gunpowder, smelling of 1857. We rushed to our Officer Commanding and said 'Sir, save us from Islam! Our feelings are hurt, our religious feelings are hurt. We are being reminded of our religion! We are being reminded of our God! For God's sake, protect us from God. Does not the Queen's Proclamation give us protection? We are being bombarded with the quotations from Quran! We can stand all bombardments but not this!' And it is on this evidence that we are going to be transported for life.

But, gentlemen of the Jury, I do not want you to save *me*. I want you to be saved yourselves. This is the only evidence and nothing more—not a jot or title more than this. If there was any, our friend (the Public Prosecutor) would have told you. He has got to transport seven for life—a

*The Court agreeing with the Jury found him not guilty and acquitted Swamiji. Ed.

arge and long transportation indeed! He took four hours in addressing you—practically a whole day and thereby earned a day's fee, although his daily is perhaps greater than the monthly salaries of all of you combined (interrupted).

The Court.—You have no right to make a personal remark. Is it not in bad taste? I know that you don't mean it.

M. M. Ali.—I am sorry. But to what do you object? To the reference to the small salary of the Jurors or the fat fee of the Public Prosecutor and of his little friend?

The Court.—To any personal remark It is not in good taste. Is it?

M.M. Ali.—I shall not refer to it again but I thought I might be permitted to commit just one offence even against good taste when I have committed so many against your Penal Code. (laughter).

(The Court remarked something which was inaudible).

Maulana Mahomed Ali continuing said—Well, gentlemen, this is the main thing for which you have been sworn in as a Jury and taken away from your work—five of you. Well, wherever you may come from, from Rali Brothers, or Forbes, Forbes and Campbell or the Customs House, you are here for that purpose, otherwise only two gentlemen might have been brought in as assessors, as wives of the Judge (laughter). In this case you are both the husband as well as the wife (laughter). You are self sufficient. You are the sole judge here as a Jury though there are several other charges—there are se ctions more than one can number—there are sections 120B, 117, 505 and so on—for which you act only as assessors. As you may remember, when the Policeman asked me when I was being brought to Karachi, under what sections I was charged and I told him of all the charges and he said —well, they are all h.me-made sections (laughter) and they can apply as many as they like. So this is the only Jury charge Sec. 120B read with sec. 131. This is as regards the leaflet containing an extract from the Fatwa It is the Jamiat-ul-Ulma that signed this Fatwa. We are supposed to be very frank people, so we said this in the Lower Court as well as in this Court that we were glad that the Jamiat-u-Ulma were at last doing their duty. The Jamiat-ul Ulma is supposed to be party to this conspiracy. But the Government is very mode rate. It has picked out only three Ulmas for this trial. The Government is astonished at its own moderation as Lord Clive said of his own loot: "I am astonished at my own moderation". Out of the 500 Ulmas who signed the Fatwa only two or three have been brought here. Well, why have not the others been prosecuted? I thought that the Ulmas who had done this would have been here. It is for the first time in my life that I saw this leaflet here In fact, it was for the first time in my life a little while ago that I came to know of this Fatwa of the Jamiat-ul-Ulma on this matter, though I knew of their Resolution in their Conference at Delhi. However, it does not matter if I did not know the others who conspired with me. That is no protection for me. And I do not seek any. But in this case of attempt in pursuance of the conspiracy I thought the clear conspirators were the Jamiat-ul-Ulma Whatever the conspiracy is, the Jamiat-ul Ulma is a party to it and I said that at last the association of the Ulmas was doing its religious duty. But I was immediately corrected by my friend, brother-in-law and legal advisor, though not my legal representative in this case—Mr. Muazzam Ali. He said, no, the Jamiat-ul-Ulma too deny the distribution and printing of these leaf lets. So I turned round and said in the Lower Court, "well, I am not correct myself, but I hope they will soon convert the forgery into a fact".

But it is the fact, gentlemen, that you have got to deal with and not with the forgery. Is it a fact that any body is a member of the conspiracy who does this! This is a presumption and not a fact. Well, gentlemen, clear your head of this of all these cobwebs woven by the P.P. It is nothing by throwing dust-good old Karachi dust (laughter) in your eyes. Nothing more than that.

I now come to Sec. 505. About the abetment of this I have not got to say anything. I have got to deal only with myself in my own and individual capacity with regard to Sec. 505, because I am the biggest offender in the matter and the others are only abetors under Sec. 109. It says: "Whoever makes, publishes or circulates any statement, rumour or report: (a) with intent to cause, or which is likely to cause, any officer, soldier or sailor in the army or navy of Her Majesty or in the Royal Indian Marine, or the Imperial Service Troops to Mutiny or otherwise disregard or fail in his duty as such .... shall be punished," etc., etc.

This is wider than Sec. 131, gentlemen, for I may not even preach to the Imperial Service troops of my own state of Rampur about their religious duty. What would my grandfather who was he "right hand man" as Government itself testified of his master, the then Nawab Saheb of Rampur in 1857 and saved hundreds of Englishmen and English women at the risk of his own life and saved the U. P. Government—what would he have thought of this prosecution of his grandsons for declaring to the Rampur Pathans the law of Islam about sparing the lives of Musalmans. But that is another

story. Well, gentlemen, Col. Beach of the Army Head Quarter, Simla, and Lord Macaulay have given me my cue (reads) "with intent to cause or which is likely to cause soldiers to disregard or fail in their duty as such." But what is their duty—the first duty of these soldiers which they must not disregard or fail in?

When a child is born in a family—if there is any faith in that family—the nurse should say not that a boy or a girl is born, but that a new recruit is born in the army of God. That child must be the soldier of God That is why the primeval souls were asked this question by God. "Am I not your Lord?" and they said "Yes". Gentlemen, I am tempted to recite a verse—a verse of my own—a poor thing but mine own—as Touchstone said 'Cinna the poet was killed for Cinna the conspirator, when Caesar was murdered and the crowds had become mad through Mark Antony's rhetoric. They killed him as a conspirator. He said "No, no, I am not Cinna, the conspirator. I am Cinna the poet". But they said 'Then kill him for his bad verses (laughter). Gentlemen, don't transport me for life for my bad verses. I address my own fellow countrymen, my own co-religionists and I say to them—you are being reminded of your duty—you are being reminded of your allegiance—you are being reminded of your loyalty—you are being reminded of the pledge that you have given to Government before your God and man—you are being reminded of your honour and you are asked to be faithful. (Recites a verse) "Kindly carry out that first pledge also—the pledge that you gave to God while you are about it. You are loyal people. A little more loyalty will not be amiss." Can I not say to the Judge—can I not say to the Jury—if these people are not true to their God, can they be true to their king? (Pin-drop silence prevails in the house—the God that gave them everything, life, honour, Faith, loyalty itself—the God that has given them—the King! If they are not true to their God, they cannot be true to their king. I say God before everything—God before loyalty—God before King—God before patriotism—God before my country—God before my father, mother and child. That is my Faith. Hang me if you like. But having done that, gentlemen, you may commit suicide yourself also, because then you would have murdered your own souls. You may walk and sit and stand and work. But your bodies would only be moving carcases without souls, fit carrion to provide food for the crows.

Gentlemen, it is the Government—it is they who want to seduce God's soldiers. We want to bring them back to their pristine loyalty. The law says that in any case there is an exception (reads) "It does not amount to an offence, within the meaning of this section, when the person making, publishing or circulating any such statement, rumour or report has reasonable ground for believing that such statement, rumour or report is true"

The Court.—read out the whole section, Mr. Mahomed Ali

M M. Ali —I will, Sir I will not leave out one jot or tittle. The Government will have its pound of flesh. In the case of Shylock, they allowed him only the flesh; but they would not let him take a drop of Christain blood. But you can take that too from me, full measure and overflowing. That exception requires that you establish the truth of the statement or reasonable grounds for your belief in its truth and that you made it "without any such intent as aforesaid." "There is no God but the one God and Mahomed is His Prophet." Is that my statement? No, it is the creed of all Musalmans. It cannot be an offence to declare that creed even if it is likely to "seduce" a man from his allegiance to a King or Government that demands obedience from him in matters involving disobedience to God. Is it an offence to say so? The next offence is asking ten persons or more to commit a similar offence. But for that too the first question is the question of statement. Whose statement? It is not my statement; it is the sratement of God! It is a declaration based on the law of the Quran. It is well-known to every Mussalman who understands the Quran. It is not a matter of my own opinion. Let me transport you, before I am transported, say to a place where Arabic is understood. Say, Aden. If a Somali or Arab soldier who understands the Quran in Arabic, hears Maulana Hossain Ahmed Saheb who was a teacher in Arabia, reciting verses from the Quran against the killing of Muslims. Or supposing, as I said yesterday, a man comes telling him he is ordered so Mesopotamia to fight against the Moslems and asks him about true religious law and if he says it is religiously unlawful for a Muslim to fight another Muslim—would it come under the law? It is a statement; but not his own It God's and it is true. Supposing the Government wants a Hindu to kill a cow and some Brahmin tells him that the cow is a sacred animal; it has got to be protected; it is the mother of millions of orphans and feeds us all. It is a symbol of innocence and of helplessness among God's creatures needing our chivalrous protection—you have got to protect it. Is the Brahmin guilty of an offence to seduce that Hindu from doing his duty even though the Army Commander needs that cow for the army's food. I challenge the Army Commander or for the matter of that the Commander-in-Chief to say that it is the duty of a Mussalman soldier or a Hindu soldier to

go against his Faith in spite of the fact that the Viceroy has disallowed the Resolution to be moved in the Legislative Assembly —the Council which I was invited to be in. The Pioneer said "You can influence people. You have such wonderful influence over the people—you have got such talents—you have got the wonderful gift of attracting the masses—will you not come to the Council? I said in a speech of mine which is the subject of another prosecution—I said that I cannot, because whoever goes to the Council has got to pass through the "Crawling Lane" on his belly and the guard of honour is provided by our sisters of Jalianwala whom a cowardly British bully sought to dishonour.

The Court.—(Inaudible) What is your point?—

M. M. Ali.—To that Assembly I was invited to go where no one is allowed to move a resolution like the one disallowed by the Viceroy, that no man, no Mussalman in the Government service, particularly in the Army, shall be compelled to go against his religion. (Reads the form to be filled in by a soldier before he is enlisted). The Judge interrupted the Maulana again and asked what he wanted to prove.)

M. M Ali,—I want to show what the man is required to do when he joins the army, what is and what is not his duty as a soldier. (Reads). Mark, gentlemen, the question is "Are you willing to go wherever ordered by land or sea and allow no caste usage to interfere with your military duty" there is no question asked of the man "Will you do anything whih is against your Faith" or "Will you have any objection when you will be asked to commit a sin," or "are you willing to go to Hell by land or by sea"? (laughter.) There is no question like that. The P P. asked me—he said to me, if some body believes in human sacrifice and your child is demanded you will be the first to seek the protection of the law. In any case, as a non-co-operator in these days. I do not want to seek the protection of the law! Neither do I believe that there is any sect that can demand such a sacrifice from other people. The only sect that can demand human sacrifice of other people's children is the sect of the Militarists. They demand it their Moloch of greed demands it—their Moloch of Imperialism demands it—their greed for dominion demands it—they want that on the high seas——on God's big broad oceans, whenever a foreign ship passes one of their's, it should dip its flag in recognition of the boast that England is "the mistress of the seas." It is these people who want such human sacrifice.

The Judge asked me "but what about the thief? Do you want that the thief's hand should be cut off?" I said, if the Government was an Islamic Government, I would require this of it. I would have the adulterer stoned to death too, though adultery is no offence in English law My bargain as a Muslim with an Islamic Government is different from my bargain as a Muslim with a non-Muslim Govt. From Non-Muslims I do not require that they should do anything for me, except permit me to hold my own religious opinions and act up to them with impunity. My religion can impose its obligations only upon me, and not upon others. There is an obligation upon me, to tell God's own truth that it is religiously forbidden to join the British Army and to fight a Muslim without a just cause, and that it is unjust to kill a brother Muslim at the bidding of the Government, which is next to infidelity. The Prophet said the last thing that he said collecting all the people who had gone to the pilgrimage together, some 175 thousand people assembled together at Mina, and the Prophet asked, "What day is it" .....(interrupted).

The Court.—I would ask you to stop! Never mind about the Prophet.

M. M. Ali.—(Indignantly) I *must* mind about the Prophet. I think you should withdraw that

M. Shaukat Ali.—Blasphemy and impertinence.

M.M. Ali.—You *must* withdraw that. You must make amends. I have got to mind about the Prophet. I have to take a man's life who insults that Prophet.

The Court.—You must stop. You cannot go on.

M.M. Ali.—I am doing what the law allows me The law says that I am not to seduce troops fr m their duty. I say it *is* not a part of a Muslim soldier's duty to kill a brother Muslim. And I am here entitled to argue this till eternity. So long as I want to explain my position I have this right. Take away this right and end this farce. What is the use of this farce. Take out a shooting and shoot us out of hand; or if you prefer to keep up this farce of a trial, try us after our death, as Lord Nelson once did. I say that no man is required to go against his religion—military duty does not inculcate this.

The Court.—It is irrelevant.

M.M. Ali.—I am explaining what my religion says—I have given it in my statement in the Lower Court. It is perfectly relevant

The Court.—Sit down.

M M. Ali.—I have not yet done with Sec 505 and have not even touched the charge

under Sec. 117 against me. I have not said one word about that. Am I to be punished without saying one word about it ?

The Court.—I will not give you a right of speech.

M. M. Ali.—Will you show me a single sentence in your law bo k that the judge has the power to take away that right. You have already taken away one of my rights by not allowing me to make a statement before the Prosecution addressed the Jury. Your own Bombay High Court says that and the Public Prosecutor agrees. I do not know if the Judicial Commissioner of Sindh has laid down another law. Now you are going to stop me again from addressing the Jury. You can object to a particular part of my address. You can say—do not say this. But I cannot understand how you can stop me altogether by saying that you will not allow me to say anything more. (The Court kept on saying 'sit down,' 'I won't hear you.')

M. M. Ali.—I am explaining that it is not the law, that it is no part of a Muslim's duty to go against his religion. Have I not got to prove that this statement contained in the resolution is a true statement and not a false statement. Is it relevant or not, I ask.

The Court.—Entirely irrelevant.

M. M. Ali.—"Entirely irrelavant" therefore I have not got to argue about that.

The Court.—I have al'owed you to argue.

M. M. Ali.—The trouble is that you are intervening me too much. I say that first of all I do not come under this section. I have got to prove what my faith is and that it is not the soldier's duty as such to go against his faith. I have got to prove why the declaration was made. And I have to prove that that declaration is a true statement.

The Court.—It is not relevant.

M.M. Ali.—Do you think you are authorised by law to take that right from me ? The law says it does not amount to an offence within the meaning of the section (reads the first part of the exception again).

The Court.—"And."

M. M. Ali.—Never mind about 'And'. I am arguing that it is a true statement. I am not yet arguing about the intention.

The Court.—I do not want to hear you.

M. M. Ali.—It is for the assessors; at any rate, you cannot take away the Assessors, right. They will have to give their opinion about this whether I am guilty or not. It is according to law. And the law says this (reads again). I cannot take your word for it. I cannot really. I cannot take any man's word as against the clear provision of the law.

The Court.—Argue your case.

M. M. Ali.—It is not *your* case that I am arguing (laughter). Well, gentlemen of of the Jury, (interrupted).

The Court.—I do not want to hear you.

M. M. Ali.—You may not hear me as you have done on many other occasions. You have slept through a great deal of evidence that was being read out. You may sleep now. But I have got to address the Jury.

The Court.—(With apparent anger) will you sit down ?

M. M. Ali.—If I don't ?

The Court.—I shall put you in custody.

M. M. Ali.—Do !

(The Superintendent of Police was here called to make the accused sit down but retired without touching him, leaving him standing).

(The Court directd the Sheristadar to call accused No. 2 Maulana Hussain Ahmad Saheb. The Sheristadar approaching called out, but Maulana Hussain Ahmad did not utter a single word or budge an inch.)

M M. Ali.—(Not minding this interruption, now, gentlemen of the Jury—

The Court.—Do not interrupt t' e Court.

M. M. Ali —I am not interrupting the Court Rather *you* are interrupting me. I have got to argue regarding this exception. I have got to deal with this. Take away the charges under Secs. 505 & 117 against me if you can and I shall stop. You have got the power to amend the charge up to the last.

The Court.—I cannot allow you to discuss religious law here.

M.M. Ali.—There is no question of religious law. I am arguing about the law of the land, as you call it. I have got to show to the assessors that this declaration of statement contained in the resolution is true because it is based on the Quran and the Hadis.

The Court.—There is no necessity of it.

M. M. Ali.—The necesssity of it is what I have got to consider myself, not you. You had no right to stop the Prosecution witnesses. You could not have stopped them unless you said that their evidence was inadmissible. You did not stop the Public Prosecutor. He was to prove what he thought was necessary. But you will not allow me to prove what I think is necessary, to prove that it is a true statement of Muslim law that I laid down that it is *haram* to serve in the army. I have got to prove that from the Quran and the Hadis, Material or immaterial, I have got to do it and I am to do it from the Islamic law. I have got to take my law from the Quran and from the King. The king gives me protection for following the Quran's law in those Proclamations. That is the King's law. If you do not obey that, then why is the King's portrait over there (pointing to the portrait of King Edward hung upon the wall.) I have got to take my law from the Quran—you have got to take the law from the king. I have got my statement based on the King's law. I do not want to create a scene. I am not here for that purpose. I have not shown disrespect to you even though I could not show any respect to the Court as part of Government. I don't want to be obstinate and cheeky. But I cannot have my right brushed aside.

The Court.—But you take so much time.

M. M. Ali.—Yesterday you sent me word that you will give me half an hour more to-day to discuss the supremacy of religious law before I come to the legal point and the facts of the case. I have already finished with that. I say that religion was to be an exception in every case Now, dealing with the law of the land, Sec. 505, I have got to prove that that declaration in the resolution that it is religiously forbidden to serve in the army is a true statement and therefore I come under the exception to Section 505.

The Court.—Suppose it is accepted that it is a true statement.

M. M. Ali.—Let the Assessors accept it. Let them give it to me in writing. Will they give it to me that this is considered to be proved. Tell me that this is proved—that my statement is true. I will go on. Then I will not argue one word more about it. Ask the Public Prosecutor whether I have got the right or not.

P. P.—We admit that the passages cited in his statement before the Lower Court are in the Quran.

M. M. Ali.—I want you to admit more than that. I want you to admit that this statement for which I am charged under Sec. 505 is in accordance with the Quran and the Hadis

P. P.—We can't admit that.

M. M. Ali.—If you won't admit I have got to prove it. Supposing a Christian is charged for making a statement of his belief in God the Father, God the Son and God the Holy Ghost. He says that he has got to prove that that is the Christian belief and is a true statement. He says "I will shew it from the Bible, I will show it from the Epistles —I will show it from the Gospels —I will shew it from the Prayer Book." Will he not be entitled to do that? Will I, a Mussalman, be a fair judge —do you think it will be fair of me not to allow him to prove that this is a correct statement of the Christian Trinitarian's Faith?

The Court.—(Nodding his hand) Sit down.

M. M. Ali—I cannot sit unless you admit that my statement is true. I should like to say one thing. I really do not want to be obstinate. I do not want to be needlessly importunate, out of sheer cussedness and ill-will against the Court. I do not want to show any disrespect to *you*. This does not tally with any part of my character as an accused person or as a Non-co-operator. But at the same time I want to stand on my right.

The Court.—You are wasting the Court's time.

M. M. Ali.—I am not wasting any body's time. I just want to convince the Jury that the statement is a true statement.

The Court.—It matters not.

M. M. Ali.—It matters a great deal to me. It matters much so far as I am concerned It matters a great deal to prove to the gentlemen of the Jury that this is in accordance with the Quran and Hadis and that I did not fabricate it. I may have made a false statement. Supposing I commit a rape and I come in before the Court and I say that my religion allows it. You can say "show it to me from your religious law." You will not take my word for it and you will have to allow me to prove it. What is it after all? I am not asking for protection for a murder that I have committed I am not asking for protection for arson that I have committed—nor am I seeking protection for loot. Loot becomes sacred when the Army Commander orders it. Murder is no murder when the Army Commander commands it. In my case too, when the Quran commands murder is no murder. So when I referred to the Quran you can say "shew it to me".

The Court.—Suppose we admit it for argument's sake.

M. M. Ali.—I want it to be admitted for all purposes. I may not argue one word

about the intention. Gentlemen, I am not speaking in my defence. But I must prove that this was a correct statement. I had the same difficulty with my friend Mr. Montague. He said "far be it from me, Mr. Mahomed Ali, to intervene in a discussion about your religion." I said to him "please do. Let us discuss it and let me prove to you what my religion is" I was actually in tears before him when I told him it is no pleasure to me to be against his Government. He respected those tears. I explained the religious law about the Khilafat and the Jazirat-ul-Arab and he had to listen. I had to explain my religion to Mr. Lloyd George also and to some other members of the Cabinet and they had not said that they had nothing to do with the Quran. I want to prove that this is a correct statement and you must not take away my right to prove it. Will you allow it?

The Court.—If you will only do it in a very short way. (The whole house burst into peals of laughter at the Judge's relaxing at long last.).

M. M. Ali.—(To the Court) Why did you not say so before? Of course, I will do it in a short way—in fact in a *very* short way.

The Maulana then quoted some three or four verses of the Quran already cited in his statement in the Lower Court and added short comments to prove that these made service Haram in the British Army, which was being used to kill Mussalmans without just cause or to destroy the Khilafat and the temporal power of Islam. Thereafter he cited a few of the traditions of the Prophet cited in the Lower Court statement and explained their bearing on the declaration contained in the Resolution. The verses and the Hadis cited were the following:—

1. "It is not for one of the Faithful to kill another but by mischance"—and thereafter follow the severe penances prescribed even in cases of such mischance".

(Sura-i-Nisa, Chapter IV.)

2. "But whoever shall kill one of the Faithful wilfully his recompense shall be hell; forever shall he abide therein; God shall be wrath with him, and shall curse him, and had prepared for him a great torment". (Idem).

3. "O ye Faithful: devour not each other's substances falsely except that it be trading among you by your own consent; and kill not your own people, verily God is unto you merciful. And whoever shall do this of malice and wrongfully, we will soon cast him in fire, for unto God is this easy. If ye shun the great things that are forbidden, we will blot out your faults, and we will lead you into Paradise with honourable entry." (Idem).

4. "After recounting the story of the first killing, the murder of a brother by a brother, the crime of Cain inspite of Abel's declaration of his own doctrine of non-violence, the doctrine of every Moslem in like circumstances, "Even if thou stretch forth thy hand against me to slay me; verily I fear God, the Lord of the Worlds", the Quran says: "For this have we obtained unto the children of Israel that whoever slayeth another soul unless it be for man-slaughter or for spreading disorder in land, it is as though he slew all mankind; and whoever saveth a life it is as though he saved all mankind alive. (Sura-i-Matiah, Chapter V.)

5. "And (the servitors of the Beneficient God are) they who call on no other gods with God, nor slay the soul God that forbidden to be slain, except for just cause, and commit not fornication, for he who doth this shall meet the reward of sin (that part of Hell which is known as Asam) Doubled unto him shall be the torment of the Day of resurrection, and therein shall he remain disgraced for ever." (Sura-i Alfurggan, Chapter XXV)

* * *

1. "Shedding a Moslem's blood is not permissible except in three cases, when a life is taken for a life" (*i.e.* as punishment for a renegade deserting his side). (This is to be found in the most authentic collections of Bukhari, Moslem, Tirmizi, Abu Daud, Nasai and others.)

2. "A Moslem is he from whose tongue and hand a Moslem remained immune." (Bukhari-B, Moslem-M, Abu-Daud-AD, Tirmizi-T, &c.)

3. "To abuse a Moslem is wrong doing; and to war against him is *infidelity* ('Kuff') (B: M: T: AD:) Nasai N: Ibn-i-Maja-IM.)

4. "He who bore arms against us is not from among us", *i.e.* is not a Moslem any longer (B: M: T: AD:)

5. "Even if the inhabitants of all the heavens and all the earths were accessories in the slaying of a single Moslem, God will certainly push them all into fire." (T: Behaqi-BQ-Tibrani-TB).

6. "Whoso assisted in the slaying of a Moslem even with a half a word, shall meet God with this written between his eyes; "Despairer from God's Mercy (*i. e.* he shall receive no portion of God's abounding Mercy:") (IM: BQ: Asbahani).

7. "God may, it is to be hoped, forgive every sin, but not the man who died while

still an infidel, nor the man who killed a Moslem wilfully." (AD: Ibn-i-Haban: N: Hakim.)

8. "Let him who can see to it that there is not between him and Heaven even a handful of a Moslem's blood, even as much as a fowl's which is killed for food, for whosoever such a man will present himself before any of the gates of Paradise, God will interpose Himself between him and Paradise". (TB :BQ).

9. "When two Mussalmans quarrel with each other and use their swords, both the slayer and the slain shall be cast into the Fire." When the people said "O Prophet of God, the reason for the slayer being cast into the Fire is plain but why the slain as well? The prophet replied, "Because he had intended to kill his companion". (B : M : T : &c.).

This statement of mine, gentlemen, is entirely based on the Quran and the Hadees as you can now see for yourself and the Maulana Hussain Ahmad Saheb will after me prove it to you still further. More than this, you have got the correctness of it established in the Fatwa of the Ulma. But that has been turned from proof of our innocence into proof of our guilt.

