

The same treatment will be meted to Indians as to colonial residents. Amnesty was given to rebels. It was also announced that Indians would be given religious freedom. History shows you that in 1857 rebellion occurred on account of religious feelings which are absent in people of other countries of the world. History proves that Indians sacrifice everything for religion and this should be so because God requires it. The worldly gain is nothing before divine grace.

Religion is law of the King. For this British statesmen issued a proclamation for Queen Victoria. It was not from Queen alone but by Lords and Commons. It was confirmed by Edward VII and King George.

Its portion relating to religious freedom says that it is not their desire to impose their religious convictions on their subjects and no one would be molested in observance of his religious obligations. All will be equal under law. "We order our officers not to molest religious freedom of people otherwise they will incur our displeasure." After this the Indians were pacified because they believed that it was a Royal Proclamation and would be followed. But it is painful to observe that it has not been followed.

The resolution which I moved is not a resolution but a religious obligation for all. It is a question 1300 years old and not new. It is termed as resolution because 2 other passages are associated with it. I know my own religion, Hindus know their own. That it is a religious matter, is not for Lord Reading or the Judge to decide but for Ulemas to settle. There are 2 factors which show that it is a religious doctrine, namely, the wordings of the resolution and the contents thereof. It has been said that police service is Haram. Haram is a religious word. There are 7 such words. Haram is called that where there is a positive proof according to Shariat. Haram is that which is met with punishment of God's wrath. Rape is Haram in religion. One who commits it meets with torture, one who abstains from it, does good thing.

[M. Mahomed Ali wrote down those 7 categories including 'Haram' and gave to the Judge who required it.]

No man can be called a Muslim unless he believes to be true every word of Quran. If, for worldly ends, he does not call Quranic Hadis true, it is Haram. Government has established police for their political ends. A soldier has to draw his sword on every man—Muslim, Hindu or any man, and has to demolish houses and devastate country. To kill Muslims is Haram, hence this service is Haram. I am going to be brief. In Quran

in 7 passages God has forbidden to kill Muslim, and in 1 passage the punishments are prescribed for him who violates that order. Here the Maulana quoted and explained some Ayats of the Holy Quran and the traditions of the Holy Prophet all of which, he said, enjoined upon Muslims not to kill each other and be Kafirs.

The court rose for lunch at 2 p. m. and met again at 3 p. m. Maulana Hussain Ahmed continued his address to jurors. He began to read and explain the authentic Traditions of the Prophet. He said:— It is provided in our scriptures that next to the sin of Kafir is the sin of killing a Muslim without any just cause.

There are some acts which a Muslim has to do if he is compelled by King to do under pain of being killed, such as drinking of liquor, eating pork, though they are Haram in religion. If he refuses to obey the King and is consequently killed by the King, he is a sinner. Secondly, there are such acts as breaking fast where a Muslim has option to obey or disobey King even under penalty of death. But if a King asked a Muslim to kill another Muslim or else he will be shot down, the Muslim is enjoined by Islamic scriptures to sacrifice his life, but not to kill his Muslim brother.

I shall now refer to books written by learned divines about 100 or 150 years ago. A question had been asked from a learned divine at Delhi about 100 years ago: "Is it proper to enter the service of the British Government?" His answer was, "It is forbidden to enter services where prohibited acts, e.g., distribution of wine, etc., are done. You can enter other kinds of services." For doing acts that are *Haram* Hell is necessarily the punishment, but for acts that are bad, God may extend his pardon.

The resolution moved at the Karachi Conference was a religious commandment which has to be preached to every Mahomedan. There is also a religious injunction to convey the Quranic commandments to other persons. We are ordered by Quran to go actually in the army and ask soldiers that it is *haram* for Muslims to serve there but we did not go there and it was our weakness. As a divine it was my duty to convey this message to Muslim soldiers and the Queen had proclaimed that none will be molested in observance of his religious obligations. Those who have molested us are really responsible for going against the royal order. If any Muslim divine asks us not to follow Quran we shall not follow him.

God tells us.—“Be not afraid of the people, but be afraid of Me. Follow all what is contained in the Quran and nothing else.” It is necessary for every Mahomedan to obey the King, but if his commands contravene the commands of the Quran, we should not listen or obey him. We are not guilty under any section of the I.P.C.

None has stated that I was present in the Subjects Committee. It has been shown that I signed the Fatwa signed by 500 Ulemas and that I was present at the Delhi Conference ; it was my duty as a Muslim divine to sign the Fatwa and to be present at the meeting. From my birth until this day I, as a Mahomedan,—God willing, until my death, as a Mussalman I have preached this religious commandment and shall continue to do so. No section of the I.P.C. can be applied against us in the face of the Proclamations. Forty crores of Mahomedans obey the Quran. The Quran at seven places has held that it is Haram to kill a Mahomedan. No Muslim has to disobey a word of Quran. Lord Reading in regard to this prosecution says that Muslim religion is not interfered with. I am glad to note that the P. P. and Judge have said that the Quranic law will not be taken into consideration. I shall be more glad if Lord Reading, Mr. Montagu and Lloyd George and even the Prince of Wales who is now coming proclaim that Muslims will not be allowed to follow all the commandments of Quran; it will be better for us and Swaraj will be attained in 2 months instead of 4 months. I proclaim with a loud voice that it is Haram for Muslims to serve in British Army.

DR. SAIFUDDIN KITCHLEW'S ADDRESS TO THE JURY.

After Maulana Hussain Ahmed finished, Doctor Saifuddin Kitchlew accused No. 3 addressed the jury as follows:—

Gentlemen of the Jury,

Before I deal with the case itself I would like to place before you a few things for your consideration. It is not an ordinary case in which you have been called upon to give your verdict. In ordinary cases you do not see a Judge, or a Crown Counsel, the Jurors, and the accused being photographed, nor all proceedings generally published broadcast in forms of booklets. In this case the Judge, the Counsel, and the accused have already been photographed and I understand that soon after your discharge you will be requested to give sitting. That in itself shows that it is regarded as a historic trial which will go down to posterity who would look upon your photographs with eyes of shame or glory. I hope in giving

your verdict you will follow only the dictates of your conscience and would yield to no extraneous pressure that might be brought to bear upon you to sell your conscience. I believe you are aware that the newspapers of all shades and opinions in India and in England, in fact throughout the whole world, are supplied with notes of these proceedings, and the eyes of the world are set on the result of this trial. The Government at great expense have collected—or concocted—materials for the case, called in witnesses from all over the country, secured most expensive legal advice and are squandering a good deal of public money on the police and military show to enhance the importance and the spectacular effect of this farce. They are also sending out press-notes and communiques containing half-truths and mis-statements to the world to create an atmosphere wholly prejudicial to the interests of the accused.

I do not know if you have ever acted as jurors or assessors before this, but let me make my position clear to you. I would not have addressed you as I am doing at the present moment. As a non-co-operator I am allowed to make statement. And as the Court would not record my statement I am taking this opportunity of saying to you what I would have said to the Court had my statement been recorded by it.

I want you to bear in mind that this case touches on the basic principles of British Administration in this country. It affects the religion of seven crores of Mussalmans on the one hand and the entire policy of the British Government towards its subject races, particularly in matter of faith, on the other.

I hope, therefore, you will give the case your fullest consideration and acquit yourselves like men. But let me tell you at the same time that I hold myself absolutely indifferent as to the nature of your verdict.

Our case, as you know, is that we have, in obedience to the Commandments of the Holy Quran, the Traditions of the Prophet and the dictates of good conscience, preached the precepts of our religion. My friend, the Public Prosecutor wants you to ignore the religious side of the question. The learned Judge seems inclined to the same view. In my opinion the Public Prosecutor has absolutely failed in his duty. He does not seem to have proper conception of his duty. I therefore ask you not to be misled by him or the Judge. His duty, surely, is not to secure conviction but to secure justice. This is exactly what my learned friend has not done. Both the Judge and the Counsel are wrong to say that religion has nothing to do with this case as it does not come within the scope of

the Indian Penal Code. For their edification and enlightenment let me inform them through you, gentlemen, that there is such a thing as religion in the case, and the Indian Penal Code and all other codes, civil or criminal, in this country are fundamentally based on the principle of religion and religious toleration. It would be an insult to the genius of Lord Macaulay and other Law Commissioners to say that they kept religions element out of the Indian Penal Code.

The Penal Law of India as at present codified contains one chapter—chapter XV—solely devoted to offences relating to religion. The framers of the Code while introducing Chapter XV say :—

“The principle on which this chapter has been framed is a principle on which it would be desirable that all Governments should act, but from which the British Government in India cannot depart without risking the dissolution of the society; it is this that every man should be suffered to profess his own religion, and that no man should be suffered to insult the religion of another.” Further on they say:—“All these considerations apply with peculiar force to India. There is perhaps no country in which the Government has so much to apprehend from religious excitement among the people. The Christians are numerically a small minority of the population, and in possession of all the highest posts in the Government, in the tribunals and in the Army. Under their rule are placed millions of Mahomedans, of different sects, but all strongly attached to the fundamental articles of Mahomedan Creed and tens of millions of Hindus, strongly attached to doctrines and rites which Christians and Mahomedans join in reprobating. Such a state of things is pregnant with dangers which can only be averted by a firm adherence to the true principles of toleration. On these principles the British Government has hitherto acted with eminent judgment, and with no less eminent success; and on these principles we propose to frame this part of the Penal Code.” (Note J).

Add to this, gentlemen, the famous Proclamation of Queen Victoria which was made soon after the First War of Indian Independence commonly called the Sepoy Mutiny, because it failed to achieve its immediate object. Add also the solemn Declarations successively made by the British throne, the British ministers, the Viceroy and other high and responsible personages in a position to speak on behalf of England and the English nation. Thus it is abundantly clear that religion is a very important element to be considered by the Jury, and the Jury is bound to take

judicial notice of it. In fact this Court has, much to its chagrin, already realised the importance and the necessity of religious toleration. In the case of the Shankaracharya you have witnessed yourself how the Court was obliged to come down from the high pedestal of prestige and recognise that a Sanyasi can command respect even in a British Court of Law.

Before going into the facts of the case let me take you into my confidence for a while so that you may be able to understand and appreciate the position better. Now let me inform you, gentlemen, that I am a Hindu by race and a Mussalman by religion. I claim to inherit both Hindu and Muslim civilizations—the one through blood and heredity and the other by reasons of faith and adoption. I am proud of my race and religion. As a nationalist I love India with the intensity of love that only a patriotic heart can feel and I am ready to lay at the feet of the Motherland, to do all that is best in me to make her free, prosperous and happy.

As a Mussalman I am bound to obey the commandments of my religion. The defence of Khilafat, the holy places of Islam, and the Jazirat-ul-Arab, is a religious duty the neglect of which drives one outside the pale of Islam. I am, therefore, religiously bound to do all in my power to keep intact the integrity of Khilafat and the holy places of Islam.

My religion forbids me to co-operate with the enemies of Islam. British Government has proved treacherous and false to the cause of Islam. Her ministers have shown racial and religious prejudices towards Turkey and the Mussalmans, by preferring opportunism to honesty of purpose. On account of the shameful makeshifts of her ministers and statesmen, I regard British Government as enemy of my faith. I, therefore, consider it a sin to co-operate with her until she has made amends for her misdeeds.

As a non-co-operator I can be either violent or non-violent according to the laws of Shariat. I am entitled to use force when I have the power to do so, or stay where I am and practise non-violent non-co-operation. The use of physical force for me in the present circumstances is out of the question. Hijrat or migration is impracticable for seventy millions of Mussalmans. Non-violent non-co-operation, therefore, is the only thing that a Mussalman in this country can practise to satisfy the dictates of his conscience and the Commandments of God. I am, therefore, a non-violent non-co-operator just as the Prophet of Islam was during his life at Mecca.

I am a non-co-operator also because I believe that a Government which has deliberately brought about the moral, economic and political degradation of my country, and which has been guilty of the monstrous inhumanities of the Jallianwala Bagh has no right to claim my co-operation.

As a non-co-operator, I ask for no justice ; I expect none from this Government. I have, therefore :—

1. engaged no counsel,
2. asked no questions from witnesses,
3. produced no defence,
4. advanced no arguments excepting one solitary statement which I am allowed by the rule of non-co-operation.

For I believe that this so-called trial is a mere farce stage-managed by an unscrupulous Bureaucracy to throw dust into the eyes of the people outside India.

The prosecutions have been conceived *abinitio* in a spirit of commouflagé and injustice. The Viceroy, the Government of India, and the Government of Bombay, have by means of declarations, communiques and statements in the press zealously tried to poison the minds of the people both in India and in England by creating an atmosphere prejudicial to the interests of the accused persons.

Among other things a lying statement has been published in a notification in Sindh which has also been attached to the record of the case to the effect that the Jagat Guru Shankaracharya of the Sharda Peeth, an accused in the case, is only a pretender and not the right claimant of that title. This is surely a wanton insult offered not only to the person of His Holiness the Jagat Guru but to the whole Hindu community.

The proceedings in the Lower Court were carried on in most arbitrary manner without the least regard for law and procedure.

They can be divided into three parts. In the first part,—

1. The District Magistrate, who himself appeared as witness constantly attended the Court and not only influenced the committing Magis-

trate by his presence but on one occasion even interfered in the proceedings by ordering the Police officer to make Maulana Mahomed Ali forcibly sit down while the latter was addressing the Court on some acts of its high-handedness.

2. The accused were purposely kept in the dark as to the true nature of the case and all the evidence against them.

3. The Magistrate refused to take all the evidence and even passed an order stating that the evidence of some witnesses might be taken up at the Sessions, thus making the fact of the commitment a foregone conclusion.

4. The Public Prosecutor was allowed to put leading questions and even to cross-examine his own witnesses.

5. The Magistrate though bound to examine the accused, refused to do so particularly in the case of the Jagat Guru Shankaracharya.

6. Excepting Maulana Mahomed Ali, the statements of the other accused explaining the circumstances of the case were not recorded.

7. The charge was not read out and explained to the accused who did not understand English.

8. The Magistrate called on the Public Prosecutor to argue his case while he never asked the accused, in spite of his promise with Maulana Mahomed Ali.

9. The Magistrate had written the committing order at home long before the statements of the accused were recorded or arguments heard. It was read by him soon after the Public Prosecutor had finished his arguments. The charge was also written beforehand.

10. The complaint, the charge, and the order of commitment are ambiguous and misleading.

This much for the first part.

In the second part—

1. Full twenty-four hours after the committment order when the Magistrate had become *functus officio*—the case was recalled in the Lower Court,

2. The Magistrate had done this *suo moto* without being asked to do so either by the High Court or any of the parties concerned.

3. The charges were read out in Urdu but not explained to the accused who were asked to put in a list of defence witnesses.

4. These vitiating effects were brought to the notice of the Court to show the farcical nature of the proceedings, but were not recorded by it.

Thus ended the second part. The third part was begun inside the jail in the following manner:—

1. The Magistrate took further evidence on behalf of the prosecution without being asked to do so.

2. The accused were not asked if they would produce any evidence to meet the evidence thus produced by the prosecution.

3. The evidence was in no sense supplementary or incidental but of vital importance to the case. It was the same evidence which the Magistrate had at first by his order refused to take.

This brought to end the proceedings in the Lower Court.

I have stated these facts not with a view to defend myself or take advantage of these illegal and vitiating circumstances, but just to draw attention to the farcical nature of the whole case. As for myself, I am indifferent to the result of this case. In fact I invite imprisonment.

The story in the Sessions Court was a mere repetition of what took place in the Lower Court, though it was done here on a more elaborate scale. In this Court too the Jagat Guru Shankaracharya was insulted, the statements of the accused were not recorded, the chairs were removed and the accused were made to sit on the floor. The accused were even threatened to be prosecuted for contempt of the Court. The behaviour of the Court on the whole was that of a prosecutor and not of Judge. The Court even arrogated to itself the original jurisdiction which is denied to it by law. The Sessions Court can ordinarily amend or alter or add to the charge when such amendment, alteration or addition is trivial, does not prejudice the interests of the accused and is supported by the evidence on the file. But the Judge in the present case changed the whole nature of the charge by adding a new section to it and by interchanging sections in the charge-sheet. Let me explain to you what I

really mean. The charge as framed by the Court stated that the so-called conspiracy started in 1921, but the Court of Sessions, as you know, changed 1921 into 1920. Thus full one year was added to the duration of the conspiracy on the mere presumption that the prosecution would produce a witness who would give evidence to that effect. This is simply preposterous. Such assumption of power by the Court is not only unwarranted but is absolutely illegal and vitiates the whole case.

The charge against me is that I spoke in support of a resolution of the Khilafat Conference held at Karachi in July 1921. I want you to bear in mind the wordings of the resolution. It runs thus:—

“ This meeting of the All-India Khilafat Conference offers its hearty congratulations to Ghazi Mustafa Kamal Pasha and the Government of Angora on their brilliant victories and their heroic efforts for the safety and preservation of the Islamic Empire, and prays that they may similarly succeed at an early date in expelling alien forces from every corner of Turkish territory.

“ This meeting further emphatically declares that it is strictly forbidden for every Muslim according to Islamic Shariat to serve, to enlist in the army, or to raise recruits, and it is the duty incumbent on every Muslim and particularly on the Ulema to bring the religious commandments on this subject home to every Mussalman in the British Indian Army.

“ This meeting further declares that if British Government, directly or indirectly, secretly or openly, takes any hostile action against the Government of Angora, the Mussalmans of India will be obliged to take to civil disobedience in concert with the Congress ; and further to make a declaration of Indian Independence and Republic at the next Congress at Ahmedabad.”

This is the resolution which is the crux of this trial. I assure you, gentlemen, that I support every word of it now as I supported every word of it even at the Conference. I want you to read it and read it carefully and then tell me what portion of it appears to you to be objectionable. A similar resolution was passed at Gokak where we had received a telegram from London that the British had been directly or indirectly helping the Greeks against Angora. My friend the Public Prosecutor wants you to realise the importance of this resolution and I make a present of it to him and through him the Government that he

has the misfortune to represent in this Court. Yes, gentlemen, I attach and I want you to attach a very great importance to this resolution for this is an expression of my religious opinion which I am commanded by Allah to convey to the Mussalmans in the Army, and if this expression of opinion makes me liable to be punished under any section of the Indian Penal Code, I am willing to undergo that punishment. This resolution, you will see, declares that it is unlawful for a Mussalman to serve in the British Army and calls upon the Ulema and others to convey the message to the soldiers generally. The Congress, the Khilafat Committee, the Jama'at-ul-Ulema, the Muslim League and other religious and political organisations in the country had passed similar resolutions long before the Karachi Conference. There is nothing new in this resolution. It is only an expression of the same principle in terms of Islam. It is not a statement, rumour or report calling upon the soldiers to disregard or fail in their duty as such nor is it an abetment of meeting or an attempt to seduce soldiers from their duty. Therefore sections 131 and 505 of the Indian Penal Code have no application whatsoever. The soldiers are required to know the commandments of their God, but they are in no sense called upon to neglect their duty. It declares as unlawful for them to serve in the army, when such service makes them do any act against the law of Shariat; it is therefore conditional. It merely tantamounts to a conscientious objection, the whole thing is conditional, which is to take place under given circumstances. The Muslim soldiers, if the circumstances do not permit their service in the army, are warned on religious grounds to secure their discharge from the army. The discharge can be secured by means of perfectly legal methods. It does not necessarily mean that in order to secure their discharge the soldiers must do illegal acts. They can acquaint their superior officers of their religious obligations, they can resign or apply to be struck off the rolls or buy their discharge and use many other ways in getting out of the army and that only when they are called upon to do an act against their religion. I want you to particularly note that in the same resolution the disobedience of law is not to be resorted to until the "All-India Khilafat Committee" resolves to that effect in consultation with the Indian National Congress. This is a very important point having a direct bearing on the whole case and I would therefore put it to you in another way:—

The charge against me is that I have asked the troops to swerve from their duty. Does this resolution say that I have directly or indirectly done anything of this sort? I tell the sepoy that it is "haram" for him to serve in the British Army. I admit that it implies that if a sepoy

according to his conscience believes in the commandments, he would resign. In pursuance of the Congress resolution we have said similar things to pleaders. We have never compelled any pleader nor have we resolved to compel any sepoy. The natural consequence of this resolution is not disobedience of law or breaking of allegiance or neglect of duty. The first step would be to secure discharge. We do not say 'do it by illegal means.' If I am liberated I shall tell the sepoys to secure discharge by legal means. This resolution speaks of civil disobedience in future. Up to now we have not resolved about putting civil disobedience into practice. May my countrymen have strength enough to adopt civil disobedience.

I am further charged with conspiracy to seduce soldiers—conspiracy requires agreement between two or more persons to do an illegal act. It also requires definite tangible proof of that agreement ; now I ask you as conscientious gentlemen, in the presence of God to say : is there any evidence on the file of an agreement between any two of us to do any illegal act—a mere presumption would not do. The Government ought to be ashamed of basing their claims on mere presumptions. I am prepared to admit that it is not necessary for all the conspirators to meet and arrive at an agreement to do an illegal act, but it is necessary for the prosecution to prove that any two at any one time, at any one place agreed to go to the soldiers calling upon them to break their allegiance or disregard or neglect their duty. The Public Prosecutor has tried to muddle your brain with several technicalities, but I want you to pay no heed to the technicalities of the case, for you are here to decide on broad open facts, whether there has been any overt act on the part of the accused which can bring them within the clutches of the law. The prosecution has made frantic efforts to prove an overt act. Certain leaflets have been brought on the file to prove an overt act. Officers in the army have come forward as witnesses to depose that attempts were made to seduce the soldiers. These leaflets will show to you the hypocrisy and the sheer absurdity of the whole case.

Now, gentlemen, you can see the legality for yourself and I want you also to carefully note the envelopes and the handwriting thereon. The envelopes containing the leaflets bear stamp-marks of different stations in the United Provinces for instance Muradabad, Kaushi, etc., but they are all of the same colour, the same quality, of the same texture and size and even the same handwriting—this much about the envelopes. Now as to the language of the leaflets you will see that it is absolutely incorrect.

Verses from the Holy Quran are not only wrongly quoted but also tampered with. The leaflets bear no names—no name either of the printer or publisher—they appear to have been printed at some “Shauq” press in Lahore—no evidence to prove this fact. They further seem to have been published by the “General Secretary of the Publishing House, Delhi”—no evidence is produced either from Lahore, Delhi or the United Provinces to prove the genuineness of the documents in question or even the existence of such wonderful institutions and persons as given in the leaflet, and by such shabby tricks and contemptible artifices the Bureaucracy in India wants to prove the charge against us of attempting to seduce Muslim soldiers from their duty. As to the conspiracy itself, as I have just explained to you, there is not a tittle of evidence on the file to shew that any two or more accused at any time in their life conspired or came to an agreement to do any illegal act. I want you also to remember that the language of the resolution or of the speeches made is not the subject of the charge, therefore an illegal act on the part of the accused outside the Conference pandal, must be proved before the charge under these sections can be established.

