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HISTORIC TRIAL

OF

ALI BROTHERS & OTHERS.

PART II.

PRICE Rs. 1/6 or Sh. 2/6.

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PROCEEDINGS IN THE SESSIONS COURT.

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THE "NEW TIMES" OFFICE,
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With the permission of Mr. R. V. Thadhani.

Shri Shankaracharya.

Maulana Shaukat Ali. Dr. Kitchlew. Maulana Mahomed Ali.

THE HISTORIC TRIAL.

Proceedings on the Opening Day.

In the Sessions Court, Karachi.

[MONDAY, 24TH OCTOBER, 1921.]

The Historic Trial of Maulana Mahomed Ali, Maulana Shaukat Ali, Dr. Saifuddin Kitchlew, Shri Shankaracharya, Maulana Hussain Ahmed, Pir Ghulam Mujaddid and Maulana Nisar Ahmed in the Sessions Court, Karachi, commenced on Monday, the 24th October 1921, at the Khalikdina Hall, at 11-30 a.m., before Mr B. C. Kennedy, Judicial Commissioner of Sind. The police and military arrangements were similar to those at the time of the trial in the Lower Court before Mr. S. M. Talati, acting City Magistrate of Karachi, at the Khalikdina Hall. The arrangements inside the hall were similar to those at the time of the committal magisterial enquiry. There was, however, a small raised platform for the Judge this time, and five chairs and a table were placed to the right side of the Judge for Jurors and Assessors ; the Serishtedar and the Urdu interpreter and other office-men were seated in front of the Judge just below the dais.

The compound wall of the Khalikdina Hall adjoining the Bunder Road was fenced by barbed wires behind. There was provided ample armed European and Indian military which occupied the back portion of the Hall compound. Some tents, games and refreshments for soldiers were provided. There were several police officials at the gate and in the verandahs of the Hall. In the verandah behind the raised platform at the back of the Hall, was a small curtained chamber for the Judge.

The Crown was represented, as in the Lower Court, by Mr. T. G. Elphinston, Bar-at-Law, Public Prosecutor for Sind, assisted by Mr. Parsram Tolaram, B.A., LL.B. The Public Prosecutor was also specially assisted in the Sessions Trial, in pursuance of the decision of the Bombay Government, by Mr. Ross Alston, Bar-at-Law, the Advocate-General of the United Provinces. The accused leaders were, as in the Lower Court, unrepresented by any Counsel, and did not cross-examine any witness.

The eagerness of the public to witness the trial was keen, and leading gentlemen of Karachi including several members of the Karachi Bar were present to witness the trial. The admission to the Hall was by tickets issued by the Registrar of the Judicial Commissioner's Court, but several gentlemen were allowed without tickets, and strictness of supervision over the tickets at the gate was slackened. There were crowds almost every day on the Bunder Road outside the Khalikdina Hall, but they were throughout orderly and peaceful. Conspicuous in the Hall by the side of the accused leaders were a party of Khilafatists. Four or five Indian and European ladies, including Mrs. Sarojini Naidu, attended the trial.

As in the Committal Court Trial, the seven leaders were brought in a closed Prison Motor Van preceded and followed by motor lorries full of armed European military. They all entered the Hall at 11 a.m. with smiling and cheerful faces. The audience stood up to do them honour and greeted them. The accused returned the greetings with graceful bowing of heads. At 11-30 a.m., the entry of the Judge was heralded by his havaldar carrying a heavy silver mace on his shoulder. On the Judge taking his seat, the proceedings commenced

At the outset Mr. Elphinston, Bar-at-Law, Counsel for the Crown, thus addressed the Court :—

I want to have one copy of the charge sheet and I want to have one slight addition made. In the first charge after the words "that you all seven accused" there should be the words "at some time or times" and there should be instead of "between February and September 1921," "February 1920 to September 1921."

Mr. Mahomed Ali on being asked said :—We have no objection as non-co-operators ; we all want to understand the case only ; you may write what you like.....

Judge :—Sit down. I do not want that.

Mr. Mahomed Ali :—The charge is already amended as desired. I thought that it was made clear to us in Court that it was February 1920 to September 1921. We should have known of it before this, particularly when 131 Section can transport us for life and yet not a syllable of evidence was uttered for that against us. I do not know if it was in the head of the Magistrate that it was February 1920 to September 1921 or it was Public Prosecutor's. Now as if the proceedings of the Lower Court are

being made null and void what is the use of trial by a first class Magistrate when the decision can be brushed aside here? The P. P. said that he only wanted a "slight change" to be made but as it is, it is not a slight change. What was the use of our labouring in Jail to be prepared for the charge laid down by the Committing Magistrate when that has been brushed aside?

Mr. Mahomed Ali further said the committal proceedings were rendered null and void by the Magistrate's refusal to record the full statements of all the accused which constituted the most important part of the proceedings for the protection of the accused

Mr. Mahomed Ali added that from first to last, ever since the Secretary of State and the Viceroy decided to launch the prosecution, there appeared to be no intention both in the Sessions Court and in the Lower Court, of exercising any judicial discretion.

The Court over-ruled the objections.

THE AMENDED CHARGE.

The following amended charge was then read out to the accused by the Serishtedar :—

"At a Court of Criminal Sessions held at Karachi before R.C. Kennedy, Esq., I.C.S., Judicial Commissioner of Sind, this 24th day of October 1921, the following accused persons :—

(1) Mahomed Ali of Rampur.
(2) Moulvi Hussein Ahmed of Deoband.
(3) Dr. Saifuddin Kitchlew of Amritsar.
(4) Pir Ghulam Mujadid of Matiari.
(5) Moulvi Nisar Ahmed of Cawnpore.
(6) Bharati Krishna Tirathji *alias* Vekantraman.
(7) Shaukat Ali of Rampur.

committed for trial by S. M. Talati, Esq., City Magistrate, Karachi, are placed at the Bar and 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 offence punishable under Section 120B-115 read with Section

131 of the Indian Penal Code and within the cognizance of this Sessions Court 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 Sectin 505 of the Indian Penal Code and within the cognizance of the Court of Sessions, Karachi.

And do further charge you the said seven persons 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 and 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.

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.

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.

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."

M. Mohamed Ali wanted copies of the charge as there were new charges. He further said :—

Before the Jury is called, I intend to inform the Court that the Magistrate committed us before the most important part of my statement was recorded. In the case of my revered friend Maulana Hussain Ahmed, his statement was not even heard by the Court. The Magistrate only recorded that he was reciting 34 couplets of Quran when, in fact, he was reciting Traditions. The statement of Sri Shankara charyara, a great Hindu Divine, was not taken because according to his rules of Sanyas, he did not get up. The statement of Dr. Kitchlew was not recorded and it was only noted that he abused the Government.

M. Mahomed Ali proceeded to say that on the very first day the English assumed reins of administration, they were promised religious freedom as laid down in the Proclamation of Queen Victoria.

The Judge said that it was not relevant.

M. Mahomed Ali :—Whatever the Court may think of us, we wanted to give our statement as it was according to our religious commandments to have passed the resolution.

He added that the Court was already prejudiced when in reply to a letter of the P. P. dated the 27th September it laid down that the case was to be committed to Sessions ! Moreover, the J. C. also came before the committal, to see if the Hall was suitable for the Sessions case !

The Judge did not reply.

The charge sheet was then read out in Urdu.

The accused were asked if they pleaded guilty.

Dr. Kitchlew wanted to speak something. He was asked on what point he wanted to speak.

Dr. Kitchlew said that the amendments that were made in the charge were against law. This made the case altogether different. If it was so, he wanted to say that it was the second Chapter of the "Tamasha" whose first Chapter had been enacted in the Lower Court.

The accused leaders were asked if they pleaded guilty.

M. Mahomed Ali said that he did not want to plead.

M. Shaukat Ali.—We are free and we do not care to plead before this Court.

Pir Ghulam Mujadid at this stage told the Court that some people had been sent to him the night previous, particularly Pir Thurabali Shah, asking him to apologise for the part he had taken in the Karachi Khilafat Conference. Pir Turabali Shah had told him if he did not apologise he would be given rigorous imprisonment for five years and would have to work at the *chaki*. Pir Turabali Shah had further said he had been assured that Government would release him (Pir Ghulam Mujadid), if the latter apologised. He had replied to Pir Turabali Shah saying that he would stand by his faith, and in the cause of religion he would not mind hardships of jail life or working at the *chaki*.

The Judge asked Pir Ghulam Mujadid to stop and sit down. Mr. Mahomed Ali protested and impressed upon the Judge the necessity of protecting the accused against unwelcome, nocturnal visitors to the jail.

P. P. :—" One witness was called to give evidence against accused No. 7. He could not come and I gave copies of his statements to the accused on Saturday for the benefit of the accused in order to see what he had got to say. But there is something to be added to it." He handed over the corrected statement to the Court.

The following gentlemen were declared selected by lot as Jurors, the Judge taking out slips from a box.

(1) Mr. Dayaram Gidumal—aged about 23—a clerk in Messrs. Forbes, Forbes and Co.

(2) Mr. C. D'Souza—head clerk, cotton department of Messrs. Ralli Brothers.

(3) Mr. Ramchand Tulsidas—head clerk, sugar department of Messrs. Ralli Brothers.

(4) Mr. R. D'Cruz—a clerk in the Bombay Co.

(5) Mr. D. Critchel.

Mr. Ramchand Tulsidas was appointed Foreman by the Jurors.

The gentlemen of the Jury then stated on prescribed oath that they would return a true verdict. The charge sheet was then read out to them by the Serishtedar.

PUBLIC PROSECUTOR'S OPENING ADDRESS.

The Public Prosecutor then delivered his opening address to the Jury. The following is an authorised summary of his speech :—

The Accused were charged with offences punishable under Sections 120B read with 131, I.P.C., Sections 505 and 505 with 109. I. P. C. and Section 117 read with Sections 505 and or 131 and Section 117 read with 109, I. P. C. [The Public Prosecutor explained the charges].

One only of these charges was *triable* by a Jury, *viz.*, the decision on the facts as to the guilt or innocence of the accused was in their hands as regards *one* charge only—the other charges involved in the case were *triable* by the Court with their aid as Assessors. He then explained Section 269 (3) of the Criminal Procedure Code and Rule 3, Chapter XIV, Rules of the Court of the Judicial Commissioner. He further explained to the Jury that they were Judges in fact only on the 2nd charge, all the others were triable by the *Court* with the assistance of their opinions as Assessors.

He read to the Jurors and Assessors Sections of the Indian Penal Code. He read *Section* 131 whole and relevant portion again and said :—"You will notice that the offence is *complete* if there is a mere *attempt* to seduce a soldier from his duty. It is quite immaterial whether the attempt is successful or unsuccessful. The *success* or otherwise of the attempt depends largely on the *loyalty* of the soldier and not on the efforts of the Accused. Thanks to the loyalty of the troops, you will in this case be concerned only with an *attempt* to seduce soldiers from their duty and a conspiracy to make that attempt." He then read Section 120 A (1) which defines the offence of Criminal Conspiracy and said :—"In this case the prosecution allege that there was an agreement to commit an offence under Section 131, I.P.C. just read. Mere agreement to commit offence without doing anything more, is sufficient to constitute the offence, though in this case the prosecution allege acts were done. If 2 men agree for even one minute to do an illegal act, they are guilty of a Criminal Conspiracy, even though they never do anything at all towards carrying out their agreement and abandon the idea before doing any single act whatever. The illegal act, which the Accused are charged in this case with having agreed to commit, is *attempting* to seduce soldiers from their duty and, to show that each Accused is guilty, it is only necessary to prove that at some time or other between February 1920 and July 1921 he did *agree* with

other persons, who may or may not be before the Court now, to attempt to seduce soldiers from their duty." He then read explanation to Section 120 A and said :—

"The ultimate object of the agreement may be the restoration of the Khilafat to its former prestige. The ultimate object may be purely religious, it may be innocent, it may be even praiseworthy and the illegal act *may* be *merely incidental* to that ultimate object, *yet* to agree to commit an offence even in such circumstances *is* a *Criminal* Conspiracy. It is necessary that you should bear this *well* in mind. The Accused will tell you their action is prompted by religious motives. On the other hand you will find, when we come to deal with the evidence, that some or other of the Accused have at 2 Khilafat Conferences, both held within one month of each other, proposed Resolutions in which in the same breath they have said that to remain in the army at this time is "Haram," *i.e.*, contrary to the Mahomedan religion and have gone on to speak of an *Indian Republic*. The seduction of Mahomedan soldiers from their duty would be very useful as incidental to and facilitating the overthrow of the present system of Government, to which their speeches show the accused are bitterly opposed and the establishment of an Indian Republic. Whether the ultimate object was this or, as the Accused allege, purely religious—or partly each, is *wholly* immaterial. The *only* question for you is did the Accused *agree* to attempt to seduce Mahomedan soldiers from their duty. Their *ultimate* object does not concern you in *any* way whatever. It is *wholly* and *entirely* irrelevant.

The Prosecution do *not* allege that the Accused are the *only* members of this Criminal Conspiracy, which has for its object the seducing of Mahomedan troops from their duty. The charge alleges that they were parties *with others* to this conspiracy.

Nor do we allege that they were all parties to the conspiracy for the *whole* period covered by the charge. They doubtless joined the conspiracy at different times.

Though the offence of Criminal Conspiracy is complete as soon as 2 persons agree to commit an offence, even though the matter ends there and no one ever does anything in pursuance of that agreement, yet the punishment is different according to whether the offence is committed or not.

If an offence is committed by any member of a conspiracy in this case, that is, if *any attempt* has been made by *any* member of a conspiracy to seduce any soldier from his duty and that attempt has been made in pursuance of a conspiracy, to which any of the Accused was at any time between February 1920 and September 1921 a party (even though that act was done without the knowledge of the Accused and by a stranger to them), each and every one of the Accused who was party to that conspiracy that is *agreed* to an attempt being made, is liable to punishment as laid down in Section 109,I. P. C., read with Section 131,I. P.C., as if he had personally attempted to seduce that soldier from his duty. In this case the Prosecution allege that an attempt has been made to attempt to seduce certain Mahomedan Officers from their duty by sending to them leaflets making a strong appeal to them to leave the Army at once for religious reasons. The prosecution further allege that this attempt was made by some person or persons who, though the Accused may not have known it, were parties to the same conspiracy, to the same Agreement to seduce Mahomedan troops, as the Accused were parties to.

This is the subject of the second charge in the case and is the only part of the case in which the decison on the facts is in *your* hands. All other matters will be tried by the learned Judge and you will *only* be called upon for your opinions as Assessors.

You as a Jury will have to decide

First whether any attempt has been made to seduce any Mahomedan Officer from his duty, if so,

Secondly whether that attempt was made by any member of a conspiracy to seduce Mahomedan Officers and or soldiers, that is to say: "Was this attempt made by some person or persons who was *party* to an *agreement* or *attempt* to seduce Mahomedan Officers or soldiers ?" If so,

Thirdly (and this point will *only* have to be decided by you as a Jury, if you first decide both the other points in the affirmative) were any of the Accused, and if so *which* of them, at any time between 1-2-20 and 30-9-21 parties to that Agreement to attempt to seduce troops ?

I would ask you to pay particular attention throughout the case to these points. You are the sole judges of fact on these 3 points and to fix them clearly in your minds, I will take the liberty of repeating them. They are :

Firstly: "Has any attempt been made to seduce any Mahomedan Officer from his duty?" If so,

Secondly: "This attempt made by some person or persons who was *party* to an *agreement* to *attempt* TO SEDUCE Mahomedan Officers or soldiers?" If so,

Thirdly: "Were any of the Accused, and if so *which* of them, at any time between 1-2-20 and 30-9-21 parties to that Agreement to attempt to seduce troops?"

These are the only points for your decision as Jury.

If you as a Jury find any of the Accused not guilty on the second charge, the learned Judge will *then* ask you your opinions as Assessors on the following points to assist him to decide them—namely,

(1) Whether there was any criminal conspiracy to attempt to seduce Mahomedan Officers or soldiers, that is any *Agreement* between any 2 or more persons to *attempt* to seduce Mahomedan troops, even though *no* member of the conspiracy *ever* made *any attempt* to seduce any single soldier and the conspiracy never went beyond the stage of bare agreement to seduce soldiers.