Gentlemen, I do not know whether a man is exempted or not in the army from observing his caste usages. This form includes merely a question about them and we do not know what happens to the intending recruit who wishes to observe them. But this is not a caste usage. This is a case of going against religious law and if a man's military duty was to go against the religious law—if the Army Commander thought so, he should have asked this question. Let them ask every Hindu soldier—let them ask every Mahomedan soldier and note what they say. Dante wrote in his *inferno* and Milton quotes it in his *Paradise Lost* also, that this legend is inscribed over the gate of Hell: "Whosoever enters here must leave all Hope behind.' So it should be written over the portals of the British Indian Army: "Whosoever enters this must leave all Faith behind." On a famous occasion the German Chancellor had said: "Necessity knows no law" and those who execrate this lawless doctrine are being punished as law-breakers. What we want is that Government should be straight forward honest about it. At present people go to the Army apparently with their eyes shut. We ask that they should go with their eyes open. If they join the Army knowing very well that their religious law, and its obligations on them will not be respected, but would be sacrificed to the Moloch of Military exigencies and that, one Queen's Proclamation and two Kings' Proclamations will afford them no protection, no body will then blame the Government. All the sin would be those people's who knew all this and yet joined the army. But what is it after all that Islamic law demands to-day. For what offence does it seek the secular law's protection? Not for human sacrifice! I do not say "shoot your officers—kill them." No on the contrary I demand that they be not guilty of the human sacrifice of their Muslim brothers—of fratricide. When you took them to fight the Germans on the outbreak of the War, I did not say "Do not fight with them. I do not say, if there is disorder in Karachi and Muslims are rioting, that Muslim soldiers should not go and stop that. In this form (shewing the form of Enlistment) all sorts of question are asked. The form says "the following 9 questions" but there are really 14 and not 9 questions in all (Reads all the questions). I do not know what happens if he says he is unwilling to be vaccinated or even to be re-vaccinated—as some Hindu may well do on account of the vaccine or lymph from the cow. I do not know what happens if he says he is unwilling to cross the black waters or give up a caste usage. The solemn declaration of the intending recruit only says that the answers are true and that he is willing to fulfil the engagements made without explaining what they are. But let us presume that he has expressed his willingness to be vaccinated and re-vaccinated and to go wherever ordered by land or sea and allow no caste usage to interfere with his military duty and that there are the engagements. But whereas the 15th question, which should have been: "Are you willing to do anything you are ordered and allow no religious commandment to interfere with your military duty? Are you willing to forego your religion?" Where is such a question in the form? If the man says "Yes" then it is alright, and if he refuses, you can chuck him out. But you don't ask him this question, you dare not do that—and yet you take him in and if he refuses to commit the most grievoussin in short of becoming a renegade and an infidel at heart as well as outwardly, you say he has failed in his military duty. But that is according to your own form of enlistment, no part of a soldier's duty as such. Therefore, Sir, it is not a question of seduction from duty. As I have already said; we are teaching him his first duty—that his first duty is to God and the second duty is to his country and his King. Gentlemen of the Jury, the Proclamation came, as you know, after the greased cartridges affair and the mutiny, and it was to repudiate precisely this unlimited connotation of military duty that it was issued in 1858. But what is the tearing with one's teeth of greased cartridges or eating a whole pig compared to the sin of killing a Muslim? I have already stated in my statement in the Lower Court and I repeat it that if a man is

threatened with death unless he consents to take pork he may not only take it, but *must*, and if he is killed on account of refusal to do so, he dies a sinner. In like circumstances he may even declare that he is a *Kafer* if he continues to be a believer, at heart, though it is preferable not to do so, and if he is killed on account of refusal, he dies a martyr. But in like circumstances he must not kill or dismember another Muslim but patiently submit to be killed instead. And you dare not ask a Musalman to touch cartridges with pig's grease as part of military duty since your experience of 1857 and the Proclamation of 1858 and yet you call it part of military duty to kill Mussalmans which is far worse than eating pork and worse even than outward apostacy. The absence of such a question as I have suggested means that the Government understood what it would lead to. We consider it a part of our duty therefore to remind the Muslim soldier of his duty to God to demand from a Mussalman that he must carry out his God's law. That is not seducing him from doing his duty in the army, and in any case, he need not desert or fail in his duty but appeal to Government through his superior officers that such duty as is against his religion may not be required of him. There is therefore neither a likelihood nor intention of seducing a soldier from his duty as such.

> Now comes Sec. 117. Against me this is the only other section. (Reads) "Whoever abets the commission of offence, by the public generally or by any number or class of persons exceeding ten, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both".

But where is the *offence?* There was no criminal conspiracy as I have explained under Sec. 120 B. There was no attempt made by us or by a fellow conspirator under that section and section 131 as I have also explained.

The Court.—Mr. Mahomed Ali, you are charged that you at this meeting and other places abetted ten or more persons to commit.....

M. M. Ali.—It says whoever abets the commission of an offence by the public generally or ten or more persons etc. But what is the *offence?* The offence is to ask the Muslim soldier to do his duty to God to bring the law of Islam home to him. But that is no offence. Therefore I have committed no offence. And when there is no offence that I abet the entire ground is taken away from under the feet of the Prosecution.

In the evidence you have it that there were two or three thousand people and two or three gentlemen on oath declared that there were only two thousand people and that they were mostly Mussalmans. I was the President there—at that meeting—and am in a better position to tell you how many people were there. When I returned to Bombay from Karachi I said to Mahatama Gandhi I was astonished to see that at least half of that big audience was composed of Hindus. But that shows that the Khilafat is a national question and not an exclusively Muslim question. The Mahratta Gentleman who told you about the Gokok resolution said that there were fifteen hundred people and the whole area of that Conference Pandal was not more than that of this hall and its verandahs. The Pandal where the Karachi All India Khilafat Conference was held—it was not far from this place—that pandal was ten or fifteen times as large as this hall and was absolutely packed—not less than ten thousand people were there. Therefore it is not a question of instigating ten people but ten thousand people to do what we asked them to do in that Resolution. But we did not instigate them to commit any offence. Cook your hare by all means, eat it, digest it. But you must catch your hare first. But my friends (pointing to the P.P. and Mr. Ross Alston) they have not yet even scented their hare much less caught it. They have not proved that there was really any offence at all that we abetted. What was it that I told the people? To bring it home to them that they must do their duty to God. (Reads from his copy of the Resolution but the Judge interrupted) (To court) I must read my copy because I must give you the exact words of the Resolution as it was read out, moved, seconded, supported and passed—the *ipsissima verba* (Reads in the original Urdu). Not my opinions or statements or even the Karachi Conference's declarations, but the commandments of Islam in this behalf were to be brought home to the Muslim soldiers. Has it now become an offence even to declare that it is the duty of Mussalmans to communicate the law of Islam itself to the Muslim soldiers. I said yesterday that the Government would not be able to find a single Mussalman who says that this is not the law of Islam. But suppose that they find such a man, suppose they create such a man for we may even credit them with the function of the Creator when they demand obedience to their behests as against the Creator's commandments—they create such a man and make him a Moslem also, and he says that the law of Islam says that every word of command in the army is God's own commandment—when the Commander says shoot a Muslim—he should be instantly obeyed. What do we ask? We say, carry the religious law of Islam to the soldier—

the Muslim soldier. I don't say carry my interpretation of it. I say—carry the law of Islam on the subject to the Mussalmans in the army. Is it an offence even to propagate the law of Islam? Supposing the man is entirely against me. He says—No, it is not a sin to kill a Mussalman—it is the bounden duty of a religious Muslim to kill a Muslim when the Commanding Officer orders it. I don't say to him—don't carry this to the soldiers, but take the law that I lay down. I simply ask him whatever the Islamic law says that he has got to carry to the Muslim soldiers. I knew gentleman who got a title and whose sons got several posts because he happened to hold certain very peculiar doctrines about the Muslims and particularly the Muslim soldier's duty to the temporal ruler for the time being. He used to engage Maulvis to go into the requirements and preach his doctrines of loyalty at all times and at any price. But now it seems even that would be an offence, for the P.P. says it is an offence under Sec. 117 I.P. C. to declare that it is the duty of Mussalmans in general and the Ulema of Islam in particular to bring the law of Islam home to Muslim soldiers. Or is it an offence only if I ask ten persons or more? If you ask two or three men, it does not matter? If you ask ten, the moment you come to ten—that is ten complete or you ask the public generally, you will be hanged. At any rate, gentlemen, you must go by what I have said and what the shorthand C. I. D. man has taken down and not what some pitiful Police liar has sought to put into my mouth.

(Maulana Mahomed Ali sent for Inspector Lakhti Hasnan's transcript of the Urdu Resolution as read out by him at the Conference and found it tallied exactly with the copy he had from the Bombay Central Khilafat Office on the letter-paper of the Reception Committee of the Karachi Conference showing that it was made at time of the Conference itself. But the translator of the Government had mistranslated into "these commandments" which would make Section 117 I. P. C. applicable if Section 505 was found to be applicable, whereas the actual words of this part of the Resolution did not refer to the declaration of Islamic law that military service was *haram* contained in the earlier part of the Resolution, but to Islamic law generally.)

Gentlemen of the Jury, I am not anxious to get off. I am not anxious for my defence. I make no defence whatsoever, though I had to explain the law of Islam to you and explain the bearing of that on the position we have taken up, I have not cross-exmined witnesses nor produced evidence on my own side. But I want you who are mostly my countrymen though co-operating with this Government to consider this. You will find that in the history of the world many celebrated trials have taken place and many great people have been declared guilty of many offences. In English history itself even poor Joan of Arc was killed for a witch. But with what result? Her golden statue stood before my hotel in France and while I was there the Catholic Church led by the Pope and the College of Cardinals canonised her and what did the successors of those who had burnt her do? Why the British army joined the French in honouring her memory and in placing wreathes on her statue. I was present at such a scene. George Washington was a wicked rebel in the time of George III. What is the verdict of the British Government to-day: He is the greatest patriot!

I should like to address a remark or two particularly to the solitary Englishman on the Jury. Englishmen are not bound to follow the majority of their Countrymen, particularly in unrighteousness and injustice. Believe me throughout English history it has been the minority that was mostly in the right and at any rate it was the minority that began great and good movements. A great cause had never been started in the world's history by the majority. It was not Pilate that was crucified. It was Christ—God's peace and blessings be on him; Pilate was the judge who pronounced the verdict against Christ! But who pronounces the verdict now and who will pronounce it hearafter? On the Last Day, the Day of Judgment, it is God that will pronounce the sentence on Pilate who did not know what was truth, and ask that famous or infamous question so cynically. But where is Pilate now. Whoever remembers him—the great crucifying judge, except for Chirist's crucification? Now to millions of human beings Christ is the Saviour. But who am I a'humble individual to compare myself with Christ who am not worthy even to take the dust off the feet of Christ? But as the Poet has said

> "Weakness never need be falseness,
> Truth is Truth in each degree,
>
> "Thunderpealed by God to Nature
> whispered by my soul to me."

And in the thunder peals of British howitzers the still small voice of humble man's soul has whispered into his ear this little bit of truth-God's eternal everlasting, soul-sustaining Truth that he must not stand by and see Muslims being slaughtered by Muslims in spite of God's clear law, but must preach against it and propagate God's Truth, unshaken by fear of man and untroubled by mundane consequences.

Gentlemen, take another case—the case of the martyrs of Karbala. The Prohhet's grand-son had only 72 men and Yazid's army had thousands and they killed him. He was then in a small minority. But

for thirteen hundred years the mourning for that vile deed—the deed of the Government in Power—has been going on. Every Muslim mourns for Hussain, Hussain the victim and not for Yazid the proud victor, and many Muslim cities have a quarter just outside known as Karbala, while no trace of Yazid's grave can be found anywhere. So, gentlemen, do not think of the consequences of your verdict to-day or tomorrow, but of its ultimate consequences here to human freedom and hereafter, in another world. And you have got to judge for yourself. Ralli Brothers cannot judge for you. Forbes, Forbes & Campbell who objected to a small white Gandhi cap cannot judge for you. Mr. Lloyd George cannot judge for you. God on his Judgment Day will ask Lloyd George about his soul, not about yours, and he may have much to answer for. God will ask you about your individual soul and none others. He won't ask Ralli Brothers or Forbes, Forbes & Campbell about it. And if as a Hindu you believe only in punishment in this very world through the cycle of transmigration of souls, you must remember that according to your belief, God's Judgment will be visited upon here and not hereafter and you will be judged the moment your soul quits its abode in your body and seeks another. Whatever your creed, your *Karma* is your own and the final Judgment does not rest with you any more than with the Judge there but with God, the Lord of all the worlds.

Gentlemen, I have taken much of your time, far more than I had intended to take or would have taken were it not for being constantly interrupted and stopped. But as I said at the very outset, had it been a case of my individual defence or of all of us accused together only, I would not have argued at such length and with such persistence. I do not seek to avoid punishment for the jail is the gateway to India's freedom. Had I thought to avoid punishment, I think I would have smashed the entire Prosecution and proved my case according to the canons of this very law the so-called law of the land. I could have cross-examined the witnesses and torn their evidence to shreds. I was really tempted to do that in the case of Col. Gwyer with his enlistment forms and his "soldier's duty as such." I think I may say this though I do not pretend to be a big lawyer like my friend the Public Prosecutor or his little assistant. Nevertheless, the case is so hopelessly weak that it could not keep us shut up in the jail for a day even if the Ex-Lord Chief justice of England himself, better known as Rufus Isaccs, K. C. had his Government's brief. But although a Non-Co-operator and therefore debarred by my duty as such to defend myself I had to speak up when the Viceroy indulged in his hill top *obiter dicta* on a mater which he knew and admitted was *sub judice*. He said that this was no case of an attack on Islam or religious interference. What could be a more flagrant case of both? If the tallest poppies are to be cut off for upholding Islam and its laws and you ask those who remain "what is your opinion about the law of Islam" which only means "you turn next if you dare to tell the truth" and you cut off their heads too if they still dare, the result may well be that there will be none to stand up and oppose your will. And then you will say "we interfere not with your faith." If this is non-interference, you can enjoy the self-complacence induced by such boasts of toleration,. But that is not all. We are asked to look at him,—the tallest poppy of the Israelite garden in England—as upon a certificate of British toleration. But, gentlemen, I cannot imitate the Ex-Lord Chief Justice of England and Viceroy of India. His law is a law unto him and my law is a law unto me. The example of his people, if I may say so without offence, is constantly mentioned in the Quran for the Muslim to avoid and take heed from. According to the Quran, after Moses (on whom be God's peace and blessing) had brought the Israelites safely out of Egypt and they had been delivered from the tyranny of Pharoah, they were asked to march on to the Promised Land. But they said, it is ruled by giants "We shall never be able to enter it so long as they are there" and they said to Moses "Go thou and thy God, and fight them—we are the while sitting here".

Well, gentlemen, that's not an example that I am asked to follow in the case of my holy land. But to avoid, I cannot take that law. "It is ruled by powerful people." "They are giants." "Go thou and thy God and fight. We rest here." But I am not here to question the propriety of tht example or that law. So far as I am concerned, the Quran is my law, giants or no giants, and I shall fight when my God demands it of me and shall not rest, nor ask Him to fight the gaints himself. And if I am to be hanged for it—for it is not Sec. 120 A or B then, but 121, waging war against the king, gentlemen, I will still say that this is my law and that it is right and even my carcase hanging from the gibbet, will I trust, say the same! Do not therefore think of saving me, gentlemen, from transportation for life. But if you have a God and if you have a soul to save and if you have faith you will decide according to your conscience. You are not to consider whether you are servants of a particular company of the Greek firm of Ralli Brothers—of Forbes, Forbes & Campbell—of the Customs Office—you are to think nothing of that, but only of this that you are slaves and servitors of God. Gentlemen, this is the one important matter. So judge according to your conscience—it is not to save

me but to save yourself. When the Judge had said " I cannot allow this " and wanted to stop me, I said to him, " then why not stop this farce and hang me outright." Well, he smiled and replied that it was not only a matter between him and me, but also between him and the public and I had replied that the public had already given their verdict both in this Hall and also in the streets where they crowd in their thousands and cheer us going and coming and the old women in spite of their Purdah come out—as my own mother had done since this trial and make signs to us indicating that they want to take off our troubles. Well gentlemen, my defence is before my God and my fellow-countrymen. Here we are now at the bar of this Court as prisoners and accused persons. But when before the judgment-seat of God, the Judge, the Jury, the accused, all the co-accused, the P. P. and his assistant, the king himself—every body is assembled and God asks " whose is dominion to-day "—what will be your answer? You will say: " There is the Power, the Glory, Thine the Kingdom, Thine the Dominion." You pray now " Thy Kingdom come." But, gentlemen, His Kingdom *has* come. God's Kingdom has come. God's Kingdom is here even to-day. It is not the kingdom of King George, but God's, and you must decide on that basis and I must act on that assumption. That is why I say I will follow the law of King George so long as he does not force me to go against the law of my God. I have no personal malice against him. I have none even against the Judge here. None against the Government. Not a single instance of that can be quoted from my public speeches. No, gentlemen, we must act from motives of public good not of private malice. Once the Prophet's son-in-law, cousin and successor, Hazrat Ali was enraged against a Jew who had insulted Islam, and the God of Islam and the Faith of Islam, and Ali had that very instant brought him down to the ground and had jumped on top of him. The Jew thought that he was going to be killed and in sheer desparation spat on Ali's face. You have seen, have you not, a vessel full of milk on the fire and about to boil over and you have seen how it subsides the moment a little cold water is poured in. The Jew's spitting acted just in that manner and strangely enough the wrath of Ali subsided at once and he left the Jew and walked away. But the Jew was so astonished at this unexpected turn of events that he ran after Ali and caught hold of him and said " This is very strange." When I said a word, you forced me down and would have killed me, and when I spat on your face in desperation, you leave me !" And Ali answered " You insulted God and I could have killed you, but when you spat on me I got enraged on my own account and personal ill-will could not go well with public duty. I could be an executioner for the sake of God but not a murderer for Ali." Gentlemen, we two bear the revered name of Ali and I have also the name of another even greater than Ali. I will not be a party to the killing of even of a gnat for personal malice, *but* for the sake of my God I will kill all, I will not spare any one—I will slaughter my own brother, my dear aged mother, wife, children and all for the sake of God, so help me God !" (And as he said this his voice failed him, drops of tears rolled down his cheeks and he sat down completely overcome.).

Ex: No. 113.

IN THE COURT OF THE JUDICIAL COMMISSIONER OF SIND.

SESSIONS COURT JURISDICTION.

Sessions Case No. 33 *of* 1921.

THE KING-EMPEROR *vs.* MAHOMED ALI AND SIX OTHERS.

Heads of charge to the Jury.

ACCUSED:

1. MAHOMED ALI of Rampur.
2. MOULVI HUSSIEN AHMED of Deoband.
3. DR. SAIFULDIN KITCHLEW of Amritsar.
4. PIR GHULAM MUJADID of Matiari.
5. MOULVI NISAR AHMED of Cawnpore.
6. BHARTI KRISHNA TIRATHJI *alias* VEKANTRAMAN.
7. SHOUKAT ALI of Rampur.

(Read charges.)

are charged as follows:—

"that you all the 7 accused at some time or times between the months of February 1920 and September 1921 both inclusive, at Karachi and other places in British India were (with others) parties to a criminal conspiracy to seduce Mahomedan Officers and Soldiers in the Army of His Majesty the King-Emperor from their duty and thereby committed an offence punishable under Sections 120B/115 read with Section 131 of the Indian Penal Code and within the cognizance of this Sessions Court.

2. And you the said seven persons are further charged that in pursuance of the said conspiracy attempts were made by a member or members of that conspiracy in or about the months of July or August 1921 to seduce Mahomedan Officers, from their duty by sending leaflets in the form of Ex. 34 to such officers, and you thereby committed an offence punishable under Sections 120B/109 read with Section 131 I. P. C., and within the cognizance of the Court of Sessions, Karachi.

3. And further that you Mahomed Ali on or about the 9th day of July, 1921 at Karachi, made a statement to wit, that "it is in every way religiously unlawful for a Musalman at the present moment to continue in the British Army or to enter the Army or to induce others to join the Army"; with intent to cause or which is likely to cause Musalman Officers and soldiers in the Army of His Majesty to disregard or fail in their duty, as such, and thereby committed an offence punishable under Section 505 of the Indian Penal Code and within the cognizance of the Court of Sessions, Karachi.

4. And further that you (accused 2 to 7 inclusive) conspired with the said Mahomed Ali to commit the said offence under Section 505 I. P. C which he committed in pursuance of that conspiracy and you thereby committed an offence under Section 109 I. P C. read with Section 505 I. P. C. within the cognizance of the Court of Sessions, Karachi.

5 And further that you Mahomed Ali, on or about 9th day of July 1921 at Karachi abetted the commission of an offence punishable under Section 505 and or Section 131 I. P C. by more than ten persons in that you stated in the All-India Khilafat Conference that "It is the duty of all Musalmans in general and the Ulemas in particular to see that these religious commandments (referring to the words quoted above) are brought home to every Musalman in the army" and thereby committed an offence under Section 117 I. P. C. and within the cognizance of the Court of Sessions, Karachi.

6. And further that you (accused Nos. 2 to 7) conspired with the said Mahomed Ali to commit the said offence under Section 117 I. P. C. which he committed in pursuance of that conspiracy and you thereby committed an offence punishable under Section 109 read with Section 117 I. P. C. and within the cognizance of this Sessions Court."

The question for your decision and opinion are not really very complicated and I hoped that I should not have to detain you long, but the course which the trial has taken will render it desirable that I should express my views on matters not absolutely essential for the decision.

Before we begin I wish to say one word about the proceedings in the Court below and in this Court, which have been the subject of some remarks from two of the

accused. There were no irregularities in the trial in the committing magistrate's Court, and if the magistrate in a case triable exclusively by the Court of Sessions, where the evidence is of the character which it is, and where the accused reserved their defence contemplated at an early stage the probability that there must be a commital, he acted merely as a prudent magistrate should. The accused raised some objections to the alteration of the charges in this Court but the alterations are immaterial and merely intended to inform the accused with greater precision as to the charges against them. Had the accused asserted at the proper time that such alterations prejudiced them in their defence, the court would have considered whether it was necessary for it to grant an adjournment, but no such objection was then taken. Similarly this Court has been particularly careful to see that no prejudice has been caused to the accused by the admission of evidence which was not before the committing Magistrate at the committal proceedings. As for the trial in this Court I think the accused will admit that they have been given far more latitude than the defence would have had, had it been in the hands of a professional advocate, and that though the court has had on occasion to vindicate—not the personal dignity of you or of myself, but of justice itself, I think I have rather erred in the direction of tenderness than of severity. Before we begin to approach the case I must ask you to clear your minds of a great deal of embarrassing matter. The principal charges against the accused are those of *conspiracy* It is on the main question of *conspiracy* that you are asked to give your verdict, the minor charge of conspiracy without attempt is really strictly a question for me as judge helped and guided by your opinion as assessors, but not bound thereby, but I intend to leave this charge also to you as a jury. It would not, I think, be decent or respectful to you in two charges so closely allied not to accept your finding in both of them as binding in so far as this Court is concerned. As regards the other charges in respect to an allied but different conspiracy I must (guided and assisted by your opinion) form my own conclusions.

Therefore it is on the conspiracy that you must make up your minds and the issue between the accused and the Government which is to be decided by you is whether the accused were guilty of the conspiracy referred to in the first two charges. The accused are not being tried for sedition or high treason and if you find that the accused are not guilty of a conspiracy they are entitled to an acquittal however seditious or treasonable you may consider their conduct to have been.

Further I beg you to dismiss from your minds anything which the accused may have said about what may be called succinctly the Gandhi negotiations. The accused are being tried for specific and clearly defined offences, and not for any acts which are not the subject of the present charges. I do not propose to refer again to this topic.

Again you must dismiss from your minds anything which you may have seen in the papers about the *effects* of the Khilafat agitation. The accused are not being tried for being members of the Khilafat association and there is not before us a particle of evidence to their responsibility for the deplorable events in Malabar. They are charged before you with specific offences of conspiring to seduce the troops from their allegiance and with nothing else.

Again we must be careful not to allow ourselves to be swayed by any external personal considerations or sympathies. Shoukat Ali on Saturday indirectly threatened us with assassinations shortly after the 31st of December if certain demands of his were not granted by Government. We must not acquit him or the other accused, if they are guilty, on account of fear, for we do not fear him; because we know that neither Shoukat Ali nor his *fedawis* if he has such, can abridge our allotted span of life by one instant, nor on the other hand must we convict him if he is innocent to show that we do not regard his threats.

On the other hand it is possible that one might reasonably feel some sympathy and respect for some of the accused. Some of the accused seem learned and pious men and of some it might be said "there are no citizens to whom the laws would owe more did they follow the right path". I do not give the rest of the quotation because I hope and trust it is not opposite. I think that Islam and this Empire and this country might have profited much by them had they not taken up this course, which whether criminal

or not is the path of faction and separation which can lead only to ruin and disruption *instead of* the path of union and co-operation which is the only one which can lead to peace and prosperity. Yet though we cannot but deeply regret that some of the accused are here at the bar of their Sovereign's Court instead of being high in the service or counsels of His Majesty, we must not let that sorrow lure us from the path of duty which is to judge the prisoners at the bar according to the law of the land and the evidence before the Court.

Nor are we in any way to be swayed by our feelings as to the Turkish question. Some of us may think that Turkey has had hard measure meeted to her. And as regards the house of Ottoman we may feel that, whether or not it has any claims to the Khilafat, it has been for centuries the inheritor of the championship, the guardian of the frontier forts of Islam, the custodian of the sacred places, and the sword and buckler of that great faith and great civilisation, and we may sympathise with those who feel aggrieved that in these days, when every petty nationality claims independence and an assigned territory, Islam alone should be menaced in its ancient seats. Others on the other hand may think that there is no wonder if that which came by the sword goes by the sword, and that there is no cause for repining if God has given to one Constantine what he had taken from another. But the accused at the bar are to be judged according to the law of the land and the evidence and not according to our feelings, one way or the other in respect of the sides they have taken in this matter.

Now that we have cleared our minds as far as may be of personal matters or errors arising from idiosyncrasy, we must also free our minds from the error that the accused have tried to create there.

The accused in their defence have strenuously maintained the propositions, *first* that their religion compels them to do certain acts, *secondly* that no law which restrains them from doing those acts which their religion compels them to do. has any validity, and *thirdly* that in answer to a charge of breaking the law of the land it is sufficient to raise and prove the plea, that the acts which is alleged to be an offence is one which is enjoined by their religion.

The first proposition is utterly irrelevant in this trial because the second two propositions are not true.

They rested their contention as to the invalidity of certain laws on various proclamations by Queen Victoria and her successors. Queen Victoria and successors were and are constitutional monarchs and employed constitutional advisers, and no principle is more vital to the constitution than the principle that the Sovereign's proclamation has no effect to make invalid a law. For the law is itself the most solemn expression of the Sovereign's will. Any proclamation therefore which secures to the subject the free exercise of his religion cannot repeal or make invalid any of the laws of the land which render certain acts punishable but it must be held that such laws of the land do not contravene the proclamation, it is almost indecent to suppose it, but if it should appear at any time that there was a variation between any such proclamation and any such law then we should have to confess that our humble intelligence was not sufficiently powerful to understand the meaning of both and we should have to apply the law of the land which we are bound to administer.

Fortunately there is no such conflict visible here. The proclamation assures to every man the free exercise of his religion. It does not permit him under the colour of his religion to attack the rights of others, or the rights of the Sovereign whose protection he invokes. What a chaos any country would be and particularly this country if the doctrine "*sicutere tuo ut alienum non laedas*" were not strictly applied. There are so many jarring sects and creeds in this Empire that there is hardly a single crime which some person or other might not commit under the colour of religion. Therefore the legislature of this country (careful as it has always been of the religious rights of the subjects) has laid down, as prohibited, certain actions, which must be prohibited in the interests of civilisation, applies penalties to the breach of such prohibitions, and calls on us to apply those penalties if the prohibitions are disregarded.

If by some mischance a person finds himself in the painful position that his religion and conscience clearly and sincerely impel him, to a course of action

which the law of the land forbids, he must if he wishes to escape the penalties of the law, either procure the law to be changed or leave the country. If he will do neither and proceeds to break the law then he must be punished. He cannot approbate and reprobate, he cannot invoke the protection of the law of the land when it suits him, and breaks it when it suits him. A man whose conscience tells him to break the law of the land and who does break it, may possibly merit our respect and sympathy, but cannot escape our punishment. Whether the executive should in such cases invoke the law is a question of expediency only. There have been martyrs in all ages from Antigone to Cavell and there have been perverse fanatics in all ages. The law cannot discriminate. All it can do is to find the alleged offender guilty or not guilty and if he be found guilty, inflict the penalty, leaving it in the hands of the executive Government to exact the penalty or not at its discretion, and leaving to the offender the prospect of a reward (if he has merited it) which will compensate him richly for our temporal censures.

The questions therefore whether the Mahomedan religion renders it unlawful for a Muslim to kill another Muslim, and whether the accused were bound to propagate that doctrine, or whether the accused genuinely believed that they were so bound and that such killing is unlawful are really not at all relevent to this case and I should have wished to keep all such questions out of this charge. But the accused have persisted in raising it with much eloquence and show of learning. I endeavoured to stop them, though the discussion was one which was highly interesting, because I did not wish to confuse the issues and did not wish to allow the present trial to be a means of propagating doctrines which I consider dangerous and unsound. I was unable to do so without prejudicing their defence and had to permit much propagandist matter of an irrelevant description to appear on the records of this case and to be expounded to you and to the audience. I have therefore reluctantly come to the conclusion that I ought to express my own opinion on the matter. I am not of course pronouncing what is actually the right doctrine in the matter, I am merely tentatively submitting certain doubts which I have to the orthodoxy of the position of the accused to your consideration.