I am sorry, gentlemen, that none of you is a Mussalman, you are either Christian or Hindu. It is difficult for you to understand the nature of this case; for your convenience, I want you to compare the verses given in the leaflet with the original text given in the Holy Quran which I am placing before you. I am glad you see the difference between the two. Now this will clearly shew that none of the accused could have made such glaring mistakes nor such a responsible body as the Khilafat Committee could do such a thing as this. Probably, you know that for a Mussalman it is considered to be a great sin to alter, add or amend a simple alphabet, syllable or a jot of a Quranic verse. Besides, the Khilafat Committee would have published leaflets over the signatures of the Secretaries or some responsible members just as they passed the resolution openly. It is said that the resolution was passed at a “Subjects Committee” before it was finally adopted by the Conference, but the prosecution has not produced a single eye-witness to show the presence of all the accused at the “Subjects Committee.” Only one witness who deposes that he recognised Maulana Shaukat Ali’s voice at the ‘Subjects Committee.’ Now at the Subjects Committee it is not necessary that all members should attend or all members should vote. It need not be a unanimous resolution of the members present, therefore it is no evidence to say that the mere presence of one on the Subjects Committee is enough to prove his connection with the conspiracy. I would like to call your attention

to the "Fatwa" of the Ulema. Probably you know that the 'Jamiat-ul-Ulama' is a distinct body, with a separate organisation of its own and it has nothing to do with the 'Khilafat Committee' as such. The Fatwa is signed by 500 Ulema and is published with the authority of the Secretary of Jamiat-ul-Ulama. This has been put in simply to poison the mind of the Judge and the Jury, otherwise it has no bearing on the case and is not a subject of the charge. The law is very clear on all the points to which I have drawn your attention, but I do not want to argue by quoting authorities or citing cases. I am just attempting to show that the case, one-sided as it is—is a mere farce and a travesty of justice and that no Indian can expect fair play in Courts established under a system of Government, which is not only irresponsible and wicked but is totally opposed to the moral, material and political interests of the country. The motive of the Government is to cause harm to the Khilafat, Swaraj and the Hindu-Muslim unity and the present case is a direct attempt on the part of the Bureaucracy to give a stunning blow to the rising aspirations of the country.

Gentlemen, I do not wish to say anything about Islamic law on the question. My friends Maulana Mahomed Ali, Maulana Hussain Ahmed Saheb have both dealt with this at length and if you care to study their statements you will come to know the true nature of the religious aspect of the question. Maulana Mahomed Ali is a learned man. Maulana Hussain Ahmad is well versed in Islamic law. Shri Shankaracharya is being adored by crores of Hindus. Pir Mujaddid has lakhs of followers. Maulana Nisar Ahmad Saheb claims a large following in the United Provinces and Maulana Shaukat Ali, you can see for yourself what he is, he is a host in himself. And for myself, well, I am an old jail bird and "great friend" of Sir Michael O'Dwyer the ex-satrap of the Punjab who is still crying himself hoarse about me in the distant land of England.

I was deported in 1919 from my house at Amritsar to the Dharamsala hills by the "Strong man of the Punjab." On my deportation some of my countrymen were shot down in cold blood by the long arms of the Bureaucracy for having dared to claim my restoration. Some of my countrymen under circumstances of grave provocation thus caused, lost their self-control and in turn killed a few Englishmen and burnt a few buildings in Amritsar. For this act, a very wrong act indeed—they were condemned by their own citizens at the Jallianwalla Bagh on the famous 13th of April 1919. Just as the people of Amritsar assembled in their

thousands and were in the act of condemning the provocation caused by the bureaucrats on the one hand and the senseless deeds of their own countrymen on the other, they were fired upon by the orders of General Dyer, the renowned warrior of Bureaucracy, and left dead and wounded without medical aid to meet their glorious death as martyrs in the cause of their country.

Out of the fullness of heart and love which the people of Amritsar bore me for the humble services I had rendered in the cause of Satyagraha, they had in my absence elected me President of that memorable meeting of the 13th at Jallianwallabagh and had put my photograph in the Chair. This was one of the gravest offences I had been guilty of in the eyes of the Punjab Bureaucracy. I have a long list of offences against me. I give you just a few for I cannot remember all.

I was among the first in the Punjab to take the vow of Satyagraha. I had also formed a Satyagraha Association in Amritsar and organized agitation throughout the Punjab against the Rowlat legislation—I had done all in my power to expose the mis-rule of the Punjab Government, particularly its boastful Governor of Martial law fame—I had also invited the Congress to hold its session at Amritsar to hear the stories of atrocious mis-rule of the old O'Dwyerism regime. Thus you see, gentlemen, I was rightly regarded a dangerous man by the Government of the Punjab, therefore after the cold blooded murder of the Jallianwallabagh they could not find a better man to be placed at the head of a conspiracy which was alleged to have been started at Amritsar with the distinct object to overthrow the British rule in India. This was a most convenient thing concocted by the fertile brain of Sir Michael and his colleagues to hide the sins of their own acts of commission and omission. That was a movement, gentlemen, inaugurated by the Bureaucrats of India, particularly the Punjab, to thwart the object of the reform scheme. This time it is a conspiracy on the part of the Government of India with the Bombay Government as its tool to defeat the object of the Khilafat, Swaraj and Hindu-Mahomedan unity. Therefore I request you to be careful for the sake of your own salvation before you give your verdict in this case. Your judgment against me will be against my religion, my country, for, the purpose of this agitation for which I am hauled up in Court, is that I as an Indian, claim to live my own life with absolute freedom of thought, of speech, of action and of conscience. I am absolutely indifferent as to your verdict and I request the Judge to give me the full

penalty of the law by transporting me for life and not to condemn me to a lesser term of imprisonment.

I am an agitator—I frankly admit. I am also a revolutionary—for the movement of non-violent non-co-operation is nothing if not a revolutionary movement. In the method of agitation I follow my renowned leader Mahatma Gandhi who is at once a saint, a seer and a practical man. I am also the founder of the Swaraj Ashram at Amritsar and the Government is very anxious to know the absorbing mystery of its inner working. I have dedicated my life at the Ashram and have taken a vow not to do anything for personal gain till the repetition of the Punjab wrong is made impossible, Khilafat wrongs are righted, and India gains Swaraj—its complete liberty of thought, action and conscience.

I have no hatred of foreign race, religion or country, but I yield to none in my love and loyalty to my God and my country.

I thank you, gentlemen, for giving me an opportunity of explaining myself fully and also thank you for giving me a patient hearing. I also thank the Judge and the Crown Counsel.

I have no ill-will against you or against any one personally. In the end, I appeal to all to remain non-violent till the end and follow Mahatma Gandhi till we have gained what we are fighting for.

The Court then rose and the leaders departed in the prison van amid loud acclamations of "Bande Mataram" and "Allah-o-Akbar."

SIXTH DAY'S PROCEEDINGS.

SATURDAY, 29TH OCTOBER 1921.

PIR GHULAM MUJADID'S ADDRESS TO THE JURY.

Pir Ghulam Mujadid being called upon to address the jury, spoke in Sindhi said :—

Before I come to the case proper, I want to say that I have regard for the physical power and I. P. Codes of Government only so long as they do not demand from me anything contrary to our religious Laws of Quran and Shariat.

If the ruling power demanded anything from us which is contrary to our religious commandments, then it will be the duty of not myself alone, but crores of Muslims to destroy that authority. We have been prosecuted here on a charge of a "Conspiracy to seduce soldiers" but we never discussed the matter at any time. I am a Muslim Alim and a Pir. I have necessarily to act according to the commandments of Quran. I have not yet obeyed the order fully. I have only translated the resolution in Sindhi. The Fatwa was drafted by Ulema and contained Quranic orders and I was bound to sign and obey it. It is God's law. God says:—Those who know God's law should propagate it, widely or else God's curse will fall on them. Another Ayat says:—The Alims are duty-bound to convey the doctrine of God to all. It is incumbent on all Muslims to propagate the law of Islam to all. Another Ayat says:—You will be considered good only when you communicate My order to all people in general. Now should we obey it? Or should we obey the Government? If it is a crime to obey what is commanded in the Holy Quran, then all the Ulema who daily teach and explain Quran to thousands of pupils are also to be, one day, prosecuted like us by the law courts.

One of my ancestors had been prosecuted only because he did not bow before a King though he was a Muslim. But I consider it fortunate for me if I am even hanged for refusing to obey the orders of a Non-Muslim Government when those orders conflict with Islam.

Hazarat Ali Abubakar Sidique, one of the greatest Khalifas, said:—I am also one of you and I am your King, only I should be obeyed so long as I do not go against the law of Islam.

The same thing was declared by Hazrat Amir Umar when he became a Khalifa.

Now God commands us to propagate His Divine doctrine to all, but this Government is prosecuting us for that. An Ayat says:—The Ulema and Pirs who would not propagate God's orders to others will be awarded eternal Hell. But I cannot understand the aim of this Government. Is it that they forbid us to say what our Quran says?

Allah in Quran orders:—Don't kill a believer. Now God says so but the Government says that we should go and fight against our own brother Muslims. And if we forbid our fellow brothers from going against God's orders, we are hanged. But Muslims don't care if they are even killed and hanged for the sake of Islam, because for a Muslim it is a privilege to be sacrificed for religion.

Maulana Hussain Ahmed recited many Ayats and Hadiths about the punishment to be meted out to those who kill a Muslim. But I don't want to repeat those Ayats again. I want merely to say that God has ordered us 7 times in the Holy Quran not to *help* even any one in murdering a Mussalman. If any Muslim even points out with a sword to a Muslim with an idea of killing, he is to be eternally cursed. There are two kinds of orders for us in the Quran (1) *Amur* and *Nahi*. *Nahi* deals with those things which we are forbidden to do and *Amur* deals with those things which we are ordered to do.

Allah orders us:—Do not kill a Muslim. If you kill, you will be disobedient to Me. Now should we not obey the commands of God and Quran and should we not communicate the law of God to all?

In Quran Allah says:—It is 'haram' for a Muslim to kill a brother Muslim. Now if God says that a certain thing is not lawful and if we find our brothers doing it, should we not forbid our brothers to do that thing and thus save him from the punishment of God?

Muslims, without caring for caste, colour or creed, whether they are of West, East, North or South, whether they belong to India, Arabia, Morocco, or Turkey, are limbs of one body if they all recite the one holy *Kalima*, i.e., "There is no God but one God and Mahomed is His Prophet." If I see a troop of my Muslim brothers going to Angora or Turkey to kill their own Muslim fellow brothers, should I not inform them of God's commands in order to save them from torments? In spite of these clear

injunctions we have only translated the resolution. Those who read the Quran daily, read this resolution every day, and they ought to understand the meaning of Quran well if their *prayers* are to be accepted.

According to an Ayat, there are 5 punishments for a Muslim who kills another Muslim. (1) Hell, (2) eternally living in Hell, (3) God's curses, (4) God's ¹ i.e. damnation and (5) Chastisement.

God says :—He who kills one person has as if killed whole world and will be punished as such. But if we forbid our brother to do that sin, we are prosecuted !

Our Prophet in his last days said : I order you that this Bait-u-Allah and 10th night of Moharum are sacred to us but more than anything else: is the blood of a Muslim holy to us.

I was glad to hear that an Alim in Islamic law was coming here and I would have asked from him what the aim of Government was in this prosecution.

There are 6 books which are authoritative for Muslims, only after Quran. They are called Suhasit Sharif. In them God has allowed killing of a Muslim only in three cases :—(1) murder, (2) adultery and (3) apostasy. Now if we obey this Government, according to Prophet and God we shall be Kafirs and be worthy to be hanged or killed. One of the Ayats says :—He who only utters one word about killing or only points out to a Muslim with a sword with an intention of killing, shall be cursed by God and he is not a Muslim.

Hazrat Abdul has told us that even Kaaba is not so sacred as a drop of Muslim blood. It is haram to kill even a bird in Bait-u-Allah Shari but even more sacred than that Bait-u-Allah itself is the blood of a Muslim and yet Muslim blood is being shed there. Hell has 7 doors and one of them is especially for those who draw sword against any other Muslim.

A Hadith says :—If any one only draws sword or a dagger against a Muslim, God and all Angels will curse him until he drops it. There are thousands of such Hadiths but being confined in jail we have been able to recollect only 80 or 90 Hadiths. The Holy Quran although a little volume contains all that a Muslim has to do and it is replete with such orders.

Now I come to Fiqa books. Shah Abdul Aziz gave his Fatwa 100 years ago saying that fighting against Muslims is unlawful; but that Fatwa was not proscribed. Why? Because perhaps the Queen Victoria's proclamation was fresh yet or because the Government did not at that time want to destroy Islam from the world!

The Court :—The Proclamation was issued only 64 years ago and the Fatwa referred by you was 100 years ago.

Pir.—Yes, but it has been republished again and again. The edition which we have got (showing) was printed only 26 years ago. Moreover, another Fatwa of Moulvi Abdul Ali is only 50 years old. Why is it not proscribed? And why is the Fatwa of Jamat-ul-Ulema, signed by 500 Ulemas of India proscribed? Either the Government wants to destroy Islam or it is wholly ignorant of it or they want us to be converted to Christianity. It is a Muslim's bounden duty to sacrifice all and suffer for Islam. God has said in the Holy Quran :—If you are in jail for Islam, you are fortunate but do not say aught that is against Islam. I therefore am fortunate that like my great-grand-father Hazrat Pir Mujadid I also have to suffer.

The Judge wanted to hear the whole story about the Pir's grandfather whereupon the Pir said :—

Our grandfather lived in the State of Patiala. Our family is in Afghanistan. My personal *murids* are about 10 thousands. Our great-grandfather was one day called by King Jehangir who ordered him to pass from a very low door with an idea of making him bow. But the Pir Sahib refused to bow his head before the King saying that he had bowed his head only to God and would bow before none else.

The King's men told the King that the Pir was measuring strength with the King and the King ordered him to be put in Jail even as in this Court the Judge ordered our chairs to be removed (laughter). He was put in Gwalior Jail but that Jail was not like Karachi Jail but only an internment. But after a time the King saw his folly and went and begged pardon from him and even so I am sure this Government also will repent and take pardon from us all (laughter in the Court).

Now we want to know from this Government if we should follow Quran and be true Muslims or be their subjects?

If a King orders a Muslim to eat a dead body or pork and drink wine or else he would be killed, it is his duty to do all those forbidden things because if he is killed, he will die as a sinner. If he is asked to utter some unholy words on pain of death, he would do so but keep his heart pure. If he is ordered to rob the property of another Muslim or else he would be killed, he may or may not rob it. But if any Muslim is ordered to even cut a hand of a Muslim, he should refuse to do so and should prefer to be killed himself. Now my so many brothers go and kill so many of their Muslim brothers and our Government even forbids us to tell them what our religion demands. I think the Judge knows something of Arabic and he knows that Fiqah is next to Quran and Hadiths of God. If I quote all the Verses in this connection, I will take days, but I only want to declare clearly that in proscribing the Fatwa, the Government has the intention of destroying Islam. But God has ordained:—Do not bow before Zulum and tyranny; and here is a direct attack on Khilafat and Islam.

I am prosecuted because I supported an Ayat of Holy Quran but my friend the P. P. did not prosecute me when in 1920 I was translating all Ayats in Tatta. He can even now do so. In the beginning there was an attack on Khilafat but now there is an attack directly on Islam.

The 22 crores of Hindus should well understand that one day such attacks on their religion are also expected if there is such a tyrant Government. Are these attacks now coming because there is Hindu-Muslim unity? But whatever it be, we Muslims are ready to be killed—hanged for Islam. Our family—our children, our all is ready to be sacrificed for the sacred cause of Islam.

MAULANA NISAR AHMED'S ADDRESS TO THE JURY.

After him Maulvi Nisar Ahmed was asked to address the jury. He spoke in Urdu.

He said :—Before everything else, I am a Muslim and obedient to the orders of God and his Apostle.

I would not submit to any wrong even if any great man ordered me to do it. This Government claims that there is justice, there is law and there is full religious freedom to all. As for justice and law, I think there is no justice. I have seen in this Court how justice has been killed.

Maulana Mahomed Ali and others showed how law has been mutilated. Immediately after I went from the Khilafat Conference, Karachi, and reached at Cawnpore on 13th July, I was arrested on 14th July and brought before the Magistrate of Muttra.

The speech for which I was hauled up before the Court could not be found for 8 days and I was in jail ! On the 9th day a paper with something written in pencil was produced as being notes of my address. Perhaps they were prepared later on. They were so illegible that no one could read them—not even the writer.

A C. I. D. Inspector was produced as witness who said that he had read it and signed it. But when he could not read it, the P. P. cleverly tutored another witness to say on the next day that he heard me speaking and therefore signed the notes of my speech ! I was put in jail and am still a prisoner. The Magistrate came to me in jail and enquired from me about my welfare. He also asked me if I wanted to go to Mecca and Medina and told me that Government was ready to send me there. I asked him :—Have you done justice ? He replied :—Oh, don't you see I filled so many pages ? I asked : is justice in writing more papers ? He went away laughing.

In this case, the witnesses have been calling themselves Sayeds and Shahs, Khan Bahadurs, etc. Can real Sayeds go against Khilafat ?

Can these men be true to Government if they are untrue to their own religion, Islam ? But if they are going to speak truth, they would be driven away from the service and they fear.

My friends have pointed out many irregular points of law in this Court and in lower one. But it is not the fault of this Judge only, it is common in all the British Courts. Even so was it in Muttra. But then why is the Government boasting of Justice ?

Why were so many witnesses called ? Not for giving Justice but only for making a show of it. Our Viceroy boldly says that there is no attack on Islam ; does religion consist in building Musijds and observing outward ceremonies only ? No, our religion consists in following Quran—every word of it.

This resolution which we passed in this Conference was passed 1,300 years ago and was proposed by the Prophet himself. If it is crime to say what is written in Quran, then by all means prosecute us. But then I am at a loss to understand what is meant by religious freedom.

An Ayat of Quran Sharif says :—If we only think of killing a Muslim, we will be worthy of being put in eternal Hell. Those are Kafirs who go against Muslims. If any Muslim even points out to another Muslim with his hand or finger with an intention of killing, his prayers or pilgrimage to Mecca are not accepted at all. Yet another Ayat says if any Muslim takes arms against another Muslim all angels will curse him till he keeps back those arms. Curse of Angels does not mean any simple thing. It means that God would never forgive the sins of that man.

I supported this resolution according to my religious duties. But I was not a member of even Subjects Committee, yet I am charged of conspiracy ! There was no discussion between us because there is no necessity of discussion on a religious commandment.

If the Government wants to destroy us and our Islam, why is this all show, why not bring soldiers and guns and shoot us all ? We are very weak persons.

What is this Jury for ? It is not for justice at all but mere for show. In Dharwar case and many other cases the Judges have gone against Jury. They do what they have already decided to do.

But every person has to die one day and why not to die for one's religion ? So gentlemen see that you do not do anything on account of which you may have to suffer heavily in future. You may not be subjected to God's curses. If Mahomedans are even killed for Islam they are fortunate.

I *had* supported the resolution in Conference and I still support it and declare that it is *Haram* for Muslim soldiers to continue in the British Army and thus fight against their Muslim brothers.

Crowds Witnessing the Trial.

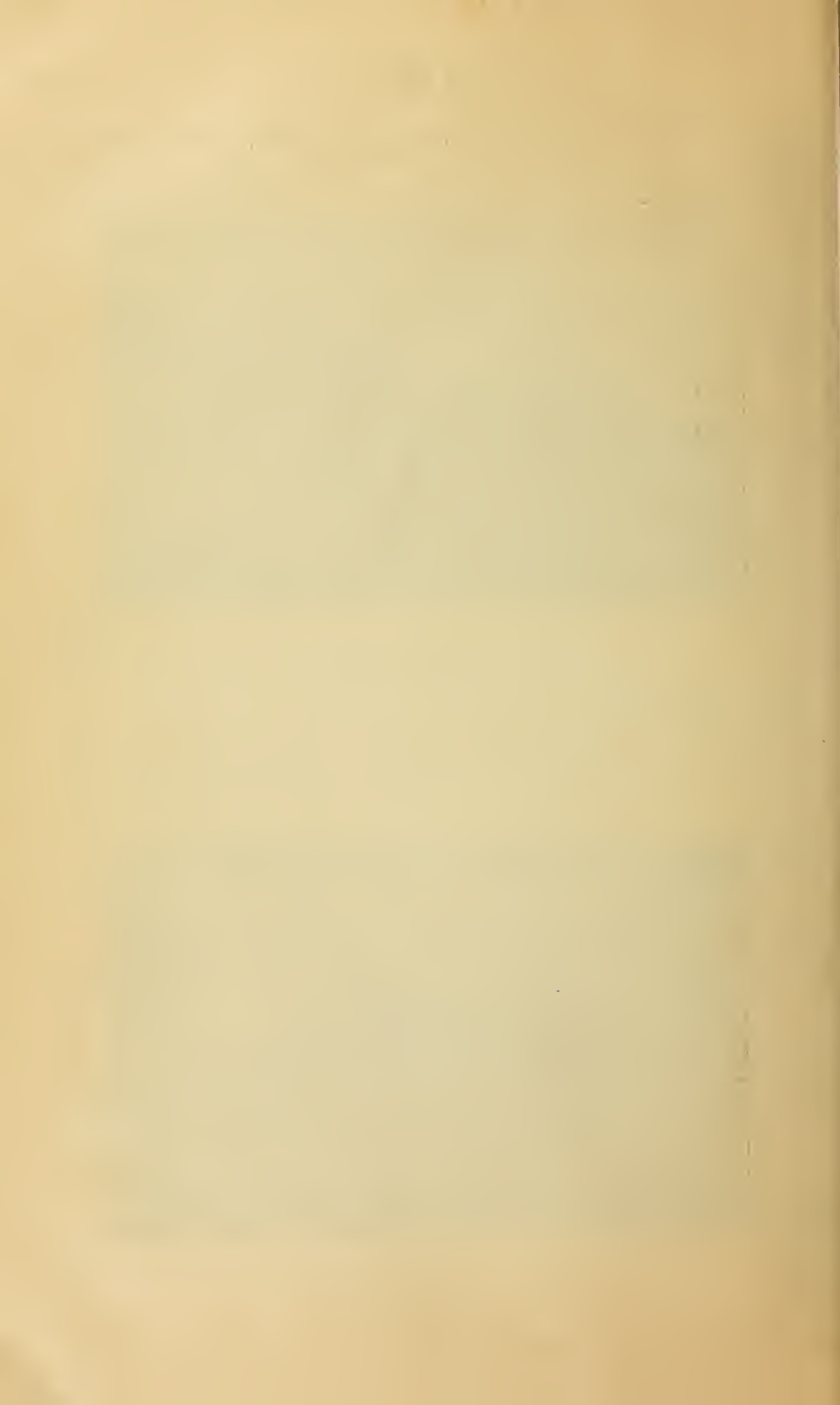
Opposite the Khalikdina Hall.



View Towards the East.



View Towards the West.



SHRI SHANKARACHARYA'S ADDRESS TO THE JURY.

After Maulvi Nisar Ahmed, Jagad Guru Shri Shankaracharya addressed the Jury. He was permitted to read his written address sitting in a chair. He said :—

1. THE FACTS.

We are in Holy Orders and recognise only one Law—the Law of Dharma (Truth, Justice and Duty)—the Law of Life—embracing, sustaining and unifying, (or at least, co-ordinating and harmonising) all the activities of life. Owing to manifold and multifarious reasons connected with our temperamental predilections, our rules of Sanyas and the methods and the character of the existing Courts of Law in the country, we cannot offer any sort of defence in the usual manner, but, in view of the momentous principles involved in this case, we are unavoidably though reluctantly—compelled to make a lengthy statement of all the facts relating to our case, so as to elucidate and clarify all the points at issue.