If you held that some persons did agree to this, then you will have to give your opinion.

Secondly, whether any of the Accused, and if so which, were parties to that Agreement between the first February 1920 and the 30th September 1921, that is to say which, if any of the Accused, *agreed* even for *one* moment between these dates that the seduction of Mahomedan troops from their duty should be attempted.

These are the 2 points for you as Assessors to consider and give the court the benefit of your opinion under the first charge. Remember that under this charge it is *quite immaterial* whether or not any attempt was *actually made* to seduce a single man. Here it is only a question of *agreement* and nothing more. That is where this charge differs from the second charge which is triable by you as a Jury and on which you are the *sole* Judges of fact. Please keep the distinction clear and remember that first as Jurymen you have 3 questions to decide under the second charge and that after deciding the second charge *then*, as assessors you have to consider the 2 points which arise under the first charge only as against those, if any, of the Accused as you hold have not been proved guilty under the second charge.

Such of the Accused, as the *Court* holds were parties to such a Criminal Conspiracy, will be liable to punishment under Section 115 I. P. C. —read with Section 131—that is on a scale triable by this Sessions Court sitting with assessors.

Before outlining the evidence I will read another section—Section 10 of the Evidence Act, which is important as showing you how in a case of conspiracy after the common intention, the *purpose* of the conspiracy has first been entertained by *anyone* who is a party to the conspiracy, *anything* said, done or written, in reference to the common intention of the conspiracy by any single member of the conspiracy, whether or not he is an Accused before the Court, may be relevant against *each* and *every* member of the conspiracy who are before the Court, *both* for the purpose of proving the *existence* of the conspiracy *and* to show that the person before the Court are parties to the conspiracy and even though they were totally unaware of any of the acts proved and did not know the persons who did them.

[The P. P. read Section 10 of Evidence Act].

The illustration to the Section will help you to appreciate the exceedngly wide scope of this section. I will therefore read it.

[Read illustration] The first evidence in point of time which will be placed before you are Resolutions passed at a Meeting held in the Town Hall, Calcutta on 29-2-20. It would appear from the statement of Accused No. 7 that he was at that meeting. These Resolutions were on 6-3-20, proposed by No. 7 and carried at the Assam Khilafat Conference. No. 7 was President of the Conference and made a speech in which he referred to this subject. In the speech the idea is put forward n a safe conditional form—if the Khilafat does not remain as it was before the War, every Mussalman soldier and Policeman must *cease* to serve. Unfortunately the witness, Deputy Superintendent Sen, has arrived late and it will not be possible to examine him until a late stage of the case.

Next in point of time we have the publication on some date after the 6th September 1920 of the Mutafiqa Fatwa, which has been published over the signatures of a large number of moulvies including both Accused 2 and 5. This Fatwa lays it down that "All Government services which help the Government are "Haram" specially those of the Police and Army." Thereafter the Jamait-ul-Ulema held at Delhi in Rabiul Awal 1339 (November 1920), the second Resolution at which laid it down that "Under

the present circumstances it is religiously forbidden to have any connection of mutual help or support with the British Government and this *included* not to serve in the Armies of the enemies of the faith and not to render any sort of military assistance.

The proceedings of this Conference, which have been published in pamphlet form, show that Nissar Ahmed, Accused No. 5, spoke in support of this Resolution and that it was passed unanimously.

In February last the All-India Khilafat Committee, Bombay, (which has 5 Secretaries of whom Accused 3 and 7 are two, No. 1 being a member) received 240 copies of this Fatwa which they distributed *free* of charge in the months of February to May 1921, as proved by the Stock book of the All-India Khilafat Committee.

2 copies of the first edition of this Fatwa were received by the Complainant in March in Karachi.

A later Edition of this Fatwa was brought out in February 1921 which is signed also by Accused No. 4, thereby showing his Agreement with it.

Meanwhile the Secretaries of the All-India Khilafat Commmittee conceived the idea of reprinting and publishing the Mutafiqa Fatwa *with* the proceedings of the Jamayat-ul-Ulema already referred to, together with a fore word written by one of their number Mr. Khatri, in which he called upon his readers to act upon the commandments of God contained in the Fatwa.

The order for printing 5,000 copies of this collection was signed on 14-2-20, but apparently the time was not then thought ripe for its publication and no copies were obtained from the printer until the 21st July 1921.

The order is actually signed by Mr. Abdul Ghani, Superintendent of the All-India Khilafat Committee Office who also received 2,000 copies on 21-7-20 and handed them to the Literature Clerk of the Committee for *distribution*. Mr. Abdul Ghani and the printer Ahmed Mahomed will be called as witnesses and the necessary documents put in evidence.

Mr. Kelly, Deputy Commissioner of Bombay, C. I. D., will also be examined in this connection.

Meanwhile the Accused before the Court had come into the open and from Political platforms had openly propounded the Idea that service in the Army was "haram."

On the 17th June at Poona Accused 7 delivered a short speech bearing on the subject. This was taken down in shorthand by Sub-Inspector Muzumdar of the Poona C. I. D., a witness in this case.

Two days later on the 19th June Accused 1 proposed and No. 3 seconded at a Khilafat Conference at Gokak in Belgaum one of the Resolutions mentioned above in which it was stated that (Read Ex. 72), Inspector Joshi and Sub-Inspector Nirwan will be called to prove this, but the *best* evidence will be copies found in No. 1's kit admitted by him to be correct and proved by Government handwriting expert to be in his handwriting.

The next item is the Resolution at Karachi All-India Khilafat Conference on 9th July. (See Ex. 47 of Committing Magistrate) taken down by 2 practised Urdu shorthand writers.

The first charge alleges that the 7 Accused were parties to the conspiracy at Karachi. The evidence of this centres round the 6th Resolution of the All-India Khilafat Conference. Resolution was read out by No. 1 who moved it and impressed its importance. [Here the P. P. detailed the part of each Accused and their close connection at Karachi].

In addition to the above there was also close association of Accused No. 7 with accused Nos. 1 and 3. They *put up together*.

Accused No. 7 spoke at Subjects Committee in the morning and evening *re* Karachi incidents. You will have (1) Evidence of the Complainant Mr. Zaman Shah who was present at the Conference throughout.

(2) Mr. Mahomed Bux, Deputy Collector, will give general evidence on the same points corroborating Mr. Zaman Shah. Then there is the

(3) Evidence of Lakht Hussein and Shan Bahadur.

(4) Mr. Burns, Mr. Jeswani Urdu shorthand writers, and 2 Reporters of the "Daily Gazette" and the "New Times" respectively.

(5) Evidence of one sub-inspector Abdul Ghafoor and 2 Head Constables Mahomed Usman Ghani and Fateh Bahadur who watched premises heard Accused 7 speaking at Subjects Committee and saw No. 6 go there.

You will also have the evidence of Inspector Karamchand re. accused No. 7 going from Karachi to and speaking at Naushahro Feroze on 11-7-21. He will depose re. his speech there on 11-7-21. Conspiracy is a question of presumption, remember.

I will also lead evidence re. the finding of copies of Gokak Resolution in the kit of Accused No. 1 *i.e.* Mr. Mahomed Ali in the evidence of (1) Mr. Shunker, Jailor of Waltair, (2) Inspector Abdul Karim, Madras C.I.D. And lastly letters written by No. 1 in Karachi Jail will be proved by Mr. Damree Jailer, and;

The Handwriting Expert to Government will formally prove that tht 2 copies of the Gokak Resolution found in the kit of No. 1 are, the one wholly and the other partly, in the handwriting of Accused No. 1—a face which he does not deny.

The evidence of the *completed act*, the substance of the 2nd charge (which you will try as Jury) that Leaflets, which were a digest of the Fatwa, were actually sent to Mahomedan Officers in the Army. For these you will have the evidence of (1) Colonel Gwayer, (2) 2 Indian Officers, and (3) I will tender evidence of 3rd Officer Subedar-Major Jiaram who is ill and unable to come to Karachi.

The P. P. here *read and explained* other charges under Section 505 I. P. C. and Sections 505-109 I. P. C. read Section 107 and 109 I. P. C. and explained and outlined the evidence under Section on 117 I. P. C. with 505 and-or 131 I. P. C. He also read and explained Section 117 I. P. C. and Sections 109 with 117 I. P. C. and outlining evidence.

THE DEPOSITION OF PROSECUTION WITNESSES.

EVIDENCE OF ZAMANSHAH.

The first witness Zamanshah Mahbub Shah aged 40 Mahomedan, Suni, Hashimi, Deputy Superintendent of Police, Karachi, deposed as follows :—

I am complainant in this case. I filed it under the orders of the Government of Bombay and D. S. P., Karachi. I produce the order of the Government and the D. S. P. (Exhibits 3 and 4). I was on the Karachi City Police Station on the 7th July when the Quetta mail arrived. Accused 6

and 7 arrived by that train, They were taken to the Kanaya Pathshala. That was close to the Pandal where the Khilafat Conference was to be held. The accused 1 and 7 put up there during the Conference. So also did Kitchlew accused 3. The Conference was held here on 8th, 9th and 10th July. I attended all the sittings of the Conference. The proceedings began at about 5 p.m. and lasted up till 10. On the first day presidential address was given by accused 1. The accused 1 said thereafter that a subjects committee would be formed which would consist of ten members from Bombay and Sindh and five from other Provinces and all the members of the Central Khilafat Committee. I had four men on duty at the Kanya Pathshala. They reported that the Subjects Committee held a meeting on the 9th July between 9 and 11 a.m. and again in the evening about 7 p.m. These were held at the Kanya Pathshala. They were private. The resolution in question was passed on the evening of the nineth, it contains a correct translation. It was originally passed in Urdu. It was passed on the evening of the ninth. The resolution was read out to the audience by accused No. 1.

He said it was the most important resolution and the essence of the Conference. It was proposed by accused 2 Hussain Ahmed who spoke in Urdu. Notes of the speeches were taken by Inspector Lakhat Husnain. and S. I. Shah Bahadur Khan. Accused 4 then translated into Sindhio Accused 4 translated the words "Unlawful to remain in the army" int-Sindhi by saying 'Nokari Karana haram hai." He also spoke on the resolution. Notes of his speech were taken by Inspector Karamchand and S. I. Abdulla. He spoke in Sindhi. Then accused 3 spoke in Urdu. Accused 5 Nisar Ahmed also spoke. Notes of their speeches were taken Accused 6 Venkatrama spoke on the resolution in English. Short-hand notes of Venkatrama's spech were made by clerks Basarmal and Topandas.

[Mr. Mahomed Ali took objection to the witness calling Shankarcharaya as Venkatarama. He said the witness called him and his brother Moulanas. He also called Dr. Kitchlew who possessed only a German degree as a doctor, Pir Ghulam Mujadid as a Pir and addressed Hussain Ahmed and Nisar Ahmed as Moulana and Moulvi respectively. He made an exception only in the case of Sri Shankaracharya who having entered Sanyas, could not bear his old name according to Hindu Dharma and must be called only by his new ashramic name. All of them claimed the

Jagadguru as the Shri Shankaracharya and the ordinary courtesy of calling the Shankaracharya by the name of his present ashram should be extended to him.

The Judge told M. Mahomedali that the Shankaracharya must make his grievance known to the court.

M. Mahomedali said :—It is a very delicate matter for the Shankaracharya to speak upon. We, as his friends, must speak for him.

The Judge asked His Holiness what his name was.

The latter answered sitting that his name was Shri Sankaracharya Bharati Tirthaji.

The Court :—Will you stand up and answer ?

Shri Shankaracharya :—It is against the rules of our Ashrama to stand up and answer.

M. Mahomed Ali :—I do not care if I and my brother are not called Moulanas. It matters little to us although I graduated from the Ferangi Mahal School and earned my title like my father before me. Personally, I don't object. But I must speak on behalf of the Shankaracharya. Surely, when my friend, Dr. Kitchlew, who is the possessor of a mere German degree is called a doctor, the Shankaracharya must be addressed in a way befitting his high station in life.

[The Court here said something, which was inaudible].

Witness Zamanshah then continued :—

Some of them had brought their followers with them. All the provinces were represented except Bengal. There were students of the Aligarh University. There was much excitement among the audience. There were representatives of newspapers there. An account of the resolution No. 6 and the speeches thereon were published in the "Daily Gazette" and the "New Times." No account appeared in the "Sind Observer." I have seen the Mutafiqa-al-Fatwa. I first got a copy of it in last March. Two copies I got from a Pathan in Karachi. I produced one of the copies in the lower Court. I have got it here [Ex. 5]. It purports to be singed by accused No. 2 and 5 (M. Hussain Ahmed and Pir Ghulam

Mujaddid). I have got a later edition in August Ex. 6. It purports to be signed by accused 2, 4 and 5. (M. Hussain Ahmed, Moulvi Nisar Ahmed and Pir Ghulam Mujaddid). The proceedings on the evening of the 9th began at 9-55 p.m. and ended at 1-25 a.m.

GOVERNMENT EXPERT'S EVIDENCE.

The second witness was Frank Brewster, aged about 45, Christian, Handwriting expert to Government, Simla. Before his evidence was taken, M. Mahomed Ali said :—

May I know under what law his evidence is being taken ? He had not been examined in the lower Court.

P. P.—As I already said, Sir, his opinion had been received only a few days back, the copy of which had been handed over to the accused.

J.—When ?

P.—On Friday last.

M. Md. Ali.—The gentleman never appeared before me and only the copy had been supplied. What I want to ask is this : how many addenda and corrigenda are being supplied in this case ?

The Judge said that it was an exceptional case.

The witness deposed as follows :—

I am handwriting Expert to Government. I saw Ex. 7 and 8. They were sent to me for examination. Exts. 9, 10, 11, 12 and 13 were also sent. I compared the handwriting in 7 and 8 with the handwriting of the other exhibits. Ex. 7 is in the same handwriting as 9 the proved signatures. The ink portion of 8 is the same, as the Urdu document sent to me. I sent my opinion to the City Magistrate. I had received these documents from the City Magistrate in a sealed cover. The seals were intact.

After the witness had finished M. Mahomed Ali said :—

Can I know if I can get my documents back which are my property ? Under what law am I deprived of them ?

They were never seized by any search warrant. They were taken from me at the time of arrest. I had sent for them at the Waltair Jail and asked the Jailor to send the papers to my wife.

I had asked the D. M. of Vazigapatam why he kept the documents. I told him :—"You have not seized them under any search warrant, can you cite any law, under which you can keep them with you ? " He could not cite any law. I asked him to send the papers to my wife but he said I should refer to D. M., Karachi.

Judge :—I cannot help it.

M. Mahomed Ali :—Is there any man on earth who can help me ?

Some of these papers have been filed as exhibits, and some have been sent to Simla and some have been sent to my wife. I take it that I am r bbed, absolutely robbed and the Viceroy, I believe, has been receiving stolen property. (Laughter in the Court).

MAHUMAD BAKSH'S EVIDENCE.

The third witness was Mahumad Baksh Illahi Bux, aged about 30 years, Mahomedan, Shaikh, Dy. Collector of Hala, who deposed as follows :—

I was present in Karachi in July last at the Khilafat Conference I remember Resolutions 5 and 6 being put before the Conference. The order of Government contains a correct translation of Resolution No. 6.

Accused 1 read it out and introduced it. It was proposed by accused No. 2. No. 4 translated it into Sindhi. He spoke on it.

Accused 3 Kitchlew seconded the Resolution. After him accused 5 spoke. Then accused No. 6 spoke.

Mahomed Ali then put the Resolution to the meeting and asked those who concurred in it to stand up. All stood up. Between 2 and 3 thousand were present on that night. The audience were mostly Musalmans. There were some of the Ulema present. I cannot say how many. I do not remember if there were any Sindhi Ulema present.

The speeches caused some excitement. Much excitement. I had gone there on duty. The meeting was open but admission was by tickets,

LAKHAT HUSSAIN'S EVIDENCE.

The fourth witness was Lakhat Hussain Tassadu Hussain, aged about 40 years, Mussalman, Shia Sayed, Inspector, C. I. D., who deposed as follows :—

I was present at the Khilafat Conference in July. I had been sent there to report speeches. Such speeches are made in Urdu. I take down these speeches in short-hand. I have been doing this work for some years. I was present at the sitting of the Conference on the 8th of July. Mahomed Ali delivered his Presidential address. He asked for selection of a Subjects Committee consisting of members from each branch. I took them down what he said. I have transcribed those notes into longhand. Ex. 16 is the true transcript of my notes. He (Accused 1) said what is written there. Ex. 17 is that translation.