The proposition is stated in the widest terms in the resolution and in the comments of the accused. It is that for one Muslim to kill another is "Haram" an act totally forbidden and which if not atoned for, and repented of, will expose the perpetrator to the penalties of hell. This is clearly stated in the Koran but the prohibition in that verse cannot be an absolute prohibition as are the prohibitions against Zina (fornication) or shirk (polytheism). For it is admitted that there are two cases in which a Muslim may be lawfully slain, namely where he is himself a murderer and the family of the victim will not take the blood fine, and the case where a Muslim has been convicted (on proper evidence) of adultry. Moreover the verse does not provide for accident, self defence, error or the like. It is therefore one of those prohibitions which is relative and contingent but not absolute.

Its limitations and conditions must therefore be ascertained by independent enquiry and particularly by a consideration of the actions of laudable persons.

We have little guidance during the life time of the Prophet, which will help us in the present age. The Koran is of course a perpetually binding law and not subject to fluctuation, being co-eternal with the Almighty, but the application of the rules to existing circumstances, depends on the condition of things at the time when we seek to apply it. During the life time of the Prophet the temporal kingdom extended over Arabia only. The Muslims were a homogeneous people, speaking the same language, living the same sort of life, townsmen and pastoralists, under much the same sort of government that of noble chieftains, divided only by the deep-lying feeling between Yemen and Mudharr, which for the moment was lulled by the supremacy of Islam. Its boundaries were the sea on three sides, and the shattered empires of Rome and Persia on the fourth. It needed no permanent army, no salaried officials, no roads or fortifications. The army was the occasional levy of the tribesmen, the judges were the companions of the Prophet and the learned ancients, the administrators were the chiefs and the principal burghers, and the roads and the fortresses were the deserts. Within 10 years of the death of the Prophet, the empire of the Muslims extended over a vast area bounded by the Berbers on the West, the revived

Roman empire on the North and Turks on the east; it contained a vast haterogeneous population of very diverse origin, language, customs and faiths, accustomed to a highly centralised administration. All the requisites of empire had to be provided and paid for, and it became very soon apparent that neither the Koran nor the traditions adequately provided for the necessity of rule. It is related of an early Caliph that the news of his election reached him while he was reading the Koran. He is said to have shut it with a sigh and to have said "This is my last time with thee". Meaning thereby, not that he intended to disobey the precepts of his religion, but that he could not devote himself exclusively thereto. Accordingly very soon the rules of "Siasat began to be developed and pious Muslims began to wonder. What is this secular code of use and wont which, if not contrary to the divine law, is at any rate not sanctioned directly by it? You will find innumerable discussion on this topic, some persons going so far as to say that all kingship is unlawful, because the king must necessarily levy unauthorised taxes which he spends partly on his self-support, and because he must kill men for offences which are not made punishable by the religious law with death. There is an interesting discussion on this topic in an Indian History in the form of a dialogue between Ala-uddin Khilji and his Shiekh-al-Islam, but the approved opinion is, that while no man is *bound* to take the kingship, yet if he *does*, he is guilty of sin if he allows the temporal kingdom and the affairs of the Muslims to go to ruin for lack of the due enforcement of the necessary temporal rules, which must no doubt not *contravene* the sacred law, but are not directly *sanctioned* by it, and I have seen severe strictures written by pious men on kings who acted not like kings but like ascetics. But almost the first requisite of temporal rule is that the authority of the ruler should be upheld. Now when the Prophet and his immediate successors were alive there was no dispute in Islam, the Church and State were coterminous and there could be no rival claimants to the temporal headship. Any Muslim who drew the sword against his fellow Muslim *must* be a rebel and a renegade. But the succession of Ali was challenged because the Beni Ummaya and the adherents of murdered Othman would not acknowledge him. Accordingly the first person to draw the sword against his fellow Muslims was Ali (with whom God is satisfied) the head of the Holy House, at the Day of The Camel. It is true that at the battle of Siffin, Amru Al Aas, the General of Muawiya of the Beni Ummaiyya did much what the accused are said to have done, he imported into a purely temporal matter a question of religion and by binding the Koran to the lances of his soldiers forced Ali to submit to an arbitration, but all schools reprobate this action. It is true also that for a short time Ali was officially cursed and that he was assassinated by a non-co-operator of the time, but all schools now regard Ali as one whose actions are worthy of imitation. Thereafter the Beni Ummaiyya retained the Caliphate with some slight and temporary interruptions. Some of them were tyrants, some of them great princes, some of them pious and learned men, but none of them showed the slightest hesitation in putting down rebel or rival claimants, without much regard to the sanctity of the claimants or the validity of their claims. What Muslim Bin Okba and Ali Hajjaj did with the holy cities is known, as also what Ziyad did in Irak, and why did Hussain Bin Ali go to Iraq, not, I think, to drink the waters of the Euphrates or the Tigris or to deliver lectures in Kufa or Basra but to maintain his right, sword in hand, like a valiant prince. I can not therefore at once admit without doubt the proposition that it always is unlawful for Muslims to slay Muslim on the field of battle. But perhaps it may make a difference if the Muslims are attacking the Caliph.

For this position also I can find no authority. To begin with, the Caliphate may be disputed. Within 70 years of the Hijra 4 standards were displayed at Mecca, of 4 princes each claiming to be Caliph. What is the simple minded Mowla or tribesmen to do in such a case? Is he to decide and decide rightly on pain of hell-fire which is the rightful claimant? God does not compel you to impossibilities. The soldier can not be guilty of sin if he keeps his faith to his rightful patron or chief. The sin (if any) is on the chief and not on the soldier

But many orthodox *princes* have stood up against the Caliph. The Caliphate passed by War from the house of Ummaiya to that of Al Abbas and the house of Al Abbas became thereon lawful Caliphs. Yet Abdur Rahaman, the Amir of Spain held out against Al Mansur,

defeated his armies, decapitated his General, and suspended that General's head in the Mosque at Kairwan, Al Mansur did not curse him, he declared him to be "the falcon of the Koreish." The Ulema of Cardova, Seville and Toledo, issued no Fatwas against *him*. He lived and reigned gloriously, and was the progenitor of a mighty line of princes for ages the protector of Islam in the west After the reign of Al Mamun province after province fell away and became a principality under a separate prince. This process went on till after the reign of Al Radhi the Caliph had no territory under his immediate rule. All these princes recognized the Abbassid of the time as the lawful Caliph, and read the Khutba in his name, but none of them had the slightest hesitation in attacking him and defeating his forces and making him prisoner if he attempted to recover any actual territory. Princes like the Beni Buyya, the house of Seljuk, Zengi of Edessa, Khawaris Shah were all at one time or another warring against the Caliph or keeping him prisoner.

And how did the house of Ottoman get its doubtful claims to the Caliphate? Not by election but by the marching of Salim on Egypt, the defeat of the Sultan of Egypt who was the representative of the Caliphate, and the forced abdication of the legitimate Abbassid Caliph (then stationed in Egypt) in his favour. It can not therefore be denied that orthodox princes have warred against the Caliph and coerced him in the exercise of his power by the fear of the sword, without incurring the guilt of sacrilege. And this doctrine of any particular sanctity in the office of the Khilafat seems to be a new thing among the Sunnis, invented, I believe, by the very band of rebels and innovators who actually deposed Abdul Hamid. I was surprised to see in one of the papers in this case, (I think) in one of the Fatwas, an assertion that the Caliph was the representative of *God*. I thought it was sufficiently known that God is universally and eternally present and does not need a deputy or representative. Also, that on the day of Alastu the contract was between God in person and each individual soul of every man without deputy or intermediary and that therefore there is no priestly caste or profession or semi-divine ruler to stand between the creator and the Creature. The Caliph is the representative of the Prophet but he is not supposed to have any share in the apostolic gifts. He is the temporal Lord of the Muslims and may without sin be opposed by temporal weapons. I know that the Shiahs' views are different; some of the extreme Shiahs holding very peculiar views as to the nature of the Immamate—but the orthodox Shiah Immamate is for the present in a state of abeyance and the Ismailis have not had a *reigning* Caliph for 800 years. I can not therefore think it established that it is an act worthy of damnation to war against the Caliph simpliciter.

But perhaps the meaning of the dictum may be that it is unlawful for Muslims to wage wars against other Muslims in the service of non-Muslim princes; Here we are not very well provided with authority of precept because there have not till recently been considerable bodies of Muslims living under a non-Muslim prince and likely to wage war with Muslims. In Spain the Muslims evacuated the country as the Christians reconquered it. In Sicily the Muslims were loyal soldiers of the Hun, Norman and Hohenstauffen kings, but the wars of those princes were chiefly with Christians, and if they fought with Mussalmans at all it was chiefly with the Fatmidis. In India when the Bahmani kingdom was established it was at continual war with the Hindu kings of Vijya Nagar, and the Vijya-Nagar kings used to enlist Arab mercenaries from Hadrramaut. I believe that the Bahmani kings used at one time to put such mercenaries to death as guilty of assisting Kaffirs against a Muslim prince, but they soon abandoned that practice. Whether the slaughter or the abandonment thereof was done in accordance with any religious opinion I know not. The Mahrattas who broke down the Mahomedan dominion in India freely employed Mahomedan troops, and whatever may have been the fate of Ibrahim Gardi I never heard of any Mahomedan soldier of Shivaji or the Peshwas being condemned by any Mahomedan tribunal to death as a renegade. Haider Ali himself was for long in the service of the Hindu Raja of Maisur and fought for his master against the Mahomedan sovereign of the Deccan and Karnatic but I never heard any one blame him on that account.

And look at the question from a reasonable point of view. An enlightened and civilized Mahomedan people is living in-

a fertile province under the benign sway of some Hindu power. Bordering the plains are hills inhabited by ferocious Muslim tribes independent and continually raiding without attempting to conquer the plains below. Is the Mahomedan who fights to repel these tribes from the hearth and homes of the Mahomedan population to go to hell, because, he does so in the armies of a Hindu Prince? But it may be said that this is *defensive* warfare. There is no real distinction between the offensive and defensive warfare. Aggressive warfare is at all times and circumstances a sin, but offensive warfare may be the only possible form of defence.

I think therefore, when we come to analyse it, the meaning of the doctrine preached with so much rhetoric and learning by the accused is merely this that, any Muslim soldier who fights in a war of which the accused disapprove is to go to hell.

And leaving the dwellers in dark corners of mosques and the grubbers along old records to say what they think fit I would ask any Muslim who may be a Sayyed and a Faties what he thinks of this doctrine; that a Muslim may voluntarily engage himself in the service of his prince, may take his pay and provisions, and be his partner in the glory of the kingdom, and then, when the day of peril comes, and his prince calls on his soldier for help, the soldier is to break his plighted oath, and the ties of fealty and leave his prince to be dethroned and slain, because, his prince is a non-Muslim and his enemy is a Muslim. I cannot believe that these are the true doctrines of a religion the prophet of which was the 'best of men' and had the title of Al Amin.

These therefore are my views on this defence of the accused but as I have said it is perfectly immaterial for the purposes of this case whether these views be correct or not. If the proposition set forth by the accused be as alleged namely, that it is unlawful for any Muslim to serve in the British army at the present juncture and if it be religiously true and incontestable and if the accused conspired to bring it under the notice of the troops, then the greater is the guilt of the accused, because, the troops were more likely to be seduced than if it were wholly erroneous and absurd.

I have now done with this preliminary matter and I now come on to consider the *charges* against the accused and I will first deal with the charges under Section 131 for the ancillary sections. As I have pointed out it is for you to consider the evidence under these charges and return a verdict in accordance with the evidence. Any expression of opinion as to the facts, which I may make, is not binding on you and it is your duty to reject such opinion if you do not agree with it.

Section 131 forbids an attempt to seduce a soldier of the King from his allegiance or duty. Such attempt is therefore an offence and it is punishable with a maximum sentence of transportation for life, and with lesser penalties. Section 120B forbids persons from entering into a criminal conspiracy to commit an offence punishable with transportation for life or with certain lesser penalties. Whether such an offence is actually committed in consequence of the conspiracy or not, and Section 120A defines conspiracy as an agreement by two or more persons to commit (*inter-alia*) an illegal act or offence. It is here laid down that when the conspiracy is to commit an offence there need be no act done in consequence of the conspiracy to render the conspiracy criminal; and it is further laid down that it is not necessary that the offence contemplated should be the sole or ultimate object of the conspiracy. To give an example, suppose some people agreed to gamble in cotton. That is not an offence. They buy futures in cotton at a certain rate. The market begins to go against them. They agree to forge telegrams from America, saying, that the American crop has been a total failure, and to corrupt some telegraph officer to send out these forged telegrams to various merchants as if they were genuine. If this agreement to forge telegrams passed beyond the initial stage of mere contemplation as a possibility, and the gamblers actually make up their minds to do so, then they are guilty of conspiracy even if they do not after all procure to be issued such forged telegrams. So here, if the accused or any two or more of them agreed together to attempt to seduce the troops, whether that was the main object of their agreement or not, then such of the accused as entered into that agreement, are guilty

of the substantive offence of criminal conspiracy even if nothing further was done and are punishable under Sections 120B and 115 which provides that when an offender abets a crime of the nature described which is not committed in consequence of such abetment he is liable to a maximum of seven years rigorous imprisonment.

Our gamblers would of course be liable to more severe punishment if their agreement to forge telegrams passed from the initial stages of agreement and preparation into actual perpetration, and so any of the present accused woud be more heavily punishable if any members of that conspiracy (not necessarily the accused) went on to attempt actually to seduce the troops, the accused would then be punishable under Section 109 I. P. C. which makes the conspiracy punishable with the same punishment as that assigned to the offence.

It is not necessary in order that any member of a conspiracy should be punished for an act committed in pursuance of the conspiracy that he should have committed or even contemplated that *particular* act it is enough if the act is committed by a member of the conspiracy, was a natural consequence of the conspiracy. Suppose A, B, C, D conspire to Kill E. It is agreed between A. B. C., that B and C should ask E to dine with them and that B and C should poison E. E. attends the dinner but does not eat any thing. As he leaves the house he meets D, who shoots him and kills him; B. and C. are liable for the death, even though they had never heard of or seen of D who had been dealt exclusively with A. It would be different if D were not a member of the conspiracy and shot E out of private hostility. In that case D would alone be punishable for the murder; and B C and A merely for a conspiracy which had proved abortive. On the whole, then the following are the questions as to which you must make up your mind.

Was there a conspiracy to commit an offence to do a legal act by illegal means?

Was one of the objects of that conspiracy to attempt to seduce the troops from their allegiance and duty?

Were the accused or any of them members of that conspiracy?

Did any member of that conspiracy whether the accused or not, actually attempt to seduce any soldier, and, if so was such attempt at seduction a natural consequence of the conspiracy?

These questions cover the first two charges.

As for the first two questions conspiracy may be proved in several ways. Very often you get a traitor or spy who acquaints himself with the inner workings of the conspiracy and is admitted to the secret counsels of the Chiefs thereof, and details in Court what he has learned. There is no such evidence here.

Or, again, you may seize papers and correspondence at the headquarters of the conspiracy or from the possession of some leading persons in the conspiracy, and it may be apparent from a perusal of such papers that there was a conspiracy, and it may appear what its aims and methods were and who were the members of it. There is little such evidence here.

Or, again, you may have evidence that certain persons entered into a common course of conduct, they adopted a definite line of policy, they spoke in favour of it, they acted in a way which is explicable best by supposing that they had already agreed to support and carry out such policy. Then if the evidence makes it highly probable that they were so acting in furtherance of the common objects of some conspiracy you can legitimately deduce that there was a conspiracy and that the persons whose actions were apparently directed to the furtherance of such conspiracy were members of it. It is of course open to them to allege that their actions were purely fortuitous but then it is for them to prove their case, at any rate, to give some reasonable explanation of their conduct consistent with their innocence.

Let us take an example. E is found murdered in a river. It is proved that A B C D were great friends and all had common reasons for disliking E and wishing him out of the way. They were continually meeting together just before the disappearance of E. A asks E to dine with him in a lonely house; and makes E drink; E's carriage comes for him, but B says to the coachman that E has already gone home, so that when E comes to leave he has to walk through lonely streets. C drives up a cab which

he leaves at a certain point, D shoots E at that point, puts his body into the cab and drives it to the river where he throws the corpse in. A and B then write to the police and give the information that on the day of the murder they had seen E leaving by train for some distant city. The court might legitimately deduce from these facts that A B C and D were in a conspiracy to kill E and that he had been killed in consequence thereof. But it is clear that it would be *possible* that A B C had been acting innocently, only the *prima facie* case against them would be so strong, that the court might legitimately call on A, B. C to prove their innocence. And if they failed to do so, it would be justified in convicting them on this circumstantial evidence.

The crown alleges that there was a far reaching and widespread conspiracy which included among its objects the seduction of the troops. The accused deny this I am much embarrassed as to this part of the case by the failure of the accused to defend themselves as to the facts and it was for that reason that I asked the accused to allow a professional gentleman who is in their confidence to argue for them as *amicus curiae*, but they refused. So we must do the best we can by ourselves. My own opinion by which you are in no way bound is that there was, but I shall try to put the case for and against this theory as fairly as I can

There appears to be a body called the Khilafat Committee of which the accused are all either members or with which they are in sympathy That those who are not members are in sympathy thedewith appears to me shown by the fact that they all have at various times appeared at meetings of that body or of the conferences called thereby and have openly supported it. What the primary object and constitution of that body may be I know not. I presume that its original object was lawful. For it was allowed to continue its propaganda unchecked. There are laws against the sedition and treason. The law gives the discretion to apply those laws just as it gives the executive power to pardon. But to refrain from applying the law in any case whatsoever, more particularly when the rights and interests of innocent third persons were affected by the failure to enforce the law, would, in my opinion (as in the case is indiscriminate pardon of convicted offenders) go perilously near to the exercising of the illegal dispensing power. The court cannot without extreme indecency suppose that there has been any such unconstitutional act committed by those in authority and it must therefore presume that the aims and objects of this body were on the whole legal.

And it appears to me very likely that the movement was originally started with no particular intention to incite to illegal acts. It is quite likely that the intention was to strengthen the hands of the Pro-Turk party at home in their attempts to get the Allies to deal leniently with Turkey or at any rate to prevent the Powers from supporting the Greeks. The friends of Turkey in this country could best do so by getting up a noisy and frothy agitation This has of late been a very common policy in India. And from what Shaukat Ali said the other day it is not entirely beyond the reasonable bounds of conjecture—and the accused must be given the benefit of any conjecture that may help them that the agitation was at first looked on with favour if not encouraged by eminent persons both in India and in Europe It would be a great weapon in the hands of the number of the Philo-Turk party if he could put pressure on members of the Cabinet at home or on the body of Ambassadors abroad, by representing that Indian Moslem feeling was violently excited on the subject of peace terms with Turkey or on the question of support to Venezilos or Constantine. There is thus nothing wildly improbable in the idea supported by the allegations of accused 7 that the Khilafat movement met with certain amount of support at its inception. But even if that was not the case, and the movement was purely spontaneous, there would be nothing illegal or improper in an agreement among some Mahomedans to carry on an agitation in favour of Turkey; even a very forcible agitation, as long as they did not agree to commit any crime in connection therewith or to carry it on by illegal means. Once it was in contemplation to carry on the agitation by illegal means or to support the agitation by committing the offence of abetting (that is inciting to) crime, then the agreement to agitate would become a conspiracy and all who joined in the conspiracy knowing that its objects were

generally criminal would be guilty of every criminal act committed in furtherence of the conspiracy.

And it would seem difficult to suppose that the agitation long continued within legal bounds.

The particular illegal acts with which we are concerned in the present trial are the incitals of the troops to desert. As early as February 1920 we find Shoukat Ali speaking on this topic at Calcutta and declaring it unlawful for troops to remain faithful. We find him presiding in March at a meeting in the Surma Valley in Assam where the same doctrine is preached. Then somewhere in September or October an alleged Fatwa is obtained (to which accused 2 and 5 are signatories) in which it is laid down that it is unlawful for soldiers to remain in the army. Then in November the proceedings of the so-called body of the ulema are obtained in which the same doctrine is up-held. Then in February, 1921, we have a republication of the alleged Fatwa signed this time inter-alias by the accused 2, 4, 5 wherein the same doctrine is established, and all readers are exhorted to bring it to the notice of persons concerned. A large number of copies of this pamphlet were distributed by the Central office of the Khilafat Committee and there was a further large distribution of a reprint. This was between February and July, 1921. Accused 3 and 7 are Secretaries of the Khilafat Committee. There are 3 other secretaries, Abdul Ghani (who is not an accused in this case) says, that he was solely responsible for the ordering and the circulation of this pamphlet.

Then in June accused 1, 3, and 7 went to the large Military Station of Poona where a meeting was held which those accused attended, and where accused 7 Shoukat Ali made a speech in which he said that a a fund was being established to help in the support of soldiers who left their service. Then in Gokak on the 19th June, there was another Khilafat meeting where accused 1 proposed and accused 3 seconded a resolution which declares it to be totally unlawful for a Musalman to remain in the Military service of the British Government. I have not read you all these speeches, resolutions, Fatwas and proceedings again because they are no doubt fresh in your memory. The accused have not challenged their authenticity or the accuracy of the reports or translations, they do not say that they bear any other interpretation than that which is apparent.

We now come to the Karachi Conference which was a meeting of the general body of the Khilafatists. It was held with great publicity in a large town to which Mahomedans of all classes resort, which is an embarkation centre and a Military station, and in some ways the commercial capital of an area largely inhabited by Musalmans of the fighting classes. Accused 1, 6, 7 arrived in Karachi on the 7th July and went in procession round the city. Accused 1 and 7 put up in a Girls' school near the place where the conference was to be held. Accused 3 also put up there. A subjects-committee was formed which held a meeting at the Girls' school twice on the ninth of July. Accused 1, 3, 6 and 7 attended one or both meetings. In the evening of the ninth July there were various resolutions proposed and passed and among them was this resolution No. 6.
(Read it out.)

"This meeting of the All-India Khilafat Conference heartily congratulates Ghazi Mustafa Kamal Pasha and the Angora Government upon their magnificient victories and the success of their most desperate (or self sacrificing) endeavours in up-holding the laws of Islam and this meeting prays to Almighty God that they may soon succeed in expelling the whole of the armies of the foreign Governments from every nook and corner of the Turkish Empire.

In addition this meeting clearly proclaims that it is in every way religiously unlawful for a Mussalman at the present moment to continue in the British Army, or to induce others to join the army. And it is the duty of all the Mussalmans in general and the Ulemas in particular to see that these religious commandments are brought home to every Mussalman in the army.

Furthermore this meeting also announces that if the British Government were to take any Military measures against the Angora Government directly or indirectly openly or secretly, then the Mussalmans of India will be compelled to commence breaking laws, *i.e.*, civil disobedience with the concurrence of the Congress and to proclaim in the forthcoming annual session of the Congress Committee to be held at Ahmedabad, the complete Independence of India (and)

the Indians and the establishment of a Republic Government in India."

The accused No. 1 introduced it by a few words saying what a very important resolution it was, and how it was the essence or marrow of the conference. The resolution was then moved by accused 2 who supports it in a long speech, in which he tells a story about a deserter from the British Army to the Turks, who was killed by one of his comrades for deserting and whose corpse on inspection showed evidently that he was accepted a martyr, whereas the soldier who killed him, being afterwards killed himself showed obvious symptoms of damnation. The speech is very vehement and strongly in favour of every part of the resolution.

Accused 3 then supported the resolution. He supports the resolution on the general grounds that it is religiously unlawful and politically inexpedient to support the Government in any way.

Accused No. 4 is a Sindhi Pir. He translated the resolution into Sindhi and spoke in favour of it though we have not got his speech before us.

Accused No. 5 Nisar Ahmed made a very short but very violent speech in support, adducing what he supposed to be strong religious reasons for desertion.

Then accused 6 spoke. Accused 6 is a Hindu and claims to be the Shankeracharya of one of the great diocesses into which the India is divided, and is a strong sympathiser with the Khilafatist movement. He made a speech of a non-committal character which does not touch on the question at issue, but asserted the need of Hindu-Muslim unity in face of the agressive policy of the British which menaced both, and he concluded by saying that the Muslims ought to obey the rules of their religion just as the Hindus are bound to obey the rules of theirs.

Mahomed Ali the president, accused 1, then asked the audience their opinion, and requested them if they wished to pass the resolution to stand up and pass it standing, which they did. Accused pointed out the importance of the resolution and asked that God might give him and his audience strength to carry out.

Shoukat Ali did not speak on this occasion, but stood up in support of the resolution. He was at the time sitting on the dais.

The correctness of these speeches is not denied. Next day on the 10th Shoukat Ali went to a town called Naushahro Feroz in Sind and presided at a district conference and made a speech which covered a large area. Inter alia he said it is Haram to serve in the army.

These are the activities of the accused in the present case from proof of which the crown asks us to deduce that there was a conspiracy to seduce troops and that the accused were parties to it. To me it seems to be clear that however lawful and constitutional a body of the Khilafat Committee may have been in its origin and however permissible the agitation it carried on at first, it or a section of it, soon began to rely on a dangerous religious propaganda and that it saw that its efforts were more likely to be crowned with success if instead of a bogus agitation it began a really dangerous one and the menace which was more likely than any other to have an effect on politicians here, and in England was a threat of tampering with the loyalty of the troops and in order to apply that menace it began to preach this doctrine of the unlawfulness of the military service in open and public places in such circumstances that the news of this opinion was likely to reach the troops and to fortify itself by procuring the alleged Fatwas and proceedings of the so called ulema so that it might have these to appeal to if the orthodoxy of its position were challenged and began to circulate those opinions to the public. From that moment in my opinion the Khilafat agitation became illegal and those who joined it were members of a conspiracy regardless of the fact whether any actual attempts were made directly to seduce the troops.

That an appeal to the troops to desert is a criminal offence, cannot be disputed. It is no crime under section 131 to urge people not to *join* the army, because no one is legally bound to do so, but Col. Gwyers evidence makes it clear that the soldier is not at liberty to resign his service except at the end of the time for which he was enlisted, and that to leave the army before the arrival of that time would be the crime of desertion, and

be an act in derogation of his allegiance and duty.

Personally I do not wonder at the accused taking these violent decisions. You have seen them in court, heard their statements in the lower court, and heard their speeches here, and you can have no doubt that with the exception of No. 6 they openly glory in their hatred of the Government of India and the British name.

The accused however say there was no conspiracy and as I have pointed out before, however violently seditious or reasonable their acts and speeches may have been, they are not to be convicted in respect of these charges unless there was a conspiracy.

I may first note that the accused do not admit the translation of a material part of the resolution to be correct. It runs in our version "It is the duty of all the Musalmans in general and the Ulemas in particular to see that these religious commandments are brought home to true version is "the commandments of every Mussalman in the army." The religion in respect of this matter." But I do not see that this helps the accused much. Their speeches and their endorsement of the Fatwas (so-called) left no doubt what they conceived the dictates of religion to be.