It was late in the afternoon of Friday the 16th September 1921 that the D. S. P. of Kaira (Gujrat), attended by a huge array of (wholly unnecessary) armed men, approached us at our (old) Head Quarters in Dakor (Gujrat) to inform us that a certain official of the C. I. D. Police Head Quarters at Poona had a warrant from the District Magistrate of Karachi for our immediate arrest on a charge, amongst others, of conspiring with Maulana Mahomed Ali of Rampur to seduce soldiers from their allegiance and their duty to the Queen ! As we had never yet had occasion to speak to soldiers or even *about* them at any place (including Karachi), the charge was naturally incomprehensible to us except on the one supposition that a speech of an actionable character under Sections 131, 505, 120B, 105 and 114 had been fabricated and ascribed to us by some obviously inventive Police brain at Karachi ! As, however, this was not a matter to be discussed with or even explained to Policemen with an arrest warrant, we said nought about it to them. But the purly religious fact was merely pointed out to them that we were just then nearing the very end of our Chaturmasya Vrata and that, Poonima having come in already, we needed but a few hours more for completing our Vishwarupa Yatra ceremony. The D. S. P.—who talked in a courteous, gentlemanly and even deferential manner—expressed his appreciation of the situation and his regret that, as he had received peremptory instruc-

tions, he was absolutely powerless and helpless in the matter. And so, (even though there was no search warrant), all our correspondence and other papers—personal as well as of the Gadi—and extending over a period of nearly 15 years—having all been rummaged, bundled up pell-mell (on account of the hurry) into a long wooden box of ours and sealed (without even an inventory of the papers being made), we were brought away from Dakore Railway Station to Drigh Road which we reached on the evening of the 18th September and whence we were duly brought over to the Karachi Central Jail.

In passing we may just mention that we were informed (by our so-called "Captors") at Dakore that we were being taken far out of the Bombay Presidency into Northern India and so on. Why, in the face of the Karachi District Magistrate's plain warrant and our actual catching of a train bound not for Delhi, but for Ahmedabad *en route* to Karachi, this wholly purposeless and incredible lie was told to us and repeated all through, we cannot understand except on Mr. Mahomed Ali's interesting, fascinating and felicitously worded theory about the "Sacred traditions of Crown prosecutions in this country" wherein, lies are loved not for utilitarian purposes but *for their own sake* !

To resume the thread of our narrative. After our arrival here, we learnt, from the Anglo-Indian Newspapers (the only ones which, until our commitment to the Sessions, the partisan bureaucracy allowed us in the jail), that the charge against us was *apropos* of our support of a Resolution of the All-India Khilafat Conference in July last at Karachi. Not knowing even a single syllable of Urdu, Sindhi and Persian wherein (barring our own two speeches and a few words of Mrs. Sarojini Naidu's) the entire proceedings of that Conference had been conducted, we had not even heard that there was any Resolution of that Conference relating to Soldiers in the Army ; and so, these newspapers did not make the position any the less mysterious or more comprehensible to us than before.

It therefore behoves us to state, at this juncture, what exactly we *did* say and do at the Conference. First there was, on the opening day, a preliminary speech of a benedictory character wherein we explained that Lord Shri Krishna's teaching of Swa-Dharma (One's own duty) was not merely for Arjun or the Pandavas or even the Hindus, but for all Sentient Creation as such ; that Manu and other Spiritual Law-Givers of the Hindus had expressly defined Swa-Dharma as that which existed

not in hostility to—but alongside of and in sympathetic and cordial amity with Para-Dharmas (others' duties) ; that the Khilafat was not a temporal but a spiritual affair entrusted by the Holy Founder of Islam into the hands of True Muslims ; that any individual who deliberately refused to obey the Prophet Mahomed might very plausibly justify himself as a freethinker, a rationalist, a scientific agnostic and so forth but could not, under such circumstances, call himself a Mahomedan and if born a Mahomedan, could only be regarded as a renegade and an apostate from Mahomed's religion ; and that we Hindus who believed in the broad-minded and universal conception of " Swa-Dharma " enjoined on us by the Lord Shri Krishna, Manu, etc., and endorsed by England too in Nelson's famous device " England expects everyman to do his Duty " we had morally no option but to sympathise with and help our Muslim brethren in their almost superhuman endeavours on behalf of their beloved Khilafat against odds tremendous and handicaps innumerable.

Owing to the difficulty caused by the great distance at which, a few miles away out of Karachi City, our quarters had been arranged for us for the sake of the conveniences and detachment preferred by us for our accommodation, worship and meditation in our orthodox Hindu style, it was about 11 a.m. the next day when we were taken to the meeting of the Subjects Committee just as it was about to close and thence to the open session of the Conference, wherein Mrs. Sarojini Naidu of Hyderabad (Deccan) began her Urdu speech with a short English preface, expressed her sympathy as a Hindu with the endeavours of Islam towards the safe-guarding of the sacred shrines of Islam as enjoined by the Prophet Mahomed and appealed to us, in our Pontifical capacity of Jagadguru Shankaracharya of the Shri Sharda-peeth, to explain the Hindu ecclesiastical position as regards the sacredness of Mecca and other holy places of Islam. And, accordingly, Dr. Saifuddin Kitchlew and others desired of us and we promised them another speech on the subject in the night sitting and we returned to our quarters immediately (that is, about 2 p.m.) for attending to some other pressing engagement we had there.

Owing to the afore-described handicap of distance that separated our quarters from the Conference Pandal, it was nearly 11 p.m. when we arrived there again, to find that the proceedings had commenced already and had gone on for some time and that Dr. Kitchlew was on his feet. On his resuming his seat near us, he reminded us of our promised speech and, while another speaker was addressing the Conference, Dr. Kitchlew

had the usual arrangement made for a chair on the platform for us to speak seated from, as required by the rules of our Order. And then Dr. Kitchlew desired us to speak on Hindu-Muslim Unity and the Khilafat and to conclude with a few words on the Angora Government.

Responding to Mrs. Sarojini Naidu's appeal to us of the afternoon, we repeated our earlier general pronouncement that, as a believer in the Doctrine of Swa-Dharma for all, every Hindu should necessarily sympathise with the Khilafat cause, and we then added that, according to the detailed account of the Final Deluge contained in the Bhavishya Puran and other Sacred Scriptures of Hinduism, the Lord would take a Colossal form, stand aloft with His feet on Benares and Mecca (the only two places which would survive the Deluge), gather together there all the Faithful of all faiths, times and climes and garner them up thence to His own bosom, thus showing that, for a Sanatani Hindu who believed in the Puranas, Mecca was—not merely for general reasons of broad-minded religious sympathy as expressed by Mrs. Sarojini Naidu, but, in the light of this positive and categorical statement on the subject,—a Sacred place like Benares ! And, on the same authority, we mentioned, too, that Adi Shri 1108 Shankaracharya (from whom we the present Jagadgurus derive our Spiritual descent and authority and on whose Pontifical throne we sit) undertook a pilgrimage to Mecca in the face of enormous difficulties caused by the ignorant and self-sufficient bigotry of the fanatics of His day, and that He had therefore to use His Supernatural Powers, assume the shape of a parrot, fly to Mecca (which, be it noted, was yet to become the birth-place of Mahomed, the last of the Prophets, but had already been singled out for the purpose) and performed Puja (worship) there with the Sacred Tulsi and the Holy Water of the Ganges from Benares !

We thus explained that Hindu-Muslim Unity was really to be based on a Spiritual foundation. We instanced the infinite and kaleidoscopic permutations and combinations amongst the Powers of Europe based on no ethical principles whatsoever but merely paying homage to their fetish (" Balance of Power "). And we also cited the example of the late Balkan War wherein Servia, Montenegro, Bulgaria and Greece formed an unholy political combination, not because they positively loved one another, but solely because of their negative bond of common hatred towards Turkey, and wherein, after they had conquered Adrianople and while Bulgaria and Greece were fighting with each other over the booty,

the Turks walked quietly back into Adrianople, practically without having to fire a shot therefor ; and we condemned all such political combinations traceable to negative causes and insisted that Hindu-Muslim Unity should stand and could last, not on the negative political basis of hatred towards Britain, but on the positive Spiritual foundation of abiding mutual *Love* without any sort of reference whatsoever to Britain (or any other third party) to account therefor.

Having thus explained the Hindu Spiritual principle underlying the Ecclesiastical support which we were giving to the Khilafat, we alluded concisely to the trials and tribulations endured by the Angora Government as the only *Temporal* power having both the will and the power to save the Khilafat and as the " real Government of Turkey " as against the " self-styled Turkish Government at Constantinople " (a fact which, we see, even the Greek Prime Minister Gounaris has, during the last few days, openly acknowledged). And we therefore bespoke for Angora the sympathy and support of all godly, nay of all humane, persons (without distinction of race or creed).

In answer to the recently put forward and edifying pseudo-ethical objections of Mr. Lloyd George and other such quick-change-artists on the score of the Khilafat dating back from the Mediaval ages only and not from times immemorial, we pointed out that even the most ancient of landed proprietorships in England to-day dated back to the conquest of England by Robert the Devil's offspring William the Conqueror in 1066 A.D. and the distribution of most of the conquered land by him amongst his camp-followers, or, at the most to the depredations and ravages committed in England by brigands and pirates, Hengist and Horsa and Co., and that Mr. Lloyd George would—logically and morally—be called upon to get Englishmen to completely evacuate not merely India but even England and retire to Jutland, Denmark, Saxony, etc., before he could expect the Khilafat to cognise and follow his opportunist and specious doctrine of Ancient Historic Origins ! Parenthetically, we would state that Rollo or Rolf or Robert the founder of the Dutchy of Normandy rejected the surnames " the good," " the great," " the magnificent," etc., and called himself " Rolf the Devil." Hence William the Conqueror was literally the off-spring of Robert the Devil.

And we concluded with a still briefer reference to Swaraj which, we said, should not be Hindu, Muslim or any other Raj but simply a Dharmic Raj conducted according to the basic principles of Justice and Righteous

ness which alone were the *sine-qua-non* and the guarantees of stability and unimpaired progress. Such a Swaraj alone was worth striving for and, like the Devas of Old who were not elated by the gems or frightened by the poison which they obtained in the course of their churning of the ocean for the sake of the Celestial Amrit (Ambrosia), we too should push on, unelated by concessions and undeterred by repression until we had churned out of the agitated ocean of Indian Politics, the Amrita of genuine Swaraj !

In connection with Swaraj we mentioned that the Nagpur Congress of 1920 had declared for Swaraj but had deliberately omitted to state whether the Swaraj it aspired to, was to be inside or outside the British Empire, because we had felt that, if we could continue as self-respecting individuals within it we would not go out of it for the mere pleasure thereof or owing to hatred of Britain, but, if Britain was foolish enough to insist on so behaving as to make our connection with her absolutely incompatible with our self-respect as Indians and even as human beings, then the Government would, by its own suicidal follies, compel the Congress to prefer "absolute independence" out of sheer and irresistible necessity ! We may state that in the memorandum on the Indian Status in the Dominions prepared by Lord Chelmsford's Government and recently published by Lord Reading's ; Lord Chelmsford too says "India sincerely wishes to remain within the Empire but only as an equal partner. Her own self-respect requires that she shall not accept any terms of inferiority."

Throughout these discourses, we followed our invariable practice of pleading for the rigorously unbiassed and dispassionate consideration of all questions solely from the view-point of Dharma and we never uttered a single syllable for, against or about the Army or the Navy. And thus it was that the charges against us were absolutely incomprehensible to us. We, therefore, naturally wondered by what mysterious process of reasoning, logical or psychological, our speeches at Karachi had got so inextricably intertwined with the Army and the Navy as to bring about our prosecution on a charge of attempting and conspiring to incite soldiers to Mutiny or to fail in their "allegiance" or "duty."

Once, indeed, in mid-May last at Ajmer, we came very near a serious affair of this sort wherein, owing to the ill-advised attempt of the Magistracy and the Police to arrest the Officiating Priest of the local Mosque and a disciple of his, *at the Mosque and during the Ramzan* and wherein

tens of thousands of armed, infuriated men surrounded the Mosque to prevent it. And we talked matters over with Mr. Gauri Shankar Bhargv tof Ajmer (at that time a Government-gagged person), Dr. Mahomed Ali Shah of Aligarh and other friends, at the earnest solicitation of the police ; and we had the people pacified by them and thus helped, in our own humble way, to avert the threatened calamity wh ch, we understood, was about to result in a tremendous collision between the Ajmer people and the Nazirabad Military forces ! Surely this successful attempt at the pacification of an excited people could not account for the present prosecution against us !

II. THE PRINCIPLES.

The only thing which, as a matter of fact, we have ever done and shall ever do in all our public lectures and our private discourses has been to impress, on our hearers, the clamant and paramount necessity for the *complete* spiritualisation of the *daily* life in *all* its activities. If it be a crime to say (as Nelson did) that every man should do his Dharma (Duty) we must certainly plead absolutely guilty to that charge and pride ourselves too thereupon ! In fact, this is our only function as Jagadguru Shankaracharya, not merely to *expect* people (as England, according to Nelson, does) to do their duty, but also to *incite* them thereto ! All people, even the most worldly, have this elementary human right of preaching Truth and Duty as the predominant factors in all life ; but a Sanyasi who has renounced the world, who owes no allegiance to anything worldly, who is bound only by and to Dharma, who has to practise it during all the waking hours of his life and who, particularly as a Jagadguru, has no other function than the preaching of Dharma to all according to their Adhikara—such an individual has not merely the right, privilege or prerogative but the *binding duty and unshirkable responsibility* of incessantly preaching Dharma as his only task in life. And as, according to the dictates of the Hindu, Islamic, Hebrew, Christian, Parsi and other religions, Dharma is as illimitable in its jurisdiction as God Himself, *we* have the duty of preaching Dharma to the world in *all* the aspects of life (not excluding even the “ secular”). If and when earnest and enquiring souls seek our spiritual guidance on a political, social, industrial, economic or other so-called “ temporal ” question, we can no more shirk our Duty of honestly and conscientiously enunciating, interpreting, preaching, adumbrating and *even inciting to the practice of* the Dharma on such a question, than we can with regard to purely ceremonial matters relating to prayers, worship, marriage, funeral obsequies and so on.

An "Acharya" has, in fact, been defined in our Sacred Literature as one whose only business it is to practise his own personal and individual Dharma, and; by every means in his power, *make* others practise theirs.

From this point of view, no department of life is too sacrosanct to escape *our* jurisdiction and we are therefore called upon to shoulder the (often unpleasant) task of preaching the Raj Dharma and the Praja Dharma. Unfortunately, to many people all the wide world over, fulsome flattery is more acceptable than wholesome advice; and if, therefore, in the conscientious performance of our Dharma of Dharmopadesh without any regard to personalities, races and feelings but solely as our unshirkable Religious Duty, we give offence to the Raj or the Praja or even both and are called upon to bear the consequences thereof in the shape of personal suffering, we ought to and do take it all cheerfully *as part of the game*.

Unswerving allegiance to Dharma and Truth has always—in Sacred as well as in profane History—entailed enormous suffering and claimed terrible sacrifices. The true man of God has always had to suffer indescribable torture, not merely at the hands of godless worldly officials but even alas ! at those of really godless official "Ecclesiastics" ! Oh ! what hideous crimes and fell atrocities have not been perpetrated against really inoffensive people in the sacred names of Peace and Order on the one hand and of God and Religion on the other !

Taking the Praja-side first, we may frankly mention that there are some vital points whereon we too (like Hazrath Maulana Abdul Bari, Dr. Rabindranath Tagore, Mr. C. F. Andrews, Mr. Jayakar, etc.,) have not been able to see eye to eye with Mr. Gandhi and other leading Congressmen. For example, while enthusiastically desirous of and actually inciting to India's economic uplift and independence and while cheerfully recognising, blessing and advocating the Spinning Wheel as the eloquent emblem thereof, we have not—even after reading and several times re-reading Mr. Gandhi's reply to Mr. Andrews—been able to approve of the indiscriminate burning of foreign cloth which India has already paid Manchester and other places for ! The sending of it to sufferers in Smyrna or elsewhere we can and do cordially agree to ; but the burning of it all is simply revolting to us and our conceptions of positive and constructive methods afore-explained. And, in our discourses and lectures at Dakor and elsewhere, we have been stating such facts candidly and have even written to Mr. Gandhi about them freely. If, by so doing, we stand to

incur the displeasure or dissatisfaction of this or that Congressman, we simply cannot help it and we cannot, on any such account, cease from conscientiously explaining the Truth as we ourselves honestly understand it.

And if, secondly, by our placing of Dharma thus on the highest pedestal, we come into conflict with a Government that places crooked diplomacy above the straightforward Dharma and selfish policy above impartial justice, and if we find ourselves clapped into jail in consequence thereof, even then we have absolutely nothing to regret ! Surely, prison life *earned as the wages of the Dharma* is no Disgrace ! Sacred history tells us that the Lord Shri Krishna (whom millions of devout Hindus worship even to-day) was born in Jail and was concealed, so to say, in Gokul for years from the tyrant Kansa ; that Adi Shri 1108 Shankaracharya (our own Spiritual Progenitor) stood thrice in deadly peril on account of his Dharmic preachings and was rescued twice by His disciple Shri 1108 Padmapada Acharya and once by direct Divine Interposition ; that the Holy Prophet of Arabia similarly underwent enormous persecution ; that Joseph the favourite son of Israel was imprisoned for refusing to commit adultery with Potiphar's wife ; that the Hebrews under Aaron and Moses were oppressed by the Egyptians for desiring to perform a religious sacrifice in the wilderness to their Jehovah ; that John the Baptist was imprisoned and beheaded for condemning the Tetrarch Herod's incest with his own brother Philip's wife Herodias ; that Jesus Christ the Prince of Peace (the supposed "Lord Master" and "Saviour") of the Western world to-day) was first concealed in Egypt for years from Herod and was finally condemned by Pontius Pilate *to wear the crown of thorns and bear the cross of shame* on Calvary as a traitor to Rome, simply because He preached to the Jews the Kingdom of God ; and that as for the Jews (to which Europe-persecuted unhappy eastern race, England's present Viceroy of and Secretary of State for India both belong), the stoning and otherwise maltreating and murdering of the prophets of Jehovah was almost the daily routine, pastime and recreation of later day Israel and, (according to the heart-rending but bootless lamentations of Isaiah, Jeremiah, Ezekiel, Daniel, Hosea, Joel, Amos, Obadiah, Jonah, Micah, Nahum, Habukkuk, Zephaniah, Haggai, Zechariah and Malachi—12 the four major and minor prophets of Israel, was solely responsible for the political annihilation and final scattering up of Jehovah's own chosen people ! There is nothing therefore to be ashamed of in prison life or any so-called "punishment" meted out by bloated temporal might to humble Spiritual Right !

Even from the worldly standpoint of public reputation and disgrace (which a Sanyasi, however, has no business to worry about), we notice that Lala Harkishinlal who was condemned as a traitor to the King and had his entire property confiscated under the Chelmsford—O'Dwyer administration is now the trusted Minister of the Punjab under the Reading—Maclagan rule and Lord Reading is inexpressibly enamoured of and publicly eulogises his brilliant sense of humour: and that, in spite of Mrs. Besant's denunciations of Mr. Gandhi and the Non-Co-operation programme of the Congress with greater virulence than the Government's, we here (in the Karachi Central Jail) have been having the instructive and interesting experience that, since our committal to the Sessions, even Nationalist papers of the ultra Non-co-operationist type of the "Bombay Chronicle" are being allowed to us but poor Mrs. Besant's "New India" alone is bracketted with Mr. Gandhi's "Young India" and proscribed! With such experiences (especially like Lala Harkishinla's) about the value to be attached to the encomiums or the prosecutions emanating from our Imperial and Provincial Governments, we wonder if there is to-day even a single benighted soul in all India (or elsewhere) who will infer credit or discredit to us, merely from any such action on the part of such an utterly discredited and disreputable administration!

No one compelled us to don the safron robe of Sanyas. On the other hand it was we that voluntarily sought it and—after 16 years of weary longing—finally accepted the long longed for life of renunciation. And the heart and the quintessence of Renunciation consists in the performance of our allotted Dharma in absolute disregard of happiness and misery, profit and loss, victory and defeat! At the time of taking Sanyas, we (Sanyasis) —with appropriate Mantras full of deep spiritual import and beauty—formally renounce the whole world (including father and mother, wife and children, land and lucre and even temporal governments and national congresses) and we swear eternal and indivisible allegiance to our only Lord and Master, to wit, the "Everlasting Yea" of Carlyle! and so, in accordance with that pledge of Sanyas we have no option but to speak out the Truth and preach the Dharma without fear or favour.

And as for the loss of personal liberty, which prison life entails, we believe in the Vedantic teaching that correct knowledge of and undeviating adherence to the Truth alone leads to final Liberation. The Lord Jesus Christ too said (St. John's Gospel VIII 32): "Ye shall know the Truth and the Truth shall make you free." And so, as Tiresia's the blind

Greek Seer (in Sophocles' Drama) said to (king) Oedipus Tyrannus of Thebes, we have in us the strength of Truth which has *already* given us the highest and truest liberty conceivable whatever may be our petty physical restrictions of the moment. And, after all, is not this world itself a huge prison and our bodies the prison-cells which our Divine Spirits are all locked up in and restricted by? Well and truly did the poet sing :—

“Stone walls do not a prison make”

Nor iron bars a cage.”

Many people may look askance at this doctrine of Truth and Sanyas as being of the obstinate and fanatical nature of Mediaeval Ecclesiaticism which, during the reign of King Henry the II (of Anjou) in England, cost that so called “turbulent priest” St. Thomas a Becket of Canterbury his life and put him to suffering at the hands of cruel assassins. But we need only answer and say that, to those who have realised that ineffable and inexhaustible Joy which is the inherent internal characteristic of the Soul, which does not and cannot need any sort of external enjoyment for its upkeep and maintenance, and whose incomparable and imperishable Effulgence, no external pains can ever avail to cloud off—to us, hatred, and fear and sorrow and worry and even doubt are, utterly and in the very nature of things, ABSOLUTELY IMPOSSIBLE.

If then, we should and do speak the Truth and preach the Dharma as a Religious Duty of ours, which we cannot possibly shirk, what should be and are our frame of mind and our object therein? Our frame of mind is one of absolutely dispassionate performance of Duty; and our object is merely the lasting uplift of all concerned and *particularly those whom we condemn*! Or, in other words, it is all Love and no hatred. Just as a parent or a doctor advises a child or a patient what to do, and what to shun, not because of hatred, but solely because of Love, and just as the prophets of Israel spoke with their hearts bleeding at the criminal and suicidal follies of Israel and solely for the uplift of Israel; and particularly as the prophet Samuel in the very act of denouncing and rejecting King Saul as ordered by Jehovah is pathetically said to have “mourned” long for Saul; so too, have we this unpleasant duty of preaching the Raj Dharma and the Praja Dharma to the Raj and the Praja *for their own good*! As the Apostle puts it, “Whom the Lord loveth, He chasteneth”; and we too have to follow God’s example and method, and whom we love, we have to rebuke! Personally it makes no difference to us in the least and

yet it is our bounden duty to remind all, *for their own sakes*, of the terrible words "Vengeance is mine" saith the Lord,—and rescue them, if we can from the coming, nay imminent, consuming wrath of God !