It is all that he said on this subject. I was present at the Conference on the 9th July when the 6th Resolution was put to the meeting. It was read by the President Mahomed Ali. He said a few words. I took them down. Ex. 18.

It represents what he said accurately. Ex. No. 19 is the translation. Accused 2 made a speech and proposed it. I took down his speech in shorthand. I have prepared a transcript and translation, Exs. 20 and 21. Accused 2 actually said what I recorded there. After that accused 4 spoke in Sindhi thereon. Kitchlew spoke (Accused 3). I took down Kitchlew's statement. I have prepared a transcript and translation, Exs. 22 and 23. He said as I have transcribed it.

The evidence of this witness was finished when the Court rose for the day at about 5 p.m.

SECOND DAY'S PROCEEDINGS.

(TUESDAY, 25TH OCTOBER 1921).

The proceedings were resumed again on Tuesday, the 25th October 1921, at 11-10 a.m. when the judge entered the Hall from the back door. Many persons among the audience stood up, but the accused leaders and a portion of the audience remained sitting. The judge looked at the accused and finding them all engaged in reading, asked the Serishtedar to ask the accused to get up from their seats. All the accused leaders refused to stand up whereupon their chairs were ordered to be removed. The accused immediately vacated the chairs. Maulana Shaukat Ali put off his broad and long green Khadi cloak and spread it on the floor. Dr. Kitchlew spread a bundle of papers on the floor and sat down. M. Mahomed Ali immediately spread his coat on the floor on which he requested Shri Shankaracharya to sit.

The Judge asked them to stand up but they refused to stand up, whereupon Mr. Boyd, Police Superintendent, was asked to make the leaders stand. He came near Maulana Mahomed Ali and asked him to stand up.

M. Mahomed Ali.—Under what law ?

The Serishtedar communicated Judge's words to them :— Out of respect due to the Court.

Maulana Mahomed Ali said if he had respect for the Government he would not have been tried in the Court. The Judge could do whatever he chose. He could make them stand by using force only.

Court:—If you persist in this, you will be tried for contempt of Court.

The leaders remained calm and unperturbed. They were then informed that they would be tried for contempt of Court.

The Public Prosecutor then pointed to the Judge some minor mistakes in the statement of Mr. Zaman Shah and cleared the matter by saying that Exhibit No. 8 was in the same handwriting as the Urdu document, and the word "it" referred to the text of Resolution contained in the Government order. While P. P. was doing this, Maulana Mahomed Ali got up and said :—" I want to know what is going on at present. I want to follow it." The Judge asked him to sit down.

M. Md. Ali :—I refuse to sit down and stand up at your order, as I did in the Lower Court. I shall sit of my own accord. If you do not want to hear me, you need not try us but simply sentence us at once.

The Judge remarked that his conduct was foolish.

M. Md. Ali :—Whether it is foolish or wise it is not for you to judge. I know quite well that it is a wise one. I have not to show respect for the contemptible Government. If you are not going to hear us better close the farce and sentence us. The Court must have some power, if not, you can pass the law and hang us or shoot us if you like.

The Public Prosecutor then continued to examine Lakhat Hussain.

The witness said :—

After No. 3 accused 5 spoke in Urdu language. I took it down in short-hand. I prepared a true transcript in longhand in Urdu, Ex. 24, and the translation Ex. 25. Accused 5 said what I actually have written there.

After that accused No. 6 spoke in English but I did not record that. The President made a few remarks. I took them in short-hand and transcribed them in Urdu. The President spoke in Urdu [Exs. 26 and 27.] Accused 1 actually said what I have recorded in my transcript. I have got my original Urdu short-hand notes. The cries of Allah-O-Akbar, etc., were uttered by the audience. There was some enthusiasm about the Resolution among the audience.

The original residence of the accused is Rampur State. I know him personally. He has resided in Rohil Khand and other places in Hindustan and in Aligarh in connection with the College. I do not know if he was in service of Rampur State. Accused 2 is a resident of Deoband, District Saharanpur, U. P. Nisar Ahmed is a resident of Khanpur. Shaukat Ali was originally of Rampur State. He does not now live much in North India but in Bombay. Mahomed Ali was educated in the Aligarh College. I do not know if they are of Shia origin. I do not know about Mahomed Ali's diploma.

The Court asked Moulana Mahomed Ali whether he would cross-examine the witness. Maulana Mahomed Ali got up and said :—

How is it that the Court is putting questions to me when the Court does not want to hear what I say ? If I take part in the case and ask what is being done, the Court does not take note of it unless I remain standing up. I think the Court has been changing its position.

Judge.—Will you cross-examine or not ?

M. Mahomed Ali.—I shall ask the question first whether I am entitled to refer to the Court when the Public Prosecutor is putting new words in the deposition of the witness which are not there.

Judge.—I think not.

M. Mahomed Ali.—Then if I am not entitled to ask any question in connection with P. P.'s suggesting the alteration of any deposition, I should be supplied a long or a short list showing me where my rights begin and where Court's grace comes in and in the case of the latter, I shall not ask anything.

The Judge remarked that it was an intervention.

M. Mahomed Ali.—This is not an intervention. I have seen many cases where these learned members of the bar get up without any provocation and suggest additions and alterations as they choose.

Judge.—Will you cross-examine or not ?

M. Mahomed Ali.—I shall not answer the question unless I get a reply to my question.

The Court then asked other leaders whether they would cross-examine the witness.

Dr. Kitchlew said: I don't want to answer a question where I am disrespected.

Pir Ghulam Mujaddid offered the same answer.

SHAN BAHADUR'S EVIDENCE.

The fifth witness was Shan Bahadur Khan, son of Khan Bahadur Khan, aged about 35 years, Musalman, Pathan, Sub-Inspector, C.I.D., Allahabad, who deposed as follows :—

I attended the meeting of the Khilafat Conference in Karachi last July as a short hand reporter. I took down in Urdu language. I am accustomed to take down speeches in Urdu. I was present on the 9th July. Accused 1 read out the Resolution No. 6. I took it down as he read it out. He made some introductory remarks. I made a correct transcript from the Urdu short hand into long hand and a translation Exs. 29 and 30.

The Resolution was then proposed by accused 2 in Urdu. I took down his speech in short hand. It is a correct transcript from my notes. It is translated [31-32]. Then accused 4 spoke in Sindhi. Then accused 3 Kitchlew. I took down his speech in short hand. I prepared a transcript of it. I produce this transcript in the Court of the City Magistrate. I see the transcript. I identify it. There after accused 5 spoke in Urdu. I took down short hand notes of his speech. I made a transcript of his speech in long hand. I produced that transcript in the Court of the City Magistrate. I identify it. After accused 5 spoke, accused No. 6 spoke. The Resolution was put to the meeting by accused No. 1 Mahomed Ali. I have got my original notes here from which I prepared the transcripts.

BASARMAL'S EVIDENCE.

The sixth witness was Basarmal Jawharmal, aged about 28 years, Hindu, Amil, Shorthand writer, Karachi, who deposed as follows :—

I was present at the sittings of the All-India Khilafat Conference in July last. I took down in short hand the speeches which were made in English. I took down a speech made by the accused No. 6 on the evening of 9th July. That speech was made on Resolution No. 6. I prepared a transcript from my short hand notes Ex. 34. The transcript is correctly prepared. It represents what accused No. 6 said, Ex. 35.

TECKCHAND'S EVIDENCE.

The seventh witness was Teckchand Hemandas, aged 29 years, Hindu, Amil, Head Master, New High School, Karachi, who deposed as follows :—

I attended the proceedings of the Khilafat Conference last July. I took notes of the Resolution and the speeches made on it. I wrote a report from the notes. Those were of the speeches on the Resolution itself. I got a transcript from the "New Times" Paper. There was a special bulletin of the "New Times". I sent in my report on Monday, 11th. Ex. 37

WILLIAM ROSE'S EVIDENCE.

The eighth witness was William Rose Burns, aged about 50, Presbyterian, Journalist, Karachi, who deposed as follows :—

I am Assistant Editor the "Daily Gazette." I received a report of the proceedings on the evening of ninth July from Teckchand. That was Ex. 37. I produced this report in the Lower Court. One page is missing. I published it correctly in my newspaper *vide* issue of 11th July Ex. 39.

HARIRAM'S EVIDENCE.

The ninth witness was Hariram Shewaram, aged about 21, Hindu, Lohana, Reporter, the "New Times," Karachi, who deposed as follows :—

I attended the Karachi Khilafat Conference in July. I took notes of those proceedings. I gave the copies of those notes to Mr. Jeswani in English. I speak Sindhi. I understand the resolution translated into Sindhi.

T. K. JESWANI'S EVIDENCE.

The tenth witness was Tikamdas Khemchand Jeswani, aged about 27, Hindu, Lohana, Editor, the "New Times," Karachi, who deposed as follows :—

Last witness attended the Khilafat Conference as a reporter of my paper. He gave me a report of the proceedings of 9th July. I published that report in my issue of Monday, the 11th, Ex. 42. I have not got the original record. I eventually got authentic copy of this resolution from the Khilafat Committee in Karachi. I published that in my issue of the 18th. I asked the Secretary of the Committee for a copy of the Resolutions and received it from him. The Resolution No. 6 is that numbered 7, Ex. 43. I have not got the Resolution in original,

ABDUL GHAFUR'S EVIDENCE.

The eleventh witness was Abdul Ghafur Zardar Khan, aged about 38, Mahomedan, Pathan, S. I. Police, Sind C.I.D., Karachi, who deposed as follows:—

I went in the Kanyapathashala on the morning of the 9th July. Two head constables were on duty there. I asked what was going on. They said there was a meeting of the Subjects Committee. I could not recognise the voice of accused 7. I have frequently heard him before. He speaks with pauses because he is fat. I was there for half or three quarters of an hour. The Subjects Committee dispersed at about 11 a.m. or so. I went round in the evening. That was about 7 or 7-30 p. m. Head Constable Keshowlal and Usman Ghani were on duty there. They told me that a meeting of the Subjects Committee was held there. I got a copy of the Mutafika Fatwa, Ex. 6. I handed it over to the Deputy Superintendent. It was handed to me by a Pathan in Karachi City. He told me that I was employed in the Police and therefore I should read it.

FATEH BAHADUR'S EVIDENCE.

The twelfth witness was Fateh Bahadur Lakhshmi Parsad, aged about 32, Hindu, Kayastha, Head Constable, C. I. D., Karachi, who deposed as follows:—

I was on duty at the Pathashala during the Khilafat Conference. Accused 1, 3 and 7 put up there during it. On the morning of the 9th July, I was there from 8-28 to noon. I saw Shaukat Ali and Kitchlew in one gari at 9-30 a.m. and Mahomed Ali in another. Many persons came there including No. 6. There was a meeting of the Subjects Committee there. Accused 7 I could hear speaking. After 11 a.m. the Subjects Committee broke up. I was on duty there after 12 midnight. At about 1-30 a.m. I saw accused 1, 3 and 7 returning from the Conference.

USMAN GHANI'S EVIDENCE.

The thirteenth witness was Usman Ghani Mahomed Ismail, aged about 28, Mussalman, Sheikh, Head Constable, C. I. D., Karachi, who deposed as follows:—

I was on duty at Karachi during a meeting of the Khilafat Conference at the Pathashala on 9th July from 7 a.m.to 12 noon. I saw some people come there for the Subjects Committee. Mahomed Ali and Shaukat Ali,

Kitchlew and Venkantraman I recognised the speech of Shaukat Ali. I was on duty there that evening. I heard in the evening the voice of Shaukat Ali. He spoke in a high voice. I had heard him speaking before.

The Court then rose for lunch at 2 p.m.

The Court met again at 3-5 p.m.

KARAMCHAND'S EVIDENCE.

The fourteenth witness was Karamchand Ramlal, aged about 39, Hindu, Khatri, Inspector, C. I. D., Karachi, who deposed as follows:—

I attended the sittings of the last Khilafat Conference in July in Karachi. I was present on the evening of the 9th of July when the sixth Resolution was passed. The Resolution is correctly translated in Ex. No. 3. It was translated into Sindhi by accused No. 4. He also spoke in support of the Resolution. I took notes of it. All of the accused except Shaukat Ali spoke in support of that Resolution I left Karachi next day on the 10th. Then I left by the Punjab mail, some of the accused 3 and 7 left by the same mail. No. 7 went to Naushahro Feroz. Accused 3 went direct towards Sukkur. Naushahro Feroz is in Nawabshah District in Sind. I went there also. There was a first political Conference of the Sahiti district there. Shaukat Ali was president. There were two sittings one in the morning and one in the evening. Accused made two speeches one at each sitting. I took notes and have been doing so for the last five years. Accused No. 7 spoke in Urdu. I am well acquainted with Urdu. I recorded it in Urdu. I have produced those notes in the Lower Court. This is the fair copy and the original Ex. 48. The translation is Ex. 56. This is the evening speech. It is a correct translation of what accused 7 did say. Dr. Choithram translated his speech into Sindhi.

MAHMUDSHAH'S EVIDENCE.

The fifteenth witness was Mahmudshah Nawabshah, aged about 43, Mussalman, Sayed, D. S. P., Thar and Parkar, who deposed as follows:—

I prepared Ex. 17, it is a correct translation of Ex. 16.

I prepared Ex. 19. It is a correct translation of Ex. 18.

Ex. 21 is a true translation of 20.

Ex. 23 is a true translation of 22.

Ex. 25 is a true translation of 24.

Ex. 27 is a true translation of 26.

Ex. 30 is a true translation of 29.

Ex. 32 is a true translation of 31.

I also in the City Magistrate's Court prepared true translations of the speeches of Nisar Ahmed and Dr. Kitchlew. The leaflet shown to me Ex. 51 is accurate. Ex. 49 is a true translation of 48.

ABDULGHANI'S EVIDENCE.

The sixteenth witness was Abdulghani Barkat Ali, aged about 30, Mussalman, Rajput, Superintendent, Central Khilafat Committee, Bombay, who deposed as follows:—

The book is the stock book of the Central Khilafat Committee. Mr. Kelly came to search the Central Khilafat Committee in Bombay. He took this book away from the office. As a rule I sent out the literature on my own responsibility. Entries in the book are made by the clerk in charge. It is his duty to enter in the book, literature which is received and which goes out. Entry No. 30 in the month of February refers to receipt of 240 copies of Mutafik Fatwa. During the month 151 were issued Ex. 54. The clerk who distributed them made the entries. It was he who distributed them made the entries. It was the clerk's duty to distribute them and enter them in the book. Item No. 30 shows a balance in March of 89 copies. In April there is an opening balance of 27 copies, May balance is of 26 copies, Exs. 56 and 57. June shows no balance, Ex. 58. In July 2,000 copies were received, Ex. 59. We charge for the literature that we issue to the public. The first 200 copies were issued to the visitors free. I sent the Fatwa to be printed at the Mustafai Press. I did it on my responsibility. The title page of the pamphlet bears an endorsement signed by me, Ex. 60. I signed that order on 14th February 1921. I signed it in February. I don't remember whether I sent it to the press then. Very likely, I sent it to the press later on. I received 2,000 copies from the press. Ex. 61 is the receipt signed by me. I handed over those copies to the clerk with instructions to hand them over to any one who would pay 4 annas and not to send them outside. I do not know that any copies of either of these pamphlets were sent out with cyclostyled letter signed by Shaukat Ali. I don't think that Shaukat Ali ever signed such letter; the letter used to be issued by some clerk in his name.

M. Mahomed Ali here said.—Why is poor Mr. Kelly being troubled now and then, whenever there is a gap to be filled, by going all the way from Karachi to Bombay to again and again search the Central Committee office? Let Mr. Kelly be sent for here and let him bring the whole

office; and when the entire body is removed here search it like a fish-pond and let us all be transported once for all for life (laughter in the Court.]