The Mahomedan accused say also that there was no *need* of conspiracy. It is they allege a clear precept of the Law of Islam that no Mussalmans should kill another. I will for the present purpose admit that this is so. They say also that it is the bounden duty of every Mussalman, if he sees a man infringing the law of Islam to point out the error of his ways to the offender. Therefore they say that individually and without any previous concert they proceeded to preach these doctrines. I do not believe this Admitting that the law of Islam makes it incumbent on every pious Mahomedan to make himself a busy body, and go round preaching to his brethren at all times and seasons in respect of any irregularities he may perceive his brethren to be committing instead of extending his own life and perhaps quietly admonishing his friends. I do not see why the accused should all unanimously have picked out *this* particular sin (if it be such) to reprove. There is a fine field for missionary activity among pious Musalmans. The accused might have gone to Stamboul or Angora and admonish their brethren to give up the reprehensible practice of slaughtering zimmis and mustamins, or to the Hajjaz to admonish the ruler thereof to cease from what the accused consider to be his rebellion against the Sultan, or nearer at home they might have preached against fornication, sodomy, wine-bibbing, the use of silk appeal, the excessive use of music, the neglect of prayers, fasting and pilgrimage and the like actions haram and makruh, which are not wholly unknown in India or might even have admonished their Hindu allies as to the dangerous of shrik or polytheism. They ask me us to believe that they fortuitously and without previous concert picked out this particular action as one in respect of which they thought their duty impelled them to preach, I find it difficult to believe this

In the case of accused 5 Nisar Ahmed he is alleged in the speech for the defence to have been suffering from fever at the time of the conference and to have made a very short speech more or less fortuitously. This may be so, but it is a very bitter speech and well calculated to impress the audience with the sinfulness of serving in the army. He is also one of the signatories of the so-called Fatwa. I am myself convinced that he was well aware of the nature of the agitation, highly approved it, and furthered it to the best of his ability.

In the case of the Hindu accused No. 6 his story is that he was totally unaware of the nature of the resolution to be moved. He does not know, he says, (as is very probably the case) Hindustani. He was not a member of the subjects committee and merely came to the conference to give the weight of his "pointificial authority" to any resolutions that may be passed, without troubling to examine their nature. If this is true he is an almost intolerably frivolous and irresponsible person, but he is not to be punished for that. His speeches no doubt highly non-committal and of course the subject was one of which he had no authority to speak. On the other hand he is no doubt a Khilafat sympathiser and prepared to further the cause of the Khilafats to the best of his ability. You must consider his case on its own merits very carefully.

It is alleged by the witness Abdul Ghani that his obtaining and circulation of the book of Fatwas through the Central Committee was on his own responsibility and that none of the accused were responsible for this action on his part. This seems very difficult to suppose unless the system in force in the office of the Khilafat Committee is extraordinarily lax but it may be so. But that does not I think help the accused much, in my opinion the obtaining and circulating of the Fatwa is a side branch of the conspiracy clearly intended to further its general aims, and the accused are responsible for it even if they knew nothing about it.

This I think is all the evidence and the arguments for and against the accused. On the whole I come to the conclusion that there was a conspiracy to seduce the troops and that some of the accused were members of it, but this is only my opinion. You must form your opinion and are in no way bound by mine.

The next point is as to the actual attempt to seduce the troops. As regards this, it would appear that it was not the official or decided policy of the Khilafatists to start an active campaign of seduction of the troops by direct overtures on a large scale at present. It was enough for the present purposes if a sense of doubt and uneasiness spread in the minds of the troops and this would best be done by preaching the doctrine of the duty of desertion openly under such circumstances, that the troops were likey to hear of it from their friends and associates. We have it that these doctrines were preached openly in Karachi and Poona (both large military Centres, perhaps that was enough for the leaders of the movement. That would not amount to an attempt to seduce. But it is further in evidence that a leaflet was circulated and addressed to Mussalman officers in several regiments, in which this doctrine was preached. It does not refer to the resolutions of the Khilafat Conference (except perhaps inferrentially.) It purports to be an abstract of the so called Fatwa. It contains two gross errors in Arabic in the quotation from the Koran and it is therefore very improbable that any of the accused saw it before its final printing. There is nothing to connect the accused with the issues of it. On the other hand it was issued by some one in sympathy with the propaganda of the accused, and if such person was a co-conspirator, then the accused would be guilty of the offence of actually trying to seduce the troops even if they knew nothing about the leaflet, or its issue. On the other hand it would be by no means impossible to come to the conclusion that it was issued by some enemy of England who was not a member of the conspiracy and who was probably a Hindu. In that case the accused would not be guilty of the offence of actually attempting to seduce the troops. This concludes the matter which is before you as a jury and I now come on to consider the charges on which I must invite your opinions as assessors. The opinions I give are purely provisional and I shall reconsider them after you have given your opinion. The accused 1 is charged with having made a statement at the Khilafat Conference that "it was in every way unlawful religiously for a Musalman to remain in the British Army" with the intention of causing or knowing that it was likely to cause Musalman officers to and soldiers to disregard or fail in their duty. This is on offence under Section 505 I. P. C.

The accused admits having made that statement but he says it is a true statement. That may be. But that does not exonerate him from guilt if he *intended* that the making of such a statement should induce Mussalman soldiers to fail in their duty. It is only when there is no such intent that making of a true statement calculated to act in that way on troops is excusable.

Suppose the Government is sending troops to a very unhealthy place like West Africa. The owner of some patent medicine writes a letter to all the officers commanding in the regiments detailed for the expedition and paints the horrors of the climate in vivid colours saying that the only hope of surviving is to fortify the constitution with daily use of Potts Patent Pilules. The law says that he is not guilty of an offence under Section 505 because the statement is true as to the climate and though calculated to alarm the troops and make them reluctant to proceed on the expedition, was not made in order to produce that effect by the quack, but for his own private profit But suppose then some wily agitator gets hold of the circular and reprints it and sends it to every man in the regiments detailed for duty, saying "You see what the eminent authority Dr. So and so

says about the place to which the Government is sending you "hoping and expecting that the troops will refuse to go or go reluctantly and sullenly. Then the law says he is guilty because his intent is evil. Here the question therefore would be not whether Mahomed Ali believed this statement to be true but whether he made with the sincere wish to cause his brethren to repent or with the wicked intention of making them mutiny or desert. He himself seems to leave no doubt on the point. His only regret is that the troops are not yet contaminated and that there is at present no chance of a mutiny on the scale of 1857.

I had some doubts at first as to whether an expression of opinion by a private person, could be a statement within the meaning of Section 505. For instance if some one sent round a circular saying "Mr. Smith is of the opinion that soldiers are sinful men that would not be a statement of the character referred to in 505 because it is not very probable that any soldier would pay much attention to the opinion of an unknown Mr. Smith. But I now think that Mahomed Ali, as President of the Khilafat Conference, is a person of sufficient importance to make his opinion have some weight with Mahomedan in general.

The other accused are charged with having conspired with accused No. 1 to commit the said offence. This conspiracy is not the far reaching conspiracy referred to in the previous charge. If the other accused or any of them agreed with Mahomed Ali that such an opinion should be published even five minutes before the uttering of such opinion with that criminal intent then they are clearly guilty of conspiring with him. Now all the accused were there in Karachi and had opportunities of talking over the matter with Mahomed Ali and they showed by their signs and speeches that they approved of his formulating that opinion. It is not therefore a very violent deduction that they agreed with him that he should utter it and that they should support it. The next charge against Mahomed Ali is as to abetment by the public of an offence under Section 505 or 131. It is in reference to the same resolution which was introduced by him at the Karachi meeting and that resolution urges on all Mussalmans in general and the Ulemas in particular of the duty of bringing this statement to the notice of the troops. I have already expressed my provisional opinion that this statement is of the character referred to in Section 505 and is calculated to produce the effect made penal in Section 131, and the number of Mussalmans present was considerably more than ten and the resolution was intended to reach the public in general. It seems to me therefore that this is a case where there was an abetment by the accused of the public consisting of more than ten persons to commit these offences the punishment for which is laid down in Section 117 I. P. C. Similarly as the other accused agreed with the accused 1 that he should commit this offence of inciting the public of the Mussalmans and the Ulemas to spread these statements or make those attempts with that criminal conspiracy in respect of those that committed offence of abetment.

Now, gentlemen, I have finished with this troublesome business but I think I should recapitulate. I asked you to clear your minds of any prejudices either for or against the prisoners, and to do your duty without fear.

I told you that the religious question did not enter into the case at all. If the accused have broken the law of the land they must be punished by the law of the land and that it did not matter to us whether they were acting under the impulsions of religion. I gave you my reasons for supposing that their views as to the religious question were wrong, but I warned you that I had no authority to pronounce thereon and recommended you to assume that they were right

I then told you that for two or more persons to agree to commit an illegal act is itself an illegal act (that of conspiracy) whether or not anything is done in consequence of such agreement and that in my opinion there was such an illegal conspiracy of which some of the accused were members and which had among its objects that of seduction of the soldiers. I gave you the evidence for and against as also the arguments of the accused and begged you to make up your own mind on this point, my opinion being by no means minding on you; particularly as regards No. 6.

Then I went on to deal with the further questions of whether any actual attempt to seduce troops had been committed by some of the conspirators in furtherance

of the said conspiracy and gave you my doubts on the subject, leaving the matter to your own finding.

You must now consider your verdict and return a finding whether the accused or any of them are guilty or not guilty of the offences connected with Section 131, other than those referred to in the 5th head of charge.

You will then give your opinion individually as assessors on the other charges which are no doubt fresh in your memory and which I need not recapitulate.

1/11/21.

(Sd.) B. C. KENNEDY,
Judicial Commissioner of Sind.

Ex: 114.

IN THE COURT OF THE JUDICIAL COMMISSIONER OF SIND.

SESSIONS COURT JURISDICTION.

Sessions Case No. 33 *of* 1921.

Crown *versus* Mahomed Ali and 6 others.

Verdict of the Jury.

The Jurors retired and returned after an absence of tfo hours 15 minutes and state through their foreman that they unanimously find the accused not guilty of both charges.

(Sd.) B. C. KENNEDY,
Judicial Commissioner of Sind.

Ex: 115.

IN THE COURT OF THE JUDICIAL COMMISSIONER OF SIND.

SESSIONS COURT JURISDICTION.

Sessions Case No. 33 *of* 1921.

Crown *versus* Mahomed Ali and 6 others.

Finding.

The Court not thinking it necessary to disagree with the Jurors finds that the accused Mahomed Ali, Hussain Ahmed, Saifuddin Kitchlew, Pir Ghulam Mujadid, Nisar Ahmed, Krishna Tirathjee and Shoukat Ali are not guilty of the charges under Sections 120B, 115 with 131 and 120B/109 with 131 and acquit and discharge them.

(Sd.) B. C. KENNEDY.
Judicial Commissioner of Sind.

1/11/1921.

Ex: 117

IN THE COURT OF THE JUDICIAL COMMISSIONER OF SIND.

SESSIONS COURT JURISDICTION.

Sessions Case No. 33 *of* 1921.

Crown *versus* Mahomed Ali and 6 others.

Opinions of Assessors.

The case for the prosecuting having been over the Assessors are called upon to give their opinion.

Mr. Ramchand Tulsidas is of opinion that the charge No. 3 is proved against Mahomed Ali because the resolution No. 6 was likely to cause the Muslim soldiers to fail in their duty.

As to the charge No. 4 Accused with exception of No. 6 have all abetted, No. 1. Accused 6 to be given the benefit of the doubt

Charge No. 5 proved against accused No. 1. The resolution being put to a gathering of more than 10 persons.

Charge No. 6 all accused except No. 6 have abetted No. 1. I have not taken into account the deep religious feeling of the accused.

Assessor No. 2 Mr. Critchel Concurs.

Assessor No. 3 Mr. De Cruz Concurs.

Assessor No. 4 Disagrees.

As regards charge No. 3 accused No. 1 is not guilty and so are all the accused on the other charges.

Assessor No. 5 Mr. De Souza agrees with the foreman.

(Sd.) B. C. KENNEDY,
Judicial Commissioner of Sind.

IN THE COURT OF THE JUDICIAL COMMISSIONER OF SIND.

SESSIONS COURT JURISDICTION.

Sessions Case No. 33 *of* 1921.

The King-Emperor
versus
Mahomed Ali and 6 others.
Judgment.

I accept the verdict of the Jury in respect of the charges under Sections 120 B. and 131 I. P. C. I have considered the opinion of the assesssors as regards the other charges. I agree with the opinion of the majority of the assessors and find that accused No. 1 Mahomed Ali made a statement on the 9th July 1921 at Karachi calculated to cause the Mussalman Officers and Soldiers in the Army of His Majesty to disregard or fail in their duty, on that as he made it with the intention of causing such an effect, the truth of it is not material. I therefore find him guilty of an offence under Section 505 I. P. C.

Agreeing also with the opinions of the majority of the assessors, I am of the opinion that all the other accused with the exception of accused No. 6 conspired with Mahomed Ali and agreed with him that he should make the statement that he did make with the intention of producing such an effect on the Musalman Officers and Soldiers in the Army of his Majesty.

As regards accused No. 6 after hearing the opinion of the assessors I am of the opinion that there is a fair doubt as to whether he conspired. This opinion would obviously be of little weight.

Agreeing also with the opinion of the majority of assessors I am of opinion that accused No. 1 Mahomed Ali at the same time and place in the same way, abbeted the commission of the offence punishable under Section 505 by bringing that statement specifically to the notice of the public there assembled at the meeting and by urging them to bring it home to every Mussalman in the Army. I think therefore that he committed an offence punishable under Section 117 I. P. C. with 505 and 131 I. P. C.

Agreeing also with the opinion of the majority of the assessors I find that all the other accused with the exception of Accused No. 6 (Bharati Krishna Tirathji) conspired with accused No 1 in the commission of this offence by agreeing with him that he should make the statement which he did make with the same intent, well knowing that it would so direct or incite the public to bring such statement to the notice of the Mahomedan soldiers and troops.

THE SENTENCE.

(To accused No. 6) The Court accepts your explanation of your action and agreeing with the jury and the assessors, I find you not guilty in respect of the offences under Sections 120B and 131 and acquit and discharge you as regards those offences.

I find you accused No. 1 guilty of an offence under Section 505 I. P. C. and sentence you to undergo 2 years' rigorous imprisonment.

I find you accused 2, 3, 4, 5, 7 guilty of conspiring with accused 1 to commit the said offence and sentence you under Section 109 and 505 I. P. C. to undergo rigorous imprisonment for 2 years.

I also find you accused No. 1 guilty of an offence under Section 117 with 505 and 131 I. P. C. and you accused Nos. 2, 3, 4, 5, 7 guilty of conspiring in respect thereof with accused 1 under section 109 and 117 with 505 and 131 and sentence you to undergo two years' rigorous imprisonment; the said sentence to run concurrently with those passed under the 3rd and 4th charges.

(Sd.) B. C. KENNEDY,
Judicial Commissioner of Sind

Delivered. 1/11/1921.

Signed 4-11-1921.

N.B.—The charge to the Jury is to be attached to and read as part of this judgment. Every copy of this judgment is to include a copy of the charge.

(Sd.) B. C. KENNEDY,
Judicial Commissioner of Sind.
4-11-21.

With the Name of God the Most Merciful and the Most Compassionate shall prevail but God.

A MEMORANDUM ON THE JUDICIAL COMMISSIONER'S CHARGE TO THE JURY.

IN THE SESSIONS CASE No. 33 OF 1921.

THE KING EMPEROR
versus
MAHOMED ALI AND 6 OTHERS.

BY MAHOMED ALI.

The charge of the Judicial Commissioner of Sind to the Jury in our trial is a fairly lengthy document, extending over 28 foolscap pages of closely type written matter aggregatng 13,000 words and covers an unusually wide area, some of it being virgin soil, without any trace even of a solitary judicial furrow. But it is none the less interesting even if it is neither a purely judicial nor a wholly judicious document

Nearly five pages are taken up by a preliminary discussion of diverse matters including the denial of undeniable irregularities in the Committing Magistrate's Court, and during the Sessions trial itself, the Turcophil and Phil Hellene points of view regarding the present situation in the Turkish Empire, and the inevitable praise of Co-operation and tirade against non-co-operation always to be expected from a Civilian who despised and churlishly rejected co-operation when it was offered, and hungers after it now that it is being withheld A couple of pages are devoted to the explanation of the Law regarding Conspiracy and nearly 5 to the various kinds of evidence that may prove it and to the kind of evidence that is actually on record. More than 2 pages are taken up by the Judge's suppositions regarding the origin and growth of the Khilafat agitation, based on nothing more than unaided conjecture, and unrelieved by a scintilla of evidence that might or might not have been produced by the matter-of-fact and somewhat unimaginative Public Prosecutor, but that was never actually produced. A page is devoted to he discussin of the Law and the evidence regarding the alleged attempt to seduce the troops by circulating a leaflet and a little over two pages to the discussion of the law and the evidence against me regarding the offences under Sections 505 and 117 and abetment thereof under Section 109 by the other Accused, while recapitulation takes up another page. Against all this, less than a couple of pages deal with the explanation of their conduct offered by the accused and some space even out of this is taken up by the judge's adverse comments thereon.

But where the judge has not been guilty of economy, not to say niggardliness, and has, on the contrary, been lavish of space, is in dealing with the plea of religious commandments where he has indulged in historical and theological *obitor dicta* to his heart's content, and has distributed the largeness of bad history and worse theology as a thriftless almoner, not sparing even the Ulema and Missioner of Islam and pointifical pronouncement on the proper field for their missionary efforts as distinct from endeavours to misguide the Muslim soldiers like freckless "busy bodies", if not "perverse fanatics".

I have dealt elsewhere with the scanty material furnished by this charge to the Jury regarding the cases against me under Sections 505 and 117 and their abetment by the other accused under 109, and since the feverish efforts of the judge to secure from the Jury a verdict of Guilty on the charge of conspiracy under Section 120B/115 read with 131 have failed so ignominously, while there never seemed any chance of any sane Jury giving such a verdict with regard to the charge of making an attempt in pursuance of a Criminal Conspiracy to seduce soldiers under Section 131, I shall be content to leave on exposed even the judge's *misdirection* and *prejudice*. The baseless *obitor dicta* regarding the origin and growth of the Khilafat agitation deserve a detailed expostuie but what needs the most detailed exposture of all are the *obitor dicta* of the judge regarding Islamic History and his absolute extra-judicial and false deductions in Muslim theology from that distorted version of Islamic History.

And, of course, I cannot pass over the tearing up of the Proclamation of three British Sovereigns and the clear enunciation of the latest doctrine that the Law of the Land provides no protection for the religious convictions and observances of an Indian subject of the King other than that which may be supposed to be embodied in the Acts of the Legislature. Here I must confess my heart softens towards the judge and I could have found it in my heart to forgive him even if he had condemned me to death; for what matters the death of one, or even 7 Indians, be they Muslim or Hindu, if it dispels the Great Illusion that the Government in India is tolerant of the people's faiths and would never penalise an Indian for doing that which his religion clearly enjoins.

I will therefore begin with this and commence by reminding the reader that it was the judge himself who had fired the first shot in this Mahabharat of God *versus Man*, when he had asked me, whether it was my contention that the Law of the Land should not punish a Hindu guilty of human sacrifice on the plea that his Sect enjoined it. He had added another—to this poser when he had asked me if I would cut

off the hand of a thief because that was the Penal Law of Islam for Larceny. A point which was then, and there answered, when I told the judge that the cutting of a thief's hand, and the stoning to death of an adulterer and an adultress, who were not even criminals according to the law of his Land were obligations imposed by Islam not on individual Muslims nor on non-Muslim Government, but on Muslin Governments. The public prosecutor had taken the lead offered to him by the Bench and had referred to the enormous sects and creeds of India, all quarrelling among themselves as to which was right and which was wrong, and like the impartial if impatient, non-partisan who had been sickened by the eternal feuds of Montagues and Capulets and had exclaimed: "A plague upon both your houses!." he thought he could best get out of this war of creeds by damning them all! But, thinking better of it, he had added something to rouse the feeling of rival sects and creeds, and had appealed to me to say if I would not be the first to seek the protection of the Law if a Non-Muslim wanted to pull down *my Mosque*or to sacrifice *my* child as an offering to *his* Gods.

In his charge to the jury the judge returns to the same charge against Indian sects and creeds: "there are so many jarring sects and creeds in this Empire that there is hardly a single crime which some person or other might not commit under the colour of religion." But, as I had repeatedly told the Jury, the point is not what crime a man may not commit under *Colour* of his religion, but what his religion as a matter of fact clearly enjoined. The religious feelings even of individuals may not be hurt, as the Indian Penal Code itself lays down; but it is not individual indiosyncracies, whims and caprices that may be offered as exculpating pleas against punishment for what the Law declares to be Criminal offence. It must be not the *subjective feeling* of an individual, but the *objective religious edict*, a commandment acknowledged by his religion to be the commandment of God. That's why I insisted on my right to prove because the Law had laid on me the corresponding duty of proving that the statement for making which I was charged under Section 505 was one which I had reasonable grounds for believing to be true. The Law of the land could not take my word for it and I would have to prove not only my individual belief but the solid substratum on which it was based—"The reasonable grounds for believing it to be true." "Supposing" I had said "I am charged with committing rape, and plead that my religion had enjoined it. You would not accept that. You will call upon me to prove that it was in fact so, before you could consider such a plea." To that I still adhere, and therefore, it is no answer to our plea of religious commandments to say that there is no crime which a man in this country may not commit *under colour* of his religion. But if the Judicial Commissioner of Sindh means that Indians are morally so deprived that the religions in which they believe, and to which they assign Divine Origin as a matter of actual fact to enjoin them to commit every crime, then indeed has this light trifler and base scoffer of Indian religions uttered a libel the like of which has not yet been uttered, whether in a Law Court or out of it.

As regards the right of others being also entitled to respect and to the protection of the Law, and the learned dictum cited by the Judicial Commissioner in his charge to jury which they could hardly be expected to comprehend *"Sic utere tuo ut alienum non laedas,"* I had already said in answer to the public prosecutor that no religion could impose any obligations except upon its own adherence, and no religion in India demanded the sacrifice of the child of another man, even if it demanded the sacrifice of one's own, and certainly never the surrender of one man's child for sacrifice to propitiate the Gods of another man's faith. But after all *we* were not seeking the protection of the Law for murderers under the colour of *our religion*. We only sought the protection of the Law for those who said to their co-religionist "thou shall not kill thy brother" against those who demanded the sacrifice of themselves and of their brothers to propitiate the Moloch of greed and Earth-hunger, the Moloch of Universal autocracy and Imperialism. It required the ingenuity of a Civilian Judge to cover this insatiable thirst for our brothers' blood under the cloak of the "rights of others, or the rights of the Sovereign whose protection we invoked." This dignified trickery was worthy of a Lawyer of the Stuart period who could justify anything done by the sovereign down to the worst tyrannies of the Court of Star Chamber, and evidently the soul of the author of the "Leviathon" has sought refuge in the body of the Judicial Commissioner of Sind." It is too late in the day to ask us to believe in "a state of nature" "red in tooth and Claw" from which the sovereign has rescued us. One need not, on the other hand go back to Rousseau's conception of an ideal "state of nature" which, as a contemporary critic of his "Social contract" said "made us long to move on all fours." But it is undoubted that a social or civil contract does exist, even if it be only tacit and unrecorded, which gives rights to the subjects as well as to the sovereign just as it imposes corresponding duties on both.

And the historical example of English sovereigns which I cited in this case more than once, tells us plainly that the first oath of allegience has to be taken by the Sovereign, so that the subject can turn round and say that the Sovereign too should not use *his* rights in a manner which adversely affects the rights of the subjects. And the *greatest* right of the subject is to have the supremacy of his God's Law recognized by the Sovereigns! The King of England has to swear in the presence of the Primate of England, the Archbishop of Canterbury, that he is and will remain a Protestant Christian and act as the Defender of the Faith, and rule the real, according to the constitution. In other words, the protection of his subject's religion and of their constitution, for which

they have wrought and for which they have fought, has to be accepted by the Sovereign before he is accepted as a Sovereign by the subjects. That is the true Warrant of precedence in the matter of rights and duties of the subjects and the Sovereign.

The same is historically true of India, for, at the very time that the Government of the Country was transfered from the East India Company to the Queen, she issued the proclamation on which we based our plea. More than that, the very transfer of the Government to the Queen from commercial Company the servants of which had disregarded the religious scruples of the people and had thereby brought on their heads the Mutiny of 1857-58, was based on the need of a clearer recognition of the supremacy of God's Law over man's and greater adherence to it in practice. But to-day, the Indian Civilian, who is the spiritual successor of the writers and Clerks of John Company, seeks a reversion to the old slap, dash practices and under, cover of a mock, humility, is pulling down the Queen's Proclamation from its high position as the fundamental and unalterable Law of the Land, in order to exalt under the colour of exalting the Law of the Land, his own autocratic whims and caprices. For the continued administration of the Criminal Law in every State Trials have only served to prove an amended version of justinian's dictum: "what the Civilian pleases has the force of Law." And like his precursor the Writer of John Company Bahadur by his disregard of the supremacy of God's Law among a Godly people, he will not merely put down a few proclamations, but will succeed in pulling down powers, thrones and Principalities, Mr. Kennedy, the Civilian of Sind, will not dethrone the Queen's proclamation but will thereby dethrone the Queen's successor. The Civilian had always believed in himself rather than in any King or Emperor as the real Ruler of India, but the veil had not been torn from the face of this sordid reality, and I was not surprised to find that Karachi had a last all recollection of Cawnpore, when the Public Prosecutor said that I would be the first to seek the protection of the Law if my child was snatched for the human sacrifice of a Hindu sect or my Mosque was pulled down. I had told him then and there that, as a non-co-operator, I would not seek the protection of his Law at any rate which ought to explain if any explanation is necessary even from us, that it was not with a view to escape the penalties of the Law of the Land for a breach thereof that we had advanced the plea of the supremacy of religious Law, but in order to pull of the veil from the face of the reality that British Courts in India, like Gallio, cared for none of these things. "But the mention of pulling down a mosque brings to mind a little unpretentious, but equally unoffending mosque in the Machhli Bazar of Cawnpore, which was pulled and pulled down too under "the protection of the Law of the Land" typified by a Civilian Governor, several Civilian subordinates of his, and the inevitable police, armed and otherwise followed by the Military which between then succeeded in adding to the ruin of a mosque the ruin of scores of "Images of God" in the shape of old men and little boys who died in defence of that sacred ruin. No, Mr. Mahommed Ali will not be the first, nor even the last, to seek the protection of *Your* Law, Mr. Elphinstone, if a misguided brother snatched away his child to propitiate his Gods with that child's blood and he knows what it costs to seek the protection of *Your* Law, when a mosque is pulled down.