We remember to-day, quite vividly, the touching incident at Benares Session of the Indian National Congress in December 1905 wherein, after the deliberations were all over and the usual vote of thanks to the President (the late Mr. Gokhale) had been spoken on by some Indian speakers, the late Miss Margaret Noble rose to thank Mr. Gokhale *not* (as the others had done) for his great political services to India, but for his still greater spiritual services to England in trying to make England just, and thus *saving her from herself* ! For, as the Tamil Poet pithily puts it, *It is the tears of the oppressed—not the hostile armies—that undermine the thrones of mighty monarchs* ! And so, Miss Noble nobly regarded Mr. Gokhale as really greater benefactor to England than to India ! It is in this spirit and with this outlook that we who place Dharma and Justice above diplomacy and state-craft have got to and do labour.

If, however, the patient or the child will not merely refuse to profit by the salutary—though perhaps often times (physically or mentally) bitter-medicines or advice of the doctor or the parent, but will even assault the latter therefore it is no disgrace to the latter but untold suffering to the former, that will really ensue therefrom ! And so, even as Amaziah the officially appointed "High Priest" of Bethel (the House of God) himself endeavoured and also instigated Jeroboam II. (the foolish son of Joash and King of Israel) to gag Amos the true Prophet of Jehovah from carrying Jehovah's message of uplift to the King and to the people and it all turned ultimately detrimental not to Amos the stern Truth speaker but to Jeroboam the momentary-pleasure-seeker and to Amaziah and the false-praise-giver ; so too, if self-advertised and officially favoured "religious" individuals and mandals in India (whom we need not name here) will not merely wink or connive at ignorant blunders of the Raj or the Praja or both (which will be bad enough, in all conscience) but, like Amaziah or (Caiaphas) fawn on, flatter and instigate either against those whose only function is the preaching of Dharma as commanded by the Lord Almighty, surely it cannot hurt the latter but will only recoil boomerang-like and redound to the infinite and irrevocable injury of the flattering instigator and the duped instigated ! Nor can we, any more than the Prophet Amos, refrain on any such account or at any body's bidding from our God-ordained Duty of Dharmopadesha !

III. THE CHARGES

With this exposition of these general principles of our Dharma as a Jagadguru and its bearing on the affairs even of so-called "secular" life and with a reiteration of our absolute innocence of any attempt or conspiracy to tamper with the loyalty of soldiers, we had indeed, at first, actually concluded our statement. But, we subsequently learnt, from Professor Vaswani of Karachi (the first Karachi Gentleman who Visited us here in jail) that the Resolution of the Conference did actually contain a reference to Muslim Sepoys and declared it *Haram* for any Muslim to continue any longer in the Army. And therefore, it has become necessary for us to add to this statement considerably.

But we must first formally repeat that we knew nothing of any such item on the programme, were not called upon to and did not, in fact, say even a word on it and cannot therefore be charged with any offence under Sections 131 or 505 or 120B. For, if mere presence at the meeting (without understanding even a single syllable of the proceedings) could suffice to make *us* guilty, much more therefore—to use an Euclidian expression—should it have that effect in the case of all the thousands who attended the Conference, *understood* all the proceedings and voted deliberately, enthusiastically and unanimously therefor ! Or, in other words, the whole Conference should have been declared "an unlawful assembly" and hauled up under the sweeping embrace of section 149 I.P.C. We, however, notice that this is not the Government's position.

It is remarkable that the warrant against us personally —*i.e.* the sixth accused in this case—as copied by one of our pupils at Dakore and also by the Jail Superintendent at Karachi—singled us out for the honour of a charge under Section 105 I.P.C. (relating to or arising out of, murder in self-defence) ! We are not aware of even yet having had the pleasure and the privilege of even the remotest connection with a case of murder, *not even* be it noted, *as the murdered person* ! The only murders we can plead guilty to are of Adharma (unrighteousness) in all its forms ; but we are not aware of any section of the Indian Penal (or any other) Code which we can be tried under, for that glorious offence and even if there should be any such section, unknown to us, somewhere, we would fervently bespeak the Courts' consideration for the fact that the very continuance, undeterred, of such unjust prosecutions (as ours) prove that injustice has not died out of the world yet, and that, the utmost

charge against us, therefore, can only be of an attempt at, not the actual perpetration of, murder (of injustice) ! As, however, this mention of section 105 against us has subsequently been declared to be an error, we render hearty thanks for this small mercy and pass on to the next section *i.e.* 120 B (Conspiracy) !

Hereon we have to say that, unlike Maulana Mahomedali who, in the crowded Kanyashala had at least his heavy breathing brother to "conspire" with at mid-night (in the derivative sense of that term, *i.e.* breathing together) we in our spacious quarters miles away out of the city, had only three boy pupils and our cook with us for the whole building, slept altogether alone, and could therefore have been guilty only of mid-night *Unispiracy* (breathing alone) for which, however, two new sections (say 120 C and 120 D), defining the offence and the punishment have yet to be manufactured and incorporated into the Indian Penal Code, pending which we have necessarily and helplessly to deny ourselves the pleasure, the privilege and the honour of pleading guilty on this charge too !

And then again, whereas, according to the elementary common sense and the rudiments of the English Language as well as the open admissions and the tacit implication of the Indian Penal Code itself, it is the very essence of Conspiracy that the "conspirators" conspire secretly, it strikes us forcibly that a charge admittedly arising out of a Resolution which was *unanimously* passed at a *public* Sessions of an *All-India* Conference, which had been openly foreshadowed and promised by the special as well as the normal sessions of the Indian National Congress at Calcutta and Nagpur in September and December 1920, which Mr. Gandhi is now said to be regretting he had not been present in Karachi, in July 1921, to support and which, we understand, is now being passed by all the Congress Committees and Khilafat Committees all over India—surely such a charge cannot, by any intelligible intellectual process (however far fetched), be brought under section 120B I.P.C. (conspiracy) ! And we cannot, therefore, help feeling that the charge that has actually been brought against us thereunder is simply too preposterous to be tenable even from the merely legal point of view and that any attempt even under section 149 (the only one that can possibly apply), to extinguish the Zeit-Coist in bound, under these circumstances, to be futile as King Canute's command to the waves of the sea !

Passing on to the main charges, *i.e.* those under sections 131 and 505 I.P.C. we have to place emphatically and indelibly on record, our

wonder that even if we had had no temperamental, religious or political objections, even if we had been co-operators (which, thank God, we are not) with a government whose wholly original and inimitably brilliant conception of "co-operation" is that we should bow and agree to everything they say and do or, at the most, should become members of the Mutual Administration Society and beg with folded hands and with fulsome flattery for this or that elementary right (including even the right to perform our Religious Duties) as though it were a mighty condescension and a celestial favour and even if we had been desirous and prepared to defend ourselves in the usual manner, we personally (*i.e.* the 6th accused in this case) have found absolutely nothing in the whole prosecution evidence or argument before the Committing Magistrate to base a single cross-examination on, or to defend ourselves against! Not a jot or tittle vestige or shred, of evidence was presented before the Magisterial Court of Enquiry, to the effect that we ever uttered a single syllable anywhere about the Army or the Navy or alluded by name or even by implication thereto! Beyond an allusion to our arrival at Karachi on 7th July, the Reception given to us at the station by the people of Karachi, our procession through the city and the fact that we made our (second) speech at the Conference, the entire prosecution evidence has, consistently and persistently refused to do us the honour, of even a casual reference to us or our residence, let alone any sort of proof that we ever spoke on the Army question at all. The most eloquent, convincing and clinching proof of the truth of this contention of ours was furnished by the significant fact that the prosecution witnesses and the resourceful Counsel for the Crown and even the committal order merely referred to our speech and did not file or quote from any report thereof, or extract therefrom as an exhibit, for the very simple reason that the speech actually contained no reference whatsoever to the Army and so could not possibly justify the unrighteous attempt of the government to connect us with sections 131 and 505.

Looking carefully into the depositions of all the various witnesses who were trotted forth one after another in the Lower Court as C I D. reporters or as Press reporters who had been present at the Conference we note, that, in the case of every one of them, the learned Counsel for the Crown had with reference to the speeches of all (but ourselves and Fir Saheb)—his stereotyped and unvarying series of questions as to who the speaker was, what language he spoke in, whether the witness had taken correct short hand notes of the speech whether he was expert therein,

whether the notes contained only what the speaker had actually stated and whether a long hand transcript had been prepared from the shorthand report and the witness was then made to produce and file the longhand transcript as an exhibit; but when each witness came to *our* speech, Mr. Elphinston merely elicited the simple statement that we spoke next and that we spoke in English but, without putting the usual further series of questions about shorthand notes and longhand transcripts and so on, he invariably and precipitately—as if he were treading on hot coals—*decamped* to the next speaker ! We solemnly contend that this was solely and simply because the filing of our speech and an analysis of its contents would certainly have had the effect of not merely failing to prove our partnership in the alleged conspiracy in respect of the Army but of positively proving the exact contrary with logically, scientifically and even geometrically irresistible precision ?

Add to this the facts mentioned, at the very outset, that we did not cross-examine the Crown witnesses and that all our papers of over 15 years past had been illegally attached by the Police and brought over to Karachi and yet, not an atom or even an electron of evidence has been forthcoming to substantiate this nebulous charge against us ! The inference is—under the circumstances—irresistible that the prosecution has not had the elementary honesty and rudimentary manliness to state even once candidly, even at the final argument stage, what it actually knew all the time, *i.e.*, that our speech contained absolutely nothing about the Army and that the whole head and front of our crime, in the eyes of the Government, was really that we had been present at the Khilafat Conference and had expressed our Religious sympathy with Islam, the Khilafat and the Angora Government (which the Government of India, too, has, all the time, been obstreperously expressing its lip-sympathy for and theatrically shedding its crocodile tears over) !

We need not content ourselves, however, with this argument from silence, *i.e.* the negative inference (however obvious) from this deliberate, consistent and ingenious act of omission on the part of the Prosecution. We can go further and call attention to the positive tell-tale fact that the reports of the Conference in the Nationalist "New Times" and even the Anglo-Indian "Daily Gazette" (both of Karachi) which were actually filed by the prosecution in connection with the speeches of the others and which happily, contain a report of our speech too, *amply suffice by themselves* to bear out, sustain and prove our contention that we never spoke about the Army !

In passing, we would just call to mind the fact that the C. I. D. witnesses stated that the whole assembly (*including themselves*) stood up and passed the Resolution! And hence the inclusion of Maulana Shaukat Ali! We would modify that statement with the fact that, as required by the rules of our Order, *we alone continued sitting at all times!* If Maulana Shaukat Ali could be hauled up for merely standing up when the Resolution was being passed, what about the C. I. D. men who *understood* the meaning of the Resolution (as we alone did not) and who too, *on their own showing*, stood up to signify their support of and assent to the Resolution! This merely in passing.

The Counsel for the Crown referred pompously, in his argument, in the Lower Court to our arrival at Karachi and the fact of our having spoken, as "proofs" (!!) of our participation in that fictitious conspiracy! Now supposing, for a moment, just for argument's sake, that we had *opposed* the Resolution *in toto* or dissented from parts thereof, would our mere presence and speech inculcate us? Or, would it be necessary to go into the contents of our speech? And why, but for the consciousness of utter futility, did he fail to ask his legion of witnesses a single question thereon, to argue thereon and even to file our speech as an exhibit in the case!

IV. THE STAB FROM BEHIND.

It is evidently this utter bankruptcy with regard to relevant evidence against us actually before the Court that accounts for the Government's indefensible out-of-court proceedings against us in the shape of communiques, circulars, etc., calculated to prejudice the minds of the judges and the unknowing, undiscerning and unthinking public against us personally by means of the unscrupulously libellous allegation that we are *not* the Jaggadguru Shankaracharya of the Sharda Peeth but only an *Impostor*! Unlike the Government which has shown itself so miserably and terribly lacking in scrupulous adhesion to the fundamentally requisite judicial attitude which alone is worthy of it in Criminal prosecution, civil litigation and private controversies *we* cannot forget that the present case is concerned not with the Sharda Peeth Gadi but only with our speech at the Khilafat Conference of July last in Karachi. And therefore we shall not refer to the Peeth affairs, over and beyond what inevitably arises out of the Government's own underhand efforts against us in connection with and as a sort of collateral security and prop for the grave criminal prosecution which they have baselessly and basely launched against us!

We need merely state that His Holiness Swami Shri 1108 Trivikram Tirathji Maharaj (the late Shankaracharya of the Sharda Peeth), recognised as such by Their Holiness the Shankaracharyas of Puri, Shringeri, Kumbhakonam, etc., the Maharaja of Kashmir, Dhurbhanga, Kathiawar etc., and all the religious associations all over the country like the U. P. Dharma Rakhshana Sabha, The Bharat Dharma Mahamandal, etc., initiated us on the 4th July 1919 at Benares as His Pata shishya (Successor-designate), that we officiated for Him (during His illness and debility from March 1920 to December 1920 ; that He formally invested us in December 1920 with the full powers and the authority of a Shankaracharya and that on the 27th February 1921 at Jasdan, in the presence and with the co-operation of the officials of the Jasdan State and of Mr. K. J. Bakshi of Rajkot (Ex-Administrator of Porbunder State and Ex-Chief-Justice of Junagadh State) and with the Vedic ceremony of Pattabhisheka (Coronation) enjoined in the Shastras, His Holiness *with His own Holy Hands* installed us on the Peeth as Jagadguru Shankaracharya and retired therefrom for a quiet literary life. His Holiness is, happily, still in the flesh and can substantiate all these statements. So can Mr. Bakshi of Rajkot and the Jasdan State authorities. Mr. Bakshi gave telegraphic information about the installation to all the Shankaracharyas, the Maharajas, the Mahamandals, etc., and the Press; while the Chief Magistrate of Jasdan State gave a detailed report of the same to the newspapers. Our connection with the Sharda Peeth is thus securely based on the impregnable rock-foundation of our direct and immediate Spiritual descent from and public Installation by the late Shankaracharya Himself and is thus—both morally and legally—as unimpeachable and binding as the anointing of Aaron by Moses or the anointing of King David by the Prophet Samuel or the appointment of Lord Reading by His Majesty King George V to the Viceroyalty of India ! The fact that, for their own subterranean political and personal reasons, the Government of India and Bombay dislike the choice, can no more do away with the moral and legal fact of our Shankaracharyaship or invalidate it, than can the anti-Reading fulminations of some anti-semitic journalistic firebrands of England, do away with the fact of Lord Reading's appointment or invalidate it !

We may add that we have received from our Shri Guru Swami and are using the images, gold and silver maces, chhatras, chamaras and other regal emblems and paraphernalia and Shawls, laces, Silks, etc., presented to Him by the present Shankaracharyas of Puri and Shringar and the Maharaja of Idur, the Maharani of Singahi, etc., and that we

have ourselves received similar offerings from the Maharajah Holkar of Indore, and the Maharajah of Dewas (junior) in recognition of our Shankaracharyaship and have actually been worshipped by them, as such with flowers, etc., in the orthodox Hindu style (without any reference to our political complexion).

We may also mention that *all* the people of Dakore (our old Peeth Headquarters) recognise us as the Shankaracharya of the Sharada Peeth, that even the (Government) Educational Inspectors, etc., performed our Pada Poojah (*i.e.* worshipped our feet with flowers, etc., and the ritual followed by orthodox Hindus) that the Kaira District Police (from the European D. S. P. to the Gujrati Sub-Inspector) also recognise us (as exemplified in their reference to us—*even after our arrest*—in the Panchnama connected with our box of papers—as Shri Shankaracharya *without our name*) and that, if a referendum be taken today at Dakore (80 p.c. of the people being orthodox Hindus, who have never dreamt of politics, 15 p.c. being co-operators and 5 p.c. being non-co-operators) the votes of persons recognising us as the real Jagad Guru will be found to be exactly 100 p.c. no more, no less !!!

We are thus not a “political” Shankaracharya brought forward for their own purposes by the Congressmen and the Khilafatists, but the actual Shankaracharya of the Sharda Peeth, recognised and worshipped as such by hundreds of thousands of wholly non-political and even anti-political orthodox Hindus at Dakore and all over the country. In this connection it is interesting to mention that Mr. K. J. Bakshi of Rajkot (afore described) is sharply divided from us in politics and that Pandit Brijnath Sharga, M.A., LL.B., of the U.P. Dharma Rakshan Sabha, is the Secretary of the Lucknow Aman Sabha and the author of some anti-non-co-operation handbooks ; and yet, being, unlike the governments of India and Bombay, of a judicial frame of mind and of a Truth-loving disposition, and consequently, constitutionally incapable of any attempt at the suppression of the Truth under any sort of *camouflage* for personal, political or party-purposes, both of them recognise and venerate us as their Shankaracharya and discuss all such political or other controversial matters with us freely, frankly and fully. And we also find that in the recent monster meeting of the Orthodox Hindus of Lucknow to protest against the Government’s false circulars about our “imposture,” it was P. Brijnath Sharga who moved the principal Resolution of protest against such misrepresentations; and that, as a result of this sacriligious action of the

Government against us, the Orthodox people of Lucknow who were co-operators or indifferent so far, have now become Non-Co-operators!! And only one dissented!!

When, however, at the end of our tour in the Punjab in April and May 1921, a pair of solicitors wrote a letter from Bombay to the D. S. P. of Amritsar that the real Shankaracharya of the Sharada Peeth was not we, but a certain client of theirs (into whose name, qualifications, etc., we need not now go, but of whom it would suffice, for our present purpose, to state that he is illiterate, that he is not spiritually connected with the Peeth that he was not recognised (as against our Shri Guruswamiji) by a single Dharmacharya, a single Maharaja or a single Dharmic Association and that ever since Shri Madhava Teerthji (*our Predecessor's Predecessor*) passed away exactly five years ago, he has been a claimant to our Peeth in the Civil Courts of Ahmedabad and Bombay and yet, in spite too of our refraining *on principle* from all participation in that litigation, he is no nearer the Peeth to-day than he was when he began this bootless business imagine the Punjab Government (which had had the worst of it in it, tussle with us at Amritsar, in its unrighteous endeavours to gag us from lecturing on "Dharma") descending to the melancholy meanness and the malignant vindictiveness of issuing the solicitors' private letter as an "Official Communiqué" of its own and advertising it all over the country by means of a telegraphic reproduction of it to all the papers from Simla through that Government tool, the utterly partisan Associated Press! Surely, when an individual who has failed ignominiously on all sides (including the Civil Courts and his "*own*" place Dakore) is foolish enough to write privately in this manner to the Government, the Magistrates, the Police, etc., about his claims—relating to and determinable solely by Ecclesiastical Hindu Law, the Government—if it had not been wickedly blinded to all sense of judicial impartiality and dignity and self-respect by its partisan political prejudices—would (as it should) have unhesitatingly thrown such letters into the waste-paper basket or, at the most, referred the correspondent to a duly constituted Ecclesiastical Court having jurisdiction over the affair in question! And yet, on account of its spite and hatred against us, the Government was mean enough and vindictive enough to take sides openly, flagrantly and shamelessly on such a purely Ecclesiastical question and to issue an Official Communiqué thereon with the sole object of discrediting us all over India in general and in the Punjab in particular! We wonder, however, whether there

was even a single individual anywhere who was really hoodwinked by and could not see clearly through, such transparently shady tactics !

Then came the disgraceful incident at Dakore wherein, when the authorities of Shri Runchhodji's temple (the most famous place of pilgrimage in all Gujrat) arranged, (as usual in the case of every new Shankaracharya of the Sharada Peeth, on his first visit to Dakore), to present us with a palanquin, shawls, laces, silks, etc., in recognition of our Shankaracharyaship, the Bombay Government had the shameless effrontery—at the suggestion of our unmentionable rival-claimant—to bring tremendous pressure to bear upon the poor old orthodox servants at the temple, by means of threats of all sorts, to prevent the function from materialising—an attempt which the local officials, under orders from above, kept up for three days and three nights in succession, but which, alas ! owing to the impossibility of bamboozling the honest and enthusiastic people (however, old, old-fashioned, orthodox, and ignorant) at the old Headquarters of the Peeth, ended in unalloyed discomfiture to the Government and its new ally, adding no doubt to its and his fierce hatred of us !

And thus, having, in pursuance of its well-known policy of "Divide and Rule" euphemistically called the "Balance of Power," pitched upon and secured an ally and a tool in the shape of a counter-claimant to our Peeth whom it could conveniently play off in its sordid intrigues against us and who possesses an excellent passport for the Government favour, *i.e.* that he denounces the Congress "lock, stock and barrel," the Government has now had the temerity to arrest us on an absolutely false charge, *knowing* it to be false, having no evidence whatsoever to adduce and yet relying doubtless on our reputed "Non-co-operation" principles to pull it through ! We verily believe that, if the Government had only unearthed and secured this ally and tool *before* our Punjab tour, it would very probably have shot us down (with Dr. Kitchlew, Mr. Girdharlal, Dr. Satyapal, etc.,) at Amritsar (*as it actually threatened and prepared to do*) and created a second edition of the Jallianwalla Bagh !

But, as a general rule, the blustering bully is really *at heart* a craven coward and so it is that we find this blustering "Government" first arresting us and then cowardly stooping (1) to the suppression (as long as possible) of the news of our arrest, (2) to the hood-winking of the public

on the matter by including us (in the Bombay "Government Communique") under the heading "others" after the Ali Brothers,(3) to describing us, in our warrant and elsewhere (when the name had at last to be published and could be concealed no longer), as "Venkatram *alias* Bharati Krishna Teerth" without the term Shankaracharya, thereby deliberately cheating the hundred of thousands of Hindus and others who know and venerate us as the Shankaracharya but have never even heard our correct name, (4) to the issuing of an Official Communique from Simla describing us as "a Hindu who calls himself Shri Shankaracharya" (as though Hinduism were incompatible with and a disqualification for, the Shankaracharyaship) and thus by suppressing *our* name alone, keeping up the mystification of the public as to our actual personality and correct identity, (5) to the publishing at Bombay of an Official Communique by the Official Fabricator and or Propagator of Mis-information ironically or euphemistically termed the "Director of Information," to the absurd effect that, whereas there were rumours about the Shankaracharya of the Sharada Peeth having been arrested and taken to Karachi for trial, "the person actually arrested is one Venkataram *alias* Bharati Krishna Teerth who has assumed that title!" (6) to the publication of the same sorry stuff in the "Sindh Official Gazette" from Government House, Karachi, on 23-9-1921 as Press Note No. 828 ; and (7) to the issuing of a Circular to the Karachi public in similar terms by Mr. W. W. Smart, the *smart* District Magistrate of Karachi, all harmoniously woven together so as to make Truth and Dharma *Smart* and bleed under the iron rods of Falsehood and Adharma ! Here again we wonder if all this crooked and elaborate hoodwinking campaign really succeeded in throwing dust even into one individual's eye or was, in reality, utterly wasted !