The witness continued:—Shaukat Ali is one of the Secretaries of the Central Khilafat Committee. Dr. Kitchlew is one of the Secretaries. He is deputed to work in Punjab. No. 1 is one of the members of the Khilafat Committee. There are 200. Shaukat Ali does not spend much of his time in Bombay. The introduction to the papers sent for publication to the Mustafai press was written by Khatri, Ex 62. Among the papers was the Mutfik Fatwa and the proceedings of Jamait-ul-Ulema-al-Hind Ex. 62. These proceedings were printed. I don't know who has published it.

MAHOMED AHMED'S EVIDENCE.

The seventeenth witness was Mahomed Ahmed, aged about 35, Mussalman, Sheikh, Printer, Bombay, who deposed as follows:—

The name of my press is Mustafai. I received Ex. 60 together with the copy of Muttafik Fatwa and the proceedings for printing. Last witness Abdul Ghani gave them to me for printing. The original order was for 5,000 but afterwards I was asked to print 2,000 only. I delivered 2,000 on the 21st July. I ave Abdul Ghani's signature in the delivery book.

VITHAL RAMCHANDRA'S EVIDENCE.

The eighteenth witness was Vithal Ramchandra, aged about 35, Hindu, Brahmin, Police Sub-Inspector, C.I.D., Poona, who deposed as follows:—

Three of the accused Mahomed Ali, Shaukat Ali and Kitchlew had come to Poona on 17th July 1921. There was a political meeting that evening. I attended it. I write shorthand in Marathi and English. I am accustomed to taking down speeches in short hand. Shaukat Ali made speeches at that meeting; at the end of the meeting, funds were being collected. Shaukat Ali spoke in English and Urdu. I took English in English and Urdu in Marathi short hand. I made a true transcript of my short hand into long hand. I made it half an hour afterwards. Ex. 65 is what Shaukat Ali said. I made a translation into English, Ex 66. There were 3,000 or 4,000 persons present. About half were Mahomedans. There are many Indian troops stationed at Poona. I can produce my original shorthand notes when required.

NARAYAN GANESH'S EVIDENCE.

The nineteenth witness was Narayen Ganesh, aged about 38, Hindu, Mahratta, Brahmin, Inspector, Police, C.I.D., Poona, who deposed as follows:—

I was present at Gokin at Belgaum District. Khilafat Conference was held. Only one Resolution was put before that Conference. Accused No. 1 proposed it. It was read out in Urdu, then in English. I took down what I could. I write Marathi short hand. I took down the Resolution when it was read in Urdu. I translated it into Marathi and took it in Marathi shorthand. I took it in English longhand. A few remarks were made by accused No. 1 while moving the Resolution. I took it in Marathi shorthand. I have prepared a transcript Ex. Nos. 68 and 69. About 1,500 persons were present. 50 % were Mahomedans. Kitchlew, accused 3, seconded that Resolution. I have the original shorthand notes with me from which the transcript was made.

The Court then rose for the day.

THIRD DAY'S PROCEEDINGS.

WEDNESDAY, 26th OCTOBER.

The accused leaders entered the Khalikdina Hall at 10-55 a.m. and straight away sat on the ground as on the previous day. This day, however, a large majority of the audience sat on the floor out of respect for the accused.

PHULCHAND'S EVIDENCE.

The twentieth witness Phulchand Purnamchand, aged about 37, Hindu, Marwari, S. I. Police, Poona, was then called. He deposed as follows :—

I attended the Belgaum Khilafat Conference at Gokak. That was on 19 June last. Only one Resolution was put before that Conference. The Resolution was read out to the audience by Mahomed Ali. He read it out in Urdu and English. I took the Resolution down. I took down in Marathi shorthand. I have prepared a true transcript in long hand, Exs. 71 and 72. Mahomed Ali proposed the Resolution. It was seconded by No. 3. About 1,500 attended the Conference.

W. C. SHANKER'S EVIDENCE.

The twenty-first witness was William Cristopher Shanker, aged about 25, Protestant, Jailor of Vizigapatam Jail, who deposed as follows :—

Accused No. 1 was brought to my jail on 14th September about 2-40 p.m. The D. I. G. of the C. I. D. and the railway police brought him there. Mr. Cunningham brought him. The Jail is about one and a half miles from the station, he came in a motor. His kit followed in another motor accompanied by his servant and a policeman. The Inspector asked me to keep the kit safely till he got an order. I locked up the kit in my office. Next day the Inspector turned up with a letter addressed to the Jail Superintendent asking me to search the kit and take possession of all papers. I suggested Mahomed Ali should be present. I sent for Mahomed Ali and in his presence opened his trunk. Several papers were found which were placed on the table. I had a list made out by the Deputy Jailor. I read the English papers and asked Mahomed Ali to read the Urdu papers and tell us the contents of them. The contents were noted by the Deputy Jailor. The list was then signed by Mahomed Ali Ex. 74, among them were the Urdu and English copies of Gokak Resolution. I then put away the papers and the list. I took

them out on the morning of the 17th. The District Magistrate called on the jail and I placed these papers before him on the table. Mahomed Ali was sent for and the D. M. informed him that they were to be seized. Mahomed Ali asked that certain papers which were in that bundle should be sent to Begum Mahomed Ali. Papers were then wrapped in a newspaper and sealed by the D. M. The packet was handed over to an Inspector of the C. I. D. who called at the jail. I was more or less present at the conversation between the D. M. and the accused.

NARIMAN'S EVIDENCE.

The twenty-second witness was Nariman Hormusji, aged about 29, Parsi, Jailor, District Jail, Karachi, who deposed as follows :—

Accused was kept in a separate room in the jail. He has written some letters in my presence to the D.M., Karachi, Exs. 10 and 11. He also wrote two telegrams in my presence, Exs. 12 and 13. I kept the originals and despatched the copies. Accused I also wrote an Urdu letter in my presence, Ex. 9. I initialled these documents, so I might identify them.

The P. P. said that he wanted to examine Deputy Superintendent of Sylhet. Mr. Sundera Nath Sen who was not examined in the Lower Court but part of whose statement was given to the accused on Saturday and a part on Monday.

M. Mahomed Ali asked if the evidence had already been recorded. The Judge said that it was going to be taken.

M. Mahomed Ali said that new witnesses were being brought in every now and then to serve the purpose of the P. P. He said that it was being done only in order to show that the "conspiracy" existed from February 1920. There was not a word of evidence in the Lower Court about dates but any how the Magistrate introduced his own dates February to September, 1921. The Public Prosecutor, he said, again wanted to have "slight" changes in the charge sheet and now to prove his own things, new evidences were being taken. "It will facilitate the proceedings if the sentence is passed. We will have no objection, we have no grudge against the Court. It will be better if there is an end to these things."

The P. P. said—"The witness's name was in the first application to the Court to summon him because he would produce the notes of Mahomed Ali's speech in March 1920. Unfortunately, he could not arrive in time in the Lower Court." The Judge allowed the evidence to be taken.

SUNDER NATH'S EVIDENCE.

The twenty-third witness was Sunder Nath Sen, aged about 42, Hindu-Baddha, Deputy Superintendent, C. I. D., Sylhet, who deposed as follows:—

I attended the Assam Khilafat Conference in March 1920, on the 6th March. The accused 7 was present. He delivered a speech at the Conference. I took notes of it, he asked some Resolutions to be passed. Abdul Hamid read out the Resolutions. Shaukat Ali asked him to read them out. Those Resolutions had been passed on the 29th February in the Town Hall, Calcutta. I attended that Conference in Town Hall, Calcutta. The Resolutions which were passed in the Town Hall, Calcutta, were published in the "Amrita Bazar Patrica" and other newspapers. Accused 7 handed Abdul Hamid that copy of the "Amrita Bazar Patrika" and asked him to read out the Resolutions, they were in English. They were read out in English and Urdu. I had a copy of the same paper. I checked the reading and translation; they were correctly read out. I have not my original notes made in the meeting. I made a fair copy. That was in the evening. I made it with my own hand. I have it with me, Ex. 77. I saw Shaukat Ali in Calcutta at the time of the Conference there in February.

B. E. GWYER'S EVIDENCE.

The twenty-fourth witness was Bernard Edward Gwyer, aged about 42, Church of England, Colonel on the Staff of Western Command, Karachi, who deposed as follows :—

Ex. No. 79 is the form on which soldiers are enlisted. Clause 14 has 2 paras. Para 2 refers only to Reservists. Ex. No. 80 is the enrolment form of soldiers enlisted during the period of War. All soldiers now serving have been enlisted under one or the other of these forms. Soldiers are not allowed to go till a definite period has elapsed. I cannot say whether they are allowed to buy their discharge. The people enlisted under Form Ex. 80 have to serve during the duration of the War and for 6 months thereafter. The date of the end of the war was fixed for 1st September. The people enlisted under Form 79 have to serve for 4 years or 5 or for 10. He cannot leave the Army before the period he had engaged for is over. He may receive his discharge after his period of service is over on 2 conditions, namely, that War is not existent or imminent, and that the Unit to which he belongs is not 10 per cent. below its Establishment, Squadron or Company. These two conditions appear in Para 14 clause 14 of Ex. 79.

When necessary a recruiting party is sent out to the area whence recruits are drawn. They consist of men of Regiment under command of an officer Indian or British. The object is to induce men to enlist in the Army. That is the only method of keeping the regiment up to strength. If the men in the recruiting detachments did not do their best to induce men to join, it would be impossible to get them.

If a Commissioned Officer wishes to resign he would tender his resignation to the Company who would submit it to the Commander-in-Chief who would give or refuse permission to resign. Except with such a permission an Indian Officer cannot resign. I am Colonel on the Staff of the Western Command.

I have received some leaflets asking soldiers not to serve in the Army. I produced such leaflets in the Lower Court ; Ex. 81 a, b, c translation 52. They are in the same state as when I got them. I have received other copies in addition to these three. They have reached 10 different battalions of the Western Command.

M. Md. Ali who was examining the leaflet which he had taken from Court said :—Am I to understand that the leaflets are put in by the witness ?

P.:—Yes.

M. Md. Ali :—I should like to draw the attention of the Court to a misquotation of the Quran. Then he read the passage in Arabic pointing out the discrepancy. He further pointed out that it was a misrepresentation of the Quran which the army had got. He read out a passage regarding the punishment to be awarded to one who killed a believer. The punishment was to be meted out to the *singular* 'man' while the reprint contained the *plural.* This he said was Mr. Mahmud's translation !

He cited another mistake also in the leaflet, at the instance of Pir Ghulam Mujaddid and others.

The witness continued :—I have received a telegram from O. C. 98th Infantry at Baroda to the effect that Subedar Major Jiram is on sick leave. Ex. 82. I then telegraphed to the Deputy Commissioner, Girgaon, if he was fit to travel and if not to send me affidavit. I received the reply Ex. 83. The affidavit has not been received. I will send it

when received. There is no provision for the resignation of sepoys of Military service before the period has elapsed for which they have signed on even on payment. I have ju looked up the point.

AZIZUDIN'S EVIDENCE.

The twenty-fifth witness was Azizudin Sharafudin, aged about 35 years, Musalman by caste, Jat, Subedar, 5th Light Infantry, Quetta, who deposed as follows :—

On the first June last the Subedar Major of my Regiment went on eave. For 2 months I acted for him. The Post of the Regiment was censored during those months. I found 10 such leaflets in the post of my Regiment during those 2 months. Some of them were received on 20th July and others during the last week of July. I have produced one of these leaflets Ex. 85. It is in the original envelope. They were addressed to the Mahomedan Subedars of the Regiment. There are one Company of Punjabi Mahomedans and one Company of U. P. Mahomedan Rajputs. They are not likely to pay very much attention to this sort of leaflets. They would pay no attention to the opinion of Mahatma Gandhi or of a Hindu Bawa like accused 6.

MAHOMED HUSSEIN'S EVIDENCE.

The twenty-sixth witness was Mahomed Hussein Turvesk Ali, aged about 45 years, Musalman, Hazara, Subedar, 106 Hazaras, Quetta, who deposed as follows :—

My Company was attached to the second Pioneers at Lahore. My Regiment was in Mesopotamia. My Company was sent to the Depot in uetta in December 1920. I received this paper Ex. 87 in that envelope. I received five more a week later. Four of them were addressed to four Subedars of my Regiment who had been demobilised and one to a Jamadar of my Company. I opened the envelopes as I was on duty that week.

After the evidence of the last witness was finished, the Serishtedar read the deposition of Jairam, Subedar, as recorded in the Lower Court to the Jurors as the witness had been unable to attend the Court on account of illness.

At this stage the Judge said :—I do not think any of the statements (of the accused) in the Lower Court are admissible. They are no statements at all. I do not think whether statements of a compromising character could be admitted. The object of the statements is to enable the accused to explain anything in the evidence against them.

Mr. Mahomed Ali, after ascertaining from the Court whether it would hear him on the question, said :—My statement is nothing but an explanation of things in the evidence led against me. The facts alleged against me are that I read out a certain resolution at the Conference and that I introduced it with some preliminary remarks, that I recommended people in favour of it to show their consent by standing up and that I made certain concluding remarks. That is practically the whole charge. Well, the accused says that was precisely the requirement of his religious law. His faith required him to carry it out and the Queen's Proclamation confirmed by the Proclamation of King Edward and the letter of King George give him the protection of the law for doing what his religion requires him to do. This is our explanation for our passing that resolution. So far as we are concerned, we have given this explanation. As a matter of fact, in an ordinary case, I would not have taken the trouble of giving my explanation or worried the Court with a statement. But here it was a matter of the utmost importance to the Government itself if not to anybody else. Let this Court once for all lay it down clearly that the Proclamation of the Queen Victoria, confirmed by the Proclamation of the the King Edward and that published in the name of King George have no value when a man is brought to a Court of Law. They promised us the protection of the law, otherwise they have no value. But let the Court say that they have no value for the Court, they have no value for the jury and I shall be content. I want a clear decision from this Court. It is a statement wholly relating to the facts alleged against us.

The Court :—The object of the statements should be to explain matters.

M. Md. Ali:— We have explained nothing but the bare charge. What is after all the charge ?

The Court was inclined here to interrupt.

M. Md. Ali : If the Court allows me to say something that I have to say, I shall speak. Otherwise I will stop. The charge against me so far

as I am concerned, at any rate, is that I made certain remarks—introductory remarks and concluding remarks. My contention is that my religion required this and I have given citations from the Holy Quran and from the Hadiths in proof of that—lengthy or elaborate,—whatever you may consider it to be. It was only an explanation of the facts alleged against us. Every word of it has its bearing upon the case. From the Proclamation of Queen Victoria and the Proclamation of the late King Edward and the letter of King George, we believed, that the law was to ive protection to religion, and I was free to do what my religion required me to do. One single word,—not one single syllable, not one comma is out of place in that explanation. Let it be ruled out if you like, let the whole Quran be ruled out, let the Proclamations be ruled out, and let there be only the Penal Code and let the Penal Code be our new scripture.

The Court :— I cannot turn this trial into a religious discussion. I am not competent to discuss your religion.

M. Md. Ali:—Then you had better resign and let them bring in somebody else who is more competent than yourself (Laughter). My contention is that I am required by your law—your law requires me to act in a particular manner, to do certain things and omit to do certain other things. So long as religion allows it, it is possible for me to keep my allegiance to the King's law and follow his law. But if the King's law is going against my religion, I walk out of my allegiance to him.

The Court :—Assuming that one of the sects of the Hindus regards human sacrifices as a religion, should they be allowed to do so ?

M. Md. Ali:—If the recognised law of a religion is that one should be permitted to kill then why should the King make such a proclamation ? He should clearly proclaim that the law will not protect such a person or sect. In the case of my religion there is no such commandment. It is all contained in the Quran, although a very small book full of repetitions, and I am to follow its injunctions if I want to remain a Mussalman.

From the Quran originates all the religious authority in Islam and if we follow it then we come in under the protection of the proclamations. Everything is contained in this small book (showing the Holy Quran). All other religious books of Islam derive their authority from the Quran. Not even a tradition of the Prophet can be valid if it goes against the

Quran and Ilm-i-Kalam (scholastics) and *Figh* (jurisprudence) all derive their authority from these two sources. And all these authorities require me to do what I did.