But let's leave this unimaginative lawyer to mug up his unimaginative briefs and look up the Law of petty Carceny, battery and assault or to correct a flighty judge regarding the rudiments of prescribed procedure. Let us see back to the exalted judge with his Civilian's "*Sicvoto*" and "*Sic Jubeo*" and see him masquerading nevertheless as a veritable Uriah heap of humility before Royalty. While in the very act of pulling down the King's portriat from his Court room, he pretends to worship all the more zealously at the Kingly shrine. "Any proclamation which secures to the subjects the free exercise of his religion," runs the charge to the jury, cannot repeal or make invalid any of the Laws of the Land which render certain acts punishable; but it must be held that such laws of the land do not contravene the Proclamation. It is almost indecent to suppose it, but if it should appear at any time that there was a variation between any such proclomation and any such Law then we should have to confess that our humble intelligence was not sufficiently powerful to understand the meaning of both, and we should have to apply the Law of the Land which we are bound to administer." Such Judicial humility is really reminiscend of the judges of the Court of Star Chamber of whom it was said that only the ermine distinguished the judge from the Prosecutor through here even that distinguishing bit of fir is also missing, they exalted the position of the King as the Law Giver and Head of Civil Society and the State, and while administering the law of the King were exterminating the hard-won liberties of the people. But even this humility is a pretence and a fearful simulacrum, and no less a person than the Late Secretary of State for India, Viscount Morley, has left it on record in his *Recollections* that a Civilian with his "Humble intelligence" thinks that "the Home Government is mostly a damned fool!" Such is the Civilian's respect for the constitutional Advisers employed by a "Constitutional Monarch." In reality it is the Civilian whose word must previal against God's, against constitutional Monarchs and against the damned fools" whom he employs as his constitutional advisers. The Civilian judge has at last turned the table upon Royalty, and has revenged the expostulating Magistrate whom Louis XIV had silenced with his clear and emphatic "*L'Etat C' estmoi!*" The Law! means Judge Kennedy, I.C.S. "I am the Law!" and if one proceeds further with his charge to the jury, it would be clear that he is not only "man-made" Law but God-made law as well, and the true type of "Ashworth the Civilian of Ahra whose story I shall relate in its proper place.

But whatever view one may take of this "humble intelligence" business, it is a duty that one owes to common honesty and truth to expose the hollow mockery of this double dealing interpretation that "Any proclamation which secures to the subject the free exercise of his religion *cannot* repeal or make invalid any of the laws of the land which render certain acts punishable, *but it must be held that such laws of the land do not contravene the Proclamaion.*" We have heard of horses and cats and dogs that may be black and white. There was a Pictorial Weekly of that name, issuing at one time from London, and none is allowed by the pictorial advertisements in English and Anglo-India Newspapers to forget that there is a brand of that name of the beverage called—and alas for too frequently consumed,—whisky. But Judicial Commissioner Kennedy, I.C.S., has originated, perhaps he may only be infringing the patent of another and older interpretor of English and Anglo-India Law—a black and white jurisprudence—that the something that is black *must* also be held to be white. A "Proclamation which assures to the subject the free exercise of his religion that proclaims with a fanfare of trumpets the protection of the law for a man's religious beliefs and practices *must* be held not to be contravened by a law that punishes him for an act which he *proves* to be one enjoined by his religion. The proclamation protects the performance of religious duty. The law punishes it and neither contravenes the other! That's the beauty of black and white jurisprudence. A Stuart King wrote a *Magnum opus* against "Black Magic." Let us hope his more constitutional successor will write, with the help of his still more constitutional adviser, another volume against "Black and White Jurisprudence." Indians have swallowed many disaggreable things from a gnat to a camel, just to prove for the ten-thousand the time that they were loyal. But however Low their intelligence may be assumed to be, inspite of a century and a half of benign Imperial Rule, it is not so "humble" as to swallow the latest legal fiction of judge Kennedy's manufacture of the Black and White jurisprudence which assures them that their religions are under the protection of the very law which penalises them and if they grumble and seek for redress, asks them either to crawl on their bellies on their way to the Legislatures to have the laws altered or walk out of the country in their scores and even hundreds of millions, or, best of all, be content with "the prospect of a reward" hereafter "which will compensate them richly for out temporal censures." The ill-suppressed sneer of Mr. Kennedy I.C.S. at "the prospect of reward" in the Great Beyond cannot make those wince who firmly believe in the eternal truths.

(Verily with Allah is a Great recompense)

(And of a truth the reward hereafter is better for those that fear God,—Do ye not comprehend?)

The "temporal censures" with which he penalises our performance of religious duty can have no terrors for those who have put their faith in the Divine assurance:

'O, Ye, Faithful, whosoever of you turns back from his faith, Allah will bring forth another people whom He will love and who will love Him: lowly with the Faithful, haughty with the infidels; who will strive in the way of Allah and not fear the censure of any censure; this is the bounty of God which he bestoweth on whom He willeth, and Allah is Vast, all knowing."

But people will love God and whom God loves, who are lowly with the believers and haughty with the scoffers, and who strive in the way of the Lord and fear not the censure of any censure, expect something more than the strength to do this from Allah's abounding bounty. They may "*leave the country*" but they have a knack of *returning to it*, also, and then of driving out the censures with their "temporal censures," as did the Prophet in the case of persecutors of Mecca. Perhaps the Vast and All-knowing Allah has given to Judge Kennedy I.C.S., the additional historic importance of playing the part of the otherwise humble straw, that can tell which why the wind is blowing. They say the Deluge which submerged the entire surface of the Earth and destroyed all but those that has sought safety in Noah's Ark, had first flushed out the oven of an old woman. Who knows Judge Kennedy may not be equally important when the next Deluge submerges an Empire over which the Sun never sets, and destroys the whole brood of temporal censurers and idle scoffers?

But "sufficient is unto the day the evil thereof." For the present it should suffice that the proclamations do not exist for any practical purposes—not even of deception! *Exit* proclamation! *Enter* Civilian's Pleasure backed by Brute Force! "Snatch if you can the club from the hand of Hercules!" and it is a seasonable present with which Judge Kennedy approaches the coming Prince.

Among thy mightier offerings here is mine! For think you that any one however deluded and gullable can expect aught from the words scattered broadcast by a Prince, who is only an heir to the one Imperial Throne still left intact if not unshaken in Europe, when the Proclamation of his father, grandfather and great-grandmother, published when they held undisputed sway, are declared null and void and made mere scraps of paper, in the latest case, in which his father, by the strangest and cruellest of all fictions, was made a party opposed to the religious freedom of a whole people?

The decision of Mr. Kennedy is nothing new. Cawnpore had already given warning of Karachi; but for the first time since the Mutiny has it been placed on record publicity that the whole thing has been taken by the Indian Civil Service to have been a huge camouflage. The Greatest of Illusions, that the Proclamations were the basis of British Indian Constitution,

and the fundamental laws which guided and governed the application and administration of every other law of the land has been completely shattered and finally destroyed, and No Muslim religious recluse will now be able o seek refuge in a *meethaq* of covenant with this Infidel Government for breaking the prior *method* or covenant with God through weakness and criminal silence. And I claim the credit for this great victory for myself, though, on second thoughts, I think I should share the honours of this victory equally with the ex-Lord-Justice of England who sanctioned the prosecution, and with Mr. Judicial Commissioner Kennedy, I.C.S., who joined his forces with mine in the final assault that battered this Citadel of Deception.

II.

I now come to that part of Mr. Kennedy's charge to the Jury in which he has roamed over trackless deserts of supposition and make-believe in Islamic History and has wandered like a derelict over uncharted seas of guess and conjecture in Islamic theology. These are indisputably mere *obiter dicta* binding on no other law-court of the world, but none the less dangerous for that. Quite early in the proceedings before him, Mr. Kennedy had clearly intimated to us that he had considerable pretentions to Arabic scholarship, when he had quite irrelevantly launched into a discussion of the appropriateness of the Quranic expression "Mawala" for "Co-operation." And he eagerly sought to enrich his store of encyclopaedic learning by asking for his personal use from Moulana Hussein Ahmed Sahib the classification that the latter had enumerated of the terms employed by Islamic *Shariat* in distinguishing various kinds of Commandments from *Farz* down to *Haram*. Not content with the newly acquired knowledge he applied it too when he used the expression *Mukruh* in his charge to the poor Jury, who could ill comprehend its significance.

But the motive for this excursion into strange and unknown realms of theology was not merely a display of overwhelming and unexpected scholarship. To say that would indeed be misjudging the judge and following his own example of misdirection. No, the game he was playing was much deeper. He had tried hard with theatrically lifted hand and peremptory "Sit down!" uttered as if he was the Lord of All Creation whom to hear was to obey, to prevent, as he himself admits my explaining to the jury the doctrine that the wilful killing of Muslim except for just cause, strictly defined by the *Shariat*, was unlawful for another Muslim, and although he further admits that he could not do this without prejudicing our defence, he was uneasy all the time and interfered every now and then because the trial was becoming a means of propogating doctrines which I consider dangerous and unsound!"

That affords us the true clue to Mr. Kennedy's motive for himself pronouncing "the right doctrine in the matter," even though modesty compels him to disclaim such an absurd pretention. The "poison" having been administered by us in the shape of the propogation of dangerous and unsound doctrines, he the Civilian, or modern Atlas, with the load of whole world, on his "shoulders," must needs administer the 'antidote' of "safe and sound doctrine" in his charge to the jury. which he sent post-haste to the "*Daily Gazette*," the Anglo-Indian evening paper of Karachi, for publication the same afternoon even before the accused could be given a copy of it, and had the satisfaction of seeing it or at least a greater part of it, in print immediately after the Jury returned their verdict, and he pronounced the sentence *before* writing or pronouncing his judgment! No doubt, the bureaucratic Government will see to it that the *Fouji Akhbar* edited by the Army Headquarters at Simla, the only newspaper permitted to the "badly segregated" Indian Army, publishes this latest exegesis of the Quaran and Hadeeth by Allama Kennedy, I.C.S., that every soldier has it daily read to him on Parade, and that he ties a copy of it round his neck as an amulet when next going to war against the Commander of the Faithful Successor of his beloved Prophet, and to wilfully slay his brother Muslim, or in his turn fall a victim to a Mujahid's bullet or sword-thrust.

This seems to be the motive also of typewriting several pages in the so-called summing up with regard to the genesis and growth of the Khilafat movement, when there was hardly a line in the evidence relating to this which needed summing up. In other words, the judge has not been content with judging the accused, but has conceived, and in his estimation carried out the ambition of judging the Khilafat movement and in fact the 1,300 year-old institution of Khilafat itself! It was, of course, inevitable in the case of a Turkophobe—in spite of all his attempts at appearing impartial, and of his expressing cheap pitiful sympathy" with the Turks that he should include in these sweeping judgments based on no evidence adduced before him, and entirely left unreferred to by the prosecution, "the doubtful Ottoman claims" to the Khilafat which had gone on for four Centuries unquestioned by Arab or Ajam, Turk or Tajeek, and which his own Government had duly impressed upon Tipu Sultan when Napoleon's eastward march was the menace of the moment and again during the Mutiny when Turkey's allies of the Crimea were hardpressed by the Sepoys in India itself. It was not the summing up of the evidence or the charge to jury that the Civilian Judge was typing during the leisure afforded by the Devali Holidays, but a work of art which he was perfecting with a view to furnish Government with ready made propaganda for its Directors of Mis-Information and to prepare laborious ground-work for leader-writers of English and Anglo-Indian and some "Moderate" Indian Newspapers.

It is this which compels me to expose these dangerous and unsound doctrines," and it becomes a religious duty to do so, because for the word of God and the example and

precept of the Prophet, the consensus or *Ijma* of the *Ummat* or community, and the strictly logical Analogy of Geyes the Fuqaha or juris consults of the Islam, the Judicial Commissioner of Sind substitutes a Civilian Scripture and a new Gospel of Islam according to Judge Kennedy." "And woe betide them that write the scripture with their own hands and then say it is from God"!

Shortly after we had been committed to take our trial at the Sessions, the papers had published that Mr. Ross Alston, that epitome of all legal lore, was coming to take up the Crown brief, and that he was to be assisted by an expert in Islamic theology. We were ready to meet this divine who could support the Devil, but he did not appear on the scene, and kind enquiries from the Advocate-General of the United Provinces elicited no further information. But perhaps like so much belated evidence in a trial in which the Magistrate and Judge alone were not belated, but only too previous, the *Alim* turned up too late to be a witness in the case, and was therefore utilised by the Judge in his summing up of non-existent evidence?

That's the best conjecture on which his novel charge to the Jury is explicable. Now the main defence of the accused was that for one Muslim to kill another wilfully was *Haram* or forbidden by Muslim Law, "except for just cause." The statement contained in the Resolution which furnishes the *Corpus Delict* had avoided needless generalization and was to the effect that at the present juncture service in the British Army for a Muslim was religiously forbidden, which can only be taken to mean that, whatever may be one's view regarding service in that Army generally, or at other times, the present situation was not such in which a Musalman could, in accordance with Islamic Law, continue in British Military Service, or enlist, or secure others, as recruits. Indian soldiers were being made to wage a War which was no war of theirs; they had no choice in the matter:

> "There's not to reason why
> "Their's but to do and die,"

or rather "kill." Nobody was there to judge the justice of the cause" according to the *Shariat*, and as a matter of fact, it was clear to the meanest Muslim intelligence that the cause was as unjust according to Islamic Law as it well could be. If any desired to refute this argument, it was open to him to prove either that *in no circumstances* was it unlawful according to Islamic Law to kill a Muslim wilfully, or that the circumstances in which Indian Musalmans in the British Army were required to kill brother Muslims wilfully were covered by *such exceptions as Islamic Law itself recognized.*

But that does the Judge in his charge to the Jury do? He takes some pains to prove that for one Muslim to kill another is not *totally* forbidden by the Quaranic Law, a proposition which nobody had ever advanced, least of all the accused in this case, who had taken the greatest possible care to explain the limits laid down by the Shariat with regard to the *hurmat* of the wilful killing of a Muslim. Perhaps the very first *Hadees* cited by me in my statement made in the Lower Court was that which laid down the three exceptions to the general Quranic Rule, namely, as punishment for (i) murder; (ii) Adultery not too as Mr. Kennedy chooses to specify leaving out the apostacy and desertion (iii) apostacy and desertion. The Quran had itself repeatedly laid stress on the limitation "except for just cause," and had more than once permitted such killing, nay, enjoined it on the society of the Faithful, as punishment for rebellious transgression and *for disturbing* Public peace (*vide* Sura-i-Hujrat, or "The Apartments," fourth ninth chapter and Sura-i-Malda or "The Table," 5th Chapter, the latter already cited in my statement to prove the prohibition of killing except for just cause. There is therefore discovery that "it is one of those prohibitions which is relative and contingent but not absolute."

But this is Mr. Kennedy's "last time" with the Quran and the Hadees much more accurately than the un-named Khalifa's of whom he relates a story to a similar effect, when he received news of his election and closed the Quran which he had been reading, with the exclamation "This is my best time with thee." Having established the "relative and contingent, but not absolute" character of the prohibition against the wilful killing of one Muslim by another, he goes out in search of its "limitations and conditions," as the best of Muslims might himself do. But while no good Muslim will deny the need of "independent enquiry" for ascertaining these "limitations and conditions," he will have to commence his pious quest not by paying his attention primarily and "particularly to a consideration of the actions of laudable persons." Islam recognizes many degrees of "laudable persons," beginning with the "truly guided" first four Khalifas and the "ten who received glad tidings" mentioned in the Friday Service Khutbas, through the loan list of the Companions of Badr and of Uhud are the rest of the Prophet's numerous "Companions," down to *their* Companions and their companions' companions. But while the Musalmans of the Suni persuation who are the only ones here concerned, go so far as to recognize the consensus of the whole community of Musumans as a source guidance in ascertaining sound doctrines, and by no means reject analogy or Qiyas as another such source, it gives priority to *nass-i-sareeh* that is, an explicit commandment contained in the Quran or in an authentic Tradition of the Prophet. But the "learned" Judge travels with no such "impedimenta" in his unholy quest. He never as much as mentions the Quran itself which has itself enjoined the killing of a Muslim for murder, for rebellious transgression and disturbance of public peace, for adultery and for apostacy and desertion, And even though he mentioned the Prophet, he at once puts him out of Court by the blasphemous generalisation

that "we have little guidance during the life time of the Prophet which will help us in the present age." A poor Prophet indeed who claimed that after him no other prophet would come and yet, inspite of being the "Seal of the Prophet's" the last symbol of authenticity affixed to Divine scriptures, left the succeeding generations to grope without guidance in their benighted state, until one fine day the divine afflatus came to a Civilian Judge of Sind and he led the wandering tribe of Islam to their destined goal! But the last of the Prophets did not leave us on uncharted seas or without a rudder and a compass like so much of esteem and flotsam as the derelict Judge believes us to have been.

"You are to act according to my Tradition and the Tradition of my well and truly guided successors. Hold fast to it with your teeth." That's what he said to the succeeding generations and we shall have a very elusive tradition to grasp if we let go that of the Prophet and of his four immediate successors for the poor substitute supplied by the Judicial Commissioner, Kennedy.

The Quran is itself the best and safest source of our religion, for *all* sects agree on its absolute and eternal authenticity and preservation. The next in order, as I was explaining to the Jury when I was peremptorily stopped by the Judge—another example of his "tenderness rather than severity towards the accused no doubt, is the precept and example of the Prophet, for it explains, assists and supplements the Quran, and the Quran itself bears testimony to its true guidance for all times. Nevertheless, if even the most rigidly and carefully authenticated *Hadeeth* or Tradition contained aught that clearly contravened anything in the Quran, the Universal rule of the Traditionists themselves is to reject the Tradition and go according to the Quran. But if a situation arises in which we fail to obtain a clear commandment in either the Quran or the Hadeeth, the next best safest source, is the "Consensus of the Community" beginning with the agreed opinion of the Prophet's Companions, and coming down to that contemporary Ulama, even though their Fatwas are being prescribed and seized by a Satanic Government and instead of supplying much needed guidance to a Non-Muslim Judge, are treated as *Corpus delicti* itself. A reliance on this consensus is based on Quranic authority itself, and the Prophet's testimony that God's hand is over Muslim society of Jamaat and that. He will never let it go astray further supports it. The last on the list of the sources of Islamic jurisprudence is the *Qiyas* or Analogy of a Mujtahid or qualified expert in jurisprudence, *i. e.* the reasoning from analogous (*Nusus*) in the Quran and the Hadeeth or analogous communal consensus" (Ijma-i-Ummat), the analogy of a known similar being accepted for guidance in an unknown similar situation But Mr. Kennedy ignores the Quran, rejects the Hadeeth, penalises what he calls the "alleged" consensus of the "so-called" Ulama, and jumping to the last item on this Warrant of Precedence, constitutes himself a recognized Mujtahid of Islamic doctrine, forgetting that it was of a similar irregular and presumptuous *Qiyas* or conjecture that the Prophet had warned the Muslmans:

"The first who indulged in *Qiyas* or conjecture was the Devil!" For was it not this "First Teacher" who had presumed to assert the supremacy of his own guess and supposition over God's direct commandment, when he had refused to bow down before God's Khalifa on Earth, Adam, on the conjectural ground that his origin from fire grave him precedence over a mere man made of common clay?

And what does this "independent" *Qiyas* of Mr. Kennedy lead him to? From a particular consideration of the actions of laudable persons beginning with Hazrat Ali, who fell a victim to the knife of a wilful slayer of Muslims, and ending with his son, Imam Husain, the martyr of Karbala, who was a similar victim, and strongly enough including in that category no less a "laudable person" than Ziyad, the other such being Hajjaj, Muslim bin Oqbah and Alaudin Khilji in our own country, he comes to the conclusion not only (i) that it is not always unlawful for Muslim to slay Muslim, but also (ii) that it makes no difference if the Muslims are attacking the Khalifa, and (iii) that too while in the service of non Muslim princes, (iv) irrespective of the question whether such attack takes place in an offensive war or merely in a war of defence. Finally by a process or scientific and gradual *reductio ad absurdum* the Quranic commandment, supported so amply by the testimony of Tradition and the consensus of the Islamic juris consults of all ages and all climes, that it is forbidden for one Muslim wilfully to kill another, is made out by Allama Kennedy to mean that "any Muslim soldier who fights *in a war of which the accused disapprove* is to go to hell!" All conclusions eminently useful to the army headquarters at Simla with its Beaches and to the Western Command with its Gwyers, and most excellently appropriate whenever this Infidel Government may think fit to launch the next offensive war against any Muslim state, including that ruled by Khalifa Himself, inspite of all that the accused and their 500 supporters among "so called Ulema" may say to the contrary!

But let us now examine the evidence on which these most desirable conclusions—from the point of view of Army Headquarters Simla—are based. As I have already stated, the Prophet has been put out of Court because, forsooth, during his life time "the temporal kingdom extended over Arabia only! But luckily we have still the *Sunnat* or Tradition of the Well and truly guided Khalifas "when" within ten years of the death of the Prophet the Empire of the Muslims extended over a vast area..... .....and contained a vast heterogenous population of diverse origins, language, customs and faiths." But did the mighty conqueror who guided Muslim counsels and regulated Muslim lives as Khalifa during the greater part of this eventful decade, claim to rule except under the direct guidance of the Quran? His predecessor Abu

Baker (with whom God was pleased) had created the traditions for all time for men who claimed to exercise sway over their brother Muslims by telling the assembled masses: "If I follow God's Book, appoint me, and if I go against it, depose me! And when the simple-souled ambassadors of the newly-risen power in Arabic met their brothers of the older diplomacy of the revived Roman Empire and latter boastingly described the formidable autocracy of their mighty Caseer, the sons of the desert proudly recounted how they and their Commander had followed Abu Baker's traditions: "He is nought but as any one of us; if he follows God's Book we appoint him, and if he goes against it we depose him." And it is just because "he was nought but as any one of us", and demanded obedience only for God and through God, that his office was sacrosanct beyond the dream of moudane monarchs and infallible Pontiffs.

But the world saw a glimpse of the "ideal Government during the lifetime of the Prophet" and for about 30 years thereafter, and then came, as the Prophet had predicted, Kings and dynasts. No man ever had to deal with more novel Problems of governance than Khalifa Umar, the conqueror of Persia, Egypt, Palestine, and most of Syria and Mesopotamia, and yet although he never hesitated to adopt and adapt alien methods of administration, it never occurred to him to complain of the absence of guidance in the "Clear Book" of God that contains everything "Wet and Dry", or in the precepts and example of the Last of the Prophets. It could not certainly have been true of him or of his two immediate successors that on hearing of his successions he shut the Book of God with sigh and said "This is my last time with thee," if it means that the eternal source of Muslim inspiration in every contingency had run dry! In the absence of books of history here in prison—or in fact, of any books except the few English books that we owe to the solid good taste of a "Political Prisoner looked up here before our time" whom all European prisoners in search of "light works of fiction" curse I have not been able to look up this reference. But if the story is told of Abdul Malik-Ibn-i-Marwan, in whose time there was much extension of territory (including the conquest of Sind by the nephew of Hajjaj, Mahomed-bin-Qassim) and much "consolidation of empire," as a modern Britisher would say, it is just as well to hear of the end also of the man who shut the Quran with a sigh when he commenced his rule. It was more than sigh with which he ended his "successful" reign, when he lamented the fact that he ever became a ruler responsible for the many sins of a "firm government" instead of teaching the Prophet's Traditions inacceptable to Judicial Commissioner Kennedy!

No Muslim would cavil at the doctrine that the ruler "is guilty of sin if he allows the temporal kingdom and the affairs of the Muslims to go to ruin for lack of the due enforcement of the necessary temporal rules, which must no doubt not *contravene* the Sacred Law, but are not directly *sanctioned* by it", except that no Muslim can tolerate the lacerating distinction between things temporal and things spiritual, and that a Muslim would require every rule before it can be enforced by a Muslim administration not only not to *contravene* the sacred law, but to be framed under its regulating general guidance. But how does this doctrine of Judge Kennedy justify the undue enforcement of the necessary temporal rule not only *not sanctioned* by the sacred Law, directly or indirectly but indirect *contravention* of it, namely that a Muslim may kill another Muslim without just cause, including the Khalifa himself, by fighting in an offensive war against him while serving the British Indian Infidel Government? And if this *Siasat* of Mr. Kennedy is to replace the *Shariat*, may not the Muslim soldier ask *"Quo Warranto?"* Mr. Kennedy says he has seen "Severe Strictures by pious men on kings who acted not like Kings but like ascetics." But does he not know that in Islam these "Severe strictures were first passed not by "pious men", but by the God of Islam Himself and by His Prophet on the kind of asceticism which is to be condemned?

Islam provides a code of right conduct for *all* men, and not separate codes for those who are to be Kings and those who are to be subjects, and Islams code of right conduct for all mankind, while it condemns that absorbtion in the joys and sorrows of this world which would make a man lose sight of his duties to his Maker and forget the rewards of the world to come, tells him at the same time that he has to live, move and have his being in *this* world, and cannot neglect the duties he owes here to his fellow men. He is to *be in* this world, but *not of* it, and must prove his dutifulness to God by doing all his duties prescribed by God for him in this world, and not by forsaking the world together with all the duties he owes therein. "There is no anchoritism in Islam" said the Prophet of God, echoing the words of God regarding the un-natural code of conduct formulated for Christian monks by themselves without any warrant for it from God:

"Then we sent other apostles of ours fast on the footsteps of Noah and Abraham and their posterity and then we sent Jesus, the son of Mary, and bestowed on him the gospels, and we cast tenderness and compassionateness into the hearts of those who followed him, but anchoritism did they innovate themselves. *We* had not prescribed that for them for securing the good will of God, but they did not observe it to the true extent of its observance; so we gave their recompense to such of them as became True Believers (or Faithful but many of them are Law-Breakers (or evil-doers)"—Sura-i-Al Hadeed or "The Iron", 57th Chapter).

If, therefore, it is asceticism to be tender and compassionate and refrain from the shedding of blood except for just cause as

already defined in God's Law, then certainly every Muslim, be he King or be he subject, has to be an ascetic. But if asceticism meant retirement from the world and all its concerns into some dark sequestered cave or on to some remote mountain top, to secure the good will of God, then it is an excrescence and an unnatural innovation of men for which there is no warrant in Divine Law, whether for dervishes or for Kings.

Nevertheless, excessive indulgence in the pleasure of this world was as rigorously forbidden by Islam as anchoritism, and it is the boast of Islam that not a few Muslims could, maintain plain living even on the dizzy height of a magnificient throne. Mr. Kennedy cites among his "laudable persons" the example of the Zangis. Nur-ud-din Zangi, the Atabek of Mosul, and master of Salah-ud-din's uncle Sherkuh, lived such a life, and when his favourite wife asked him for an increment in her small allowance, he could only make her the offer of his three shops at Emessa or Hams. "Three shops!" asked the astonished wife, "and, pray whose this extensive kingdom and all that it holds?" "Ah," replied the Zangi, "that's God's and the Musulmans'. As for myself, I own only these three shops in Hams which I have purchased out of my own earnings." That was the theocracy of Islam for which Mr. Kennedy would substitute the cruellest of autocracies. Nearer home, the much-maligned Aurangzeb, who had as a Prince once retired to the solitude of a cave in Ceylon, but had come to recognize the error of that sort of asceticism, nevertheless, earned his own living while ruling as Emperor of India, by sewing caps and the still more congenial occupation of copying the Holy Quran, and while often living merely on barely, bread and water, left forty rupees and twelve annas as the savings of a life-time to be utilised for his unostentatious burial! His simple grave at Deogiri or Daulatabad under a Maulsiri tree is characteristic of the kind of asceticism that Islam not only permitted but enjoined on all, kings as well as subjects.

So much for Mr. Kennedy's "severe strictures written by pious men on Kings who acted not like Kings but like ascetics." And we now come to "the Imperial theme" to which all this condemnation of Kings acting like ascetics was "but the prologue" the theme so dear to the heart of the humble "Indian Civil Servant" who is neither Indian, nor Civilian nor anything like a Servant! "But almost the first requisite," says Judge Kennedy, I.C.S., "almost the first requisite of temporal rule is that the authority of the ruler should be upheld!" By that wonderful telepathy that connects the Civilian of Simla even with the Civilian of far away Sind, the Judiciary has laid down the law for the Executive to follow, and what could be more after Simla's own heart than this doctrine of upholding the ruler's authority? But that never was and never can be the doctrine of Islam, where the authority of the temporal ruler is only to be upheld if he rules as the Agent of God and upholds His eternal rule over all His Creatures. "There is no Government but God's," preached Hazarat Yusuf in prison itself to his fellow prisoners, "None are we commanded to serve but Him alone; This is the straight religion even though the major portion of men know it not!" There may be Kings and there are numerous Traditions of the Prophets enjoining the honouring of kings. But that's only because the King has to be "the shadow of Allah on the Earth" and it is clear as the noonday Sun, no shadow can exist alone and unrelated to the substance. So long as the shadow goes with that substance and the two do not part Company, the king as the king as the shadow of God on earth is entitled to his subject's respect.