The veriest Tyro in Indian Religious technique knows that, while an English Commoner on being raised to the peerage has the liberty to and does often voluntarily, *assume* a new name, a Hindu on entering Holy Orders has not the liberty to, but must necessarily and as a religious rule—discard the old name, and, not *assume* but, *accept* the name newly conferred on him by his Guru (Spiritual Preceptor) in accordance with the rules elaborately laid down for this purpose in the Hindu Scriptures ! Thus, whereas Sir Rufus Isaac had the liberty to and actually did *assume* the name Lord Reading, Prof. Venkata Raman Saraswati on taking Sanyas (which, however, was on the 4th of July 1919 and not somewhere in 1916 as a lying message of the Associated Press gravely announced) had not the liberty to *assume*, but had perforce to and did

therefore *accept* the new name Swami Shri Bharati Krishna Teerth bestowed on him by his Guru ! Under these circumstances, it must be obvious that, to speak of us as "One Venkataram *alias* Bharati Krishna Teerth, a Hindu who calls himself (or has assumed the title) Shri Shankaracharya" is no less reprehensible than to speak of "one Rufus *alias* Reading, a Jew who calls himself (or has assumed the title,) Viceroy of India" ! And yet, such is the *exact* and mathematically identical course pursued by the supposed responsible and dignified Governments of India and Bombay in our case ! And to speak of us (as several prosecution witnesses and even Mr. Elphinston did) as "Venkataram" (which was not even our Purvashram name of our childhood) can only be compared to the describing of Mr. T. G. Elphinston as Tommy ! And, as in duty bound, the *Daily Gazette* and other Anglo-Indian newspapers have all faithfully published all such inane rot with the big-type Scare-heading "Aliases of an arrested Man !" and so on, all insidiously calculated to bias against us the minds of the people on the one hand and of the poor magistrates and judges who—whether Indian or non-Indian by birth—live, move and have their being in Government Communiques and Anglo-Indian newspapers !

If the Government had itself really believed this nauseating nonsense and gratuitous fiction about our being an "imposter" or if it had been an honest and manly Government, it should and would have openly prosecuted us for cheating, false personification, etc., and not dealt us this dastardly stab from behind in connection with another charge altogether !

The worst part of this famous conduct and conspiracy is yet to be laid bare. Not content with issuing these Communiques and Circulars with a view to cheat the public and to prejudice the Courts, the Government has also approached the Courts directly and sought to influence them. The aforementioned lying Press Note No. 828 of the "Sind Official Gazette" denying our Shankaracharyaship was sent in to find a place in the records of the committing Magistrate as special Exhibit B. in the case. And to make assurances doubly sure, there is also a telegram from the Assistant Commissioner of Sind against us *to the Court* through the District Magistrate of Karachi !

In this connection we are reminded of a recent civil case connected with our Gadi (into details thereof we need not now go) wherein the British Resident at Baroda wrote privately to the District Judge of

Ahmedabad to pronounce Judgment in favour of a certain party and Justices Heaton and Shah of the Bombay High Court were shocked at this letter which they saw amongst the records before them and animadverted in strong terms on the nefarious conduct of the British Resident at Baroda in thus endeavouring to influence and corrupt the even course of justice in a British Indian Court of Law ! We should like to know if there is any the slightest difference of a saving character in the atrocious conduct of the Assistant Commissioner of Sind in seeking to bias the minds of the Judges against us !

In the criminal proceedings in the Martial Law area in Malabar there is the interesting case of a Moplah who had been convicted of a certain charge, being brought *in prison clothes* on another charge before the Martial Law Tribunal and we find the Judges objecting fastidiously thereto on the plea that even the sight of the prison clothing is calculated or likely to prejudice the mind of the trying Judges against the accused ! And, consequently, they ordered him to be brought there after in his ordinary clothes. If then, even in the case of a duly tried and convicted man, it is reprehensible—even under Martial Law to give scope *through the prison clothing* even for the possibility of a prejudicial suggestion in the minds of the Judges, how much more so—under the ordinary Law which, according to Sir William Vincent and others we are now supposed to be prosecuted and tried under—must it be for the Government to go on deliberately piling up a huge heap of positively false and venomous communiques, circulars, etc., about the imposture of one who has not been tried on any such charge—or who is (both morally and legally) as truly the Shankaracharya of the Sharada Peeth as Lord Reading is England's Viceroy of India ?

When Sir Maneckji Dadhabhoy began to speak, about our case the other day in Imperial Council of State, the Government spokesmen came down upon him with the one word "sub-judice"! May we know by what law a comment on a (Sub-judice) case amounts to contempt of Court, only when it is in favour of the accused and does not amount thereto if it is against him.

It is, therefore, a moot question how far this flagrant and barefaced plot to prejudice the minds of the Magisterial and Judicial Officials and thus pervert the even course of justice by means of such a maliciously conceived, —cleverly planned and adroitly executed series of wholly

false and immoral publications in regard to a case that is still "*sub-judice*," will be recognised and punished by the legal Courts (as was sure to have happened, if some poor Indian Editor had been the culprit) and, how far even the miserable plea of 'Privilege' can avail to successfully stave off a criminal action launchable by us under Section 499 I. P. C. (Defamation) which (under "privilege") merely indemnifies magistrates, judges, etc., as regards any *bona fide* remarks of theirs arising out of the actual case before them and does not give any one (even the Governments of India and Bombay) the unlimited license to say aught against an accused in matters wholly *malapropos* of and irrelevant to the case actually on hand !

We note that even the "Indian Social Reformer" (which is, by no means a non-co-operationist paper, and which differs from us radically in political, religious, social and other matters.) asks the same question as to whether the Law of Defamation (499 I. P. C.) does not apply to the Director of Information and calls upon him to retract and apologise handsomely for his libel against us ; and the present Chief Judge of Dewas, Junior (who has married a widow and is thus out of the pale of orthodox Hindu society) emphatically seconds the proposition.

We learn from the *Bombay Chronicle* and the *New Times* that in reply to the protests received from practically the entire people of Dakore against the Government's mendacity in respect of our Peeth, the "Director of Information" has indeed written to Dakore admitting that, in view of the existence of two other claimants to our Peeth the problem is a tough and complicated one, but assuring the people that *it was not and is not the Government's intention to take sides in a religious controversy*. It is remarkable, however, that even this tardy belated, half-hearted insufficient, unsatisfactory "Explanation (which is no explanation at all) is to be found merely as a private communication (which the recipient has sent to the Press) and has *not* been published—like the original lie—as an official Communique containing a straightforward and positive retraction of, let alone an honest apology for, that lie. And certainly much less does it come in as an exhibit into the records of our case. And yet we are asked and expected to be given enough to believe that the Government is *not* taking sides ! What else, on earth, has it been and is it doing all the time, we verily wonder !

We should not have objected in the same way as we now do—if the Government had had the honest courage and manliness to say openly that it did not care a farthing for Hinduism and our Ecclesiastical position as the Jagadguru (holding much higher office than Archbishops of Canterbury and York and comparable only to His Holiness the Pope of Rome) and that it had boldly arrested us in spite thereof. All that we now condemn is the Government's recreant and cowardly conduct in cheating the judges and people by sailing under false colours and taking shelter under lies and subterfuges. The Viceroy of India and the Governor of Bombay may have no sense of shame or of self-respect, but we, *on England's behalf*, feel ashamed of such cowardice and subterfuge on the part of the highest representatives in India of the mighty and puissant British Empire and we feel unavoidably compelled by these recurring experiences to concur with the American Professor who, while on a visit to England, felt nauseated by the interminable references on all sides to the sun never setting on the British Empire and gravely accounted for that unique phenomenon by saying "quite true, and quite necessary too. For, God, who is omniscient knows that He cannot trust modern Englishman in the dark and hence keeps throwing the Sun's light on them somewhere all the time."

It is impossible, nay positively immoral and sinful, to mince matters and speak in measured terms of the immeasurable inequity underlying the dastardly conduct of a so-called "Government" which has, with diabolical deliberation, determined to clap us into Jail somehow without even an iota of evidence (worth the name and adducible against us in the open Court) and, owing to this utter bankruptcy not merely in righteousness and in statemanship but also alas! in respect of evidence to convict us with (even according to its own codes of procedure), has the craven cowardice to stab us behind the back with its irresponsible *obiter dicta* and *ipse dixit*—not worth the paper they are written on and the ink wasted thereon—as regards the purely ecclesiastical question of our Shankaracharyaship of the Sharada Peeth ! Equally impossible for us, morally, is it to acquit the Imperial, Provincial and District Authorities of a dark and deliberate criminal conspiracy (punishable with 7 years' rigorous imprisonment under the 2nd part of Section 211, I.P.C. read along with 120 B. I. P. C.) organised for the purpose of convicting us on false and malicious charges (under 120 B, 131 and 505) one of which is punishable with transportation for life, *knowing* all the time as the prosecution procedure itself has clearly proved, that there is *no just or lawful ground* whatsoever for any such criminal proceedings

against us ! Unlike the Government which has both the will and the power to illegally attach even our Peeth papers of years before our coming to the Gadi and without even making a list there of and without producing a search warrant therefor, we have neither the inclination nor the authority to attach and scrutinise the correspondence between the three conspirators (Imperial, Provincial and District) on the subject of our arrest and incarceration and cannot, therefore, spot out and put our finger exactly on the arch-plotter in this conspiracy and apportion the blame and the responsibility, with mathematical exactitude, amongst the whole gang. But, even if Lord Reading had merely let himself be guided—or rather misguided by the Bombay Government, nothing can absolve him of his moral responsibility for keeping a rigorously judicial frame of mind absolutely proof against all possibility of taking sides for political or other reasons with parties in their religious or other private concerns ! Surely there is—*pace* the Bharat Dharma Mahamandal—no law yet, whereby private property or Ecclesiastical authority can be retained or must be forfeited according as one prefers to be of this or that political complexion which the Government has placed a premium or a discount on ! Surely Lord Reading cannot solemnly pretend that this act of his Government is a sample of his Nostrum “Equal Justice” which he has been advertising to the world *ad libitum* and even *ad nauseum* ! If, however, he has really been over reached “sold” in this affair (as in the case of the Munitions Muddle Case), let him have the manliness to come forward openly and make amends herefor,—according to the ancient Mosaic Law of Restitution laid down in Leviticus VI, 1-7 and Numbers V, 6—7 !

V. THE PRE-COMMITTAL ENQUIRY.

It is clear then that, besides the out-of-court *camouflage* and tomfoolery about our Peeth² which we have already exposed, there was not even the ghost of the shadow *prima facie* case against us on the actual evidence adduced by the prosecution witnesses in the course of the magisterial enquiry which, apparently owing to the nerveless and panic-stricken and consequently irrational frame of mind which both the Court and the Crown seem all the time to have been in, was blissfully innocent of all regard for any known rules of procedure and made everything indiscriminately and impartially topsy-turvy from beginning to end !

The District Magistrate of Karachi began the whole farce with a prelude in the shape of a public notification about his precautions for the preservation of the public tranquillity in Karachi during the days of our trial. And therein he referred to us as "some offenders" (not as "some accused"), as if our guilt was already an established fact ! And this frame of mind was evidently the one which the enquiring Magistrate had been instructed to show towards us and this naturally resulted in many serious errors of procedure and behaviour which rendered the trial wholly a farce and a mockery.

According to Section 80 of the Indian Evidence Act, no deposition is admissible as evidence under the Criminal Procedure Code unless it has been read to the witness in question in the presence of the accused or his vakil, and so on. And yet not a single deposition was thus read out to anybody in the presence of any one of us ! We wonder how these depositions which are clearly inadmissible for proving perjury were both sufficient and admissible for committing us to the Sessions.

Hours before the accused are examined or called upon to give their statement, and hours before the Crown Counsel argues on the case (which he had *not* opened with any sort of statement as to what he proposed to prove or to lead evidence on), the Judicial Commissioner visits the Khalikdina Hall to make sure of its fitness for our Sessions trial which is thus already an established proposition ! And, as for the inquiring Magistrate, he has the charge ready before calling upon the accused to say anything in defence and, as soon as, the Crown Counsel finishes his brief and farcical apology for an argument, the Magistrate reads a charge off without calling on the accused—even at that stage—to say aught they may have to say in reply ! And worse still, on 27th September 1921, *i.e.*, when the Crown Counsel had just examined a handful of the prosecution witnesses and had several cartloads of them still to examine, he applies to the Court for permission to summon two originally unmentioned witnesses on his side and gets from the Magistrate *an order in writing* (Exhibit E) to the effect that the *Committal proceedings will not be delayed therefor and it will do if these men are produced in the Sessions Court* ! What clearer proof can there be of the fact that the Magistrate had been officially and officiously instructed and has immorally and illegally agreed, to commit us to the Sessions without even hearing the prosecution evidence, let alone the defence statement ! And yet when some one points out too late the obvious fact that, according to Section 219 of the Criminal Procedure Code, supplementary witnesses may—if

need be—be examined even after the committal, but only *before* the Sessions and only by the Committing Magistrate and that there will be difficulties in their production otherwise in the Sessions Court, Mr. Talati is compelled to bow down to the inevitable and begin the whole business again in Jail in our presence just two days before the Sessions ! What a farce and what a travesty of justice is it that men who are thus openly prebaised against the accused and who can commit them to the Sessions without caring even to hear the prosecution evidence, are set over us with powers to pronounce dooms of death, transportation for life and the like !

The Court was in such a hurry over the proceedings as to read off the charges without explaining them and without having them rendered into Urdu ! And we were brought into the Court again two days later for hearing the charges read out in Urdu ! If even such a small flaw could thus need rectification, how much more so should the more serious and terrible defects and illegalities ? Surely, it was a case of straining at a gnat and swallowing a Camel !

Wherein is the difference between such a trial and an Executive order of Internment, or Deportation, etc. ? Much is being made to-day of the proposed rescinding of the Rowlatt Act, etc. But what is the good of it all, if the ordinary law is to be so mismanipulated as to equal or even out-Rowlatt the Rowlatt Act ? The only difference, so far as we can see, will be that whereas now, under the Special Acts and Executive Orders, we have the advantage of being regarded as possibly honourable people who have not been regularly tried, we shall hereafter, under a deliberate prostitution of the ordinary law, be supposed to have been tried, found guilty and convicted ! Is this really the change for the better or, at any rate, the change which our moderate and co-operationist friends have been panting for and congratulating the country on ?

In going into these details of these wholly illegal proceedings, it is not our object to get off on the strength of these technical flaws. On the other hand we wish our case to be judged solely on the intrinsic merits of the evidence against us and our defence statements. Nor do we desire that the case should be sent back to the same or another Magistrate for re-trial in accordance with the rules of procedure. On the contrary we

feel that, in spite of our temperamental and irrepressible optimism and cheerfulness and the extreme kindness with which the jail people are looking after us, we are, as under-trial prisoners—"neither fish nor flesh nor good red herring" and the sooner the final proceedings in this case are concluded, the gladder we shall be. Nor even thirdly is it the case that we are putting on record the fact that our sense of sacrosanctity of these rules of procedure has been shocked! In reality we care nothing for them and do not, in many respects, approve of them. Our whole object herein is to demonstrate, with unanswerable facts, what scant respect is actually paid thereto by those who pretend to believe therein and swear thereby and what abysmal depths of degradation the so-called "Courts of Justice" have deliberately sunk to in British India to-day!

But, as our individual case in the magisterial Court was practically an absolute blank which no perfection or defect of procedure could make, mar or alter, we need not enlarge thereupon but would only call attention to the astounding mentality of the Magistrate in refusing to hear our statement on the actual evidence before the Court, not because of any irrelevancy or any political or other digression but just because, according to the rules of our Order (corresponding, mind you, to the clear injunctions of the Old and the New Testaments about Nazarites, Priests, etc.), we could not stand and address any one except our own Guru and other Spiritual Elders and superiors, while the Magistrate—for reasons which were and still are inscrutable to us, under any known Religious Scriptures or procedure codes—was pertinaciously anxious to claim towards us the relationship of a spiritual father!!! And then, even after the so-called 'argument' of the Crown Counsel, the Magistrate did not give us—the (by-himself)—solemnly promised opportunity for our written statements or oral arguments, but proceeded straight away to read off hurriedly his order of committal of us to the Sessions—an order which had been ready hours before the oral statements of the others and the Crown Counsel's arguments were actually concluded! Thus comes it about that, even without any evidence from the prosecution witnesses against us and without any statement from us (oral or written), we find ourselves lightly—nay flippantly—committed to the Sessions!

And this takes us to the question of our personal Religious Liberty and the Viceroy's specious claim of a few days ago that his appointment to the Indian Viceroyalty by the Christian King of England was a suffi-

cient and convincing proof that, under the British Government, there could be no religious persecution in India ! We know not whether Lord Reading is a real live orthodox Jew or only an Englishman in whom, the Jewish element subsists merely as a racial accident of birth and has got practically snuffed out of existence on the religious side and, therefore, we have neither the right nor the desire to dogmatise thereupon. But may we point out generally that toleration is one of the easiest things in the world towards persons of an alien race or religion when they have, in actual daily life and for all practical purposes, been assimilated by us and that the crucial test of tolerance *versus* persecution comes in, only when a fundamental conflict arises, not merely in theoretical doctrines of metaphysics or private worship, but on practical precepts of everyday public life ! Leaving aside, for a moment, the root question about Islam and the British army which forms the basis of the present prosecutions, what shall we say about the wonderful magisterial ruling whereby we were deprived of our right to make a statement, because the religious rules of our Order did not permit us to address him standing and he would not permit us to speak sitting ! Is this not in itself an eloquent illustration of and convincing commentary on Lord Reading's contention about religious toleration under British Rule in India ?

Moses, St. Paul and others have laid down rigid and elaborate rules of conduct for Nazarities, Priests, etc., as regards Pidyon Ha Ben (Redemption of the Firstborn), shaving, covering and uncovering of the head, sitting and standing, and so on ; and we too have similar rigorous rules in our Hindu Scriptures about Sanyasis, etc., and other such matters, which you might tyrannically—by the application of Brute Force—coerce us into breaking, but which we cannot possibly, of our own accord, transgress ! And, although such rules did not, in the present case, involve any sort of conflict with any religious rule of Zoroastrianism or any other creed or with any Code of Law and although, we made it clear that there was no disrespect intended for the Court, but only an insurmountable religious disability which we were labouring under, even if such a totally innocuous case, the Magistrate had the hardihood to harshly assert that it was *his* order and “*must be obeyed*” (in preference to the dictates even of our Religion) ! If, even when there was no religious, political or other conflict of principles involved, there could be such an arbitrary and tyrannical exercise of authority for the mere pleasure of exerting it, how much worse is it bound to be for all chances of religious toleration when such a conflict is really involved ! A

system of Government, Education, Procedure and so forth, which is *non-moral* and hence seemingly tolerant—not as a deliberately considered and positive virtue, but merely owing to callous indifference with regard to Religion—must necessarily and speedily become positively *immoral* and lead to all such petty persecutions !

As, however, we have already stated, we voluntarily took Sanyas and are bound by the rules of Sanyas. Even an ordinary association has its own rules, regulations and bye-laws which are binding on those who pledge themselves to abide thereby and deliberately become its members. So too, having correctly understood the rules of Sanyas, carefully counted the cost and deliberately entered the Holy Order, we can see no justification for breaking those rules. And as St. John, St. Paul, St. James and even the Lord Jesus Christ have all—exactly like the Lord Shrikrishna—repeatedly declared that devotion to the Master and disobedience to His Commandments are horribly incompatible with each other and just as St. Paul frequently—in his epistles—describes himself as a “prisoner of Jesus Christ,” so too are, we (Sanyasis) Prisoners of our Sanyas Dharma and have to perform it in utter scorn of the consequences ! Acting, therefore, on Shri Bhartri’s Haris famous maxim :—

निन्दन्तु नीतिनिपुणा यदि वा स्तुवन्तु लक्ष्मीः समाविशतु गच्छतु वा यथेष्टम् ॥
अर्थे वा मरणमस्तु युगान्तरे वा न्याय्याप्तयः प्रविचलन्ती पदं न धीराः ॥

(i.e. Let worldly-wise men scorn or praise,

Let wealth come in or go out as it likes,

Let Death take place now or aeons hence,

The Righteous will not swerve an inch from the path of Dharma),

We had no option but to lose our right of making a statement, as we could not exercise it without violating our Religious principles !

And besides, as a general rule, gosha ladies, invalids and others having any sort of disability are given special facilities and consideration; and it is therefore a mystery to us why a case of Religious disability like ours was not treated even with elementary courtesy ! Insult was added to injury by the Magistrate’s original refusal to record our repeated statement about our religious rules precluding our standing to address him and by his insisting on simply recording that we refused to stand and address him, as if it were a purely refractory or insulting act of our own free choice !

And the *Daily Gazette*, the *Pioneer* and other Anglo-Indian papers have gone on better and omitted all reference to us in their report of these particular proceedings, as if we were not one of the undertrial prisoners in the case or had no right to make an oral statement like the others. It is this conspiracy of the Government and the Anglo-Indian Papers for the suppression of facts and/or the fabrication and propagation of falsehoods that naturally and inevitably lead to the prostitution of the Law Courts in the land in a manner that cannot be condemned too strongly. And thus it is, let us repeat, that, without even one word of evidence in the entire prosecution case to implicate us in any sort of complicity in the imaginary conspiracy relating to the army and without even taking our statement (oral or written) as required by the rules themselves, the Magistrate has committed us to the Sessions on several charges under Sections 131, 505, 120B, 109 and 117 I.P.C. !

And yet it was for the purpose of such an utterly baseless and bankrupt prosecution that our Vishwarpua Yatra ceremony was unceremoniously and sacriligiously broken in upon by the "Government" of Bombay with the "full concurrence," mind you, of the "Government" of India and we were bundled off hither from Dakore in such unseemly haste ! We were rotting here for 8 days before the magisterial enquiry actually commenced and some of our co-accused came here a day or two after us. And yet the "Government" could not afford to lose the few hours needed for the completion by us of that momentous ceremony, prescribed for all Dand-i-Sanyasis ! Should not religious toleration be extended even to those whom one is, politically or otherwise, sharply divided from ? Tippu Sultan of Mysore (whom our school histories have been vilely calumniating as a horrid persecutor of the Hindus) was indeed a devout Muslim but, as incontrovertibly demonstrated by the records still preserved in the Jagadguru Shankaracharya Math at Shringeri, where we lived for 6 years-he was an ardent admirer and fervent venerator of the then Shankaracharya of Shringeri and was instrumental in building tens of new Hindu Temples and endowing hundreds of old ones, which had fallen into decay (physical and financial) ! We are sure he never treated any Hindu, much less a Shankaracharya, in the churlishly cavalier and cantankerously intolerant manner, employed towards us by the Imperial and Provincial Governments and the District and City Magistrates whom this case has brought us into contact with ! It is not the indifference of the man who has really no religion influencing his every act, but the considered and deliberate toleration (*on principle*) of a devout believer

in and strict follower of one religion towards similarly devout believers in and strict followers of another religion, that alone deserves the name of toleration. Judged by this crucial test, a Tippu Sultan comes off infinitely better than the present British Government of India, notwithstanding Lord Reading's effusions about religious toleration !