Had not religious toleration been proclaimed by the proclamation of the Queen in 1858, the Queen would not have been recognised by a single Hindu or by a single Christian or by a single Mahomedan. We could come in only as Mussalmans just as we are and with this little book of ours (showing the Quran). If the Quran had no use for us, the Queen could have said: "Gentlemen, you are welcome but not with that book" and we would have remained in the faith. But the Queen wanted us, just as we were, even inspite of this book. And what about the Queen herself? She has to go before the Archbishop of Canterbury and to declare that she was a Protestant and would continue to remain so and to be the Defender of that Faith. And as long as she remains Protestan and defends that Faith, you will abide by your allegiance to her or otherwise her head would be chopped oft as the head of Charles I was chopped off. His son had to go on his travels and did not like to go on his travels again when he was King. Another son James II had to leave the country and its Government and his true successors were called Pretenders because the people insisted on the oath of allegiance to be taken by the Kings.

I want to know clearly whether the King to-day is as King, the Defender of the Faith, or a Pretender. If so, why does he not say so that he wants us to discard the religion of the Quran or otherwise "you" cannot remain within my Empire.

The Court:—But you will want to cut off the hand of every thief according to your Quran!

M. Md. Ali:—I am afraid the Court does not understand Islamic law. The hand of the thief will be cut by every Islamic administration. That is the requirement imposed on it by Islam. The moment there is an Islamic administration anywhere, I will ask it to cut off the thief's hand and what is more I will ask them to stone the adulterer to death, whereas in your country, adultery is not even a crime! According to our religious injunctions, the adulterer, if we had the power, would be sentenced to be stoned to death.

My law is this that no soldier shall be asked to kill another Muslim unless for a just cause—a just cause according to my religious law. If the King accepts me as a subject as I am, with all this law, and I come in. Ask me to go against this law, I walk out of the Empire or kick you out of it. This is my only argument."

The Court then passed an order allowing the statements of the Lower Court to be read to the Jury. The Sherishtedar began to read Moulana Mahomed Ali's statement and when the Court rose it was not finished.

After the Court re-assembled at 3 p.m. the Sherishtedar continued reading the statement of all the accused whatever had been recorded by the Magistrate along with his notes [Published verbatim in the "Historic Trial" Part I] and finished it by about 3-45 p.m. The Judge then began the examination of the accused.

EXAMINATION OF THE ACCUSED.

The examination of Mr. Mahomed Ali by the Judge then began :—

Q.—Is your statement Ex. 90 correct ?

A.—I don't know.

Q :—Did you move the resolution Ex. 3 ?

A :—No. But I introduced it or a similar resolution. It was proposed by accused No. 2.

Q :—Did you approve of that resolution in your introductory speech ?

A :—I said it was the marrow of the Conference.

Q :—Did you believe that the resolution if passed would be published ?

A :—Yes.

Q :—Did you expect that copies of that resolution would reach the Indian troops ?

A :—I thought it was possible that some copies might reach them though they are very badly segregated.

Q :—Did you expect that the resolutions of the Khilafat Conference would have much effect on the troops ?

A :—I feared they were so demoralised by the Government that it would not produce much effect as fifty years ago but I hoped it would produce some and I am glad to see that it has produced some.

Q :—Is there any truth in the idea that you and other accused agreed together to seduce the soldiers ?

A :—No, we never discussed it at any time. But as a conscientious Moslem, I and the other 5 accused must feel together that this is our duty to feel that Muslims must not continue in the army in the circumstances actually existing at the time.

After Mr. Mahomed Ali had signed the above statement he wanted to give a statement as promised, but the Judge refused to allow him any statement except an address to jurors which was not to be recorded. The Maulana very much insisted on the promise of Court being kept up and

the Public Prosecutor also drew the attention of the Judge to Section 342 of Cr. P. C. to the effect that a statement on evidence but not a general address, was allowed but the Judge refused to listen.

M.—Am I allowed to make no statement at this stage ?

J.—No.

The Court then asked Maulana Hussain Ahmed if he was ready to answer to questions of the Court but he said:—As my statement is not to be taken I do not want to say anything.

The Court asked Dr. Kitchlew:—"Will *you* answer the questions please" ?

Dr. K:—Under what circumstances should I answer questions ? Will I get an opportunity of making a statement ? If not, I will not answer any questions. These proceedings are all against law and therefore illegal.

Pir Mujaddid and Maulvi Nisar Ahmed also gave the same answer as Maulana Hussain Ahmed.

The Judge then asked Shri Shankaracharya :—

Q:—Did you support this resolution at the Karachi Conference ?

A:—We did not know the details till after coming to the Karachi jail. We did not even know that there was any military question raised in the agenda at the time of the Conference. The first time we heard of it was when we got there. All we did was to give our ecclesiastical support to Hindu-Muslim unity and to the protection of the Khilafat. Had we known that it was on the agenda, we should have said that it was the duty of Mahomedans to follow their religious law accurately, just as it is the duty of Hindus to do so.

Jagatguru Shankaracharya on being asked if he would sign the statement recorded by the Court as above said he refused to sign.

The Court then asked Maulana Shaukat Ali if he would answer the question.

Maulana Shaukat Ali said:—"I am perfectly willing to oblige the Court if you give me a solemn promise to give me a chance to explain my position." The Court refused to accept the terms and Maulana refused to answer (laughter in Court).

The Khalikdina Hall.

Barbed wires behind the Compound Wall.

View from the Front.

View from the North-West.

The case for prosecution having been brought to a close, the Court asked the accused persons to enter upon their defence and to produce evidence. They all said they did not want to call evidence.

Mr. Mahomed Ali :—I am not going to give any defence but only an address to the jury as my statement has not been admitted which, I consider to be illegal, perfectly illegal.

Maulana Hussain Ahmed said that he would not give any defence.

Dr. Kitchlew said that he had to give defence to God and the nation only. Pir Mujadid and Maulvi Nisar Ahmed also did not offer any defence.

The Jagad Guru :—There is no evidence against us and we do not want to give any defence.

Maulana Shaukat Ali :—I would have given Quran as my defence but as this Court has nothing to do with God, I give no defence.

Towards the close the Court called the Public Prosecutor to state how he would proceed the next day in his leading of the charges against the accused. Upon his doing so Mr. Mahomed Ali raised an objection as to the misjoinder of charges against them and quoted Section 239 of the Criminal Procedure Code on the point. He pointed out to the Court the definition of the phrase "the same translation" for which they were being jointly tried and urged that the Public Prosecutor should have the action made of the several accused as a joint transaction for which they have been jointly tried.

The Court then rose for the day at 5-50 p.m.

FOURTH DAY'S PROCEEDINGS.

THURSDAY, 27TH OCTOBER 1921.

The Court assembled at 11 a.m; the trial was more largely attended by the public than on previous days.

P. P. :—I would like to draw your attention to exhibit No. 36 evidence of Mr. Teckchand. Witness stated that he took down translation from "New Times." That was a special Sunday bulletin of "New Times."

M. Mahomed Ali :—May I say that P. P. should speak louder so that we may hear him.

Judge read out what P. P. said.

M. Mahomed Ali :—Is that by way of corrigenda ?

Judge :—No.

M. Mahomed Ali :—This addition is being done so often.

PUBLIC PROSECUTOR'S ADDRESS TO JURY.

The Public Prosecutor then delivered his address to the Jury.

The following is the authorised summary of his address :—

You have the charges before you. I will deal with each in turn. Please excuse me if I travel over some of the same ground as I touched on when opening.

Let us read the 1st charge. You will remember that Sec. 131 I. P. C. renders it a criminal offence to *attempt* to seduce an Officer or soldier from his duty.

The mere *attempt* is sufficient to complete the offence. Even though the attempt fails, the person, who makes the attempt, is guilty under Sec. 131, I. P. C. [Read Sec. 131.]

You will remember that a bare agreement to commit an offence is sufficient even though the agreement is only momentary—even for one minute and even though *no* action *whatever* is ever taken in pursuance of the Agreement, still anyone who agreed for *one moment to commit* that offence is guilty of criminal conspiracy. [Read Sec. 120 A.]

You will remember also that the ultimate object of the conspiracy is *immaterial* and *irrelevant* [read explanation]. It is immaterial that the committing of an offence was merely incidental to the *ultimate object* of the conspiracy. This is a point of *law on* which you must *accept* the ruling of the learned Judge. The Court will lay it down for you that it is *immaterial* that the Accused may have acted from religious motives.

Religion is revealed. One man interprets the Holy Scriptures in one way, others equally devout and earnest hold directly contrary views. Verses and even parts of verses may be detached from their context or may be taken in conjunction with other verses in *different* ways by one party or the other, so that there exist acute differences of belief amongst the followers of practically every religion in the World, giving rise to numerous sects within one and the same religion, a fact with which you as men of the World are well aware.

You have Protestants and Roman Catholic Christians, Sunni and Shiah Mahomedans, Pirai and Punjabi Khojas, just as you have Mahomedans who believe in the maintenance of the Temporal Power of the Sultan of Turkey as the Caliph of Islam and those who hold contrary views. The Accused interpret certain verses of the Holy Quran as forbidding one Mahomedan killing another even in a state of War. Many other Mahomedans who are equally devout recognise War as an exception to these texts. Throughout the late War,Mahomedans enlisted knowing they would probably have to fight against Mahomedans. In fact every Mahomedan in the Army, including those who enlisted before or after the War, were liable at any time to have to fight against Mahomedans on the Frontier. Had the texts to which the Accused refer been universally interpreted as the Accused interpret them, they would have come into prominence long ago and must have seriously affected recruiting. The 6th of the 10 Commandments of the Christians and the Jews is even wider than these verses quoted by the Accused, for it prohibits killing generally without any limitation regarding one's co-religionists, but killing in War, in self-defence or as a puishment for crime are generally accepted exceptions to this Commandment. Mr. Mahomed Ali admitted this last exception as applying even to the verses he quotes, admitting that a Muslim King ought to kill a Muslim caught in adultery. Apparently, however, he denies that War is an exception to what those verses enjoin.

It is not possible for this or any Court on earth to decide which sect is right. It is not possible for you or any Court to decide whether the beliefs held by the Accused are correct or those held by others. The

Accused are at liberty to hold any beliefs they like, but they cannot commit crimes in the name of religion. Human sacrifices to the Goddess Kali —to which the Court referred—are none the less criminal because they are acts done in the *bona fide* belief that the killer believes his religion requires him to take human life as a sacrifice. In oder to be consistent, when asked yesterday by the Court, Accused 1 had to admit that according to him under the Proclamations of H. M. Queen Victoria, King Edward VII and King George V, human sacrifice should be permitted. If his children were taken and actually sacrificed to the Goddess Kali, would Mr. Mahomed Ali for one moment consider the murderer should go unpunished ?

Take another instance—a hypothetical instance. If the principle upon which the Accused say they are acting is true, it must provide the same logical conclusion in every case. Are forcible conversions to Islam permissible ? The Accused *may* say that *they* believe forcible conversion is contrary to the Law of Islam. That is beside the point. The fanatics who forcibly convert Hindus to Islam *they* believe that they are doing God *service* and the Accused say that every man is free to do what *he* believes his religion requires. The religious beliefs of the victims are immaterial. The practical result of this doctrine of the Accused in this instance would be to deny even liberty of belief to the victims. *The principle for which the Accused are contending means* that, if a man *believes* his religion requires it, he may commit murder, dacoity, robbery, arson, rape and every other offence known to law with impunity.

Are you prepared to hold that if a man murders you, or even forcibly converts you to Islam, he should *not* be punished if he believes that his religion requires him to murder you or forcibly compel you to accept the religion of Islam ? Such a proposition would necessarily put an end to any safety of life, property and even of the religion of each one of us.

If some non-Muslims demolished a Mosque honestly *believing* that their religion required it, would the Accused say that these non-Muslims should go unpunished ? Never !

In short, you may hold any religious beliefs you like, as laid down in the Proclamations of H. M. Queen Victoria, King Edward VII and King George V, to which Accused 1 has referred, but you *cannot* commit crimes because *you* think your religion requires you to commit crimes.

It is of the utmost importance that you should grasp this fully and bear it in mind throughout the case.

There is absolute freedom of faith, but no license or permit to commit crimes in the name of religion.

The Explanation to Sec. 120 A of the I. P. C. covers this point. The learned Judge will direct you on the law and you must accept the law as laid down by him and in accordance with your oath return a *true* verdict according to the *evidence*.

Read the first 2 charges—both charge the Accused with *agreeing* to seduce Officers and soldiers. The 1st charge is the *mere* agreement, *nothing* more—the second charge is the agreement being *followed* by an actual *attempt* to seduce Officers.

The Court asked one of the Indian Officers whether he thought Mahomedan Officers were likely to be seduced by these leaflets and he said it was unlikely that they would be affected but whether or not the attempt is likely to be successful is quite immaterial.

Now the *duty* from which it is alleged the Accused agreed to attempt to seduce the Officers and soldiers is two fold—*both* are mentioned in the Resolutions.

Firstly, they attempted to seduce them from remaining in the Army. Col. Gwyer has told you no Indian Officer can resign his commission without the permission of the Commander-in-Chief. No soldier can leave until he has completed the period of service for which he signed on and even then not if his unit is 10% below strength, *or* if war is existing or imminent.

The War ended officially on 1-9-21. When the Resolutions were passed and all other acts done *no* soldier in the Army could resign 6 months after end of War.

[The P. P. here referred to Exhibit 79, clause 14, para 1. Exhibit 80]

Secondly, the accused attempted to seduce Officers and men from doing *recruiting* duty.

It is impossible to keep the Army up to strength, *unless* Officers and men induce others to enlist.

These are the 2 points re : which the Accused have attempted to seduce Officers and soldiers from their duty.

Now re: the evidence—There was no cross-examination. The evidence is unchallenged, and largely admitted. Accused 1 has challenged 1 immaterial item in the evidence of Fateh Bahadur Ex. 45, the Head Constable who saw Accused 1,3 and 7 on the night of the 9th July, when "this resolution" was passed, return to the Kanyashala at 1-30 a.m. from the Conference. No. 1 has said this is a wanton lie, because subordinate Police *must* put in *some* lie even in the truest case. The Police have *not* lied. Zamanshah has told us that on the 9th the Conference proceedings did not finish until after 1 a.m. and he is corroborated from an entirely independent source namely the "New Times" Reporter—see Ex. 42 the Account of the proceedings of the night of the 9th July. "The *sitting* came to an end at about 1 a.m."

It takes some few minutes for a crowd of 2,000 to 3,000 to leave the Pandal. The C. I. D. Head Constable who saw the 3 Accused *reach* the Kanyashala at about 1-30 a.m. was therefore speaking the truth and Mr. Mahomed Ali was *wrong*.

One other point Accused 1 challenged and *failed* in. *He* thought that the evidence of the Inspector Abdul Karim of the Madras C. I. D. given in the Lower Court was inconsistent with that of the Waltair Jailer given here. I tendered the Inspector for cross-examination and pointed out that there was no discrepancy whatever. At the request of No. 1 the learned Judge read through the evidence of the Inspector and *agreed* that there was *no* discrepancy whatever and the point was abandoned.

The evidence before you is therefore unshaken in any way—on the contrary the *allegation* of Accused No.1 on the *one* small point re: which he has attacked the evidence is proved to be *wrong* and the prosecution evidence correct.

Pardon me if I now remind you of the provisions of Sec. 10, Evidence Act.

You will remember that, in order to *prove* the existence of a conspiracy *or* to *prove* that *any one* of the present Accused was a party to that conspiracy, you may take into consideration any act done by any party to the conspiracy in reference to the common intention of the conspiracy at any time after such common intent was 1st entertained by any party to the conspiracy even though the door of that act may be a *complete* stranger to all of the Accused and is acting entirely without the *knowledge* of *any* of the Accused and even though such act was done *before* the Accused joined the conspiracy *or after* he left it.

I would again remind you that conspiracy is a matter of *presumption* No C. I. D. Officer can *see* the conspirators conferring. They cannot get into the meetings of the "Subjects Committee" even, where the Resolutions are drawn up. [Gave instance 9, S. L. R. 223; read whole case]. Conspiracy held was proved there, though one man did nothing more than accompany his co-conspirator and never even uttered a single word.

Now first as to the existence of a conspiracy—an Agreement to attempt to seduce troops from their duty—leaving aside at present the qusetion whether the Accused or any of them were parties to such an Agreement. What are the facts from which an agreement to commit his offence is to be presumed ?