"The King is the shadow of God on Earth; God honoureth him who honoureth the King and God dishonoureth him who dishonoureth the King."

But where the shadow presumes to set up a claim to be itself the substance, it must vanish from our sight and leave not a rack behind. In my statement before the Committing Magistrate I have cited several emphatic traditions of the Prophet enjoining the strictest discipline on Muslims and implicit obedience to the commands of those in authority from among themselves. But even in their case, if they commanded aught that contravened God's commandment, there was to be "neither hearing nor obeying!" And what could be clearer than the Quaranic injunction. And if ye and the men in authority from among you dispute in aught, refer it back to God, if ye have faith in God, and in the last Day. This is best for you and the fairest determination.

Mr Kennedy would, however, appeal against Law to History, as if that Tribunal of erring mankind could anticipate reverse the order of Doomes-Day and dethrone God from his Eternal Throne. The Prophet of God had foreseen, and, what is more important for our present purpose, foretold the trials and tribulations that awaited his *Ummat*, and the Babul-Fitan the Chapter of the Traditions dealing with coming trials and disturbances is full of what History had subsequently to record. "I fear not poverty for you," lamented the Prophet of God, "But I fear the world may be extended unto you and ye may selfishly struggle for it among yourselves even as those had selfishly struggled for it that were before you, *and ye may kill each other and perish.*" And we have come as near perishing to-day as we could well do because these "laudable persons of Mr. Kennedy had the world extended only too widely unto them and selfishly struggled for it among themselves even as those had done that had preceded them, and wilfully slew Muslims without just cause. Is the action of these very men to become the *Sunnat* that we must hold fast with our teeth, while discarding the *Sunnat* of the Last of the Prophets and of his well and truly guided successors? If such precedents could replace the Shariat and Divine and Prophetic guidance, then truly would the Shariat also become "the lawless science of Law" and "the wilderness of single instances" to mislead God's simple creatures. For if Ziad's killing of Hussein

could modify the sacred law in favour of such vile and wilful slaying, why could not the adultery of this bastard's father justify that sin which is no offence according to the criminology of Great Britain? Because Musalmans still drink wine and fornicate, the drinking of wine and fornication have not ceased to be sinful why then should not the wilful slaughter of a Muslim without jost cause be as sinful as ever, even though Hajjaj-ibn-i-Yousuf-ath-Thaqafir spared not Muslim lives in the very sanctuary of Ka'ba?

"Woe betide the Arabs for the evil that's nigh;" said the Prophet, "Its victims shall be consigned to Hell-fire!"

"Alas, for Ammar!" lamented the Prophet, "the rebellious faction shall kill him, when he will be inviting them towards Paradise, and they will be inviting him towards Hell-fire."

"The destruction of my *Ummat* will be at the hands of some striplings from the Quresh."

"There will soon be among the tribe of Thaquof, a terrible destroyer (or exterminator) and a terrible liar."

Contemporary Ulamma and their successors have all agreed that the "Terrible Destroyer" here prophesied was Mr. Kennedy's "laudable person" Hajjaj, the Governor and General of the Umayyide King Abdul Malik-i-bin-i-Marwan, a consideration of whose actions and independent enquiry into whose tyrannical repression will according to Mr. Kennedy, enable us to ascertain the "limitations and conditions" of the Divine injunction against the wilful slaying of a Muslim and provide ample guidance to "help us in the present age" when the Prophet's own life-time, affords, according to him, "little guidance"!

Ammar, the son of Yasar,—that first victim to be slain "in the way of Allah"—was himself killed in the battle of Siffin to which Mr. Kennedy so glibly alludes. Are we to mourn with the Prophet for Ammar who was inviting "the rebellious faction" towards Paradise, or glory in the slaughter which consigned that rebel band to Hell-fire? Are we to mourn for Hussein the Victim, or rejoice in the success of Yazeed the Victor, when we know that we owe our destruction to Yazeed and other such Quresh striplings, including Feisal, the Successor of Yazeed in the Kingdom of Karbala!

It is true that Hazrat Ali drew the Zulfiquar against Muslims, and we know that he was "the lion of God," and with him, as Mr. Kennedy very kindly reminds us, "was God pleased." We also know that the Camel which he ordered to be bled to death on "The Day of the Camel" was the mount of none other than Hazarat Ayesha, (with whom, we may not forget, but God and God's Prophet were equally well pleased)." That camel before a burden that had been borne by the shoulders of the Prophet spouse himself when he patiently showed his girl-wife from her apartments, until she admits she herself got tired and dismounted, the Military sports of the Abyssinians on the Day of Id. We further know that with Hazrat Ayesha were also Hazrat Talha and Hazrat Zubeir, both of whom had shared with Hazrat Ali, and the other well truly guided successors of the Prophet, the glad tidings of a promise of Paradise. These were no doubt "laudable persons," and the *Sunnat* of Ali must we hold fast even with our teeth. Why then *did he* draw the sword against *them*, and why did they come to fight against him? The story is simple but it is certainly *not* the story that Mr. Kennedy relates.

The succession of Hazrat Ali was not challenged by Hazrat Talha and Hazrat Zubair, because they had already placed their hands between him in token of allegiance acknowledged. But they certainly insisted on the wilful killing of the late Khalifa, Hazrat Othman. Hazrat Ali, no doubt, contemplated taking such action, but awaited the opportunity and the strength to enforce the Divine Law of *Qisas*,—the taking of a life for a life, in which there was "life" for mankind. He was not yet firmly in the saddle and wanted time. Those who opposed him were deemed by him to be rebels whom he considered himself as their acknowledged Khalifa and Commander of the Faithful entitled to slay for rebellion and for disturbing the public peace They on their part considered that he had ceased to be entitled to any obedience as Khalifa and Amir-ul-Momineen because he was defined the Divine Law of *Qisas* and screening the murderers of the late Khalifa and Ameer-ul-Momineen. Neither side, therefore, considered itself to be outside the pale of Divine protection offered by the exceptions contained in the verse regarding "him who took a life without a life or to disturb the peace on Earth."

The Day of the Camel was the day of Cross-purposes. Overnight a settlement had been concluded on the basis of the surrender of the culprits involved in the murder of Othman to Ayesha; but this sort of peace could not be to the liking of those who were about to be surrendered, and they resorted to violence during the night which resulted in the two forces lying opposite to each other joining issue. Those on either side who were not in the know regarding the action of the culprits, blamed the other side, and thus when Ali met Talha and Zubair in battle, there was bitter mutual recremination. But when the truth dawned on the two latter, they immediately retired from the field, only to fall victims to the swords of Ali's partisans. When one of these men brought to Ali the head of Zubair, the cousin of the Prophet, and hoped to get considerable reward for it. Ali only announced to him the reward that the Prophet had bade the Muslims to announce to him "Give the slayer of Safiyyah's son the glad tidings of Hell-fire!" How would that do as a commentary on Mr. Kennedy's allotment of rewards and penalties on the Last Day: "What is the simple minded Mawla or tribesman to do in such a case? *Is he to* decide and decide rightly on pain of hell-fire which is the right claimant? God does not compel

you to impossibilities. The soldier cannot be guilty of sin if he keeps faith to his rightful patron or chief. The sin, if any, is on the chief and not on the soldier." No, Mr. Kennedy, you had better leave Islam and its Sacred Law alone. Back to your Bracton and your Coke-upon-Littleton! Back to your Blackstone's Commentaries and to your "Law of the Land." There is no vicarious sinning in Islam.

"No bearer" says the Quran, "shall bear the burden of another!" As for Ayesha, she recollected only when reminded by Ali himself the words of the Prophet, that she would one day fight him, and the Prophet's injunction binding her not to leave her house For this forgetfulness she never ceased to expiate during the rest of her life, when her chief occupation was to purchase slaves only to manumit them,—a fitting atonement for an error that had resulted in the slaying of many Muslims, "through mischance."

And if Mr. Kennedy, I. C. S., would deign to look up his copy of the Quran, he will find therein enough guidance for the problem presented by the terrible tragedy of The Day of the Camel. For, says the Quran;

"And if two parties from among the faithful fight each other, then make peace between the twain; and if one of the twain transgresseth against the other, fight the one that transgresseth until it reverts to the Commandment of God, then if it reverts, make peace between the twain with justice and equity. Verily God loveth them that do equity Nought is true but this that the faithful are brothers, wherefore make peace between the twain of your brothers; and fear God, happily mercy may be dealt unto you."

Muslims remain intact if wilful slaying of Muslims, including their Khalifa himself, even by Muslim soldiers in the pay of a non-Muslim waging an offensive war was to be lawful? *But Mr. Kennedy and his kind object to the Brotherhood itself*; and cannot therefore object to such killing as Islam has declared unlawful for all time. The Fatwa of Judge Kennedy, I.C.S., is not an end in itself It is a means to an end—the ultimate ending of the Brotherhood of Islam!

The issue in the battle of Siffian, though ostensibly similar was in reality different. and the actors on the side opposed to Hazrat Ali were also of a different stamp. As Hazrat Othman was himself one of the Beni Umayya, Amir Muawiya, the leader of that house, had good enough claim to demand the *oisas*. But for one thing, all the culprits had already paid the penalty for that dastardly deed with their lives on the day of the Camel, and, for another. Amir Muawiya had not acknowledged Hazrat Ali as Khalifa and Amir-Ul-Momneen, and the battle of Siffian rather than the earlier conflict was an armed challenge to Ali's Khilaft. But, so far as I know all Ulamas of Islam have agreed that this challenge was nothing short of rebellion, as the Hadeeth about Ammar's death, who was killed on the field of Siffian, itself testified Amir Muyawia and all his aparty were designated "Fiat-ul-Bagjiyah" ("the rebellious Faction") until Imam Hassan made a settlement whereby Amir Muswiya became Khalifa and Amir-ul-Momineen. It is *not* true as the Judicial Commissioner asserts that "at the battle of Siffian Amru (Sic) Al Aas, the General of Muwiyas of the Bani-Umaiyya, did much what the accused are said to have done; he imported into a purely temporal matter a question of religion and by binding the quran to the lances of his soldiers forced. All to submit to arbitration, but all schools reprobate this action. "The matter was *not* "temporal" as Hazrat Ali would have been the first to maintain, and all schools reprobate this action *not* because Amr-bin-Al-Aas "imported into a purely temporal matter a question of religion," but because he abused the Quran by making it serve his low purpose of cheating Hazrat Ali, as the sequel will show. If the accused are ever guilty of that trickery all the punishment of Mr. Kennedy's Law of the Land," and all his "temporal censures" will not equal the smallest faction of the torments that the accused will in that case merit hereafter.

Amr although he was the conqueror of Egypt found his courage failing in him in such a sacrilegious War as he was not waging on behalf of "the rebellion faction, ' and despaired of the result, after seeing the turn which the fighting had so far taken, if he had to remain content with putting his faction claims merely to the arbitrament of the sword. He, therefore, bethought himself of another kind of arbitrament, and exchanged stratagem for strategy. Knowing that Ali's supporters included a large number of ignorant people who were inclined towards perverse fanaticism, he caused copies of the Quran to be tied to the lances of his soldiery and demanded arbitration in the name of the Holy book. Hazrat Ali whose respect for the Quran none could improve upon, was inclined to ignore this mock-religious appeal, and he argued with these fanatics. Telling them the whole thing was a ruse he claimed to be "the speaking Quran" himself, as he could well claim, being the accepted repository of the tradition of Islam. When nothing could convert these people, he agreed to abide by the result of the arbitration, and while Amr himself was nominated by the Beni Umaiyya, Ali nominated Abdullah-ibn-Al-Abbas. To this the rebellious faction demurred, on the ground of Hazrat Abdulla being a cousin of Ali and a Bani Hashim, while even an Amr-ibn-Al-Abbas could claim that he was no relation of Muawiya and this challenge to Ali's nomination was supported by the fanatics of his own side. It was then that Abu Musa Ashari was nominated by Ali And yet so perverse were these ignorant fanatics on his side that now they turned round and accused Ali of having made a man an arbitrator *in* a dispute between

Muslim and Muslim when the Quran had declared ("there is no Government also judgment but God's) twelve thousand immediately deserted him; but when Abdullah-ibn-Al-Abbas a prince among traditionists, was sent by Hazrat Ali to explain things to them, with instructions to base his arguments mostly on the Traditions of the prophet, as they were the best commentary of the Quran 8,000 reverted to their sworn allegiance, but the remaining 4,000 deserted finally, and became the *Kharijees* that Sunnis and Shias alike reprobate, but whom Mr. Kennedy has been pleased to give the honourable and topical cognomen of "non-co-operators"

When the arbitrators finally met poor Abu Musa Ahmed pious and unsophisticated old Yemanite Companion of the Prophet fell into the trap prepared by Amr-ibn-Al-Aas for him. It was proposed by Amr that both the arbitrators should begin by pronouncing judgment each against his own claimant for Khilafat and thereafter leave the community to elect the Khilafat afresh untramelled by what had gone before, Abu Moosa was warned against this and was asked at last to leave Amr to make the beginning in this self-denying arbitration, but he heeded it not and relied upon the word of a Muslim and a Companion of the Prophet and when he had pronounced the deposition of Ali, Amr promptly announced the end of the dispute by "agreement"—certainly as much an "agreement" as that of Mr Kennedy with the majority of the assessors in his judgment convicting as under Section 505 for he said that while Ali had been deposed by his nominee he the nominee of Miawayia proclaimed Muawiya as Khalifas there being no other in the field. It was this action and *not* "what the accused are said to have done" that "all a school reprobate," and I have been forced to go into all these details to refute this false history of which Mr. Kennedy took "judicial notice," and still more the false doctrine that the wholly "extra judicially" deduced from it. And it is this work of art which will in all likelihood win the Judicial Commissioner the recognition for "theological erudition" and "historical research" of English, Anglo-Indian and some Indian "Liberal" papers —in nothing more liberal, indeed, than in the praise of false doctrine coupled with temporal authority.

III The other question that relating to the position of the Khilafat need not detain us very long, for a citation of the Hadeeth on the subject of rival claimants to Khilafat even though fairly well-known to Musalmans all the world over, would suffice to dispel the darkness caused by the smoke-screen of Judge Kennedy. He wished to prove that it is not unlawful according to the law of Islam for a Muslim to rise against the Khalifa and fight his Muslim armies, or even to lay hands on him, and that "this doctrine of any particular sanctity in the office of the Khilafat seems to be a new thing among the Sunnis, invented by the very band of rebels and innovators who equally deposed Abdul Hamid" and for evidence he reproduces a summary of the history of the decline of the Khilafat and of the selfish rapacity of his "orthodox Princes" who gradually deprived the Khilafat of all territorial possessions. He might just as well have painted the picture of the Holy Roman Empire at the time when Voltaire found it to be neither Holy, nor Roman, nor an empire and with better justice might have said that there *never* was a foundation for attaching any sanctity to the office of the Empire and at least with equal justice might have said that there never was a Holy Roman Empire. Nay he could have even asserted that the Papacy was never held in any esteem until a few facious Roman Catholics who had themselves turned the Pope out of the Quirinal Palace and locked him up in the vatiern began to call him His Holiness and Pontife Maximus to serve their own ends and to oppose the true protestant faith because some Popes take the lovers of Theodosia and Marozziahad lived very unholy and licentious lives, unworthy of any Christian and much more so of Catholics in Holy orders with their vow of perpetual celebacy, and St Peter's at Rome still contains the nude marble statue of an illegitimate daughter of one Pope who was the mistress of another Pope, but whose undraped beauty a later Pope out of sheer decency, caused to be covered with draperies in metal painted with white chemal. At any rate, neither Mr. Lloyd George nor Mr. Asquith could much relish Mr Kennedy's description of the Khalifa that "he is the temporal Lord of the Muslims for, in order to deprive him of his temporal power, and even to "Vaticanise" him, these English statesmen have likened him *not* to "the temporal lord of the Muslims", but to the spiritual head of a branch of the Church of Islam.

But Islam knows no temporal overlordship as distinct from spiritual headship of of the Church, and these terms are not at all applicable to the Khalifa of the Prophet of Islam and Commander of the Faithful. They are only borrowed from a faith the history of which originated, and contained for over three centuries without any temporal power attached thereto, and thereby created that interminable struggle between empire and papacy which has hardly yet ceased. The Khalifas are the successors of the Prophet, and short of his apostleship they continue the succession to his spiritual cum temporal rule over all Muslims. They cannot claim more nor can they be content with less for the Prophet of God was his representative on Earth or Khalifa—an expression the use of which for a *man* need cause no surprise to Mr. Kennedy, for a God who with his Infinitude cannot take a finite shape as "son of God" of His Avatar or incarnation, must needs send a man to represent him and act as His deputy among men.

But perhaps Mr. Kennedy who scoffs at "the dwellers in dark corners of mosques" and even sneers at "the grubbers among old record", has never read the Quran where a mere man is twice mentioned as the Khalifa on earth of a God "sufficiently

known" to be "Universally and eternally present." Before the first man was created God addressed the host of angels in His Heaven and said "I am about to create a Khalifa" and when He had created him, and equipped him with knowledge beyond the reach even of angels. He asked the angels to bow before this latest creation of the Omniscient and Almighty. It may interest Mr. Kennedy to know that all bowed before the Khalifa ("except the Devil"), who haughtily refused like Mr. Kennedy to acknowledge a human representative and deputy of God on earth, and thereby become an infidel! That first enemy of the first Khalifa of God succeeded in depriving him of his place in paradise, and caused him to be driven out to the earth; but this, the latest enemy of the latest Khalifa of God's last Prophet, evidently seeks to deprive him also of his place on earth, and drive him forth into sheer space or even out of it.

The other mention in the Quran of a Khalifa of God as in reference to David, "O David, we will make thee a Khalifa on earth, wherefore judge between people with justice and follow not desire, since it will lead thou astray from the path of God; verily those that stray from the path of the God, for them there is severe torment in that they forgot the Day's of Rechuning" —Sura-a-Suad, 38th Chapter.

The last Khalifa of God on earth in that sense, as the Last of the Prophets, was Mahomed (on whom be God's peace and benedictions), and since then his first successor was known as the Khalifa of the Prophet and so on. But since the line of succession was continuous, it was agreed that each successor should shortly be designated as the Khalifa of the Prophet and Commander of the Faithful Nevertheless on one occasion at least the Prophet himself calls one of his successors, the Medhi who is yet to come as the Khalifa of God in the well-known Hadeeth. "When you see the black flags come from the direction of Khorasan—approach them for in them will be the Khalifa of God Al-Madhi With regard to the succession to his Khilafat in general the Prophet himself had said:—"Whenever a Phophet died, another succeeded him, and verily thre is to be no Prophet after me but there will soon be Khalifas and they will be many." The companions asked him therefore what do you order us to do, O, Prophet of God? He said, Be true to the allegiance sworn to the first, and then to the allegiance sworn to the next, and so on in due order Do you fulfil what is due from you, and God will question them regarding that over which they were appointed wardens'").

This *Hadeeth* should suffice to prove that the Khalifas from the very first day hold a position of "particular sanctity" analogus to the position of Prophets before Islam; that Muslims were to owe allegiance only to one at a time; that nothing short of breaches of the sacred law, in which they were not to be followed—as I have already cited Hadeeth to prove could justify disobedience to their commands, and as I shall cite another *Hadeeth* to prove only open infidelity justified armed resistance or (*Khuruj*), that the Musalmans must for their part carry out all their own obligations to the Khalifa and must leave it to God to question the Khalifa when regard to that which had been placed under his charge and wardenship.

What could be clearer—nay, what could be more statesmanlike than this? Abu Huzifa, a companion of the Prophet is a specialist regarding the Traditions concerning the future trials and tribulations of Muslims and used to question the Prophet very frequently about them. In one of these traditions the Prophet foreshadowed a time when the Khalifa would be a terrible tyrant, and Abu Huzifa, apprehending that such a period might come within his lifetime, as it did in the time of some companions of the Prophet asked him how he should act in such a contingency. And unhasitatingly the Prophet commanded his Companion to obey him unfalteringly even if the unjust and cruel Khalifa ordered him to receive undeserved lashes on his back. Thus, on the one side even David, a Prophet and Khalifa of God Himself, is warned to deal justly with the men over whom he was appointed God s deputy and representative, and not to follow selfish, misleading desire, lest he stray from the path of God, and forget the way of redoning, when he would stand answerable to God for that which was placed under his wardenship, and would be liable in case of neglect, to severe torment. On the other hand, a Muslim must unfailingly obey a mere man like him who has no pretentions to apostolic succession, whom he had himself helped to appoint, and whom he could himself help to depose but who was nevertheless a Khalifa or successor of the Prophet, and through him, "the shadow of God on Earth." He must not deny his allegiance to him, even though he should personally suffer indignity and torture without deserving either. There is thus no unrestrained autocracy in the case of the ruler, but merely theocratic representation with a very heavy responsibility, to God and Man, and yet no encouragement of indiscipline in the case of the subject even in case of unmerited suffering and hardly endurable provocation. The office of the Khalifa is sacrosanct even if the person holding it may forfeit by his own evil-doing all title to personal esteem. The Khalifa has his duties for which he is answerable, and the Muslim who owes allegiance to him has *his* duties for which *he* is answerable and although no obedience is due from the latter to the former in aught involving disobedience to the God whose deputy he is in succession through the Prophet, the Muslims are not on that account to go to war against the Khalifa

"*Except* if you see open Infidelity which furnishes you with an argument before God"—(Tradition)

When the Quran first promised the Khilafat to Musalmans it was in these words:—

"Such of you as are faithful and do good works God promised into them that he

would assuredly bestow succession (Khilafat) on the Earth upon them as He had bestowed succession (Khilafat) upon those that were before them; and that he would assuredly establish for them their faith which He approved for them and that he would assuredly bring peace unto them in exchange after their fear, (or in security); serve Me, associated nought with Me; and Those will reject (or deny) the true Faith (or be Infidel) thereafter, then are they evil-doers (or Law-Breakers)" (—Sura-i-An-Noor or "The Light," 24th Chapter). This is the definite promise of Islamic Khilafat, and this also the purpose for which it was to be bestowed on the Musalmans, namely that they should serve God, and assign to the commands of none other the binding force and supremacy that are peculiarly associated with the commandments of God. And the very first verses in the Quran that permitted the Musalmans to draw the sword again their tyrannical persecutors were these:—

"Those Muslims too with whom the Infidels are worrying are now permitted to fight against them because they have truly been oppressed; and verily God is potent to render victorious succour to them that have been driven forth from their homelands without just cause but only because they say 'God is our Lord' ! ! Did not God set aside some men through the agency of others from their dominion, churches and temples and synagogues as well as mosques in which the name of God is frequently repeated would have been certainly demolished and assuredly God will give victorious succour unto them that succour God; verily God is of a surety Strong and Mighty. These are people who, if we established them in dominion over the earth would maintain prayer, give obligatory alms, exhort people to do the righteous thing and dehort them from doing the unrighteous; and for God is the eternal determination of affairs ("—Sura-i-Haji" The Haj, 22nd Chapter).

It is because the "Kings", that became Khalifas after the well and truly guided Khalifas of the first thirty years following the passing away of the Prophet, very often neglected this, the true purpose of their Khilafat, and selfishly sought the world that had been extended unto them, and because others, including Mr. Kennedy's "Orthodox princes", instead of getting the Musalmans to depose such of them as were guilty of breaches of God's Law, or themselves suffering patiently under their injustice, set up rival kingdom and hastened disruption and anarchy that the Khilafat has come to this pass to-day. The Khilafat is a prisoner of the English, who exercise undisputed sway in his very capital, bereft as it is of all means of defence, and the Khalifa's residence has the guns of the English Fleet trained on it so as to keep him in duress vile. The only sign of his temporal power,—the greatest need of the Khilafat, of course after its spiritual soundness, a need that reconciled the most pious Muslim divines to the Khilafat of Kings and dynasts whose only claim to it was that power—is to be found not in the Government at Constantinople, but in that temporarily established by Ghazi Mustafa Kamal Pasha at Angora. And yet, strangely enough, it was against that solitary sign of his temporal power that the Khalifa sent so-called "Khilafat-Armies" at the bidding of the English. Could Islam be in a worse plight than this?

But when the leading Ulamas and other exponents of Muslim public opinion in a country that has far the largest Muslim population of any country in the world, recognize long last the true cause of all the ailments of Musalmans, of which everything else is only a symptom, namely the neglect of God's commandments by princes and by people, by *Alim* and by *Ummi*, by soldiers and by civilians, and seek to prescribe the true remedy to the patient in his all but fatal illness, Mr. Judicial Commissioner, Mr. Kennedy must needs penalise them, and then adding insult to injury, preach to them on their duty to remain silent, and not to go about as busy-bodies preaching in season and out of season, or to preach, if preach they must against the excessive use of music and the wearing of silk apparel! Yes, all this is sinful and no Mussalman can afford to disregard vice in any shape or form. But God Himself has furnished us with divine Warrant of precedence, and has commanded us to avoid the cardinal or major sins *first*, promising that if we, for our part do that, He may in His abounding mercy, happily blot out the minor sins, are we to preach "out of season" a sermon against silk shirts and siren songs when the one sermon that is "in season" is to preach, and to preach from every available pulpit, against Muslim soldiers wilfully slaying brother Muslims without just cause, and warring against their Supremest Commander among men the Successor of their beloved Prophet, and the Shadow of God Himself on Earth. And warring too while in the pay—the scanty miserable pittance of a pay—of an Infidel and tyrant Government and warring against Islam and God! The poet has truly said:—

"If thou distinguishest not between various degrees thou art at heart an apostate." And Mr. Kennedy with his wonderful sense of proportion and precedence invites use to this apostacy! No, Mr. Kennedy go back to your Coke—upon—Littleton and spare the followers of the Quran. "Is not Allah sufficient unto his Sesoitor"? For us that is the only true Evangel.

But, what, asks Mr. Kennedy, of rival claimants to the Khilafat? Well, what of them? Islam was no incomplete faith when the last of the Prophets passed away, that Mr. Kennedy may be permitted to try his 'prentice hand at completing and perfecting it with the help of his "orthodox princes." his "laudable persons" and his "simple-minded Mawla or tribesmen"—and "automan" to whom his chieftain is to supply the "mirror of consciousness." Allegiance is due to the first Khalifa and only *after* him to his successor, as the Hadeeth I have already cited clearly proves. He is another and still simple solution. "When allegiance *is* sought for two Khilafas, *slay the second of the twin*!

("—Authentic Tradition in both "Bokhari" and "Muslim"). Here, Mr. Kennedy is not only the lawfulness of slaying a brother Muslim to prove your "relative and contingent but not absolute prohibition", but a positive and direct *command* to kill! Slay the second. That is why your Grand Sherif of Mecca nor any of his "Quresh striplings" in search of any sort or kind of a throne even if three-legged, did not dare to set himself up as a rival Khalifa, for they feared only too justly that simple solution "slay the second!" Here is another *Hadeeth* should you need another after the one above "When you have all agreed on a man to carry on your affairs whoso comes to you and intends to cause separation among you, then kill him, be he whoever he may." Yes, "Kill him be he whoever he may"—even though he be the English "Grand Sheriff Mecca" and a true descendent of the Prophet, lured by the promise of an Arab Empire offered by Sir Henry Mac Malcon, late Foreign Secretary of India and for a brief space High Commissioner of Egypt!