Let us state it plainly, now and here, that even if we had ever any doubts about the absolute moral impossibility of co-operation with the present heartless, soulless and godless system of Government in India, our actual first-hand experiences of it, through the present case, must necessarily cure us, once for all, of all such doubts and make us a still more confirmed non-co-operator than we ever already were ! Can Lord Reading, with a clear conscience, honestly claim that, in the matter of that ceremony of ours at Dakore and particularly as regards the high-handed magisterial exclusion of our oral statement because our Religious rules precluded us from standing and addressing the Court, we can, *in actual practice*, trace out the least vestige of that Religious Toleration and Equal Justice which he has been so magniloquently parading before all and Sundry ! And, if so, we must ask him " what is Toleration " ? and " What is Justice " ? And, unlike jesting pilate, we shall wait for an answer ! Surely an ounce of practice is better than tons of theory !

It will be remembered that, like the Pilgrim Fathers who wended their way to the rock-bound coasts of America on board the Mayflower for enjoying the Religious Liberty which England denied to them during the time of that " wisest fool in Christendom " (King James VI of Scotland and I of England), the Parsis too came centuries ago into India for enjoying the Religious Liberty which their own motherland (Persia) denied to them and they found under King Yadav of Gujrat, not merely spiritual liberty but also such compassionate temporal patronage and loving material encouragement as to become one of the most flourishing Communities in India to day. And, year after year, they still pay their tribute of grateful praise to King Yadav therefor. What a grim irony of fate is this then whereby a Parsi becomes a tool in the hands of the British Government, forgets the debt that his race owes to the tolerant and benignant Hindu King Ya lav of Western India and shows such intolerance towards the Apostolic Successor of King Yadav revered and beloved Gurn as the Ecclesiastic Head of Hinduism in Western India.

In fairness, however, to the City Magistrate and in extenuation—not, of course, in justification—of his ungentlemanly and intolerent conduct towards us, we must say that he too, like the District Magistrate, would seem to have weakly succumbed to official orders or the prejudice engendered by the afore-described calumnies circulated by the Bombay Government about our being an “ Imposter ” ! And that alone is a sufficient commentary on the ethics of the Government !

And we must, also, not omit to testify that the one cheering ray of light in all this dismal darkness is the consoling fact that, excepting one Abdul Karim of Madras and barring a few trifling and inconsequential white lies (seemingly due more to mechanical habit than to deliberate intention), the Police and other witnesses in the first, *i.e.* the pre-committal stage, told the Truth on the whole and did not (as we had originally inferred at Dakore) fabricate any evidence which would have been of real help to the Government in its God-forsaken mendacious campaign against us. And we may also add that, on this one promising foundation, we joyously base our sanguine hopes for India's Glorious Future.

VI. THE ORDER OF COMMITMENT.

It was a most wonderful order of commitment whereby the City Magistrate washed his hands of us and passed us on to the Sessions Court for trial.

In the very first paragraph we note that whereas the original complaint lodged against us by the Deputy Superintendent of Police, Karachi, (Exhibit A) mentions only 4 Sections, the Committing Magistrate begins his Committal Order with the statement that the *complaint* is under 5 Sections. We do not meddle with his right to add any number of Sections of his own, but we do demur to his misrepresenting the contents of the Exhibit in question.

The second thing to be noted is that, while translated extracts are given from the vernacular speeches of the others, *we* are only said to have *made a speech* (without any allusion to its contents), thus keeping up the Crown's conspiracy of silence on this point.

The third remarkable factor is a reference to the accuracy of the translations filed in the case. Let it be remembered that, when Maulvi Hussain Ahmad Saheb (Accused No. 2 and the mover of the Resolution)

began the very first sentence of his oral (defence) statement in the Court, the Court translator (who is said to be one of the very best men available in all Sindh for translating Urdu into English) broke down utterly at the very outset and confessed himself hopelessly at sea and the proceedings came to an abrupt standstill in consequence thereof and that an Urdu translator has therefore been requisitioned from the Punjab High Court for the Sessions trial ! May we ask if the C. I. D. reporters at the Conference are alleged to have higher educational qualifications than the Government's own best translators and how are we to believe (1) that the poor fellows could have understood such Resolutions and speeches correctly and (2) that convictions based (as they always are) on such reports can be justly and morally upheld ?

The fourth astounding element is the magisterial series of statements (1) that all the other accused (*i.e.* No. 2 to 7 "either admit or do not deny") the allegations of the prosecution, (2) that they refused to answer the questions put to them, (3) that they wanted to give a statement similar to Mr. Mahomed Ali's and (4) that their statements were irrelevant ! Compare this unqualified statement with the Magistrate's own admission lower down that for religious reasons, *we* refused to answer him standing and he therefore refused to hear us and receive our statement ! This reminds us of an Irish case wherein the defendant who had been called upon to pay the price of a costly Chandlier which he had borrowed and broken, was told by his lawyers of three possible lines of defence (which he might get his witnesses to substantiate) and so, to make his case trebly strong, gave all the three statements together *i.e.* (1) "The Chandlier was broken when I borrowed it" (2) "It was whole when I returned it" and (3) "I never borrowed it at all."

As a matter of fact we repeatedly stated to Mr. Talati that he should at least record our statement, that we were not going to deliver a political or even a religious lecture and that we meant to confine ourselves rigorously to the evidence adduced by the prosecution witnesses, but that not an iota of evidence against us was on record for us to rebut. The local Indian papers reported this incident, but the Magistrate had dictatorially ruled us out of his Court altogether (except, of course, for the purpose of commitment) and did not record even that one statement ! Under such circumstances, the statement that we "either admitted or did not deny" this or that allegation, can only be compared to the claim that one who had been killed "either admitted or did not deny" some particular charge.

Fifthly, we wonder why we have been charged with conspiring between February and September 1921? The only evidence of "Conspiracy" adduced is the public resolution of 9th July 1921, and our speaking thereat. And so far as we can calculate, 9th July 1921 is even more accurately between 17th January 16,000 B. C. and 31st December 16,000 A. D. than it can be between February and September 1921. We may, however, dismiss the whole commitment proceedings with the pathetically manifest truth that Mr. Talati is a good but weak man who has either bent before the orders of his masters or yielded to the prejudices sedulously generated and fostered by them. We prefer to believe the former.

VII. THE POST-COMMITTAL ENQUIRY.

We now pass on to the Post-Committal Enquiry on the 21st and 22nd October 1921 by the City Magistrate whose chastened behaviour therein showed, at every step, that as Mr. Talati, he was a good man but as the City Magistrate, he had shewn himself too weak and plastic in the hands of the authorities above him and deserved more pity than condemnation at our hands. The only witness relating to our part of the case in this supplementary inquiry was one Basarmal who came in, at long last, to file as Exhibits his shorthand notes and his long hand transcript of our second speech in the Khilafat Conference here in July last. In this connection it is curious to note that this witness and one Topandas were both mentioned by name as prosecution witnesses in the very first complaint of Mr. Zaman Shah (the Deputy Superintendent of Police) and were again specifically named by him (in his opening evidence as the first witness on behalf of the Crown) as the persons who had taken notes of *our* speech but they were not at all called in during the entire enquiry. On 30-9-1921, *i.e.* after our committal, the Public Prosecutor had informed the Court is writing that both of them should be allowed to come in at the Sessions trial; but on 21-10-1921 the supplementary enquiry began, it was stated that only Basarmal was going to be examined. And when he was called, it was alleged that he had come without his notes and so had gone home to bring them "To-morrow"! When it was pointed out to the Court, on the next day, by ourselves and Maulana Mahomed Ali that the production and examination of this witness at this stage after the continued and deliberate omission thereof in all the earlier stages looked suspicious and needed explanation, Mr. Talati readily called upon Mr. Elphinston to explain. And the explanation that he gave was (1) that he had not

first thought this witness's evidence necessary and had dispensed with it and (2) that, in our statement (which the Magistrate had refused to record because we were seated) Mr. Elphinston had understood us to say that we had not spoken about the Army part of the resolution and so he felt it now necessary to put the speech in for the benefit of *ourselves and for the jurors* to draw such inference therefrom as they might! Mr. Mahomed Ali wanted to know if the keeping back of this witness and this most important Exhibit was because the Government had desired to convert us, detach us from the others and let us off and therefore in the meantime did not produce any evidence against us except the superficial one about our having attended and spoken?..As such tactics have actually been attempted with regard to Pir Saheb (Accused No. 4) and as his speech too (although admittedly and forcibly about the army) was not filed and has still not been filed as an Exhibit, there is reasonable ground for suspecting that the same consideration (*i e.* the hope of being able to win us over) was responsible for the original non-filing of our speech as an Exhibit! Add to this the fact that, *after our committal*, Mr. Girdharilal of Amritsar had made it clear to the District Magistrate of Karachi that, in the performance of our Dharma, we had actually braved and confronted and not been cowed down even by the display of bayonets and firearms against us at Amritsar and were therefore incapable of being converted by the fear of a comparatively petty trifle like imprisonment of either sort or even transportation! This strengthens the suspicion that Mr. Mahomed Ali gave expression to and may be held to explain why his evidence was deemed necessary *after* our committal and after the final renunciation of all hopes of an apology or even a retraction from us!

But there is this great and tremendous difference between our case and Pir Saheb's, *i.e.* that while he had spoken strongly on the army question and he even now justifies it from the Quran, we had not even known about that subject and had said nothing about it and had no need to say aught in our defence statement about the army (unless, indeed, we now voluntarily choose to do so for our own satisfaction and pleasure). We therefore feel it necessary to look for some more plausible explanation. And like the plain blunt person that we are and ought to be, we should put it to the Court that, leaving out of account the preliminary incubatory period of triangular correspondence (between Simla, Bombay and Karachi) and counting only from the 8th of September (the date of the complaint and the warrants) the prosecution would seem to have been

nursing and cajoling and threatening and otherwise striving to persuade poor Basarmal and Topandas (the only English reporters in the case) for over 45 days to concoct false evidence against us and to have failed therein. On any other hypothesis we are unable to understand the prosecution's omission even to produce these witnesses. But the Crown Prosecutor had apparently consoled himself with the expectation that, as a militant non-co-operator and like Mr. Shaukat Ali, we would justify the Resolution on the Army question on political grounds and convict ourselves out of our own mouth thereby. And so he seems to have spoken the truth in saying he had first thought it "unnecessary" to produce these men and file our speech. Why was it necessary, may we ask, to produce others' speeches and not ours? But when we actually began our statement in the Lower Court with the declaration that we were not going to deliver any political or other harangue and would rigorously confine ourselves to the evidence adduced but regretted that not a word of evidence had been let in against us which we could base a cross-examination on or need defend ourselves against, the shock of the disappointment must have been tremendous indeed. But the Magistrate came unexpectedly—and we hope unconsciously—to the Crown's rescue in that horrid predicament by refusing to record our evidence for the reason already dilated on? And the Counsel quietly took advantage of it by passing us over lightly in his argument which, be it noted, was *after* we began our statement and were prohibited by the Magistrate. If the Crown had really meant, as now claimed, to file our speech for our advantage before the Jurors, it should have done so at the very outset. Or, if Mr. Elphinston had been honestly ignorant of our honest ignorance of the details of the original (Conference) proceedings, he should at least in his arguments, have considered our clear contention about it and referred to it and corroborated it with our speech and not taken mean advantage of the Magistrate's refusal to hear us and record our statement! As a matter of fact, however, we had *not* really denied before the Magistrate that no evidence against us had been produced for us to rebut when he stopped us. It is therefore plain that Mr. Elphinston's present explanation does not really record his impression of what we stated, but only revealed what he had himself known all the time but had not been candid enough so long to admit. As we had not actually said it, his impression cannot have been due to our words and must certainly have arisen from some other cause. And what cause could be more natural than his own inner consciousness of the truth?

And when at last it is decided to file our speech, the procedure still continues to be unnaturally erratic ! Only one of the two witnesses is called and he too " forgets " to bring his all important notes of our speech ! Imagine " Hamlet " being staged and Hamlet alone of the " Dramatis Personæ " being forgotten or a marriage taking place with the bride and the bridegroom alone absent ! Under these circumstances, we find it impossible to resist the conclusion that an unwilling witness is long pressed to give false evidence, struggles hard against it to the last and finally triumphs ! For, though his report is woefully incorrect and muddles up the Puranas and the Gita and replaces Hengist and Hersa by one Robert and so on and therefore utterly valueless as an instructive or even coherent epitome of our speech, it is obvious that the errors arose from a weak memory and from sheer ignorance of the Hindu Scriptures on the one and the History of England on the other and not from any malicious incline or fabricative genius at all ! Any intelligent person who reads it along side of the newspaper reports of our speech and the first part of this statement (which we had prepared within two days of our arrival here, *i.e.* on the 20th September, when we had not yet heard from our local friends about the army part of the Resolutions) can easily see that it is peculiarly jumbled up and inaccurate but honest report. We have therefore once again to offer our hearty congratulations to the police witnesses (except Abdul Karim of Madras) for their having clung on the whole, to the truth !

Now, as this report too corroborates our contention that we never spoke about the Army, it is an interesting speculation why the Crown had filed at all, why (in this instance alone) the shorthand notes too have been put in, whether it is really (as claimed by Mr. Elphinston) for our benefit before the jury or really for showing that, although we did not speak about the Army, our strong condemnation of Mr. Lloyd George's acrobatics with regard to the Khilafat should turn the jurors against us and so on. As, however, this is an idle and aimless speculation, we do not care to go thereinto but would and need only point out that in case the last conjecture is correct, it might be open to the police to indict on some other charge (say, Seditious preaching) but it would certainly not be within the authority of the Court to convict us under sections 131, 505, 120 A and so forth !

VIII.—THE SESSIONS TRIAL.

We need to say—only a few words about the Trial in this Sessions Court. We were astounded to see the proceedings opening with drastic alteration of the charges framed by the City Magistrate and an addition

thereto all calculated to enhance the gravity of the offence and of the punishment (in case of a conviction). We do not, of course, contest the Court's powers to do this under Section 227 of the Criminal Procedure Code, but we do contend that the charges were all terribly prejudicial to us, that there was not a scrap of evidence before the Committing Magistrate in support of these charges, that this was merely a camouflage of the prosecution to produce (under section 231 C. P. C.) new witnesses who had not been produced in the Lower Court (whether *before* or *after* committal), that even after taking advantage of Section 219, C.P.C. for a post committal magisterial examination of supplementary witnesses the prosecution had failed to adduce any evidence in support of these amendments and was adopting this "cute" but mean trick for getting illegally admitted lots of inadmissible new evidence and that under such circumstances, the adding and amending of the charge under 227 C. P. C. and proceeding immediately with the trial under 228 C. P. C. are, in the words of the great commentator Sohini, *ultra vires* and are not merely errors of procedure but an improper assumption of jurisdiction. There are lots of recorded cases supporting this contention, *i.e.*, 6 Calcutta Weekly Notes 73; 1899 Allahabad Weekly Notes 39; 31 Bombay 218; 5 Allahabad 233; 29 Calcutta 415; 6 Bombay High Court Reports of Crown cases 76 and 3 Madras 351. And of these, 3 Madras 351 is on all fours with the present case and ought to have been followed here. It is distinctly laid down under 228 C. P. C. that a Court of Sessions cannot take cognisance of such charges without commitment thereupon. The object of this restriction is to secure, in the case of persons charged with a grave offence, a preliminary inquiry which would afford them the opportunity of becoming acquainted with the circumstances of the offence imputed to them and enable them to make their defence properly. And, similarly, where the alterations in or additions to the original charges would raise different questions of law or would submit of a different defence on the facts, the Court should always act under section 229 C. P. C. suspend or postpone the trial and give the Committing Magistrate an opportunity to make a further inquiry.

And especially with regard to the changing of February 1921 to February 1920, it must be stated that the report of Mr. Surendra Nath Sen of the Assam C. I. D. about Maulana Shaukat Ali's speech of 6th March 1920 at Karimganj (which the Public Prosecutor sought to put in at the post-committal magisterial inquiry of so late a date as 22nd October 1921, but which the Magistrate refused to admit as evidence

and of which, therefore, Mr. Elphinston gave us copies privately "as a matter of courtesy" as he pretended)—this precious report has been further supplemented on the opening day of the Sessions Trial (*i.e.* 24th October) with a reference to some Calcutta Town Hall resolutions of 29th February 1920 and is the basis for the alteration of February 1921 to February 1920. Surely, it is a revoltingly horrid and shamelessly unrighteous lie to say that this change is one which is justified *on the facts already before* the Magistrate. The expression "*on the same facts*" in this Chapter of the Criminal Procedure Code is most important but has been quietly thrown overboard by the prosecution. The charges therefore, are wholly illegal.

And particularly in a conspiracy case wherein it is sought to catch, in a wide net, all sorts of persons who may not have known anything of such facts or even one another (as Mr. Elphinston argued in his opening speech), it is particularly laid down that such changes are absolutely *ultra vires* and without jurisdiction, (without a retrial) !

In *our* case the prosecution has adduced abso'utely no evidence to show any sort of connection between us and any conspiracy relating to the Army. The only evidence before the Court in respect of us is that we attended and spoke at the Khilafat Conference sitting of 9th July last at Karachi ; but even the report of our speech there (as filed by the prosecution itself) does not contain even one word about the British Army !

Nor has the prosecution let in any documentary or even oral evidence to show that we are even an *ordinary* member of the Central Khilafat Committee or any of its District, Taluka, Village units or even of the Subjects Committee or that we were ever anything more than an honoured guest and patron giving our blessings to Hindu Muslim unity and the Khilafat cause. And yet the prosecution has sought to involve us too in the meshes of its wide net. We contend therefore that the alterations are *ultra vires* with regard to all the accused in general and with respect to us in particular.

In passing we would like to mention that the Jury too seems to have been empanelled in a manner not permitted by Law. We refer to the fact that amongst the persons called for the purpose, there were some Goan gentlemen who are not British Indian subjects and, amongst the five actually selected, we believe there is one such gentleman. It

is no *moral* answer to this to say that we did not challenge his selection. That would be like meeting a charge of adultery with the plea that the woman had consented or had been asleep or unconscious ; or a charge of theft with the plea that the house had been carelessly left open. We wish to make it clear that we have absolutely no objection on any score whatsoever to Goan people as such and we do not ourselves believe in the sacrosanctity of the rule restricting the Jury to British Indian subjects alone, nay, we positively feel the utmost cordiality towards our Goan friends, particularly if they are devout and God-fearing Roman Catholic Christians as we understand them to be. Our only object in alluding to this fact is to illustrate and demonstrate how difficult, nay impossible, it is to get our British Indian Courts of Law to observe their own rules and to voluntarily administer justice unless and until—either by our challenging of their actions and procedure or owing to considerations of policy and diplomacy of the usual devious character—they are helplessly *compelled* to do so by some process akin to a surgical operation. In fairness, however, to the Judicial Commissioner we feel it our duty to record the fact that when he clearly understood our *religious* position and the rules of our order of Sanyas precluding our standing before him, he specifically exempted us therefrom and that we ourselves voluntarily elected to abandon our chair and sit down with our co-accused.

Passing on to the Crown Prosecutor's argument in this Court, we have to say in the first place, as regards the logic of it generally in trying to establish the fact of a conspiracy that we never heard a more illogical kind of logic than that. The whole logic of it pushed to its logical consequences would result in the *reductio ad absurdum* that all who belonged to the Central Khilafat Committee or any of its branches, all who ever associated with poor Mahomed Ali (without the honorific "Maulana" or even the gentlemanly Mr.) all who attended a single Khilafat Conference during all the centuries (past, present and future) and including the Police and other reporters there) all who were in the Subjects Committee of any such Conference and even all who arrived by the unfortunate Quetta Mail on a certain fateful day in July 1921 at poor Karachi—and many other kinds of people whom we have neither the time nor the inclination, nor even the power to describe in detail, were *ipso facto* conspirators under 120-A and culprits under 131, 505 and the rest of the family. As it is impossible to go in detail into all these ridiculous absurdities, we will consider only one of them, *i.e.* the Subjects Committee. Is the Crown unaware that resolutions are passed at the Subjects Committee after a lot of discussion and the final shape arrived at is generally very different

from *every one* of the proposals made therein and can only be described as the Mathematical Result out of innumerable Forces? And *no one* is individually responsible therefor while *every one* is bound to abide thereby. And even the President (unlike our Viceroys, Governors and even petty Magistrates) has no vote and must necessarily—as President—introduce before the meeting and put to the vote every resolution (even those which he may personally be opposed to). It is therefore (morally as well as legally) unrighteous and illogical to foist the blame on any one, unless—by independent proof and evidence—it could be shown that he had pressed for it in that identical shape and voted for it in the Subjects Committee. It would be absurd to argue that when a majority carry a proposition that one does not like, one should resign immediately. That would mean the immediate disruption of all Parliaments, Cabinets, Legislative Councils and even Executive Councils and so on. So the prosecution should have proved who in the Subjects Committee pressed for the Resolution in question in the identical form which it ultimately took and then prosecuted *them*. In reality we find Crown in the desperate predicament that it had no evidence to show who attended the Subject Committee except that Maulana Shaukat Ali's voice was heard somewhere in that part of the country or the world and that the voice was recognised as his, because, mind you, he was fat. Surely this is an achievement which great modern scientists engaged in the fields of Acoustics will envy our Karachi policemen for; but this is no evidence according to any Evidence Act on Earth (Except perhaps that of the French Resolution wherein a person who was suspected, to be suspected, to have been suspected (raised to the N power, (being perfectly indeterminate) was immediately guillotined without any further evidence). And if it be argued the gentlemen admit their approval of or sympathy with the resolution, even then we have to say that even a confession is no evidence without independent corroborative testimony. And besides, the expression of sympathy with or approval of any opinion—however anarchical—is not indictable under any section of the Indian Penal Code. It is not opinions, for which prosecutions stand. And so long as the acts are not proved, the detached and abstract opinions have no legal value.

Owing to the Crown Counsel's logic about our special and individual part in the alleged conspiracy, we must say that it was the most vicious example in our experience of the vicious practice of arguing in a vicious circle and begging the whole question at issue. We have already exposed the utter bankruptcy of the prosecution in the matter of actual positive, relevant evidence with regard to us individually,

the consequent stabbing of us from behind with libellous communiques and circulars, the non-filing of any speech of our to start with because there was nothing in it to connect us with the army question and the police witnesses refused to lie and perjure themselves, and the final desperate filing of the available report with a view to make the best of a bad bargain. It was this terrible lack of facts which, in our case particularly, drove the counsel to admit in desperation that presumption was such and such. We quite agree not merely that it was a presumption, but that it was the very height of presumption to presume things and to ask the jury to presume things for which not a scrap of evidence was forthcoming. And how was our knowledge of and participation in the alleged conspiracy proved? By our sympathy with the Khilafat cause! And how was that proved? By our knowledge of and participating in the conspiracy !! What else is this, gentlemen, but argument in a vicious circle ?