1. The Resolutions in Town Hall, Calcutta, on 29-2-20. Mr. Shaukat Ali was there. He says he has never missed a Khilafat Conference and Sundra Nath Sen saw him in Calcutta.

2. Same Resolutions at Assam Khilafat Conference on 6-3-20. [Read them.]

3. Mr. Shaukat Ali's speech on 6-3-20—read passage.

4. The Fatwa was issued after the 6th September 1920, because it quotes a Resolution of that date. Read the Army passage in the Fatwa and this Resolution of 6-9-20. The Fatwa bears the names of Accused 2 and 5.

5. The Jamat-ul-Ulema Proceedings in November 1920. Read second Resolution, on which Accused 5 spoke, and at end.

6. The Reprinted Fatwa in February 1921. In this there is a further exhortation to Mussalmans not to serve in the Army. It bears the names of Accused 2, 4 and 5.

7. The Bombay Khilafat Committee received 240 copies of Fatwa for distribution in February 1921.

8. 14-2-21. Bombay Khilafat Committee ordered 5,000 copies of Fatwa and proceedings of Jamait-ul-Ulema to be printed—but for some reason, probably because the time was not ripe, did not send the order to the Press. Notice the wording of the Foreword written by Mr. Khatri, a Joint-Secretary of the All-India Khilafat Committee,

Though Mr. Abdul Ghani says he gave these papers for reprinting on his own authority and without the knowledge of the Accused, remember he is really an employee of the Accused's party and you should think twice before accepting extenuating circumstances which, from loyalty to them, he may urge on their behalf. Further he is obviously a co-conspirator with them and *they* are all therefore liable for *his* acts, even though they may have known nothing whatever of them at the time.

9. In February, March, April, May, 1921, the Khilafat Committee distributed the Fatwa *free*, though they charged for most of their literature.

10. 17-6-21 Shaukat Ali at Poona spoke of "Discharged Soldiers Fund."

11. 19-6-21. Gokak Resolution (read).

12. 9-7-21. Karachi Resolution and violent speeches thereon [Read passages emphasising the attempt and intention to seduce].

13 11-7-21. Shaukat Ali at Naushahro Feroze where he said "Haram to serve in Army."

14. 21-7-21. 2,000 copies of the reprinted Fatwa proceedings of the Jamat-ul-Ulema and foreword received by All-India Khilafat Committee and given for distribution.

15. End of July and August. Leaflets sent to troops. (Read para. 5 and verses) N.B. These leaflets are relevant and important evidence according to the Rule laid down in S. 10, Evidence Act, when considering the question we are now dealing with namely the *existence* of a conspiracy.

From all these acts, all this long course of consistent conduct only 2 conclusions are possible. Either the Accused have been *fooling* their ignorant co-religionists, fervently preaching to them the doctrine that it is "haram to serve in the Army" and repeatedly urging them to *act* on this religious commandment, impressing as they did in the Resolution and Speeches at Karachi the absolute duty—the absolute *necessity* for every Mussalman to bring these texts *home* to the Mussalmans in the Army, fooling their ignorant brethren because they never meant a word what they said, or—as they have certainly appeared in Court—they are sincere

men, they sincerely mean what they say and they *want* their hearers to do what they enjoin, they want their hearers to carry this message to every Mussalman in the Army and why? First in order that every Mussalman may leave theArmy himself and secondly,in order that everyMussalman may cease to induce others to join,that is, if the Accused are sincere, their *aim is* to attempt to seduce Mahomedan soldiers from their duty. I give the Accused credit for sincerity and I am sure they will maintain that they *were* sincere in what they did and were *not* fooling their ignorant brothers. How do you think in Calcutta, Assam, Gokak and Karachi that all these acts of the Accused which I have placed before you, all these Khilafat Conference Resolutions in Calcutta, Assam, Gokak and Karachi, and all these speeches at public meetings all over the country, the Fatwas, the 2nd Resolution and Speeches thereon in the Jamait-ul-Ulema, the reprinting in Bombay and distribution of the Fatwa and proceedings of the Jamait-ul-Ulema with its emphatic foreword, can you for one moment believe that all of these, uttered and published to emphasise the *one* single theme, were not the acts of men who were acting in agreement ? All preach the same idea "it is haram for a Mussalman to remain in the Army." In the face of all these proved acts, all pointing clearly to the same conclusion, you cannot but hold that the men who made these speeches,published these fatwas, etc., gave out and supported these Resolutions did *agree* and that they agreed to attempt to seduce troops from their duty. Conspiracy is nearly always a matter of presumption. Remember the case in 9 S. L. R. at page 223. There a man who did *nothing* was held by his mere presence to have shown he was a co-conspirator with the chief Accused—here each and every Accused has done several acts which associate him clearly with this movement and show that he agreed with others including the present Accused to attempt to seduce Mahomedan soldiers. Remember that acts done by members of the conspiracy other than the Accused are relevant as proving the existence of an Agreement to commit an Offence—and as proving that the Accused or any of them were parties to that Agreement. The prosecution need *not* prove any meeting at all. Here we have proved meeting on a common platform in Karachi in the common cause. I put it to you that a widespread agreement to attempt to seduce Mahomedan soldiers from their duty *must* be presumed from the proved facts of this case.

We will now take the case of each Accused separately to see whether he was a party to this Agreement.

Accused 1. Gokak and Karachi Resolutions. Must have been at Subjects Committee, being a Member of All-India Khilafat Committee and President of the Conference here. See statement to Lower Court and to this Court.

Accused 2. Name on Fatwa—1st and 2nd Edition and proposed Karachi Resolution—see his speech and read passages. See statement to Lower Court and to this Court.

Accused 3. *Seconded* Gokak and Karachi Resolutions. Honorary Secretary of All-India Khilafat Conference, Bombay, and must share responsibility for their acts. As Secretary he must have attended the Subjects Committee which included all members of the All-India Khilafat Committee—see his speech here. See statement to Lower Court and to this Court.

Accused 4. It was not necessary to burden the Record of the Court and take up time by proving the Police Report of his speech. It was not taken down in short-hand and you have the "New Times" Reporter's short report of it. I will read this. This Accused translated the Karachi Resolution into Sindhi and spoke in its support. It was doubtless from No. 4's translation into Sindhi that the Sindhi Reporter of the "New Times" got the words " it is haram to *serve* in the Army," because, as Mr. Zamanshah says, No. 4 translated "remain in the Army" as "foj men Nokari Karn' Haram Ahai." The words I have quoted appear in the "New Times" of the 11th July but do not appear in the later so-called "authentic" copy supplied by Mr. Mahomed Khan, the local Khilafat Secretary, which was published in the issue of 18th July. Mr. Mahomed Khan doubtless intentionally left these words out as being too dangerous to publish. That such words were in the Resolution is proved not only by the 2 short-hand writers, but by the copy of the Gokak Resolution found on and admitted by No. 1. In his speech No. 3 said that the Resolution here was the *same* as at Gokak. Accused 4 also signed 2nd Edition of Fatwa and tells us he had arranged for its republication in Hyderabad. See his statements in both Courts.

Accused No. 5. Name on both editions of Fatwa—also on 2nd Resolution of the Jamait-ul-Ulema as having supported it—spoke strongly at Karachi. Refer to his speech and statement to the Magistrate and this Court.

I will next take the case of Accused 7.

His case is on practically the same footing as that of the other Mahomedan Accused. I propose to take the case of the Hindu Accused No. 6 last, if I may. Now Accused No. 7 arrived on 7-7-21 by Quetta Mail with Nos. 1 and 6. Put up at Kanyashala with Nos. 1 and 3.

Close Association here as in Bombay Khilafat Office. As Secretary of All-India Khilafat Committee was a member of the Subjects Committee. Was seen *going in* at the morning meeting, was heard speaking at it by 3 witnesses and was heard speaking at evening meeting by Mahomed Usman Ghani. He states he was and is in *full* sympathy with the Resolution and only regrets not having spoken on it.

This is borne out by the consistently prominent part No. 7 has taken in this movement.

1. Deputy Superintendent Sundra Nath Sen proves he was in Calcutta at the time of the Khilafat Conference there in February 1920. No. 7 says he has never missed a Khilafat Conference. Similar Resolutions were passed there on 29-2-20. [Read the Resolutions].

2. On 6-3-20 No. 7 was President at the Assam Khilafat Conference, delivered a speech in support of the same idea and had the same Resolutions as at Calcutta put forward and passed. [Read speech].

3. On 17-6-21 Spoke at Poona. [Read speech].

4. 9-7-21 was here at Karachi as noted above. Stood up on dais.

5. 11-7-21 Spoke at Naushahro Feroze where he said: "Haram to serve in the Army."

As Honorary Secretary of Bombay All-India Khilafat Committee, responsible jointly for what was done there—even for the acts of Mr. Abdul Ghani, Mr. Khatri and others done without his knowledge for they also clearly agreed to the same course as No. 7 and their acts done in pursuance of this Agreement are relevant evidence against No. 7 and all others who were parties to this Agreement, all who agreed to this attempt being made to seduce troops from their duty. No possibility as to No. 7 not being in full *agreement* with the others. That is the question. Conspiracy is a long and frightening word—discard it altogether from your minds. Use the simple English equivalent "agreement."

Was not No. 7 acting *in agreement* with other persons in attempting to seduce Mahomedan soldiers from their duty ?

We will now take the case of *Accused No.* 6.

He says he did not know the contents of the Resolution until after his arrest. There can be no possible doubt whatever but that that statement is *untrue*. This Resolution was published by the "New Times" in a special edition brought out on Sunday the 10th, the last day of the Conference (*vide* Tekchand) "Daily Gazette" Reporter, Ex. 36 who says he cribbed his report for the "Daily Gazette" from this Sunday Bulletin.

Accused No. 6, as his speech would show, is a keen political worker—shall we say an agitator—who had heartily espoused the Khilafat cause.

Do you think No. 6 did not read this account of Saturday's proceedings on Sunday? On Monday the 11th it appeared in the "New Times" and in the "Daily Gazette" papers of different political points of view. Do you believe that this most important Resolution was published in *none* of the newspapers which this keen political worker read ? It is utterly *impossible*. This Resolution was emphasised by the President of the Conference as being the *essence* of the whole Conference. Accused 6 in the opening words of his speech said of this speech that this Resolution was "one of the *greatest* importance—it is of the greatest importance spiritually and politically." He delivered a long and vigorous speech in support of it. Do you believe for one moment that he was not sufficiently vain to look at the reports of that speech and not sufficiently interested in this 'most important Resolution' to read it in the newspapers? Without a shadow of a doubt he must have read the report of this Resolution and of the speeches on it and he is *not* speaking the truth when he says he saw the Resolution for the *first* time after his arrest in Karachi jail.

Now what are the proved facts against him ?

1. Arrived on 7-7-21 by Quetta Mail with Nos. 1 and 7.

2. Seen by 2 Head Constables going to the Subjects Committee, where it was decided to put this Resolution before the Conference—see Ex. 17. It was *not* a mere repetition of the Gokak Resolution Ex. 7 A it contains more. Ex. 7 A with 17. The Resolution *must* therefore have been discussed at the Subjects Committee and No. 6 *must* have known its contents then.

3. He spoke in support of the Resolution and emphatically urged its unanimous acceptance. He dissented from *no* part of it. He addressed himself more to the *ultimate* object of the conspiracy—the attainment of an Indian Republic—rather than the immediate act, the seducing of Officers and men of the Army from their duty. But although Accused 6 carefully avoided any mention of seducing troops *or* of civil disobedience, yet his speech bears internal evidence that he *knew* the contents of the Resolution to which he was speaking. [The P. P. went through the speech commenting].

4. Although he *must* have seen reports of the Resolution he never at any time dissociated himself from it in *any* way, at any time and even *now* when he pretends that he was ignorant of its terms at the time when he urged its acceptance as "a *most important* resolution of the greatest importance both from the religious and the political point of view," *yet* even *now* he does not express any disagreement with what it says—look at his last answer to the Court. This Resolution was not a new thing. It was as old as February 1920 repeated in March 1920, it was the *only* Resolution at Gokak, which No. 1 went to propose and No. 3 from Amritsar went to second and is similar to what this Accused's co-Accused have publicly preached for nearly 18 months. The Prosecution have put in a full detailed report with the original short-hand notes, so that Accused may get any crumbs of comfort that he can from it. His words, on which the Prosecution rely, were, however, reported in the "New Times" and proved before Accused was committed to the Sessions Court.

The "New Times" Report shows that Accused emphasised that this Report was of *the greatest* importance both from the political and the religious stand-point and that Accused urged the Audience to pass it unanimously.

Can you gentlemen believe that a man of the education and ability of Accused 6 would be so foolish as to get up and emphatically state that a Resolution was of the *very greatest* importance and as to strongly urge a large public audience to accept and pass it unanimously when he did not even know *what* the Resolution was ? Yet, that is what Accused 6 asks of you !

That, gentlemen, is an outline of the part played by each of these Accused.

I first put before you reasons for holding that a widespread agreement to attempt to seduce troops from their duty existed at some time or times between 1st February 1920 and 30th September 1921. I have now shown you from the evidence that each one of the Accused was a party to that conspiracy. There can be no question re: any of the 6 Mahomedan Accused. In their very statements in Court they make their position clear. Regarding the one Hindu Accused, I submit the Prosecution have established his complicity, that he too was a party to this Agreement. Are you prepared to accept his uncorroborated explanation which is in itself a highly improbable one ? Are you going to believe that this highly educated and intellectual gentleman impressed the very great importance of the 6th Resolution upon his audience at Karachi and called upon them to pass it unanimously in a light hearted manner, ignorant and utterly callous of the contents of the Resolution ? He was either criminally foolish or he is a criminal trying to avoid the punishment for his crime. His education and obvious intelligence lead irresistibly to the latter conclusion.

Apply Sec. 10 of the Evidence Act to this Case. Bear in mind its illustration and the further illustration I gave you of the case reported in 6 S. L. R. There are 2 simple questions for you on this part of the Case.

1. Do all the activities, which the Prosecution have proved, show that there was an *Agreement* between any 2 or more persons to attempt to seduce Mahomedan Officers or soldiers from the Army ? That is surely not difficult to answer. The other question will be regarding each Accused individually. "Was each Accused a party to that Agreement at any time between 1st February 1920 and 30th September 1921 ? "

Re· the suggestion of the Court that "perhaps the Accused did not mean business," but only to frighten Government into giving way, theoretically this is possible, but in the light of the proved facts of this case *impossible*.

1. The conduct of the Accused throughout this prolonged campaign has been that of men who were in earnest.

2. The answers of the Accused in Court are *not* that they were bluffing Government, but that they *were* in earnest.

Mr. Mahomed Ali asked if he hoped to reach the soldiers said, he hoped to have *some* effect—he did not say that his intention was to bluff Government.

Neither Accused nor their followers are likely to say they were merely bluffing—they were not in earnest. They have never yet suggested this in any way. God only knows what is in the heart of man—we can only conclude from the proved facts and admissions what the intent was.

If a man, who has proclaimed his hatred and contempt for you, fires a bullet through your hat and, when run in, says I admit I hate and despise you but I only fired at you to see you jump, would you believe him? It would be as impossible as to believe that the Accused were merely bluffing here—a thing they have never even suggested.

2nd charge. This is the only charge on which you are the sole Judges of facts. Please therefore weigh the facts carefully and give them the fullest consideration on this charge in particular This charge deals with the *completed attempt* made when the leaflets were sent to the troops. The *only* question is were they sent by someone who was in agreement with Accused? Not necessarily the Accused should even know of his existence, much less of his act. The Prosecution have *only* to show that the sender was a member of the conspiracy, that is, that he was working in agreement with the Accused, even meeting is unnecessary (9 S. L. R. 223). Remember the illustration to Section 10 Evidence Act. The intent of the sender of those leaflets *was* to attempt to seduce officers. He was *in agreement* with the Accused—whether or not Accused knew it.