The reason for this stern and draconic commandment is not far to seek. The lashes that Hazrat Abu Huzaifa was asked to endure on his bare back have already pointed to it. The reconciliation of the most pious Ulama to the Umayyide rule of Yazid's successors has also done the same. Muslim society must not be exposed fratricidal wars, leading to disruption and decay. If Khalifa is not worthy of that office, let him be *deposed;* but if another the worthiest and most pious among the Muslims, sets up a rival claim while the unworthy man is still Khalifa, then he the worthiest and most pious among the Muslims, must pay the penalty of his "previousness" with his life.

If that is so, you ask, what is to become of so many of Mr. Kennedy's "orthodox Princes" who warred against the Khalifa or set up rival claims against him? Well, I am sorry for them, even if Mr. Kennedy's far too sweeping statement be true that "the Ulama of Cordova, Seville and Toledo issued no Fatwas" against Abdur Rahman of Spain whom the Abbaside Khalifa even called the Falcon of Quresh. In the first place, neither the Umayyides nor, indeed, the Abbasides had succeeded to the Khilafat in the manner of the well and truly guided first four Khalifas, that is, by election or by nomination by their predecessor accepted and acclaimed by the community. But since they had that great requisite of Khilafat, temporal power, which was generally used by them to good effect in defence of Islam, the Ulamas of those times following the prophecy of the Prophet about "many" Khalifas and about "Kings" and dynasts after the Ideal first four, reconciled themselves, for the sake of defence and security of the Muslim World, to the Khilafat acquired by these latter *i.e. with force Majeure* and domination. Therefore, Abdur Rahman, who had escaped the holocaust of his family at the hands of its Abbaside supplanters and their Ajami supporters, felt himself to be at least as much entitled to continue the succession in the Umayyide family as the newly risen Abbasides did in breaking that continuity. In the next place, the Muslim world outside the Iberian Peninsula of Europe and the far west in Africa did not acknowledge the Umayydies and Khalifa. No doubt many of the "orthodox Princes" who defended Islam in Spain and the Western Marches contributed a brilliant chapter to the history of Muslim rule. But it is open to us to speculate where we would have been if there has been one Supreme Khilafat throughout the Muslim World, of which each succeeding incumbent was elected by the democracy of Islam or nominated by his predecessor with popular acclaim. As a European writer has said, Christendom must thank Amir Muawiy that all Europe is not part of the Muslim World to-day, and we cannot mourn too much the awful tragedy of Siffin, inspite of Hazrat Ali's chivalrous—nay, truly Islamic offer of help to Muawiya in Syria against New Rome.

And what shall we say of the tragedy of Karba where the sons of these two opposing protoganists of Siffin were the chief actors? Can any Muslim, Sunni or Shiah, forgive this cynical and supercilious trafficker in untruth who said in open Court: "And why did Hussain Bin Ali go to Irak? Not, I think, to drink the waters of the Euphrates or the Tigris, or to deliver lectures in KUFA or BASRA, but *to maintain his right, sword in hand, like a valliant prince.*" To maintain his right as a prince or his grandfather's right as a Prophet? Prince indeed! Why ("King is Hussain, Emperor is Hussain! The Faith is Hussain and the Refuge of Faith is Hussain! He gave away his head, but gave not his hand into the hands of Yazid; Of a truth the foundation of 'there's no God but God' is Hussain!")

This is the truest appreciation of Hussain maintaining his right and that of every Muslim against Yazid, and the likes of Yazid to come in future generations, and it may interest Mr. Kennedy to know that this was written not by some Shiah believer in apostolic succession, but by a Sunni Saint who is known to this day as "Sultan-Ul-Hind," "the Sultan of India," though he was buried over so many centuries ago on a bare hill-top at Ajmere in barren sandy Rajputana.

Hussain had not gone to fight for the temporal heritage of Ali, or even of the Bani Hashim against their ancient enemies the Bani Umayya, but for the temporal-Cuin-spiritual heritage of every Muslim who claimed that he had received from the Last of the Prophets himself the inestimable patrimony that the open breaker of God's Law was not the man to administer any law among Musalmans. The sweet water of the Euphrates and Tigris had not attracted him away from the brakish waters of Sem-Zem, but the far sweeter draught of martyrdom! He did not go to deliver lectures at Kufa or Basra but on the tablet of Karbala he engraved a lesson that shall eternally guide mankind!

Two previous *Nazars* presented to Him had been graciously touched and remitted

by Allah, one at the Oldest House at Mecca by Ishmael, the "long-suffering son" of the Patriarch Abraham and the other at another *Harem* at Calvary, when they wanted to crucify Christ "and they neither killed him nor crucified him, but his presentment was placed there for them," and thereafter "Allah raised him towards Himself." But this, the third *Hazar* of life was presented and *accepted*, so that the foundations of true faith may be firmly laid. The head that Hussain gave away, while withholding the hand so sedulously sought, is the foundation stone of Islam.

But when Imam Hussain heard that Yazid had already been accepted by a large following in his father's stronghold of Syria, he asked Yazid's deputy to accept any one of his three suggestions. One was that he might be taken to Yazid to whom he would explain his position. Another was that he might be allowed to go back home to the Hajaz. But one can understand how the third suggestion must have been the one that Hussain himself liked best—that he might be allowed to go one of the Marches of Islam, here to wage Holy War against the enemies of Islam. But none of these suggestions was accepted by the cruel and blood-thirsty tyrants, and the courage that might have changed the world's history, like Ali's if there had been no Siffin, had to show itself in such unequal combat as the valiant band of 72 could maintain against thousands at Karbala. But it is a libel on the valiant martyr of Karbala to bracket him with Mr. Kennedy's "Orthodox Princes" who betrayed their allegiance to the acknowledged Khalifa, and warred against him for their own selfish wordly ends.

And whatever the Ulamas of Cordova, Seville and Toledo may or may not have done, in the case of Abdur Rahman "the Falcon of Quresh," it is a libel on the Ulamas of Islam to suggest that they did not condemn such "orthodox" princely practice. Imam Abu Mansur Matureedi, who flourished towards the end of the third century of Hijra, or of the ninth century A. C. in a place near Samarkand, said that who ever calls the Kings and Princes of our time even just is a *Kafir*, for they were tyrants and Law-breakers. Similarly Imam Safaar of Bukhara who flourished two centuries later, (to quote only one more example), when asked whether it was lawful to call the reigning sovereigns just and Kings, answered that some of these phrases and designations were rank infidelity, and others involved sin and law-breaking for they were untrue and unmerited! Moulana Hussain Ahmed Sahib to whose invaluable I owe so much already had selected numerous such examples and other citations and only at my own instance had he refrained from quoting them in his address to the Jury, because no evidence had been led by the Prosecution on this subject to need refutation. But we little knew that the Judge on the Bench was to occupy the place of witnesses in the witness-box, and that he was going to take "judicial notice" of such false history, as he said he did, in answer to my suggestion, that it would have been fairer to us to have called for such evidence and to have allowed it to be subjected to the customary legal tests of truth. But, as I have suggested before, perhaps the *Alim* that was to accompany Mr. Ross Alston did not, like so many witnesses arrive in time, and only reached Karachi when it was to cue for the Bench rather the witness-box to speak and bear false witness.

And whether fortified with this "Speaking Shariat" or only with what is to be found in books, the Judicial Commissioner had an uninterrupted run. And having proved as he thought beyond denial that "orthodox Princes have warred against the Khalifa and coerced him in the exercise if his power by the fear of the sword," —what it was permissable for a mere man to declare,—he went on to add that there same "orthodox Princes" of his did so "*without* incurring the guilt of sacrilege!" That surely Mr. Kennedy armed only with his "temporal censures" could have well left to the Great Awarder of rewards and penalties hereafter.

But is not Mr. Kennedy, the Civilian of Sind and may he not do what did "Ashworth, the Civilian of Agra?" That very superior person had so jarred on the nerves even of bureaucratic brothers at Agra that one fine morning at a breakfast where he too was a guest, another bureaucratic guest related his dream of the night preceding. He said he had dreamt that he was dead and buried, and after a decent interval had been resurrected and brought before the Judgment Seat of God to answer for his many sins of commission and omission. He described the hurrying to and fro and the din of the Day of Reckoning when millions of millions had to be resurrected, judged and rewarded, or punished, as they deserved, when all of a sudden a strange and unaccountable silence supervened over the prevailing tumult and a huge but unwhispered "Hush!" seemed to have made every one absolutely still. And the assembled and rather disorderly crowds parted in a very orderly manner and seemed to make way for some Awe-inspiring Personality. He then saw coming towards the centre of this assemblage a person walking very slowly and unconcernedly, his thumbs resting inside the arm-pits of his West-End Waist-coat, looking neither to the right nor to the left, but apparently so absorbed in himself as not to notice that sum-total of humanity of all ages and climes assembled for by far the most serious business of life, or rather after-life. Such was the infectious effect of this unusual silence and orderliness on the part of this otherwise disorderly and rowdy human assemblage that the Great Judge had also suspended the operation of judging resurrected souls and sat silent, watching the even and tranquil progress of this Awe-some personality. And at last when "It" had reached the foot of the Almighty's Throne, God could not help asking half apologitically, "May I ask, Sir, who you may be?" It replied without showing any more concern than it had yet done: "Oh, don't you know? I am Ashworth, the Civilian of

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Agra." And thereupon, instantaneously God Almighty descended from His Eternal Throne, and said: "Pray excuse me; take your seat—I was only keeping it warm for you!" Amurath succeeds Amurath and perhaps Kennedy the Civilian Judge of Sind has succeeded to the Judgment Seat vacated by Ashworth the Civilian "Junt" of Agra, with no chance for poor God to have even a look in!

He has judged not only the seven accused in King-Emperor *versus* Mahomed Ali and six others, nor even the whole Khilafat movement and awarded the "temporal censures" that he was or was not empowered by the Law of the land to award; but has also judged the whole of Islamdom here and hereafter, and while eternally condemning Khalifas to be wilfully slain without just cause, by Muslim soldiers even in the pay of Infidels waging offensive wars against him, he has acquitted and made to *leave* the Court "without a stain on their character"—all except for the whitewash as *Punch* said on a memorable occasion that the Premier and the Viceroy may together perhaps recollect the whole host of his "Orthodox Princes" who like him exalted self even above God. His false history may or may not be allowed to go unchallenged, but his extra-judicial and still more false theological deduction from that history could not. That is why I have, in spite of none too robust a health, written this long and detailed memorandum on the subject, and close this part of it with the final observation, that had we from the soil of Sind permitted the unchallenged circulation of this new Evangel under the colour of sound Islamic doctrine, we would have been guilty of the worst crime that any Indian Muslim could have ever committed in the course of the twelve-hundred-year old history of Islam in India. Islam had entered India through Sind through the efforts of one Mahomed. It must not be driven out of it through the same gateway through the sinful neglect of another!

There is only one more of Mr. Kennedy's religious doctrines that has to be noted and refuted. It needs no great argument to prove that what a Muslim could not lawfully do while serving a Muslim Master, he could not lawfully do while serving a non-Muslim. And the Fatwa of Shah Abdul Aib Sahib cited by Moulana Hussain Ahmed Sahib in this case, specifically refers not only to the unlawfulness of service in the British Army, but also to the unlawfulness of such service in the forces of the Sikhs and the Mahrattas of his time a hundred years ago. In fact he considers it unlawful for a Muslim to give Military help to a non-Muslim even against another non-Muslim, if thereby he abette the domination of Infidelity.

But, then, Mr. Kennedy appeals from religion to reason which in nine cases out of ten is the prelude to an appeal to Unreason—and asks us to consider the case of an enlightened and civilised Musalman people living in fertile province under the benign sway of some Hindu power "Bordering the plains are hills inhabited by ferocious Muslim tribes independent and continually raiding without attempting to conquor the plains below. Is the Mahomedan who fights to repel these tribes from the hearths and home of the Mahomedan population to go to hell, because he does so in the armies of a Hindu Prince?" This apparent poser is well calculated to set the Hindu against this Muslim, and may well trouble the mind even of an Indian working for and expecting the early establishment of Swaraj, for what could be plainer than this that the Punjab is the fertile plain, and the raiding independent hill-tribes at the tribes across the Punjab border the attempted annexation of whose territory is calculated to involve Government in its next Indian War? But the solution is supplied by Islamic Law which is believed by every Muslim to be based on the best and most sustained Reason, and it is this that the Muslim who resists such wanton aggression and attempts to put a stop to such disturbance of public peace may reasonably expect to be led into paradise with honourable entry!"

I related to the Editor of "Nation" in London a tradition of the Prophet to the effect that a Muslim must assist his brother Muslim whether he be oppressor or oppressed, and Mr. Massingham's face immediately showed a rather critical smile at this apparently fanatical and perverse doctrine. I told him, he might well smile; but even the simple-minded son of the desert could detect such obvious injustice, for a Companion of the Prophet had immediately asked how it could be just to assist an oppressing brother. To this the Prophet of God had replied that the assistance which a Muslim could render to an oppressing brother was to *prevent* his oppression! A Muslim of the Punjab fertile plains would best assist his independent raiding brethren of the hilly border by putting a stop to their raids and *that* the Indian Musalmans mean to do. God willing, when India has won Swaraj—that is to say, *if* the raids of the ever-troubled hill-tribes on our border outlive bureaucratic British Rule!

But Mr. Kennedy jumps from this sort of defensive warfare to an offensive war, and although he is careful to declare that "*Aggressive* warfare is at all times and circumstances a sin," he brushes aside as totally unmeaning the distinction between offence and defence. But it is precisely because it is under cover of *defending* themselves only all powerful or bellicose nations frequently "offend" others that we must continue to distinguish between wars of defence and those of offence and aggression, by whatever name they may be called and howsoever they may be camouflaged. Islamic juris consults have also discussed the lawfulness of (Hujum) as distinct from (Difa) and those that declare the former also to be sanctioned by Islamic Law take care to distinguish it from aggression, which would be—a thing strictly forbidden in one of the two earliest verses

permitting the Muslim to unsheath the sword in self defence: "And fight against them in the way of Allah that fight against you and transgress not; verily God loveth not the transgressors"—Sura-i-Al-Baqrah "the Cow"—2nd Chapter.

Finally, after the grimacing sneer against "dwellers in dark corners of mosques and grubbers among old records," Mr. Kennedy asks "any Muslim who may be a Sayyad or a Fatics (Sic)"—though why he particularises these is not clear and at any rate Moulana Hussain Ahmed Sahib is a Syed—what he thinks of this doctrine" that a Muslim may voluntarily engage himself in the service of his Prince, may take his pay and provisions, and be his partner in the glory of the kingdom, and then, when the day of peril comes, and his prince calls on his soldiers for help, the soldier is to break his plighted oath, and the ties of fealthy, and leave his prince to be dethroned and slain, because his prince is a non-Muslim and his enemy is a Muslim?" A puzzling poser indeed, but the more puzzling it is, the more precisely it furnishes us with an argument for appealing to the Muslim soldier not to engage himself voluntarily in the service of this Government, nor to take its scanty pay and poor provisions—costing in all but a fifth of what it pays a white soldier, though the white soldier is not by a long mile five times as brave or hardy or successful as the Indian Sepoy. That is why we ask the Muslim soldier to secure his discharge, if he is already in the service, before he is next called upon to be the Government's "partner in the glory of the Kingdom" by crawling on his belly and writing poetry on the ground with his nose, not to mention the "glory of the Kingdom" in which Bosworth Smith wanted him to be a "partner" when his women folk were threatened with unmentionable shame! Let him not plight his oath at the cost of breaking the oath taken on "the day of Alastu"—which I am thankful Mr. Kennedy in passing acknowledges in his charge to the Jury. But had we not *hammered* at the fact that no soldier in the British or any other Army in the world plights his oath to break the laws of his God even to save his prince from dethronement and death and had I not gone patiently through every one of the fourteen items—reminiscient if somebodies fourteen points—in the enlistment form exhibited by Col. Gwyer to prove to the hilt that while Government was careful to ask a recruit whether he would object to go anywhere that he is ordered by land or by sea, it had not asked him whether he would or would not object to go to Hell! He is questioned about his attachment to "caste usages" interfering with his "Military duty" but never a word is asked about religious Commandments, and one may well suppose that after the grim sequel of the issue of greased cartridges, no Commander dare ask a soldier in India to disregard or fail in his religious duty as a Hindu or a Muslim so as not to disregard or fail in his duty as a soldier. A Government that was so punctilliously careful as to make sure whether the recruit objected to vaccination or even re-vaccination, may well be given "the benefit of the doubt" always denied to us by Judge Kennedy, and exculpated from the charge of condemning a Muslim soldier to the five-fold punishment prescribed in the Quran for wilful slaying of a brother Muslim without a just cause. Yes, Mr. Judicial Commissioner Kennedy, I.C.S. the Prophet of our religion *was* the "best of men" and had the title of "Al Amin" or "the Trusty" as you seem to admit for your purpose, but it is just because he was *that*, that to him was revealed the verse, "O, Ye faithful, do not be guilty of a breach of trust regarding God and the Prophet and each other, while Ye know it," Sura-i-Al-Anfal, or "The Spoils" 8th Chapter), Let no Muslim voluntarily engage himself in any service where he knowingly and wilfully betrays the trust of God and His Prophet and the trust of a brotherhood of three to four hundred million Muslims and those that had unknowingly engaged themselves in this manner must challenge those that had deceived them! I hope Mr. Kennedy has now learnt what *our* religious conditions are, even though his Law of the Land can give them no protection. In spite of Queen Victoria's Proclamation that she disavowed alike the right and the desire to impose her own convictions on her subjects.

This exhaustive, and I must confess, also exhausting refutation of Mr. Kennedy's excursion *into* the unfamiliar domain of religious Doctrine leaves neither time nor space nor even inclination to deal with his judgment on the Khilafat movement contained in his charge to the Jury, which is based on not so much as a word of evidence or even complaint by the prosecution. But young civilian is nothing if he is not thorough, and was it not Lord Morley who had likened him to Strafford for that very reason, and even mildly warned him of the fate of that believer in the policy of "Thorough"? Mr. Kennedy must needs see to it that the entire Khilafat movement, extending as it does over all India as well as beyond the confines of India, is declared illegal and suppressed, while he is about it locking up for as many years as he can some of the principal workers engaged in that movement.

But why all this laboured and tortuous acknowledgment that the movement was not illegal in its origin, and why, indeed the first and only gift to the accused of "the benefit of the doubt" in accepting my brother's word for it that at its inception the Khilafat movement received a certain amount of sympathy and approval both here and in England. Is it not, as the *Times of India*, following the lead of the Viceroy himself, tried to assure the Musalmans soon after our arrest that Government wished it to be known that it is still in favour of the movement rather than against it—of course within certain limits! The fact is that having tried to isolate the Musalmans, it now wants to isolate *us* and such other of the principal workers as base

the case for the Khilafat—*and* the Jazeerat-ul-Arab on the unalterable *religious* obligations of the Musalmans. A fictitious origin within the pale of legality, as distinct from its present alleged illegal growth is assigned to the movement stated to have been favoured, if not encouraged, by "eminent persons both in India and in Europe" in those days. Then says Mr. Kennedy, it sought "to strengthen the hands of the Pro-Turk party at Home in their attempts to get the Allies to deal leniently with Turkey, or at any rate to prevent the powers from supporting the Greeks." All this *not* because Mr. Kennedy, or any other official for the matter of that, cares two straw about the Khilafat movement and its past history, but because they all want this roseate picture of a fictitious past to the prospect realized in the *immediate future*! "The Pro-Turk party at Home" and its "attempts to get the Allies to deal leniently with Turkey," indeed! Where in the name of all that is not cant and hypocracy it that "party," and what have been its "attempts" and particularly their result? "Constantinople was retained for the Sultan!" Shout the greedy grabbers of unearned gratitude. But Constantinople only *detains* the Sultan and at any rate we were asked to be duly grateful for this small mercy to *each* of the Allies when our Delegation visited the Capitals of each in turn. Now this Leniency or Mendicancy School in the School of His Highness, the Aga Khan, the Ruling Chief of the second or third class of Bombay Presidency with a salute of Nine Pop-Guns, who first offered to go to fight Turkey and the Khilafat as a private soldier in the British Army, when only too sure that this bellicose loyalty would have no chance of undergoing a test or trial, and is now sending frantic cables, when we are safely locked up, to induce Musalmans to re-climb the heights of the Himalayan Sinai, called Simla and beg the Government to give the beggars something.

For our part we plead for no leniency or indulgence but stand on our *right* as Muslims to retain the Khilafat with adequate temporal power and to free the Jazeerat-ul-Arab including mandated Mesopotamia, Palestine and Syria, from all non-Muslim control. Nothing short of this will satisfy a *Muslim* and an adherent of the Ottoman Khilafat, and we shall fling in the face of the Grand Almoner who presumes to offer us his beggarly sympathy and the promise of *leniency* in dealing with the Turks! The Turks, with God's grace, need no leniency, and the day they need it, they shall forfeit their title to the love, respect and admiration, which, thank God to-day they rouse in and receive from every Muslim heart! In vain is the net spread in sight of the bird and Mr. Kennedy's bait will not tempt any Muslim any more than Lord Reading's advocacy of his religious cause while he is day after day shutting up his fellow workers on account of the self-same religious convictions. There was a time when some of the best of us like Chotani M'an, that large-hearted Muslim, and Doctor Ansari, that selfless National worker were led to entertain hopes from "the Pro-Turk party at Home" and its "leniency." But sooner or later all were cured of this fatal expectation, and we thank God for this National deliverance.

Now India's non-violent battle for restoring to India her Swaraj, coupled with Ghazi Mustafa Kamal Pasha's violent battle for retaining the Swaraj not yet wholly lost by Turkey will alone give us back the Jazeerat-ul-Arab and the temporal power requisite for the Khilafat. So, friends, as I said in my message the other day "hurry up with that Republic!"

That's my last word and I live in the hope that God will give me a life long enough to see my country enjoy once more her long freedom and be through that restored freedom the saviour, with God's grace, of the Khilafat that is my Faith.

AMEN!

(Sd.) MAHOMED ALI

Karachi Jail.

A Note on the Judgment of the Judicial Commissioner of Sind in the Sessions Case No. 33 of 1921.

THE KING-EMPEROR

versus

MAHOMEDALI & SIX OTHERS.

BY MAHOMED ALI.

I am preparing a separate memorandum with regard to the extraordinary summing up of the Judicial Commissioner in this case, which was in effect, and may well have also been meant to be, the judgment itself, and much else in addition. I therefore confine myself here to the judgment which I may explain was never delivered in the Court in our presence or to our knowledge and of the existence of which we have learnt for the first time from Mr. Moazzam Ali who secured and brought to us a copy.

It is necessary to say something about it, because the Judge, who had acted in a most unfair manner throughout the trial, and had in fact showed his prejudice even before the committal to the Sessions by coming to inspect the Khalikdina Hall preparatory to holding the Sessions Trial there, has introduced an element of dishonesty even into the unpromising material provided by the opinion of a majority of the Jury acting as Assessors with regard to the minor charges under Section 505 and 117 I. P. C.

It will be remembered that the Judicial Commissioner had obviously summed up for a conviction of us for Criminal Conspiracy to attempt to seduce the troops from their allegiance or duty and had no less than three times told the Jurors that in his opinion there was such an agreement as made it a Criminal Conspiracy, and that some of the accused, (clearly meaning *all*, except Sri Shanker Acharya, whom he equally clearly wanted to be acquitted) were members of that Criminal Conspiracy, although he had to admit that there was no evidence of a traitor or spy who had acquainted himself with the inner workings of the Conspiracy, had been admitted to the secret counsels of the chiefs thereof, and had detailed in Court what he had learnt, and that there was little evidence obtained by seizure of papers and correspondence at the Head-quarters of the Conspiracy or from the possession of some leading persons in the Conspiracy, though seizures both legal and illegal were not wanting. He had come to the conclusion that we were criminal conspirators who intended to seduce the troops, because he thought there was evidence of "a common course of conduct," of the adoption of "a definite line of policy," of our having spoken "in favour of it" and having "acted in a way which is explicable *best* by supposing"—the italics are mine and are meant to emphasise that in the Judge's opinion it is not necessary that these speeches and actions should be explicable *solely* on that supposition "that we had already agreed to support and carry out such policy." Not one word was said by him to the Jury in such a lengthy charge about any benefit of doubt accruing to the accused, even when he negatively expressed the absence of an impossibility—he would go no further—that the leaflets received in some Regiments, constituting the only attempt to seduce the troops in pursuance of our conspiracy, may not have been sent by us or any co-conspirator of ours, even though without our knowledge, but by some other—"some enemy of England who was not a member of the conspiracy and *who was probably a Hindu!*" All this, however, proved much ado about nothing, for the Jury, consisting of one European and two Anglo-Indian Christians, and two Hindus, employed though they were in the service of European firms, and in two cases the Greek Firm of Ralli brothers, or in the service of Government itself, had the courage of their convictions and by their unanimous verdict of "Not Guilty" brushed aside all these cobwebs so laboriously spun by the Judicial Commissioner to entrap them. They believed neither in the existence of a criminal conspiracy to seduce the troops of which we were members, nor connected us or any co-conspirator with the so-called attempt made in pursuance of such conspiracy. Thus at a stroke the two main charges, one of which was punishable with seven years imprisonment and the other with transportation for life, fell through. Therefore there only remained the minor charges of making a statement with intent to cause, or which was likely to cause, the troops to disregard or fail in their military duty, and of instigating the public generally, or at least more than 10 persons to commit the same offence, one of which was punishable at the most with two years of imprisonment and the other with three years. In both these cases the Jury acted only as Assessors and the Judge could entirely disregard their opinion, being to this day in defenceless India both the Judge and the Jury in his own person in these and many other such cases. As I had said, the jurors as assessors were here only the bigamous wives of the judge in terms of the Arab proverb: "Always consult your wife; but do what you think best!" The Judge could, therefore, reassert himself and vindicate the all but omnipotence of the bureaucratic judiciary in India, and he certainly did assert himself to this extent that he not only convicted us, but also awarded us in one case the maximum, and in the other almost the maximum sentence that the law allowed. And what is more, he edged in the words "agreed" and

"conspired" into the judgment when convicting the other accused under Section 109 read with Sections 505 and 117 respectively, when that section only entitled him to say that they had "abetted" me in committing the offences punishable under the two latter sections. Well, I grudge him neither the satisfaction of awarding almost the maximum sentence, nor of his greedily clutching at criminal conspiracy, however "minor," by way of a *consolatium*, or what they would call at Cambridge a "Wooden Spoon." But what I do grudge him is another "agreement," much more criminal than ours, in which he seeks to incriminate the majority of the assessors as co-conspirators. He says "I agree with the majority of the assessors and find that accused No. 1 Mahomed Ali made a statement on the 9th July, 1921, at Karachi calculated to cause the Mussalman Officers and Soldiers in the Army of His Majesty to disregard or fail in their duty on that as he made it with the intention of causing such an effect, the truth of it is not material. I therefore find him guilty of an offence under 505 I. P. C." The Judicial Commissioner is welcome to find me guilty of any offence under the Indian Penal Code or under any other Code of his favourite "Law of the Land," but he cannot make the majority of the assessors a party to this nefarious transaction. Now it is clear that one of the two Hindu Jurors declared all of us "Not Guilty" of every one of the offences with which we had been charged, while the other, who was the foreman of the Jury, gave the following verdict with which the three Christian Jurors agreed:—"Mr. Ramchand Tulsidas is of opinion that the charge No. 3 is proved against Mahomed Ali because the resolution No. 6 was likely to cause the Muslim soldiers to fail in their duty ..... I have not taken into account the deep religious feeling of the accused." Now, this is the necessary extract from the copy of "Assessors Opinion" supplied by the Court and purports to have been taken down by the Judicial Commissioner himself. But what I heard the foreman declare in Court was that "in giving this verdict I have not taken into consideration that this was the deep religious conviction of the accused," and I admit that he *may* have said instead: "in giving this verdict I have not taken into consideration the deep religious conviction of the accused." In any case the word used was "conviction" and not "feeling" and I can only account for the alteration by supposing that the Judge wanted to get over the difficulty caused by the "Exception" to Section 505 I. P. C., and my "deep religious conviction" would have brought me under it when the Jury disavowed any criminal intention. But even as it is, I come under that exception and my conviction though it may be perfectly legal so long as the Judge and not the jury is "the monarch of all he surveys," cannot nevertheless be based, as it is here sought to be, on an *agreement* with the majority of the jurors acting as assessors. Indeed it is based on the clearest possible *disagreement* as I shall presently prove. The relevant portion of Section 505 is this:—"Whoever makes a statement with intent to cause, or which is likely to cause, any Officer, Soldier, etc., to disregard or fail in his duty as such shall be punished with imprisonment which may extend to two years, or with fine or with both. *Exception*:—It does not amount to an offence within the meaning of this section when the person making any such statement had reasonable grounds for believing that such statement is true and makes it without any such intent as aforesaid." Now the common ground between us and the prosecution or the Judge—for the two are interchangeable expressions for all practical purposes in this case except when the Judge is more antagonistic to the accused than the prosecution—is that a statement *was* made and it was contained in a resolution introduced by me as President of the Karachi Khilafat Conference, moved by another of the accused, and seconded by a third and supported in speeches by two others out of those convicted and passed with the consent of yet another. But the prosecution charged us with making a statement *with the intent* to cause the Muslim soldier in the Army to disregard or fail in his duty as such, or, in the alternative, asserted that *it was likely* to produce this effect. If the intention is *not* proved, and even if the likelihood of such an effect *is* proved, it is open to the accused to prove that he had "reasonable grounds for believing that such statement is true," and if he can establish that, he comes under the exception to the section, and his making such a statement "does not amount to an offence within the meaning of this section." Now what the majority of the jury as assessors did was to declare only that "the resolution No. 6 was likely to cause the Muslim soldiers to fail in their duty." If, therefore, I had established that I had reasonable grounds for believing that the statement in resolution 6 which was the subject of the charge was *true*, I would have been "Not guilty" of this charge as well. It was this possibility which the astute, if not learned Judge foresaw and with remarkable obstinacy endeavoured for more than an hour to prevent my refering in my address to the jury, to the citations from the Koran and the authentic Traditions of the Prophet in my statement made in the Lower Court, in support of my claim that I had reasonable grounds for believing the statement contained in the resolution to be the true enunciation of an Islamic religious doctrine. At the very outset the Judge had objected to my explaining to the Jury what constituted the sources of Islamic Law and would not let me explain what great care had been taken by the Traditionists to ascertain the authenticity of the Prophet's Traditions and how rigid were the tests imposed by them as compared with the tests applied by Christian theologians even with regard to the four generally accepted gospels of the New Testament.