Mr. Elphinston had the presumption to cast libellous aspersions on our veracity, not on the strength of any facts he had proved or evidence he had adduced but his presumption that we *must have read* particular newspapers (if not also C.I.D. reports) which he was going to file three months later in a false case against us. Let us inform Mr. Elphinston that, until the Government (whose business it is to tackle the problem of unemployment) actually threw us *out* of employment on the 16th September last by arresting us, we had normally very little time for reading newspapers and particularly to waste time on the reading of our own speeches. With our prayers, our elaborate Poojahs (worship) our regular classes for our pupils (in Sanscrit Literature, Logic, Astronomy, Philosophy, etc.) our incessant public lecturing work, our correspondence (which we write with our own hand and which as our records attached by the Government can prove works out at daily average of about fifty letters which are more of the nature of lectures and dissertations than letters) and our work of answering the questions of pilgrim visitors and worshippers at our shrine and other inquirers we are fully occupied from 3 a.m. to 10 p.m. and then we read our newspapers between 10 and 11 p.m. seeing only the telegrams, the leading articles and important fresh material. Even this we do with the utmost difficulty, because we are completely done up long before that hour, and when during conference times, we are called upon to sit continually for hours in the Pandal and especially when there are night sittings, we find that they are urgent letters to be got through at midnight and, jaded as we are, we have not the physical

capacity (even if we had the wish) to prefer the "Daily Gazette" of Karachi to "sleep gentle sleep, Nature's soft nurse." It must be remembered that, as the Jagadguru Shankaracharya we are continually called upon by inquirers (in person and by post) to answer an infinite and multifarious series of questions relating to Ceremonial matters of faith (like prayers, worship, marriages, funerals, oblations to the sacrificial or the house-hold fire, etc.) political matters (like co-operation, non-co-operation, etc.) social matters (like Basu's inter-race marriage Bill ; Patel's inter-caste marriage Bill ; Gour's marriage Bill ; the Depressed classes Problem, etc.) and so on. And we have to answer all such questions, remove all such doubts and difficulties and cannot—like the Commercial West or even Mr Ross Alston, or Mr. Elphinston—say that we do not receive Rs.3,000 per day or per month and cannot do all this work. It is our duty and we have to and do perform it as such. Having therefore very little time for and great difficulty in, keeping ourselves in touch with the progress of the world in the shape of fresh news, we certainly do not normally find it possible to read stale news in the shape of our speeches. And even granting that we could have read local papers and if it should have been the "Sind Observer" we would have according to the prosecution evidence itself—got no information on these matters. As a matter of fact, however, we read no local papers as we had not the time to do so. And on a matter of actual fact like this, it must be obvious to any unprejudiced person that *our* simple statement of facts should have a million times more moral and even legal value than the presumptions and most heinous aspersions and illogical inferences of persons whose very presumptions are paid for at the rate of thousands or at least hundreds per day.

The most offensive and atrociously false part of the Crown Counsel's argument was the imputation that we were trying to get out of the consequences of our action by denying knowledge of the army part of the Resolution ! We wonder what right Mr. Elphinston (who never saw, knew or heard about us until we came into the relationship of Public Prosecutor and Public prosecuted) has, to say aught about our courage or cowardice ! It is just because we do not care for or fear what the police may report of our speeches, that we read fresh news of the world and do not worry about reports of our own past speeches ! And besides, the very speech filed by the prosecution and made so much of by the Counsel, will show how we wanted all the 330 millions in India to go, if necessary, into Jail for the sake of Dharma until, at last, the jails could not contain them ! And yet we are accused of cowardice ! If, how-

ever, he is inclined to think that, that was merely tall talk and bravado; we will make a present to him of the fact that when, in April last, the Sikhs of the Punjab invited us to Amritsar to arbitrate on a purely religious controversy between themselves and the Sanatanee Hindus, and the Deputy Commissioner and the D.S.P. issued orders prohibiting our speech on "Dharma" under the Seditious Meetings Act (X of 1911), we refused to admit the authority of any temporal Government to gag us in the performance of our Ecclesiastical duty and drove a coac hand pair through their orders, and when the D.S.P. with his Deputy and two Assistant S.P.'s, posted themselves with about 25 armed mounted men with fire-arms and bayonets, within 60 yards of our quarters, to prevent our proceeding to the meeting, we drove straight on, braving all their murderous military display ! And then the D.S.P., etc., bit their lips but they durst not lay violent hands on us as threatened. How ignorant must Mr. Elphinston be of our character and our frame of mind to say that we who braved and confronted fire-arms would be afraid of his prosecuting and clapping us into jail. From this Amritsar incident, he may perchance think us even more dangerous and dare-devil than he had originally deemed us to be, but we hope that it will at any rate cure him of his hallucination about our insincerity, timidity and desire to escape the consequences of our speech ! Let him learn now at least that like the Highland Chief Roderick Dhu (in Sir Walter Scott's *Lady of the Lake*), we can only say:—

" Thy threats, thy mercy, we defy,

Let recreant yield who fears to die."

Why then did we say that we had not known, until our arrival at Karachi jail about the army part of the Resolution ? Solely because it was the fact and we could not—even for the sake of bravado or popular applause—pretend to have known what we had really not known.

The fact is, as the prosecution evidence itself has shown, we went to the Subjects Committee's sitting at 11 a.m., *i.e.*, just when (according to the prosecution evidence) it was breaking up. We attended part of the day's session and left at 2 p.m., to re-attend the night sitting at 11 p.m., thus obviously having been absent in the evening session too of the Subjects Committee. And when we did come to the Pandal, Dr. Kitchlew was on his feet. We asked him what the next speaker was speaking about and he said the subject was "Angora" and so we spoke on the Angora Government after an introduction about Hindu-

Muslim Unity and the Khilafat, as our speech will clearly show. And this does not mean that Dr. Kitchlew "vilely deceived" us (as the Crown Counsel suggested). It is usual to describe long Resolutions with such short headings as Swaraj, Non-Co-operation, Angora, etc., resolutions and Dr. Kitchlew followed the usual and natural practice. And besides Dr. Kitchlew could not have any desire to cheat us, because he did evidently more than Justice to the Government and we now find that the Government (which is capable of prosecuting people for their religious faith) did not deserve it ! Going from the external to the internal evidence it is clear that our speech itself proves our absolute ignorance of the army question being on the *tapis*. It will be noted that, of the three parts of the resolution, we said nothing about the first part, *i.e.*, Kemalist Victories or the second, *i.e.* Army but only about the third, *i.e.*, Angora. If we had known the existence of the other two parts, our whole speech about the Purans and Adi Shankaracharya, etc., was wholly irrelevant to the Resolution on hand. This very irrelevancy is the clearest possible proof of our ignorance of the first two parts.

The Crown Counsel aid all imaginable emphasis—having nothing else to go upon—on our being a political agitator and a sympathiser with the Khilafat. May we say that, in the matter of our sympathy with the Khilafat, we are conspirators with Mr. Montagu and the Government of India (including Lord Chelmsford and Reading) and that, as regards our being a political agitator in the memorandum (just published by Lord Reading) even Lord Chelmsford (who, as even the Anglo-Indian "Times of India" admitted, left India unhonoured, unwept and unsung) plainly said : " India sincerely wishes to remain within the empire but only on terms of equal partnership. Her own self-respect requires it that she shall not be in a position of inferiority" and that therefore Lord Chelmsford is our co-conspirator in our political agitation about Swaraj and Republic and so on.

Finally, we would point out that, apart from the external and internal evidence, there is one unanswerable reason why we *could not have* known about the Army question at the time of the Conference. And that is that, whereas the Islamic Law was explained by Hazrat Maulana Bari and other Ulema who would seem to have clear cut answer on Muslim sepoys in the Army, Hindu religious law (as we shall show presently) is intensely complicated on the question of Hindu sepoys in the Army and we could not give an answer off-hand ! Mr Gandhi may consider these

questions from the stand-point of politics—cum—Religion generally, but we have to give our interpretation of the Hindu scripture from the spiritual standpoint alone ! As John Stuart Mill says : “ 999 persons have no more right to coerce one person than one man has, even if he had the power to coerce 999.” And therefore our position is that, unlike the Crown Counsels who are heavily paid for their presumptions, we could not have the presumption to uphold or condemn the deliberate opinion of the Ulema on a matter of Islamic Law but should frankly have stated that we were ignorant of Islamic Law and should merely have asked Muslim to be faithful to Islamic Law just as we would have wished and asked Hindus to obey the behests of Hindu Law. And even to please our Islamic friends on the one side or to oblige Mr. Elphinston on the other, we could not have taken any other course. We need add no more on this point of fact, notwithstanding all the presumptions of the prosecution.

IX. THE ARMY QUESTION.

(FROM THE HINDU SPIRITUAL STANDPOINT.)

Apart, however, from the fact that we never spoke or even knew in July last at Karachi about the Army question and that, far from our having participated in any conspiracy, we have really, on the other hand, been the victim of a huge Government Conspiracy against us and our Peeth and, although the Army question has no direct bearing on our part of case, we still feel it our duty to go briefly into this question too (of Muslim Sepoys) on its own intrinsic merits, as usual, from our own characteristic spiritual standpoint. But, before doing so, we would just point out that section 7 (2) of the English Army Act 1881, 44 and 45 Vic. C58 applicable to India under Sections 131 and 505 I.P.C. and the similar English Enactment 37 George III C. 70 as amended by 7 Will. IV and 1 Vic. C 91 clearly defines the “Seduction of a soldier from his Allegiance or Duty” as *an act amounting to treason*—and definitely, expressly and categorically, excludes therefrom “Even insubordination and disobedience, howmuchsoever flagrant” (*vide Pindidads* 1907 Punjab Weekly Reporter Cr. 37) and, secondly, that, according to the terms of the Exception Clause of Section 505 itself if a report be circulated in the belief that it is true and without intent to incite mutiny, sedition or disturbance of the public tranquility but only with the object of advising a friend for his own betterment or of cautioning a co-religionist (or a body of co-religionists) against incurring religious impurity or sin, then the accused is exempt *irrespective of the consequences*, *Vide* Dr. Gour's Edition of the

I.P.C. pages 735 and 2432 and *Gazette of India* 1898 (Part. VI), P.38). And, consequently, it is obvious that a straightforward Resolution of the openly and admittedly *Religious* character in question and with the *Religious* motive described is evidently *not* within the purview of actionability under these enactments at all ! And besides, no one has asked the sepoys *to continue in the Army and there mutiny or fail from allegiance or duty* ! And, calling upon them to leave the Army in favour of a secularly more paying or religiously less impure profession is manifestly not indictable under section 131 or 505 I. P. C.—nay, is positively exempted as just afore-explained, by the Exception Clause of Section 505 I. P. C. ! This, however, only in passing.

Turning now to the intrinsic merits from the purely Spiritual standpoint, we have already stated our conviction clearly that God-made Law and Man-made law must, as far as possible, be harmonised; but, if a radical, diametrical, fundamental and irreconcilable antagonism arises between the two, *it is the man-made law that must necessarily go under*. In the clinching words of Antigone to the Tyrant Ceon of Thebes (in Sophocles' tragedy of Antigone).

“Nor do I deem

Your Ordinance of so much binding force

As that a mortal man could over-bear

The unchangeable all-binding Code of Heaven.

This is not of to-day and yesterday

But lives for ever, having origin

Whence no man knows : whose Sanctions I were loathe

In Heaven's sight to provoke, fearing the will

Of *any* man.”

This is why, in the light of further and further study and experience, the Man-made law of the realm is and must be changed from time to time, whereas the basic principles of Religion—*i. e.* Truth and Justice—can never be discarded or even diluted but, like His Mercy (as Sung by the Hebrew Psalmist “endureth) for ever” !

Passing on from the Pagan or classical Greek literature to the Hebrew Scriptures, we must first note that the Mosaic Pentateuch (*i. e.* the Books of Genesis, Exodus, Leviticus, Numbers and Deuteronomy) clearly enjoin that Kings too are bound by the Divine Law and prescribe, with con-

siderable wealth of detail, the "Sin offerings" and "trespass offerings" they should offer in expiation of their sins and trespasses against the Mosaic Covenant. Rightly, therefore, says Mr. Paul Scott Frower, in the course of an article in the "Atlantic Monthly" that "the Jews, through innumerable transmutations of time and place, have not only kept their identity as a people, but have opposed a vigorous, if passive resistance to most attempts at assimilation" and that "the sturdy Monotheism of Israel teaching that men shall obey Jehovah alone, carries by implication the idea that all *merely human* authority [*i.e.*, not having its sanction in or conflicting with Jehovah's] is unjustified and therefore negligible." And, finally, we observe that the very fact that an endless galaxy of kings like Saul, David, Jeroboam, Zedekiah, etc., in Judah and Israel, was severely rebuked and even thundered at and against by a fearless succession of noble Prophets and Seers like Samuel, Nathan, Amos, Jeremiah, etc., did or did not pay heed thereto and was consequently saved or swept off and annihilated, is the clearest possible proof that, according to Hebrew theology too, the law of the King of Kings is above that of His petty creatures drest in a little brief authority and intoxicated thereby.

As for the New Testament Dispensation, we learn from the Gospel of St. Luke (III.14) that John the Baptist too preached this simple Truth that even soldiers are within the jurisdiction of the rules of ethics and we also know how he was unjustly incarcerated and beheaded for preaching Dharma to the incest-loving Herod. And then we have the central and cardinal fact of the New Testament, *i.e.*, that, although the Lord Jesus Christ was by no means an anarchist and asked men to render to God and to Caesar what belonged to them respectively, yet His whole life was one continued plea and martyrdom for the placing of God's Law above man's! And it is, therefore, no wonder that the Apostles St. Paul, St. Peter, St. James, St. Stephen, etc., follow the same path and teach us the same lesson as their Master Himself had done before them. Hence do we feel that the King-Emperor (who, by a huge legal fiction, is the "complainant" in the present case against us), even if he did not care for Queen Victoria's explanation of her title "Defender of the Faith" as *Protectress of Religion generally* and even if he did not accept the doctrines of other faiths about the supremacy of God's Law over man's law, should—as a Protestant Christian and as the Defender of that Faith at least—accept the actual teaching and example of Christ and His Apostles as authoritative on the matter, in which case there can be no doubt as to the ultimate verdict hereon.

Apart, too, from the tenets of Religion as such altogether, we would point out that, even according to modern Civil and Criminal Jurisprudence as enunciated by the greatest Jurists of the western world to-day, a soldier is not only under the Military Law laid down by Tennyson :

“Theirs not to reason why,
Theirs but to do and die.”

but also under the laws of Ethics and Religion. How else shall we account for the Allies (including England) insisting on and bringing about the trials of so many German and other War “criminals” on charges of inhumanity, etc. ? If the men had no moral option but to obey the orders—however atrociously immoral or sacrilegiously irreligious—of the Kaiser and other “superior” officers, how could they be hauled up as “Criminals” for obeying such orders ? Surely we cannot blow both hot and cold with the same breath ! And this clearly shows that, apart altogether from Religion as such, even the ultra-rationalistic modern conception of life postulates a conscience-clause even for soldiers. Or, in other words, Morality and Religion are above Man-made law.

But, as regards the Government of India, our initial difficulty is that this body often shows itself *too* “superior” to Christianity and even Rationalism and all such “d.....d nonsense” ! We notice, however, that a Bill which Dr. Gour of Nagpur recently sought to introduce (for the registration of all adoptions) was stoutly opposed by Dr. Tej Bahadur Sapru on behalf of the Government on the ground that the Bill went against Hindu Law and therefore could not be countenanced even to the extent of being circulated for consideration and criticism ! Apart from the intrinsic merits of that Bill and whether it was really acceptable or repugnant to Hindu Religious principles, we must candidly express our whole-hearted approval of the copy-book—maxim—like principle and policy so prettily enunciated by Dr. Sapru, *i.e.*, that nothing obnoxious to the Hindu or other Religions should be enacted in the Indian Legislatures for the Hindus and others respectively.

And this root-principle should apply not merely to new Bills but even to existing Acts. If and when, at any time, any existing Act is found to offend against the principles of Religion generally, it ought to be withdrawn altogether ; and if it is offensive to a particular sect only, such a community at least ought to be categorically exempted from the sphere

of its operations. This is the only moral course open to Governments and Legislatures that really believe, with King Solomon (Proverbs XIV. 34), that "Righteousness alone exalteth a nation."

As for Hinduism and the Sepoys, we must frankly admit that the position is intensely complicated and, *pace* Mr. Gandhi, no mechanical ruling can be given. The conflicting cases of Shri Bhishma, Vibhishan, Prahlad, Akrura, etc.,—all of them splendid specimen of godly humanity—make the problem still more knotty and naughty. And the final conclusion from the Hindu standpoint must needs be very intricate and puzzling and even impossible to deduce without a detailed and careful study of each Adhikari's case on its own individual and intrinsic merits. As this problem, however, is not actually before us, for our emergent consideration at present, we do not go into it any further just now.

The case of the Sikhs seems very simple. We need only allude to the striking incident in the life of Shri Guru Govind Sing (the last of the Gurus, after whom the Granth Saheb is alone the Guru of the Sikhs) wherein, on one occasion, just in order to test the steadfastness of his disciples to their Dharma, the great Guru (while riding out with a number of them) merely set his bow and arrow in position as if he were intending to aim an arrow at the Samadhi (place of burial) of a Saint, was sternly called upon by the disciples to dismount immediately and explain his atrociously sacrilegious conduct, quietly applauded their fearless and impartial adhesion to Dharma, volunteered to be tried for his offence (according to the Panth rules and like the commonest of common people) by the communal Panch, was fined Rs. 100 for the small offence of merely feigning to aim against a Samadhi, paid the fine cheerfully and rejoiced indescribably that his spiritual labours with them had not gone in vain! The Sikh therefore has to place his Dharma relentlessly above even his Dharma Guru, let alone pettier fry (like temporal rulers), as even Ranjitsing the Lion-Hearted King realised through bitter personal experience!

As regards the Muslim law, however, the present prosecutions have themselves widely proclaimed and advertised to the world the fact (which we ourselves did not know until a few days ago here and which even Prof. Vaswani of Karachi says he knew nothing of until quite recently) *i.e.* that a huge assembly of *Ulema* (including Hazrat Maulana Abdul Bari Saheb of Lucknow whom we saw for the first time at Karachi in July but whom we had frequently heard of from many and diverse quarters as one of the greatest living authorities on the Islamic Scriptures) has

actually declared that, under the present plight of the Khilafat, it is "Haram" for a Muslim to be in the Army. We do not know the exact technical signification of "Haram" but we roughly guess it to mean "forbidden by Religion." We know not personally if this decision is correct; but we who always insist that a Hindu shall invariably act in conformity with the Hindu Law and who further believe in Swa-Dharma for all, must certainly and unequivocally declare ourselves similarly in favour of all Muslims unquestioningly following the Muslim Law of Allah in preference to the Man-made law of no body in particular !

Apropos of the recently published new edition of Sales' translation of the Qoran, the London "Times Literary Supplement" says of the Qoran "Every Mahomedan must learn by heart some portion of it at least, for recital in the daily prayers; and thus, five times a day, it passes on the lips of men in every land of Asia and Africa, from Peking to the shores of the Atlantic—from Wilna and Tobolsk to Cape Town and Buenos Aires. Its claim on the allegiance of the Believer is as far-reaching as its geographical extension. Co-eternal with God Himself, it demands absolute obedience to its injunctions in every department of human thought and activity, not only in respect of Dogma and Religious belief and practice, but equally so in the realm of *law, political theory* and such details of *civil and domestic administration* as taxation, inheritance and the control of refractory wives" and so on. These are the words, not of an Indian (or Kemalist) Nationalist, Damagogue, Firebrand, or Stump-Orator, but of the sober literary reviewer on the Editorial staff of the London "Times," who thus most eloquently testifies to the indubitable supremacy of the Qoran as the highest Court of Appeal in *all* the affairs—spiritual as well as temporal—of *all* Muslims !

If, however, the correctness of the view adumbrated at the Khilafat Conferences of Gokak and Karachi be reasonably, conscientiously and *responsibly* doubted by anybody, the question will then have to be decided on the common sense principle laid down in our Taittiriyaopanishad *i.e.* by an assembly of eminently learned, thoroughly devout, rigorously straightforward and entirely dependable Muslim divines (without any artificial manipulations—like Col. Pride's Purge or Lord Ronaldshay's recent so-called "Public" meeting at Calcutta—for mechanically predetermining and automatically ensuring any desired political hue for the assembly).

We personally have not studied the Qoran and other Islamic Scriptures sufficiently to venture to give any opinion on the matter ourselves (as we might freely venture to do in the case of the Bible) and we always—on principle—refuse to dogmatise, one way or another, on a question which we have not ourselves thoroughly studied. Nor can we grant, even for a moment, the utterly and revoltingly preposterous proposition that the Karachi Police, Magistracy or Judiciary or the Bombay Government or even the *Omniscient* Sir William Vincent (with the worthy Dr. Sapru) can decide such intricate and delicate problems of Islamic theological Law. That would be no less ludicrous than the judgment and discrimination of a person who, needing to be treated for nephritis, pulmonary consumption or double pneumonia, selects as his doctor one who knows nothing of Anatomy, Physiology, Hygiene, Pathology, Therapeutics, etc., but happens to be the tallest, the stoutest, wealthiest or the handsomest individual in that vicinity! Even as perplexing points of medicine, Hindu Law, etc., are invariably referred to the experts who have specialised in those particular branches of Science or departments of Learning, so too should this point have been referred to the specialists therein.

But what do we actually find? We find that, instead of adopting this only ethical, sensible and statesmanlike procedure, the Government—with its pathetically crass faith in Repression (with a big R) all-round (however unjust and impolitic) as its one and only remedy for all the ills of Indian life—is prosecuting and persecuting all sorts of people and procuring for them the benefits of cheap fame and martyrdom which we at any rate, do not honestly feel we have at all, in this case, deserved? And besides whereas even the Nagpur Congress Resolutions are specified as the Swaraj, Non-Co-operation or other Resolution, this Resolution is now famous all over India as the “Karachi Resolution!” The Conference had failed to send its message far and wide; and even we and Prof. Vaswani and millions of others had never heard of it; but the Government (by these prosecutions) has acted as the *Propagandist Agent* of the Khilafat Conference and carried to the whole world the Conference message that it is “Haram” for a Muslim to continue in the Army!

Surely this is neither worldly wisdom nor Justice but only the Royal High Road leading the Government straight to political and moral suicide!

We find all the world in general and Anglo-India in particular waxing eloquent in condemnation of the forcible conversion of the Hindus to Islam by the Moplah rebels of Malabar. We who sincerely believe in and

actually practise religious toleration are entitled to condemn them : but may we know what right the Governments of India, Bombay, etc., and Anglo-India have to do so ? If we clear our minds of all cant and hypocrisy, all prejudice and partiality, we must honestly fail to see how and wherein the Moplah's sword against the Hindus of Malabar for their religious faith differs—morally—from the Government's present prosecutions of the Indian Muslims for *their* religious faith ! We fail to see how Section 131 or 505 I. P. C. is a morally nicer or less repressive instrument herein than the famous Moplah knife ! We may frankly state that from the ethical standpoint we personally prefer the highway robber to the polite thief, and the murderous ruffian to the gentlemanly cut-throat. Of course, tastes differ in all matters and there may be those who prefer being cheated by the smooth-tongued hypocrite to being assailed by the rough highwayman. But, all the same, so far as the actual cheating or murdering goes, we see no practical ethical difference between the two. Even so is the present prosecution of Islamic religious opinion, on no higher moral plane than the Moplahs' persecution of the Hindus in Malabar ! In our opinion it is considerably *lower*. Hence our query about the Moplah *Mote* and the Government *beam* (St. Luke VI 41-42) !