The Fatwa was written and published with an object. The Jamait-ul-Ulema 2nd Resolution and Fatwa republished with the *same* object. Resolutions at Gokak and here with the same object. At meeting after meeting these *men* have preached this doctrine and have urged *action.* The 2nd Fatwa urges *action.* The foreword of the All-India Khilafat Committee reprinted by the All-India Khilafat Committee *urges action.*

The Resolution of the 9th July emphasises the duty of all Mussalmans and of the Ulemas in particular to *bring home* these religious commandments to the Mussalmans *in* the Army. These leaflets were bringing those commandments home. They were doing what Accused proclaimed to all Mahomedans, both to those in the Pandal and through the Press to all in India, *should* be done. These leaflets *began* to be sent in the last week of July—can you not presume that their sender *agreed* to what the Accused preached and intended—though he may never have

seen or spoken to the Accused ? The message sent broadcast by Accused and other workers in this movement obviously had reached and won over the sender of those leaflets, if he was not *already* in agreement with them.

The whole passage in the Fatwa laying it down that it is "Haram to serve in the Army" has been reprinted in this short leaflet of less than one page. This is the *only* subject discussed in the Fatwa, the *whole* passage regarding which is reprinted in the leaflet. The leaflet merely gives the headings of other subjects. The Fatwa quotes a verse from the Holy Quran and a 'Hadis' in support of its contention that it is 'Haram' to serve in the Army—both the verse and the Hadis are quoted both in Arabic and Urdu in the Fatwa and both the verse and the Hadis have been repeated in full in the leaflet, in Arabic as well as in Urdu.

The Accused now allege—after the Prosecution case has been closed —that there are two mistakes in the verse as printed in the leaflet. The language of this Court is English and the leaflet is in vernacular. A translation of it was made by K. B. Mahmud Shah, a Mahomedan gentleman of standing and an expert linguist. He was examined before the Committing Magistrate, in whose Court both the leaflet and his translation of it were filed as Exhibits. You have also had him here as a witness Now the translation by K. B. Mahmud Shah into English of this verse, as printed in the leaflet, tallies exactly with this Court's translation of the verse as given in the Fatwa. These 2 mistakes in the verse in the leaflet (which the Accused say show that the leaflet must have been written by a barber for 2 pice and not by them) do not appear at all on the Record of this case in English, which, as I have said, is the language of this Court. From the English translations it appears that the verse in the leaflet is word for word the same as the verse in the Fatwa, the correctness of which is admitted. The Accused might have pointed out the mistakes, which they say appear in the verse in the leaflet, when several copies of the leaflet were produced in the Committing Magistrate's Court a month ago. They made lengthy statements to the Committing Magistrate as the Court Record shows. For the past month these copies of the leaflet have been on theRecord available for inspection or for copies being taken. Yet even when K. B. Mahmud Shah, who translated the leaflet, was produced as a witness before you here 2 days ago no hint whatever was given, there was not the *slightest* suggestion of the allegation which the Accused now make—after the Prosecution case is closed—to the effect that there are 2 mistakes in the vernacular verse as quoted in the leaflet. Had this been suggested before K. B. Mahmud Shah returned to Mirpur Khas,

or at any time before the Prosecution case closed, it would have been possible for us to have had the point cleared up in evidence on the Record so that you might see whether there is any substance in this allegation which has been raised for the *first* time after the evidence was closed in this Court. You have in evidence the translations of the verse as given in the Fatwa and as given in the leaflet and from these translations, which have not been challenged in any way, it certainly appears that the verse in the leaflet has been taken word for word from the Fatwa. Even if, however,a mistake has crept in somehow into the leaflet, still it is absolutely clear from a comparison of the leaflet and the Fatwa that the one has been copied from the other with the intention of emphasising and bringing into prominence the passage in the Fatwa regarding service in the Army with the intention of putting that point in a nut shell clearly before the troops. Even if there is a mistake in the verse in the leaflet its meaning is clear—as the translation shows. Any Mahomedan Soldier therefore, who read the leaflet could not fail to understand what the writer of the leaflet wanted him to *do* or that the verse quoted in the leaflet was quoted to support the doctrine that it was 'Haram to serve in the Army.' The alleged mistakes are therefore of no great weight when considering whether the person or persons, who got these leaflets printed and distributed, were acting in agreement with the Accused. The whole evidence in the case, which you are entitled by Section 10 of the Evidence Act to consider in this connection, and in particular a comparison of the leaflet with the Fatwa, raise an exceedingly strong presumption that the person who sent these leaflets to the troops *was*—whether the Accused knew it or not—acting in agreement with them, was a party to the same conspiracy.

Go through Fatwa and compare it with leaflet. No doubt the latter is obviously a summary of the Fatwa, drawn up to carry out the purpose put forward in the 6th Resolution on 9th July 1921 here.

The sender of the leaflets is not before the Court but that is *not* necessary. The only indication of origin that we have are post marks of Allahabad and Cawnpore where the covers appear to have been posted. Mr. Mahomed Ali said in his statement to the Lower Court that he was pleased to see that at last the Jamait-ul-Ulema had sent this leaflet to the troops (see his statement) but at the suggestion of his legal Adviser Mr. Mozumali, whom you have seen assisting the Accused in Court, he withdrew that statement, as noted by the Committing Magistrate. However, you will note that the leaflet states that theFatwa itself can be obtain-

ed from the Jamait-ul-Ulema Hind, that is from the body to which Accused 2, 4 and 5 belong, who brought out the Fatwa and whose proceedings in November 1920 show their strong views on this subject. The leaflet is practically an *advertisement* of the Fatwa, whose doctrine on the point of service in the Army has been preached with such fervour by the Accused for the last 18 months. From all this it is clear that the sender of these leaflets, whoever he was, was *in agreement* with the Accused. Surely, this is a fair presumption, an irresistible presumption.

Now adopting the principle laid down in S. 10 of the Evidence Act, bearing in mind the words I read to you before but will again repeat from 9 S. L. R., were not *all* the Accused in agreement and was not this leaflet sent by someone who was in agreement with them ? [Read 9 S. L. R. at page 224].

Direct evidence of conspiracy is hardly ever adduced but "unlawful conspiracy is to be inferred from *the conduct* of the parties Chandavarkar J. in Emperor *vs.* Annappa (2) said that "a conspiracy may be proved by other than oral evidence, it may be proved by the evidence of surrounding circumstances and the conduct of the Accused both before and after the alleged commission of the crime"and cited the case of Reg. *vs.* Esdaile (3) that "there may be conspiracy without overt acts." So also in Barindra Kumar Ghose *vs.* Emperor (4) Jenkins C J. said "though to establish a charge of conspiracy there must be agreement, there need not be proof of direct meeting or combination nor need the parties be brought into each other's presence ; the agreement may be inferred from circumstances raising a presumption of a common concerted plan to carry out the unlawful design."

Note particularly the words of Sir Lawrence Jenkins quoted in that case which I will again repeat: "Though to establish a charge of conspiracy there must be agreement, there need not be proof of direct meeting or combination nor need the parties be brought into each other's presence: the agreement may be *inferred from circumstances*," and apply that principle to this case.

[Read Section 505]. There can be no doubt but that Mr. Mahomed Ali used the words attributed to him in this charge as these words appear not only in the notes of both the Urdu short hand writers but also in Mr. Mahomed Ali's own handwriting in the copy of the Gokak Resolution found in his kit when he was arrested. Mr. Shanker, the Jailer of Waltair,

has proved that this copy was found in Mr. Mahomed Ali's kit and Mr. Mahomed Ali admits that this copy is in his handwriting and this is proved by the Government Expert who says the Gokak Resolution is in the same handwriting as the l tters which Mr. Damri, the Karachi Jailer, has proved he saw Mr. Mahomed Ali write. Accused 3 in his speech here said that the Resolution here was the same as that proposed at Gokak. No. 3's actual words were:—"This Resolution" (etc. Read from beginning of No. 3's speech). There can be no doubt therefore that Mr. Mahomed Ali used the words he is charged with having used. The next question for your consideration is then whether in making this statement Mr. Mahomed Ali *intended* to cause Mahomedan Officers or soldiers to fail in their duty. The intent of Mr. Mahomed Ali is shown clearly by the very words of the Resolution "it is the *duty* of *all* Musulmans to *see* that these commandments are *brought home* to the Mussalmans in the Army." They can only be *brought home* by approaching the troops, by this message reaching the Army—there *could* only be one object in *bringing* this *home* to the Mussalmans in the Army, namely to cause them to leave it at once, to cause them not to bring in recruits that is to say, to cause them to fail in their duty in the 2 respects re; which Col. Gwyer gave evidence. Even therefore if the statement made by Mr. Mahomed Ali were *true*, (which is not admitted) still it would *not* be protected by the Exception to the Sec. 505 because it was made with *intent* to cause troops to fail in their duty. In judging of the intent of Mr. Mahomed Ali you should also bear in mind the fact that he proposed the Resolution, containing the words mentioned in this charge, previously at Gokak. His statements here in Court also leave doubt as to his *intent*, that he did *intend* that his statement should *cause* Mahomedan Officers and soldiers to fail in their duty. He *meant* every word he said.

4th charge. This is against Accused 2 to 7 under *Sec.* 109, I. P. C., and alleges that they conspired with Accused 1 that he should commit the offence under S. 505, I. P. C., which is the Subject of the 3rd charge, and that Accused No. 1 committed that offence in pursuance of that conspiracy. You have ample evidence that all the Accused agreed together that Mr. Mahomed Ali should publish that statement to all the people assembled in the Pandal and that they all inte. ded by publishing that statement to cause Mahomedan Officers and soldiers to fail in their duty.

As when considering the 1st charge, here too the fact that the Accused agreed to commit this offence is a matter to be presumed from the proved

circumstances. Now Mr. Mahomed Ali said after concluding his Presidential Address that a Subjects Committee was to be formed to draw up the Resolutions. The members of that Committee must have agreed to this Resolution being put to the Meeting in this form. I have already reminded you that the words emphasising the duty of bringing this injunction home to the troops were not in the Resolution at Gokak, but were added here. This shows the Resolution was apparently discussed at the Subjects Committee and it could hardly fail to have been discussed there for both Mr. Mahomed Ali and Accused 6 strongly emphasised the supreme importance of this Resolution in the Pandal. It is proved that Accused 1, 3, 5 and 7 attended the Subjects Committee. I have already detailed the evidence on this point to you. These 4 must, from their close association here at Karachi, have known that this Resolution was to be proposed and they must have agreed to it. You remember that Accused 1, 6 and 7 arrived at Karachi together, Accused 1, 3 and 7 put up together at the Kanyashala and all 4 took a prominent part in the Conference and as I have said, attended the Subjects Committee. These 4 at least then were in agreement with Mr. Mahomed Ali as regards the publication of the statement.

Accused 4 translated the Resolution into Sindhi, there can be no doubt therefore as to his Agreement. He also spoke strongly on it as the "New Times" report shows. Accused 2, 3 and 5 also delivered very strong speeches in support of this point. Accused 6 urged great importance of this Resolution and begged the audience to pass it unanimously. Accused 7 regrets he did not speak on it, boasts that he was in full sympathy with it and he left the evening after the Resolution was passed at Karachi and repeated the same sentiments at Naushahro Feroze. From all this surely you can only draw the one conclusion namely that *all* the Accused agreed that this statement should be made and that Mr. Mahomed Ali made the public statement mentioned in the charge in pursuance of a conspiracy to which he and all the other Accused were parties, that they *all agreed* that this statement should be published. Sec. 110, I. P. C., requires that the Prosecution also establish the intent of the Accused who were parties to this conspiracy. But you will have no difficulty on that point for it is clear that all of the Accused who agreed to this statement being made in this manner *intended*, by giving such wide publicity and emphasis to this statement, to *cause* Mahomedan Officers and soldiers in the Army to *fail* in their duty. The *intent* of all the Accused is clear. Their speeches from which I have read passages, leave no room for *any* doubt as to what their

intent was and the wording of the Resolution, the emphasis on the duty of bringing this message *home* to *all* Mussalmans in the Army shows beyond doubt the meaning of those who agreed to this Resolution being placed before the Conference. If further evidence of intent were needed you are entitled to consider the evidence already discussed on the 1st charge which shows the conduct of the Accused during the last 18 months, how throughout these months these men have, at one time or another, in one way or another tried to bring this message into prominence, have preached it from Assam to Poona, from Gokak to Karachi, have published it in successive Fatwas in Delhi and distributed it in Bombay with only one possible aim, namely that it should *have* effect and the only effect it can reasonably have is to cause Mahomedan Officers and soldiers to fail in their duty. You must consider the case of each Accused separately as to whether he *agreed* to this statement being made and as to whether he *intended* the statement to have the effect which the Prosecution allege.

The 5th charge is against Mahomed Ali under Section 117, I.P.C., namely, that he *instigated* more than10 persons to commit an offence under Sec. 505 and-or 131, I.P.C. when he called upon all the Mahomedans assembled in the Pandal and all Mahomedans who might read the Resolution in the Press or hear it from others to bring home to the Mahomedans in the Army the message which is the subject of the 3rd charge. (Read the words in the charge.) The words on which this charge is based do not appear in the Gokak Resolution, but are to be found in the copy of the Resolution given to the Editor of the "New Times" by Mr. Mahomed Khan, Secretary of the Khilafat Committee in Karachi as "authentic;" there is no doubt therefore that these words were used here. They appear in the short hand notes of both the Urdu Reporters. The Urdu words have not been challenged by the Accused and may be taken as fully proved. The translation "these religious commandments" has been challenged. An exact literal translation of the Urdu words, whose translation Mr. Mahomed Ali challenges, would have been "the religious commandments about this," but the meaning is the same when you read the context in which the words were used. K. B. Mahmud Shah has accepted the translation of the Karachi Resolution as given in the Order of Government sanctioning this Prosecution. That Translation obviously conveys the true meaning of the Urdu words used.

The words were addressed to a very large number of Mahomedans and to more than 10 Ulemas even as Mr. Zaman Shah's evidence shows

These words clearly incited them to publish a statement which fell within Sec. 505 Indian Penal Code, and by doing so *attempt* to induce soldiers to fail in their duty (Sec. 131). An incitement to either offence under Sec. 505 or 131, Indian Penal Code, is sufficient for the substantive offence under Sec. 117 of abetting more than 10 persons to commit an offence *any* offence *whatever*, but here clearly an offence under Sec. 505 and or 131, Indian Penal Code.

Section 109. This charge is similar to the 4th and alleges that Mr. Mahomed Ali committed the offence mentioned in the 5th charge in pursuance of a conspiracy to which the other Accused were parties. The proof of conspiracy here is the same exactly as on the 4th charge for there can be no doubt that any of the Accused who agreed to the publication of the sentence of the Resolution which is the subject of the 3rd and 4th charges must also have agreed to the publication of the words which are the subject of this charge also, as these words occur in the next sentence to those in the Resolution. (Read it. Referred to and explained "circumstantial proof." Read 7, S. L. R. Isarsing *vs.* Crown remarks on page 112 and explained).

In this case as in nearly every case of conspiracy, the evidence is largely circumstantial and you must draw your deductions from the facts proved and placed before your facts which are surely ample to substantiate the charge which the prosecution bring that these Accused did with others agree to attempt to seduce Mahomedan Officers and soldiers from their duty,that *some one* in pursuance of that Agreement actually made an attempt, by sending these leaflets and that the Accused did agree together to commit also the minor offences under sections 505 and 117, I. P. C.

[Read definition of "Proved" in Evidence Act, and explained it and "benefit" of *reasonable bona fide* doubt].

Remember the points to be decided under each charge. I asked you to note these when I first opened the case.

The 2nd charge is the only one triable by you as a Jury. Under it you have 4 points to decide which I mentioned in my opening Address.

On all the other charges you have only to give your opinions as Assessors. Under the 1st charge you will require to consider the 3 points which I mentioned in my opening Address.

On the other charges the points are clear from the wording of the charge which are in your hands.

For instance on the 3rd charge you must consider whether,

1. Mr. Mahomed Ali made the statement mentioned in this charge.

2. Did he make that statement *intending* to cause Mahomedan Officers or soldiers in the Army to fail in their duty ?

Under the 4th charge you must consider :

(1) Whether any, and if so, *which* of the Accused *agreed* with Mr. Mahomed Ali that he should make that statement.

(2) Whether those of the Accused who agreed with Mr. Mahomed Ali to make that statement, *intended* thereby to cause Mahomedan Officers or soldiers to fail in their duty, and,

(3) whether Mr. Mahomed Ali made that statement *in pursuance of that agreement.*

Under the 5th charge you must consider :

(1) Whether Mr. Mahomed Ali used words having the meaning of those attributed to him in this charge.