As I was myself loth to do anything that might savour of indulging in religious comparisons, I had not then persisted. But when I was dealing with the charge under Section 505, and had yet to deal with the one under Section 117, and the Judge said "Never mind the Prophet," and on my asking him to withdraw this insolent and blasphemous expression, insisted on my

stopping altogether, I saw what he was aiming at, and persisted in the exercise of my right as an accused person even to the extent of defying the Court. I succeeded in my persistence, but I had already had to wrangle with the judge for over an hour, and so contented myself with a very brief citation of the verses of the Qoran and the Traditions of the Prophet, and barely touched on the juridical pronouncements of Islamic Juris consults in the early days of Islam or of later-day Ulama, like the late Shah Abdul Aziz Sahib, the late Moulana Abdul Hayy Sahib and Moulana Ashraf Ali Sahib who is still living. Nevertheless, it was enough to convince the jurors that the statements for which I was charged under Section 505 was part of my deep religious convictions, and the foreman, speaking for four of the five jurymen, gave expression to this conviction when giving the verdict of "Guilty," as directed by the judge, while the remaining 5th juror gave the verdict of "Not Guilty." The judge had already misdirected the jury on the point paying regard to or totally disregarding of our religious convictions, and even if he may be considered to be right—which I deny—on the general proposition, that in answer to a charge of breaking the law of the Land it is not sufficient to raise and prove the plea that the act which is alleged to be an offence is one which is enjoined by the religion of the accused, he can never be deemed to be right in his assertion that it is immaterial and irrelevant what the religious convictions of the accused is if that religious conviction is a statement for which he is charged under Section 505. There, at least, it is both material and relevant, for if it is a man's deep religious conviction, and he proves that that conviction is based on the universally recognized authoritative sources of his religion, as I sought to do, then he proves that he had reasonable grounds for believing that the statement he was making was true, and that brings him under the exception to Section 505, if *Criminal intention* is not proved against him. In his summing up the judge said in one place: "the question therefore whether Mahomedan religion renders it unlawful for a Muslim to kill another Muslim and whether the accused were bound to propagate that doctrine, or whether the accused genuinely believed that they were so bound, and that such killing is unlawful, are really not at all relevant to the case," he further admits that "I endeavoured to stop them ..... because I did not wish to confuse the issues and did not wish to allow the present trial to be a means of propagating doctrines which I consider dangerous and unsound." It was in this trial that we learnt for the first time that an English Christian Judge could consider himself competent to declare what was sound and safe Islamic doctrine and what unsound and dangerous, and to characterise the Fatwa of 500 Ulama in every place where that word occurs in his summing up as "the alleged Fatwa" and the Ulama themselves as "so-called Ulama." But even if we disregard this characteristically civilian claim to omniscience, we cannot leave un-noticed the unsoundness of his own doctrine with regard to "the Law of the Land," and his own inconsistencies with regard to those doctrines. For, in another place in the same summing up he says with regard to the charge under Sec. 505 "the accused admits having made that statement, but he says it is a true statement. *That may be.* But that does not exonerate him from guilt *if he intended* that the making of such a statement should induce Musulman soldiers to fail in their duty. *It is only when there is no such intent that the making of a true statement calculated to act that way on troops is excusable.*" The Italics are mine and are meant to emphasise that at last the judge has accepted my contention and resiled from the position he had taken up throughout the trial that the whole of my argument based on our religion and our beliefs was both irrelevant and immaterial.

How different is this reluctant admission of relevance from the cocksure certainty of the following which occurs elsewhere in the same charge to the jury! "If the proposition set forth by the accused be as alleged namely that it is unlawful for any Muslim to serve in the British armies at the present juncture and *if it be religiously true and incontestable*, and if the accused conspired to bring it under the notice of the troops, then the greater is the guilt of the accused because the troops were more likely to be seduced than if it were wholly erroneous and absurd." In other words the greater the truth of the statement the greater the guilt; but there is unfortunately that exception to Sec. 505 which makes it "excusable." Well, one juror declared us to be "Not Guilty" of this charge and the four others did not say merely that we were "Guilty," but clearly expressed that the mere likelihood of our statement "acting that way on troops" was proved, and that they had not taken into account our deep religious convictions on the subject. Clearly a case of the jury intimating to the judge that they had found us guilty only because he had misdirected them, not to take into account our deep religious convictions and that if it was an offence to make a statement based on those deep religious convictions "when there is no such intent," and the statement is only "calculated to act that way on troops," then only were we guilty, otherwise it was, in his own phraseology "excusable." If this was not implied, and *almost* explicitly declared, why did not the Foreman merely say: "Guilty"? In view of a clear declaration of the majority of the jury about disregard of our religious convictions and the proof only of likelihood of a particular effect as against criminal intent, it it not palpably dishonest of the judge to say in his judgment: "I AGREE WITH THE OPINION OF THE ASSESSORS and find the accused No. 1 Mahomedali made a statement on the 9th July 1921 at Karachi calculated to cause the Musalman Officers and soldiers in the army of His Majesty to disregard or fail in their duty and that *as he made it with the intention of causing such an effect*, the truth of it is not material. I therefore find him guilty of an offence under Section 505 I. P. C." Had the Judicial Commissioner said he had *disagreed* with the assessors in their findings of fact I would have had no grievance. But

for him to seek cover behind the four assessors—the husband seeking cover behind four of his wives, to use the trope of the Arab proverb—is not a very manly thing to do and not a very edifying or encouraging spectacle. But perhaps he does not think it unjudicious to insert a personal opinion where the strict letter of the law would not have served his purpose, as did a spiritual forbear of his who in the olden days, when the jury could not leave their retiring Chamber before their verdict was given even to partake of much needed food or drink, was approached by a thirsty juror who wanted to go out and have—not any alcoholic beverage—but a glass of *water*. That prototype of the Judicial Commissioner of Sind is reported to have said after some judicious cogitation: "Well water is clearly not food, and *personally* I don't think it is *much* of a *drink*! You can go." The majority of the assessors had declared that our statement was true and was likely to affect the troops, and that sufficed for the judge, for *personally he thought intention was proved.*

There is one point more that need be mentioned with regard to the charge under Section 505. The resolution as framed and passed at the Conference only purported to declare the Law of Islam with regard to the Army in the present circumstances, viz., that it was religiously forbidden to continue in it, join it, or recruit for it. It did not call upon the Musalman soldiers to disregard or fail in their duty as such, and while in addressing the jury I had in passing suggested what the Muslim soldiers could do, without demanding immediate discharge, or deserting. Dr. Kachlew had laid considerable stress upon the same idea and none but a dishonest judge could ignore so important a point in favour of the accused. The Musulman soldiers of the Army could well have gone with the Ulema's Fatwa and the resolutions passed at the meeting of the Jamiat-Ul-Ulema and at the Gokak and Karachi Conference, and asked their Officers to approach government with a view to have a stop put to the most reprehensible practice of sending Muslim soldiers to fight against Muslims and kill them "without just cause" as defined by Islamic Law and thereby destroy the temporal power of Islam, while rebelling against the Commander of the Faithful, the Successor of their beloved Prophet. This very practical alternative, entirely within the realm of his "Law of the Land," was completely ignored by the Judge in his lengthy summing up, while he roamed over trackless deserts of supposition and make-believe in Islamic history and wandered over uncharted seas of guess and conjecture in Islamic theology. But it is manifest that this neglect was not through forgetfulness. It was studied and deliberate, as can easily be judged from his careful elimination of the *name* of the Fund for which Moulana Shaukat Ali was alleged to have appealed in his alleged speech of ten seconds duration on the 17th June at Poona. He is alleged to have said: "The fund collected from Hindus and Musalmans will be termed" Discharged Soldiers' Fund "and the soldiers who will leave service will be paid out of (this fund)." In his carefully worded summing up which he had typed at leisure during the Devali Holidays the Judge said: "Then in June accused 1, 5, and 7 went to the large Military Station of Poona where a meeting was held which those accused attended, and where the accused 7 Shaukat Ali made a speech in which he said that a *Fund* was being established to help in the support of soldiers *who left their service.*" Had the judge taken into consideration the fact that while welcoming and congratulating every soldier or policeman who leaves the Army or the police force and secures his discharge, as we would welcome and congratulate any Civil Employee of a Government with which we are non-cooperating, no responsible body in India, national or communal, and no recognized leader of public opinion had yet called upon the soldiers and policemen to desert, any more than upon civil employees of government to leave their service immediately, and had the judge further taken into consideration the fact a "DISCHARGED SOLDIERS' FUND" is very different from a "Deserted Fund" or even merely "a Fund to help in the support of soldiers who left their service," he could have had no alternative but to believe that, although we maintained and relied upon the supremacy of religious Law, and sought the protection of the Law of the Land, pledged to us by Queen Victoria and her successors in their proclamations, for all actions enjoined on us by our religious Law, we had not been yet resorted to Civil Disobedience, and had so for broken no Law of the Land either, all that we had done being to declare that the Law of Islam made service in the British Army in existing circumstances *Haram* or religiously forbidden, and that it was the duty of the soldiers to take early steps to obtain their discharge, or represent matters to their superiors with a view to have the character of their military duty altered in accordance with Islamic Law. Angora, and not the Army was the main consideration, and ultimate object, the Army being only an incidental consideration as I had clearly explained in my statement in the Lower Court. The Muslim Officers and Soldiers could well do what other Musalmans in India were doing, namely bring pressure to bear on Government with a view to prevent a re-opening of hostilities against the Angora Government and the destruction of the remnants of Islam's temporal power, and to make government understand that it was never a Muslim soldier's bargain with Government that he would kill Muslims "Without just cause" as defined by the *Shariat* and therefore no part of "his duty as such." Not one word of this appears in the summing up and the judge misdirected the Jury with a view to obtain a verdict of Guilty.

But his sins are not only those of omission. They include sins of commission as well. It is only too well known that the highest Judicial Officer in Sind made the biggest blunder which a judge in a Criminal Case could commit by taking away the right of the Accused to have an opportunity to explain any circumstances appearing in the evidence against them. This opportunity Section 342 of Criminal Procedure Code had

made it obligatory upon him to afford to the accused by questioning them *generally* on the case after the witnesses for the prosecution had been examined and before they were called on for their defence. The Select Committee on the Bill of Act X of 1882 had clearly observed in its report that "the object of empowering a judge to examine an accused person is to give the accused an opportunity of explaining any circumstances which may tend to criminate him and thus to enable the Court in case where the accused is undefended to examine the witnesses *in his interest*. It was never intended that the court should examine the accused with a view elicit from him some statement which would lead to his conviction. We have therefore limited the power of interrogating the accused by adding to the first paragraph of Sec. 342 the words "for the purpose of enabling the accused to explain any circumstances appearing in the evidence against him"! We think the accused should always have this opportunity of explaining and we have therefore *required* the court to question him *generally* for that purpose before he enters on his defence." That is why it has been ruled that *"the Sessions Court is not to establish a court of Inquisition* and to force a prisoner to convict himself by making some criminating admissions, after a score of searching questions the exact effect of which he may not readily comprehend."

But while the judge, inspite of the novel but necessary intervention of the Public Prosecutor *in support of our claim* to make a statement on the case generally, without which all his labours would have been lost and the entire proceedings vitiated, refused to give us the opportunity to place or record our explanation of the doubtful circumstances in evidence against us, he nevertheless took advantage of the same Section 342, which gave us the right we wished to exercise, to put to us certain questions with a view to supply the missing links in the prosecution evidence and fill the gaps it had left, just as the Magistrate in the Lower Court had done.

If any one doubts that, let him go over the questions put to me. They were intended to obtain from me an admission that I had approved of the resolution proposed by Moulana Hussain Ahmed Sahib, when all that was in evidence against me was that as the President I had read it out to the audience as I had done in every other case, and as every Chairman of a meeting has to do whether he be himself for the motion or against it. More than that, the Judicial Commissioner fished labouriously for an answer from me to the effect that we intended the soldiers to disregard or fail in their duty, though all he could get was the admission that I *did* hope it would have *some* effect—though the Indian Soldiers were segregated in an unprecedented manner from all other human society and were not likely to learn of the resolution in many cases—, and that the effect likely to be produced on them would in all probabilty be much less than it would have been 50 years ago, when they were not so badly demoralised as they were to-day. The last two statements had not been taken down by the judge at first, though Sec. 364 (1) makes it obligatory that every answer given by the accused shall be recorded in full, and it was I who had insisted on their insertion if the judge wanted me to sign my answers. But having been thus forced to incorporate them, he now turns and twists them to suit his own purpose and in his summing up says: "here the question therefore would be not whether Mahomed Ali believed the statement to be true, but whether he made (? it) with the sincere wish to cause his brethren or to repent with the wicked intention of making them mutiny or desert. He himself seems to leave no doubt on the point. His only regret is that the troops are not yet contaminated and that there is at present no chance of a mutiny on the scale of 1857." Prejudice is like one of those convex or concave glasses that turn slim men into a round-bellied mass of adipose tissue and fat men into elongated skeletons, and it was through some such glass or the still more distorting one of perverse dishonesty that he looked when he metamorphosed my regret at the general demoralization of the once religious Indian society, including the soldiers, by an irreligious Government, into a regret that the horrors of 1857 could not be enacted 64 years later on a gigantic scale.

But the jury refused to swallow the bait. They did not say that "the wicked intention" was proved; they referred only to the likelihood, and that coupled with our deep religious convictions—which they said they had not taken into account—brought us—if the judge even at that stage repented himself of his misdirection,—under the protecting wings of the exception. But far from repenting, the judge sought cover behind a non-existent agreement with the majority of the jury and convicted.

But look at the artistic manner in which he brings his favourite "Conspiracy" and "Agreement" again. The only facts proved were that I, as President, had done a President's customary duty and read out the Resolution to the audience, and after emphasising its obvious importance—for anything which foreshadowed the possibility of an Indian Declaration of Independence and of establishment of an Indian Republic was bound to be regarded as the "essence" or marrow of the Conference—I had called upon Maulana Hussain Ahmad Sahib to move it. The Maulana had made a long speech containing a sustained religious argument which could have left no doubt in any one's mind about the need of the resolution he was moving. Doctor Kitchlew, in another powerful speech, characteristically more "modern" and "mundane," had seconded it. Pir Ghulam Mujaddid Sahib had translated the Resolution into Sindhi, and in another moving speech in the same language had commended it to the acceptance of the audience in Sindhi. Maulana Nisar Ahmad Saheb had, in further supporting it, made up for brevity by imparting some of the heat of the sincere preacher's heart that consorted well with a fever that had imparted unusual heat to his body, that day. The Sri Shankar Acharya, prompted by his friend Dr. Kitchlew and by his own sympathy

with a religious people made to suffer for their faith had expressed the desire to make a few observations, to which I had at first demurred owing to the laleness of the hour. But when I had been informed that he desired to give his Ecclesiastical support to the warning held out by us in the resolution to the Government, I had requested him to speak, even at that late stage, and when he had given expression to his general sympathy and support, I had wound up the proceedings with asking those who supported the Resolution to stand up to mark the solemnity of so solemn a Covenant as that which, in certain contingencies, bound them to declare the Independence of India and establish a Republic. When all including not only my brother, who had *not* spoken on the Resolution, but even the Police Officers and Magistrate on duty, and the C. I. D. reporters, had stood up and passed the Resolution, I had appealed to God to give every one present the strength to carry out his solemn resolve.

Thus, mine was the customary role of the President of a large assembly resolving upon a solemn duty solemnly accepted and acknowledged. But what does the judgement make it? "Agreeing also with the majority of the assessors"—the inevitable cover is sought here too—"I am of opinion," says the Judicial Commissioner, "that all the other accused with the exception of accused No. 6 *conspired with Mohmad Ali and agreed with him* that *he* should make the statement, that *he* did make *with the intention* of producing such an effect on the Musalman Officers and Soldiers in the army of His Majesty." And let us look at the summing up on which the judgment that was to be had cast its sinister shadow ahead. It says: "The other accused are charged with having *conspired with accused No.* 1 to commit the said offence. *This conspiracy* is not the far reaching conspiracy referred to in the previous charges. If the other accused or any one of them agreed with Mahomed Ali that such an opinion should be published *even 5 minutes before the uttering of such opinion with that criminal intent*, then they are clearly guilty of *conspiring with him*. Now all the accused were there in Karachi and *had opportunities of talking over the matter with Mahomed Ali*, and they showed by their signs "—What signs? I ask —" and speeches that *they approved* of *his* formulating that opinion. *It is not therefore a very violent deduction that they agreed with him that he should utter it and they should support it.*" Nothing could well be more fantastic travesty of the truth. The Section under which the other accused were charged only refers to "Whoever abets any offence", and we had accordingly concluded that we were all charged with the offence of making the declaration contained in the Resolution at the same time and place and were thus made co-accused in one and the same trial, the transaction being the same, and that since I happened to have read out the Resolution and thus technically made the alleged criminal statement first, I was designated as Accused No. 1, and those who had moved, seconded and supported it, were designated accused Nos. 2, 3, 4, 5, and 6 *seriatim* in the order in which, they had spoken, while my brother even though he had not spoken on the resolution was roped in, only because the Government had in reality wanted to punish "The Ali Brothers" and none other. The rest of the Accused could not however be left out with any decency even though one of them was not a Mussalman whom alone Government had been advised by O'Dwyer to tackle, and whom after the Moplah affair they found an excellent opportunity of isolating. We understood "abetment" under section 109 to mean taking a part jointly and not *instigation*, nor even *agreement* to support each other, except such as is implied in speaking in support of a resolution. So little did we think that the judge had another conspiracy up his sleeve, though not, as he calls it, "the far reaching conspiracy referred to in previous charges"—that when we read the charges under Section 109 read with Section 505 and 117 and found the words "which he (Mahomed Ali) committed in pursuance of that conspiracy," I noted on the charge sheet the question "*which Conspiracy*?"—being still doubtful whether the charge did or did not refer to "the far reaching conspiracy referred to in previous charges." The charges had at no stage been explained to us, and I had complained of having been confused by the joinder of so many without any explanation from the prosecution, Magistrate or Judge, though "the Law of the Land" made such explanation a mandatory condition. And it is *only now* that I really come to understand the charges, locked up in jail as a convict on receipt of a copy of the summing up and of the so-called judgment which defies description in any thing approaching legal language.

Now, there was no evidence of any agreement "even 5 minutes before" I read out the Resolution that I should *read* it, and thus *utter the opinion* of the conspirators? What is more, there was not only no evidence on record but such an agreement itself did not exist. Any one who knows anything about Public Meetings knows that it is optional for the person presiding thereat to read out the Resolution to be moved or merely to call upon the mover to move it and in doing so read it out himself and it was a pure accident that I chose to read out the Resolutions and this one among the rest. What, I ask, would have happened if I had *not* read it out? Would I, Accused No. 1, have got out of the trial? Not that perhaps, for the fate of my brother tells me otherwise; but at least the unsought for and unexpected eminence of being Accused No. 1, would have fallen to the lot of another! In that case, however, on precisely the same evidence—or, rather, lack of it—would the Judge have declared in his summing up that "Accused No. 1 Hussain Ahmed" was to move the resolution and the other Accused including "No. 6 (or may be No. 7) Mahomed Ali" "had agreed with him that he should utter it and they should support it"? That is what comes of trying to misdirect the Jury to convict without a jot or tittle of evidence, for, evidence there was none, except that all the Accused were there in Karachi and

had opportunities of talking over the matter with Mahomed Ali." For, although we know that most of the accused spoke at the Conference, there is nothing in their speeches to prove such a criminal agreement as the "Law of the Land" requires before convicting the accused, and it is entirely beyond us to know anything of the mysterious "signs" to which this judge of the Occult refers in his summing up.

To prove an agreement of any sort, it was not merely necessary to prove that "all the accused were there in Karachi and had opportunities of talking over the matter with Mahomed Ali." It should have been proved that all of them *did* meet and *talk* and *at one time or another came to an agreement to commit an offence with the requisite Criminal intention*, and the least that the prosecution should have done was to give some evidence that the Subjects Committee for which Provincial elections had been called for by me, and which was announced to take place on the 9th July, *did* meet, that all the accused, or at least some of them, were members of it, and *were actually present when the particular resolution came to be settled*.and *all agreed that it should be placed before the meeting and passed*! The only evidence that is on record is that after the time for which the Subjects Committee had been announced, Moulana Shaukat Ali's voice was heard outside the building by some Policemen on duty and they recognised that voice as his —forsooth, "because he was fat!" If on such evidence people could be convicted and sentenced to undergo rigorous imprisonment for the maximum period provided by Law, Poor Old Sir John Falstaff and his goodly company at East-Cheape would have been guilty of every offence ever committed under the SUN, even if they had been as pious as the archangals, and not the sturdy vagabonds that they were. Nothing could be a better advertisement for "Antipon" or "Mota-lene" than this, that its use would make fat people's voice indistinguishable even to those living Dictaphones, the Policemen of Karachi, and they could shout high treason at the top of their voices with impunity. As I had pointed out, when the Public Prosecutor was addressing the Jury, there was not even evidence to show that my brother was in the room in which the Subjects Committee was meeting, much less that he spoke at that meeting, and still less that he spoke on this particular Resolution or in favour of it.

And since the Public Prosecutor has confessed that the accused know much more than the prosecution, may I tell him and the judge that I have no recollection of seeing any of the accused at the Subjects Committee Meeting when this Resolution was being settled, except my brother, who never spoke on it, at any rate not in a voice to be specially noted in the street, that it was I who drafted it with the consent of the members present and that the only discussion centred round the concurrence of the Indian National Congress with regard to resort to Civil Disobedience, when that contingency arose. And of course, there was no other agreement, criminal or otherwise, except that employed in the passage of the Resolution in the Subject Committee. Is it or is it not therefore, "a very violent deduction" to conclude from the absence of all evidence that guilt is proved to the hilt. As for the evidence of Maulana Shoukat Ali's fat voice, of course, that much the C. I D. men had to swear or how could the senior "Ali Brother" be roped in and punished, when he committed the unforgiveable sin of silence at the Conference itself, while even the "unwanted" Jagat Guru had contrived, against the President's first decision to speak?

The charge under Section 117 need not detain me. If that under Section 505 has failed as it has, and the making of a true statement reasonably believed to be true without Criminal intention is no offence, as it is not the abetting of it by the Public generally or by any number of persons exceeding 10 cannot be an offence. But even if we were guilty of an offence under Section 505, the resolution itself—which is admitted to be *all* the evidence on the point —proves that we did *not* abet the commission of offence under Section 505 by any body else. The Central Khilafat Committee's copy of the Resolution written at the time of the Conference itself on the Reception Committee's letter-paper, supported by the *verbatim* report of the C. I. D. Inspector Lakhti Husnain proves that all that we asked of Musalmans generally and of Muslim Ulama in particular was, that they should bring home to the Muslim soldiers "is bab men Shariat ke ahkam" or "the Commandment of Islamic Law in respect of this matter," as the Judge himself admits. But, no; he cannot exculpate us on that account, but must support the mis-translation contained in the Government's Order sanctioning the prosecution by referring to our own conceptions of what the Shariat was. Whatever our own conceptions, we did *not* call upon any one to preach those, but "*the* commandments of Islamic Law in respect of this matter" pure and simple, and therefore no offence was committed, unless it be an offence to preach Islamic Law itself to Muslim Soldiers of His Majesty, by the Grace of God, Defender of the Faith.

Let this interminable wrangling about section and exception, likelihood, intention, true statement or false, cease, for the case against us was really proved even before we were arrested and charged. We stood for the Supremacy of God's Law and some section or other of Man's Law was bound to penalise that religious conviction, and punish us, the Queen's Proclamation and the King's notwithstanding! As the late Akbar wrote with sure prescience, ("Heaven knows which Law would punish us, but we stand charged with partiality towards religion.")

And what is one to say of the manner in which the Judge has defied "the Law of the Land"—his own favourite—and flouted it in framing and pronouncing the judgment? Let the Public Prosecutor do what he can do to bring it within the four corners of the Criminal Procedure Code. But then he may as well square the circle!

MAHOMED ALI.

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