(2) Whether in doing so he did in fact *instigate* more than 10 persons to commit an offence under Sec. 505 and-or 131, Indian Penal Code.

Under the last charge you must consider whether Mr. Mahomed Ali's instigation was in pursuance of *an Agreement* to which any and if so, *which* of the Accused were parties.

I must thank you Gentlemen for the patient hearing you have given me and the intelligent interest you have taken throughout the case and in conclusion I would remind you of the oath you have taken that you "will well and truly try the case submitted to you and return a true verdict according to the evidence." I have taken you through a good deal of the evidence. It is now fresh in your minds and you must remember that you

are to decide the points laid before you according to the *evidence.* I have impressed upon you and without doubt the Court will also tell you that the guilt of the Accused is in no way diminished even if they thought that their Religion required them to do any of the acts with which they are charged.

If you are of opinion that on the evi lence it is proved that the Accused did any of the acts with which they are charged, you will be doing violence to the oath you have taken if, in spite of that eviednce, you acquit the Accused on account of their religious doctrines or on account of any sentiment. The evidence is simple, brief and clear and, if you will only confine your attention to the proved facts, vou will have no difficulty in returning a true verdict on the evidence.

After the Public Prosecutor had finishe l his address to the Jury, Maulana Mahomed 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 the 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 MAHOMED ALI'S ADDRESS TO THE JURY.

Maulana Mahomed Ali then amid pin-drop silence 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 P. Prosecutor would say. I wanted you to act as 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, no ; 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 himself 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 theLower 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—are 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 Mussalman 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 that we all want toleration. The British Government has never tired of saying that it is a tolerant Government, and that the British rule is firmly based on toleration.I do not think that the Government of a civilized 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 differences. 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 foolish opinions–and we have yet got to see what kind of opinion the Judge holds that would be after I am silenced—but it is not the question whether a man's judgment 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 meant for the 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 than the audience here in this hall, certainly for more than the five of you. It is really meant for the whole world. We want to have our right to get the proctection of the law for our religious beliefs and practices recognised. Let the Government be repentant 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 the 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 26 allies (laughter) and India's men, money and other resources—but that's another story (laughter)—we cannot tolerate your 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, but 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 "Mahomed Ali and six others *vs.* the Crown" but 'God *vs.* Man.' This case is therefore between God and man. That is the trial. The whole question is—shall God dominate over man or man shall 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 Judge. We are not foolish enough to create any unnecessary 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 Prosecutor 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 it 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 a 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 obligations, 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 it, as there are any number of sections—Secs. 120 B, 131, 109, 505, 117 and so on.

As regards these sections and the various charges, so far 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 this Government that theCourts 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 have 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 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 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 P. P. had said that 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 Muslim. 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*, (laughter) gentlemen of a policeman—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 protection. 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 too 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 a perilous state, truly a sad plight (laughter). But in this case, it is not the case of any man's individual opinion or ofthe opinion of a small number of Mussalmans, 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 Mussalman, can go outside this book (pointing to the Quran). Look at this translation in English. This book is full of repetitions. But you see what a small book it is inspite of its repititions. Althogether it is 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 comes the Traditions of our Prophet. But about this original source (pointing to theQuran) there is not one single sect of Mussalmans 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 differenee ofopinion. In the case of the Prophet's Traditions, even if one of the compani-

ons of the Prophet said that the Prophet said so and so, and if that tradition, handed down from his companions, is against or in contravention of anything contained in this book, no Muslim 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 (*adjuvendi cause* or *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 Scriptures, if we have 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 authenticated with the greatest care ; but their testimony too cannot over-ride the dictates on the Quran of which all sects of Islam agree. It has been said that there are sects. Well, I am not going to base my case upon anything which is subject to the differences of the 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 P. P. 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 you offer is no excuse if you have done anything which is a criminal offence—that religion is no excuse for a 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 inspite of all the allegiance 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 a Mussalman soldier to use cow or swine-greased cartridges—which the Hindus and the Mussalmans won't touch—and he refuses 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 hypocrisy. Now, in this form you will see there is a question (Reads the form)—"Are you willing to go wherever ordered by land or sea and allow no caste usage to interfere with your military duty?" Take it that every soldier at the time of enlisting 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 beef for him. The man absolutely refuses that and he quotes his 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 phrase 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 whoseover wanted to live within this Empire will be allowed to live and be regarded as a 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 straightforward. 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 laid before you. Whatever evidence there is in this case it 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 Kanyashala 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. What 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 any man—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 juridical opinion or Fatwa to show that what we declare is wrong. There might be a difference between the Shias and 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 it have sold themselves to Government. But so far as the question of killing another Muslim is concerned, there is no difference of opinion. This is the main point.

Now, gentlemen, I want to say something about the charges. It was not for you, gentlemen, nor 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 and 505 of the I. P. C. have been jumbled together for the purpose of creating confusion—though section 233 of the C. P. C. lays down that these several charges cannot be joined. Sec. 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 offences than one of the same kind committed within a 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 thinkyou should trouble yourself in reading this to the Jury. There cannot be any re-casting of the charges at this late stage.

Maulana Mahomed 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 gentlemen 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 billiards and you score by hitting your ball in such a way that it hits the other two — 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 frequently to the beginner. Well,the advice that you will in such a case get from the more experienced is to hit hard and trust the rest to luck (laughter) and not unoften you score what is called a fluke in your opponent's case, and a very difficult stroke of couse, in your own (laughter).

Well, gentlemen, that's precisely 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 (laugh ter).

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 a criminal offence which makes it 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 knew 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. 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 any body" (laughter). And, gentlemen to the Jury, truly enough there has been no agreement. No evidence has been 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 me away from my wife and girls, to take me away from my wife and aged mother—to take me away from my country, which is still more important to me. And all this is on a matter of "presumption." Not a single witness came in to say that there has been 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 shewed 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 frank man—we are very frank people. Ex-hypothees 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 Mussalman he is bound to abide by what is contained in the Quran. If one single syllable of it I reject, I am not a Mussalman. 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 Mussalman. But the moment I reject this, however pious or otherwise I may be, I am not a Mussalman. And whatever is contained in the Quran I am required by the same law of Quran to go and preach to every body in the world—even to non-Moslems. Take the case of my revered friend here, Maulana Hussain Ahmed Saheb. He has been teaching in Medina—he is the disciple of Maulana Mahmud-ul-Hassan Saheb the late Shaikh-ul-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 therein for ever. 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 that 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 Mussalmans ? 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 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 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 in them;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 any body.' 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 every body. 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 he too 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 and Sec. 117 and is sent to Jail—What is he to do? He must show fortitude! He may be hanged, he may be drawn, he may be quartered, but he must shew 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 Mussalman.'') 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 Mussalmans.

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 Head Quarters, 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, that this 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) ''Referring to the arrest of the Ali Brothers, Col. Beach speaking as a soldier said that it would be worth while 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 Muslim,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. 120 A and 120 B (laughter). No, gentlemen, it is your Beaches of the Army Head Quarters of Simla and your Gwyers of the Western Command that seduced soldiers from their duty,if you have *any* faith,if you have any belief in God then your first duty, your prior allegiance is toGod. Is it not the duty of Christians to 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 King—still we talk of loyalty. An Englishman—not a Mussalman—but a Christian Mr. H. G. Wells wrote a book after the War—a sort of allegroy 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 Englishman, 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 led 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 brushed aside for us in India because men's law—120 B and 131 and 505 and 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).

Maulana Mahomed 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.

FIFTH DAY'S PROCEEDINGS.

FRIDAY, 28TH OCTOBER, 1921.

MAULANA MAHOMED ALI'S ADDRESS TO THE JURY—Contd.

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 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 word that you are to take ; he has got to prove it that his religion requires it. He has got to explain it. As I had 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

Prison Motor Van.

Accompanied by Military Lorries.

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 a 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 what Mr. H.G. Well 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 there be peace—"Render unto Caesar what is Caesar's, and render unto God what is God's." And then he asks"Who is this 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 from 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 Mussalman who could say that, in spite 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 Mussalman who says that, I say openly is not a Mussalman. 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 Mussalman who lives in British India—any where that a Moslem dwell—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 uninformed 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 Ameer's malice or madness, we certainly do not want Indian soldiers, including the Mussalmans, 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. Montague'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 belief 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 atend 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 not only do not advocate assistance being given to him by IndianMussalmans but we will most zealously advocate and lead the stoutest resistance against such wicked and wanton aggression. This is precisely what in September 1917, we had told the Hon'ble the Raja Saheb of Mahmudabad who had visited 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 hope, 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 move must be attributed, as the Secretary of State has publicly said, to the unrest which exists throughout the

Mahomedan world, an 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 Mussalmans to wage war against the Khalifa and those engaged in Jehad, who are in wrongful occupation of the Jazirutularab 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 Mussalman 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 to 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 Mussalman'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 conform to the prescribed beliefs and practices. This is spoken of in the holy Quran as *'Amr-bil-maroof'* and *'Nahi-anilmunkar'*; and certain distinct chapters of the holy Prophet's traditions relate to this essential doctrine of Islam. A Mussalman 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 exhorts others also to do good and dehorts them against doing evil. If therefore any Mussalman is being compelled to wage war against the Mujahids 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 Mussalmans 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 not they 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 Mussalman 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 carcass will shout out from the grave that it is the Faith of the Moslem—(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 that 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 Assessors. 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 it 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 brother 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 learn 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 a 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 that you and the Judge have to take my word for it that there was never at any time any discussion among ourselves about the declaration 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 Mahomed 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 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 September 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 Mahomed 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-Ulama—it was nothing new that they resolved and declared. What discussion or agreement was required for the Ulama 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 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 Mussalmans 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 re-opening 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 thing 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 independence 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 serious 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 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 the 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 declare 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 has in this case five wives that are to be consulted(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 sakes 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 theGreek firm of Ralli Brothers gave this verdict and the gentlemen from Forbes, Forbes and Campbell gave that verdict. You should be united. I prefer that you should be united in a matter of grave import like this. Let yourself be guided by your own conscience because that is after all 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. (Read 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 other 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 the Quran. All this has to be carefully done. He gets an ignorant Maulvi to copy it—every Mussalman fears and trembles when he has got to copy anything from the Quran lest he writes something different and attribute 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: آفتاب آمد دلیل آفتاب "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 where Maulana Nazir 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 did it? (laughter). Well, if this thing (showing the leaflet) is sent round, is that by itself sufficient for you—as men of any sense—you who are practical 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 least we find we are to be seven—our revered friend Jagat Guru Shri Shankaracharya 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 *baresark* 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 lightning 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 Army received by them—Officers! Euphemism could go no further. Yes, if officers of courage in battle and length of service and medals—and those real medals—not of silver, hanging on their breasts but medals of lead bullets that found billets 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 theQuran was sent to us and even without opening these envelopes we scented that they were smelling of gunpowder, smelling of 1837. We rushed to our Officers Commanding and said—'Sir, save us from Islam! Our felings 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 bombardment 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 tittle 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 large 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 fee 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 Ralli 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 sections more than one can remember, there are sections 120B, 117, 303 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 home made sections (laughter) and they can apply as many as they like. So this is the only Jury charge—Sec. 120 B read with Sec. 131. This is as regards the leaflet containing an extract from the Fatwa. It is the Jamiat-ul-Ulama 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-ul-Ulama were at last doing their duty. The Jamiat-ul-Ulama is supposed to be party to this conspiracy. But the Government is very moderate. It has picked out only three Ulamas 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 Ulamas who signed the Fatwa only two or three have been brought here. Well, why have not the others been prosecuted ? I thought that the Ulamas 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-Ulama 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-Ulama. Whatever the conspiracy is, the Jamiat-ul-Ulama is a party to it and I said that at last the association of the Ulamas was doing its religious duty. But I was immediately corrected by my friend, brother-in-law and legal adviser, though not my legal representative in this case—Mr. Muazzam Ali. He said, no, the Jamiat-ul-Ulama too deny the distribution and printing of these leaflets. 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 but 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 individual capacity with regard to Sec. 505, because I am the biggest offender in the matter and the others are only abettors 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 disregard or fail in otherwise 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 the "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 life own 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 Mussalmans ? But that's another story. Well, gentlemen, Col. Beach of the Army Head Quarters, 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's 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).—God that gave them everything, life, honour, Faith, loyalty itself—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 soul. 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 Christian 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 Mussalmans. 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 statement 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 undrstood. Say, Aden. If a Somali or Arab soldier who understands the Quran in Arabic hears Maulana Hussain Ahmad Sahib 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 and telling him he is ordered to Mesopotamia to fight against the Moslems asks him about true religious law,and if he says that 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's 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 honor is provided by our sisters of Manianwala 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 which 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 these days, I do not want to seek the protection of his 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 will 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 Government. 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 tellGod'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 173 thousand people assembled together at Minah, 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 from 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's 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. 303 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 books 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 ownBombay High Court says that and the Public Prosecutor agrees. I do not know if the Judicia Commissioner of Sind 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 irrelevant;" therefore I have not got to argue about that ?

The Court.—I have allowed 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 that 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 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 directed the Sheristadar to call accused No. 2 Maulana Hussain Ahmad. 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 the 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 and 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 necessity of it is or not, that 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—you have got to take the law from the King. I have got my statement based on this 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 came to the legal point and the facts of the case. I have already finished with that. I said 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 the 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. I et 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.

The Public Prosecutor.—We admit that the passages cited in this 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 show it from the Bible, I will show it from the Epistles—I will show it from the Gospels—I will show 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 curs dness 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 anybody'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 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 C mmands t. In my case too, when the Quran Commands, murder is no murder. So when I referred to the Quran you can say "show 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 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; for ever shall he abide therein; God shall be wrath with him, and shall curse him, and has prepared for him a great torment" (idem).

5. "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 ordained 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-Matdah, Chapter V).

5. "And (the urvitors of the Beneficent 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 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-Al-Furqan, Chap. 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, etc.)

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

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

3. "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. "Who so assisted in the slaying of a Moslem even with 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 which is killed for food, for whoseover 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 L T : etc.).

This statement of mine, gentlemen, is entirely based on the Quran and the Hadees as you can now see for yourself and 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 Ulama 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. It 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 straightforward, 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 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 King's Proclamations will afford them no protection, nobody 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 (showing the form of Enlistments)all sorts of questions 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 Hindus 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 revaccinated 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 where is 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 grievous sin 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 *Kafar* 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 Mussalman 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 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 Mahatma 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 Marhatta gentleman who told you about the Gokok resolution said that there were fifteen hundred people and the whole area of that ConferencePandal 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—that pandal 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 an 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 could 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's 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 soldier, 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 soldier. I knew a 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 (*Hakim-i-Waqat*) حاکم وقت—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 Ulama 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—لہ ۱ ۸ جد ۔گ ی 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 Lakht Hussain'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 the time of the Conference itself. But the translator of the Government had mistranslated اس باب میں شریعت کے احکام 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, I have 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-examined 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 wreaths 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 hereafter ? 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 ? Who ever remembers him the great crucifying Judge, except for Christ's crucifixion. 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.

"The Thunder pealed 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 Prophet'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 consequence of your verdict to-day or to-morrow, 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 and 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 and 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 sought 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 Isaacs, 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 theViceroy indulged in his hill top *obiter dicta* on a matter 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 laws of Islam" which only means "your 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 faiths." 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 that 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 I shall not rest, nor ask Him to fight the giants himself. And if I am to be hanged for it—for it is not Sec. 120A 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 carcass 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 Rahi Brothers—of Forbes, Forbes & Campbell—ot 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 has 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 andcoming 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: " Thine 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 Goerge 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 desperation 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 strongly 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 yon 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 hear 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.)

MAULANA HUSSAIN AHMED'S ADDRESS TO THE JURY.

After Maulana Mahomed Ali finished his address to the Jury, Maulana Hussain Ahmed gave his address.

Maulana Hussain Ahmed said :—

At the time of Mutiny of 1857 to allay excitement of Indians, the British Government had issued Royal Proclamation which contained all satisfactory hopes. It was a foundation of British rule in India. It is laid down in the end of it that the Government will work for welfare of Indians and that Government will not expand its territory and will fulfil promises to save rights of the Princes and people.