When, for example, certain distinguished ecclesiastical and other leaders of the western world to-day (like the Rev. Prof. George Adam Smith the great Biblical Scholar and Commentator) come forward to point out the blemishes in modern Christendom and, in the sacred name and under the blinding authority of the Lord Jesus Christ Himself, denounce the Divorce Laws, etc., of Europe and America as wholly un-Christian, surely it is inconceivable that the so-called "Christian" Government of England, not content with trampling—in actual daily practice—on the noble teachings of Christ, can also proceed further and prosecute, and otherwise persecute, those learned divines who are, for faithfully obeying Christ and not for merely hypocritically naming Him !

It is clear then that there is a considerable body of Islamic theologians in India who declare it *Haram* for a Muslim to continue any longer in the British Army. If the Government honestly and sincerely thinks otherwise, its method of persuasion should not be the hatred and persecution of all and sundry who take or, like the Gerondins of old (in the days of the French Revolution) are even suspected to take, the opposite view, but only the threshing out of the question dispassionately by the

theological leaders of Islam and arriving at a *bona fide* settlement based on *their* conclusions. Any other process will not only not be a sample of the Equal Justice whose importation, at long last, into India, the Ex-Lord-Chief-Justice of England has all along been understood to have become Viceroy of India for, but will also be a terrible and suicidal failure !

If, as the result of such deliberations, it becomes inexorably clear that Islam actually and relentlessly precludes Indian Mussalmans from service in the British Army under present-day conditions, the Government should either let them withdraw therefrom or remove the religious obstacles in their path. Surely, if Mr. Lloyd George (as Prime Minister of England) can confer with the Irish Sinn Feinners in order to find a *via media* for reconciling Ireland's *Political* aspirations with England's requirements, much more therefore can and should Lord Reading (as Viceroy of India) confer with the Indian Khilafatists, in order to find a *via media* for reconciling the Indian Mussalman's *Religious Duty* with England's temporal rule ! Surely, the vital difference between the Irish Republicans and the Indian Khilafatists *i.e.* that the former believe in organised murder looting, kidnapping and incendiarism while the latter do not, should not be counted against the latter as the reason for refusing to hold such a Conference with them as that slippery electrical Mr. L. G., is holding with Sinn Fein !

If the Government, however, persists in its suicidal folly of looking upon its real well-wishers and conscientious advisers as its mortal enemies and insists on meddling with the sacerdotal affairs of Islam, it would be virtually ordering a new Khilafat for Indian Mussalmans in its own favour as against the original Khilafat enjoined on them by their Prophet Mahomed. And, whereas the rumours of 1857 about greased cartridges were perhaps false and the consequent panic of the sepoys about their Religion was possibly erroneous, there can be no doubt whatsoever that any declaration or action on the part of the Government in the direction of dictating Islamic Law to Indian Muslims according to its own sweet pleasure and over the head of the Heads of Islam, will be tantamount to the Virtual Supercession and Practical Proscription of the Quran itself and will, certainly and inevitably, drive the Muslims of India to choose definitely and expeditiously, one way or the other, between their Eternal Over-Lord Allah and their present temporal rulers the British a dark and fateful contingency which we (as sincere well-wishers of all

including the Raj and the Praja, England and India and so on) can only contemplate with indescribable horror and shuddering ! And yet, as this is certainly and manifestly the direction which the Government is, wittingly or unwittingly, drifting to, we feel it our Duty to call its attention thereto *for its own good* !

IX. THE CONCLUSION.

To recapitulate and sum up, so that our actual position may be grasped accurately:—

1. We *did* attend the Khilafat Conference of July last at Karachi and we spoke *twice* thereat (not merely once as deposed to by the prosecution witnesses).

2. Owing to our utter ignorance of Urdu, Sindhi and Persian, we knew nothing of the details of the proceedings. Nor did we concern ourselves with them.

3. On the night in question, we arrived late at the Pandal, were desired by Dr. Kitchlew to speak on Hindu-Muslim Unity, the Khilafat and the Angora Government and actually spoke on these subjects from our own Hindu Spiritual standpoint. We spoke of the sanctity of the Holy places of Islam and of the sufferings of the Angora Government which has got inextricably intertwined with the Khilafat Cause.

4. We should have spoken in the same way, had the honour and the integrity of Hinduism, Christianity or any other Religion been imperilled. To a true Hindu and particularly to a Sanyasi, *all* men are brothers and *all* Religions are Divine. And he regards the oppression of the weak by the strong anywhere as a denial of God's Law of Love and Justice that governs the world. The speech, therefore, merely expressed our Religious views regarding the present plight of Islam.

5. We had never yet uttered a single syllable about the Army anywhere. And it was only a few days ago here (in the Karachi Jail) that we heard, from Prof. Vaswani for the first time, about this tiny and incidental part of the Resolution in question.

6. This our contention will be found substantiated by the evidence adduced and the Exhibits filed, by the prosecution itself.

7. So, on the actual facts and the evidence, we are obviously innocent of any of the offences we have been charged with.

The same would seem to be the case with Maulana Shaukat Ali too even from legal point of view who, according to the prosecution evidence itself, did no more than stand up at the end to signify his assent to the Resolution (even as the whole Conference—excepting us and *including the Police*, as deposed to by the C.I.D. reporters themselves—did).

8. With regard to the intrinsic merits of the question of Muslim Soldiers in the Army, this is obviously a subject with which the Mussalmans alone are directly concerned. We have not ourselves studied the Quran and other Islamic Scriptures sufficiently and we always refuse to dogmatise or even risk an opinion on any subject that we have not thoroughly studied. The only persons who have any authority to discuss this subject are the Divines of Islam and they must naturally and necessarily decide it in accordance with their own sacred Law. Neither we nor any secular official of a non-Islamic temporal Government can be morally—or even legally—justified in meddling with such a purely Religious question.

9. If we had known, at the time of the Conference, that the Army question was on the *agenda*, we would have frankly expressed our ignorance of Islam *i.e.* Law, would not have presumed on our own authority to dictate to the Muslims on the matter but would have simply and clearly stated that, just as we ourselves always call upon all Hindus to perform their Swa-Dharma and obey the behests of the Hindu Religion so too would we expect and wish all and even incite all Mussalmans to carefully consider, correctly grasp and faithfully practise their Swa-Dharma and obey the injunctions of Islam !

10. It is our fervent Religious conviction that men of all Faiths and the Government too should adopt this universal doctrine of Swa-Dharma and therefore should also cheerfully accept such conclusions as the Divines of Islamic theology may arrive at on Islamic matters. For, it then becomes a question of Faith and the Prophets and thus gets beyond and above judicial courts, legislative acts, procedure codes and all such merely mundane matters. This is the principle on which the whole of Chapter XV (sections 295 to 298) of the Indian Penal Code is based, *i.e.* that you can only argue politely with and never force yourself on or

violate the feelings of even the most perversely stupid person on matters of faith. Before such prosecutions as these can stand, Chapter XV I.P.C and its principle *must first go* !

II. We therefore emphatically repeat that—on the evidence and from the ethical standpoint too—we are not guilty of any offence whatsoever.

We know from the "Dublin (Quarterly) Review" (July—September 1921) how His Holiness the (present) Pope Benedict XV of Rome—the true Servant, faithful Soldier and worthy Vice-Regent of Christ on earth laboured hard and impartially, with his sage advice of August 1917, to mitigate the horrors of—and, if possible, shorten the late War, how the selfish and godless " Powers" of Europe resented His Holiness's impartial ministrations (solely because they *were* impartial) and—in the compact between England, France, Italy and Russia—went out of their way to specially name His Holiness as one who (on account of his madness for righteousness and impartiality) should *not* be allowed to participate in the final peace negotiations and the settlement of issues arising out of the War and how the present League of Nations, too, has, similarly, carefully excluded His Holiness, harming itself and not him thereby ! Like him, we too have been giving our advice to the Raj and the Praja and once again, in conclusion, let us reiterate the simple Truth that, whether our advice is heeded or not and even if it is not merely not accepted but positively resented or even savagely 'punished,' we remain absolutely unaffected ! Like His Holiness the Pope, we too have the satisfaction of having conscientiously performed our Duty of Dharmopadesh by elucidating and clarifying the facts, preventing all preventible misapprehensions and emphasising Truth and Justice ! And this satisfaction will and does quite suffice for us !

From our own personal standpoint, there is neither pleasure nor pain neither fear nor bravado, but all within is Bliss and Joy and Peace which in the words of the Apostle, "passeth all understanding!" And, as regards the external aspect of life, a Sanyasi who has merged the petty individual self in the Universal All-Self cannot worry about that. He neither seeks to live nor wishes to die.

And, after all, as Brahma said on a memorable occasion recorded in the Shrimad Bhagwat (III, 16, 37),

विश्वस्य यः स्थितिं लयोद्भू व हेतु राध्यो ।

योगेश्वरै रपि दुरत्यय योगमायः ॥

क्षेमं विधास्यति स नो भगवांस्त्र्य धीश ।

स्तत्रास्मदीय विमृशेन कियानिहार्थः ॥

(i.e. He, the primeval Being who creates, protects and destroys the Universe, whose infinite powers are inscrutable mysteries even to the highest Adepts, who is Perfect and who is the Lord of all—He will look after our welfare ! What purpose shall *our* solicitude serve herein ?)

And has not Shri Krishna too said in the Bhagwad Gita :—

नहि कल्याण कृत्तश्चि दुर्गतिं तात गच्छति ॥

नमे भक्तः प्रणश्यति ॥

तेषां योग क्षेमं वहाम्यहम् ॥

i.e. (1) My dear boy, none that is a doer of good shall perish !

(2) My devotee shall never perish !

and (3) Their welfare and progress I look after !

And is he not shouldering all our burdens, according to His public and definite promise ? Where then, O ye of little faith, is there any need or room for anxiety and worry ? Let no one therefore fear, grieve or worry on our petty personal account !

With Dante, the great Italian poet, let us say :—

“In la Sua Voluntade e nostra pace”

(In His Will is our Peace).

Om Tat Sat.

After Shri Shankaracharya finished at about 4 p.m. (on 29th October) Maulana Shaikat Ali gave the following address in English :—

MAULANA SHAUKAT ALI'S ADDRESS TO THE JURY.

Gentlemen of the Jury and the Judge,

I am personally not capable of making a long speech. If you interrupt me in the middle of my argument I lose my points. I am not so clever as my brother. If you interrupt him in the middle of his speech—if you ask him questions he will never lose his argument—he seldom misses his points. I am positively certain if you will give me a patient hearing—I think you will have no complaints. If the trying Magistrate had just the little patience to hear me—to let me say my say in my own way, he would not have had any complaint whatsoever. It is not my desire to waste your time or my own by inflicting a long speech upon you. I am also anxious to see the case finished. I am very anxious to see my mother and fellow-workers go away without any further delay. There is so much work to be done. I begged of her and wished her to go away. But she said that she wants to go away either with us or without us without further delay when the case was finished. So I cannot afford to make an unnecessary waste of your time and mine by making a long speech. Besides, we have much work to do for the country.

Before I go further and say what I want to say, I want to clear a few points. I am one of the Secretaries of the C. K. C. and I have worked much for it and if the C. K. C. have done anything—any work that has been done by this Committee—with the help of a large body of earnest workers, I have played an important part in it. I am very glad—I am very thankful to the P. P. that he has acknowledged what I have done for it. And whatever I say now, I hope, will be taken as absolutely fair and truthful. I want to speak everything frankly—I want to speak out what is the real truth for your information and for the Judge.

I just give you the information which the Prosecution failed to supply to you. Poor Maulvi Nisar Ahmad who had just come from Mathura Jail—convicted under Section 124A for six months—he is even now a prisoner. He came with us all the way from Gokak. While coming with us from Bombay he got fever in the train. He also was with us when my brother and myself and Dr. Kitchlew were living at Kanyapathshala, that is further information I give to you. Poor Nisar Ahmad was laid up with fever. He was not a member of the C.K.C. He took no part in the Subjects Committee. He was not elected to it. In the

Conference meeting he was called upon to speak, as he is a great preacher. He spoke nothing outside the Quran and the Hadees. The people were anxious to hear him. He said only a few words.

You have heard Maulana Hussain Ahmad, Pir Ghulam Mujaddid Saheb, my brother and Dr. Kitchlew—they have told you—that if a Muslim goes to a Muslim scholar to know what the Law of Islam is, it is the bounden duty of him as a theologian to give him a fair and square answer. So Maulana Nisar Ahmad was asked to speak on the subject. The subject is very simple for a Muslim—he requires no time to think over it—it is not necessary at all. He was in fever and so he made a short speech. What the effect of this information be on his case, I do not care—no true Mussalman would care—to bother as to the result of speaking of what he regards as Gospel truth. Another thing I want to say and that is about Shri Shankaracharya. Our Karachi friends wanted him to come with us. So on an invitation from the Khilafat Committee like Mrs. Sarojini Naidu he came with our party to attend the meeting. I here take the opportunity of gratefully acknowledging the sympathy and support of our Hindu brethren in our Khilafat cause. We have a very large number of Hindus—who are helping us as workers and even as office-bearers—there is not a single city in which we have no Khilafat Committees and where we have not a large number of Hindu workers with us. I have travelled all over India—and I may tell you that in all places the Hindus are working with us or giving us assistance—and in many places—where Mussalmans are weak they are working as members of the Committees and even as Presidents and Secretaries or as workers. So Shri Shankaracharya came to give his Hindu ecclesiastical support and sympathy with the Khilafat cause. And I may tell you again—Mahatma Gandhi—our great Sirdar—our great Chieftain, he also comes and gives us his support. We carry our ordinary business ourselves—we draw up our resolutions—we talk—we quarrel—we fight in our Subject Committees—but as a rule we send for him only when we want him to make a speech often not on any Resolution. But these speeches are made only in a general way especially to prove his sympathy with the Khilafat cause. So too Jagatguruji came in and spoke. Whatever value you may attach to it you may—but it is God's truth which I consider as my duty to put before you.

As for myself, I am not going to make a speech in my defence except to tell you what I think and I ought to tell about our work clearly and

frankly. After what you have heard from my brother and from that great theologian-gentleman, that one speech, that one statement which I would beg of you to consider and pay greatest respect and attention to is that of Maulana Hussain Ahmed Saheb. You have heard Dr. Kitchlew and Shri Shankaracharya, you have just heard. I have nothing left in store for me (laughter). But I want to tell you this and which I hope you will appreciate why we are doing all this ? The Judge incidentally put a question to the P.P. when he was trying to prove a conspiracy that "Did he not think that this Res. passed at the Karachi Conference was meant more for the Government so that they might realise the feelings of the Muslims"? Now, I may speak for myself and for Mahatma Gandhi—having lived with him—we have practically lived as two brothers—I want to tell you and the Court so that you may understand that every effort by us, by Mahatma Gandhi—by the C.K.C.—by all our workers—sympathisers—extremists and moderates—every effort possible has been made to bring this home to this Government that it is a very serious question. For Government's sake you must realise this. Believe, me, gentlemen,—every possible effort was made to make this Government realise the gravity of the situation—we asked them—"satisfy the Muslim demand—rectify the Punjab and Khilafat wrongs and grant us Swaraj"—the Mussalmans, the Hindus—every one will be perfectly willing to co-operate with you.

Col. Wedgwood he is a Christian, he is an Englishman. He came over to India to study the question. I heard from my brother and friends in England that Col. Wedgwood had helped the Khilafat cause in and outside Parliament. The Khilafat Committee in Bombay convened a public meeting to welcome him—and Col. Wedgwood was present there—we thanked him for his efforts. A Resolution was put in—and I proposed that Resolution. I spoke in his presence. I told him frankly that my heart was burning to-day against England—and it will continue to do so, as long as British had not evacuated the sacred places of the Muslims—so long as the British Government has not satisfied the Khilafat wrongs—so long as they had not redressed the Punjab wrongs—so long as we did not get Swaraj—so long as these were not done, I counted myself as an enemy of England. I hate every body who is an enemy of my God—who is an enemy of my Faith and my Country—and all that lies in my power, I shall do in getting my rights back—and I told him also that any body—be he an Englishman—be he a Jew—a Parsee—agnostic

or whosoever he may be —any body who comes forward and does some thing to help me in getting my rights back—who will help me in giving me satisfaction about the Khilafat—about the Punjab wrongs—and help me to win Swaraj—there is the hand of brotherhood and fellowship I offer. And Col. Wedgwood jumped up and took it. I shook hands with him. And I spoke in Urdu and told the audience—there were 25,000 of them—“ Do not blame me as I am shaking hands with him—it is because he helped us in our Khilafat work. He has come to study the Khilafat question. He has come all the way with an open mind to study the question—and he is going to do what he can. And on behalf of the Muslims of Bombay, nay for the matter of that—for the Muslims of the whole of India—I offer him my hand of brotherhood and fellowship.” And they all said do it. I say now again whosoever helps us—whosoever helps us in giving satisfaction with regard to the undoing of our wrongs—whether he is the Judge—whether he is the Public Prosecutor—or the Jury or the Viceroy—whosoever he may be—we all offer him our hand of fellowship and brotherhood. Every effort was made—every effort has been made and is being made by us to justify our cause and in getting our rights back. When we were in Jail there was no Khilafat Committee worth speaking. There was no organisation. There was no fund. Dr. Kitchlew was in jail—my brother was in jail. On the 28th December 1919—from the Betul Jail we proceeded straight to the Congress at Amritsar. There was held a Khilafat Conference. I was asked to preside in that Conference. We did not think of a Revolution then—we did not think of a Republic —we did not think of rising in rebellion—I did not say that we are all rebels—I did not say that I acknowledge no King—that I owed no allegiance to him—that I did not say that I was a free man and India was my home and God alone my King.—I did not say that we do not want your Police, your Army and your navy —I did not say that I do not want the protection of your lands—then I counted myself as the subject of the King-Emperor. At that Khilafat Conference, gentlemen, a resolution was passed that a deputation was to wait on the Viceroy to put everything before him—to put our case clearly and moderately. Another Resolution was that we must send a deputation to England to put our case before the King, the Parliament and the people of England. I, as President, was ordered to make arrangements. The Government of India readily assented to receive the deputation--and on 19th of January 1920—the pick of the Mussalmans—the Ulema—the pick of the Hindus and Mahatma Gandhi was in the gallery

—we waited upon the Viceroy and put clearly our demand. The Viceroy made a speech. He had personal sympathy with us and he realised that the Moslem feeling was genuine. And he got the deputation to England a passage in February next. My brother, Maulana Suleman Nadri, Mr. Syed Hussain and Mr. H. M. Hayat—they were members of that deputation. The deputation sailed and we waited for months and months—to see what answer we got from my brother—we were eagerly waiting for a cable from him. Meantime every possible effort was made to carry our message to our people—everything was put before the Viceroy to make him and the English people realise our grievances—that it is a matter of our religion—it is a matter of our conscience. There was no question of bluffing in this as has been hinted. We mean business now and we meant business then. We wanted that England should know what the Muslims felt about the Khilafat and once for all realise the strength of genuine Muslim feeling.

People ask—what has become to the Ali Brothers? I tell you, we have our English friends—I was in Government service for 17 years—my brother was brought up in England—was for four years at Oxford—I was one of the best cricketers in my day—I was a strong swimmer and an expert athlete—I was socially popular. Mr. Ross Alston will be able to tell you that. I met him in Benares—I was then in the Government service. I want to say all this to show that we are not by nature revolutionary—that we are not born in a Revolutionary family. I have not gone mad—a mad dog has not bitten me (laughter). But things have happened which have upset us—we, who were once very careless—we who were used to put on fine clothes—we, who are brought up in luxury—those old days are gone—you have no idea how dressy and smart this brother of mine Mahomed Ali was—how he used to spend thousands of rupees on clothes only—but things are different.

Well, the point is this. We did what we could in India. We made our appeals to England—to British Ministers. The Government of India sympathised with us—they wanted to show a generous spirit. The Government of India, the Governor of Bombay realised the feelings of the Muslims. The Governor of Bombay, I am told, said that “my heart is in sympathy with the Muslims but it is not in our power. Go to England.” Therefore we sent over a deputation. They went over everywhere. They interviewed Mr. Montagu—they interviewed the Prime Minister—they saw Members of Parliament. They addressed meetings

in England, in the country in Scotland. But to no result. They went over to France. They knocked at every door—waited for some little consideration—some little ray of hope. We waited for a message. My brother for days and months never sent a message. At last a message came. We came to know that “France is willing to make an honourable peace with Turkey and satisfy what the Muslims demand is”—and that Italy had already made a peace with Turkey and that it is our Government, the British Government alone who was unwilling. When the war broke out England promised on the 5th November 1914. Lord Hardinge made a definite pledge made on behalf of the King—and even the Czar of Russia was consulted.—and they all agreed to this that all the Muslim sacred places will be immune from attack and molestation. I do not remember all the details. One clever brother in the family is more than sufficient (laughter). But all the same what I am telling is absolute truth. Therefore I am not keeping back anything—because we are straightforward. We tell you in your face what we think. And God willing, I still hope—hoping against hope—that things will not be bad—as bad as they are. Let us hope that.

We came to know that it is impossible—we can get nothing from England—that’s what our deputation told us—and in the meantime we were not idle—when we found that England’s pledge carries no weight—we acted like old Cromwell—“Trust to God and keep your powder dry”—we carried this message to every home in India—we roused the Muslims—we roused our Hindu brothers to work, to do what lay in our power—when we found there was no hope—that this Government would pay no attention to all our appeals—to all our memorials—to all our beggings, prayers and petitions—we decided after a full consideration—after a great deal of heart searching—and the great man whom I, a Mussalman, am proud to acknowledge as my Sirdar and Chief—Mahatma Gandhi—he who is not only a great man—a good man, a clever man, a shrewd *Bania* as he is—who thinks two hundred times before he says anything—he thought and thought over it and at last told us that there was no chance whatsoever to make this Government realise the wrongs it has done or to repent for its actions—but to put difficulties in its way—in a peaceful way that they may come to hear us. And we started Non-Violent Non-Co-operation. We spread that message all over India. I have travelled many thousand miles—I have travelled all over India—I have been spreading this message to thousands and thousands of our

fellow-countrymen and countrywomen—working and carrying this message to every home—man, woman and child. How many thousands of miles Mahatma Gandhi travelled—how many thousands of miles I have travelled—how many thousands of our people—Hindus and Mussalmans are working for the Khilafat and for Swaraj. Gentlemen, we know and the Government knows it well. We do not mind what the Anglo-Indian papers write about us—what our Moderate brothers say about us. Our chief is the coolest man—the one man that never gets excited is Mahatma Gandhi. He is calm—he is resourceful—he is too careful—he knows what he does—and he knows how to do a thing. And I may tell you, gentlemen, —I will betray him—I think he in his heart of hearts still believes in England —that she will yet apologise—yet repent when she realises our just cause—will appreciate the justice of our demand regarding the Khilafat and the Punjab and will give us what we want : I have studied him—he breathes in his heart of hearts that every Englishman and Englishwoman is not what the Anglo-Indian newspapers picture them to be—he still believes that the British Government will yet come round—they will satisfy the Muslims—they will yet give satisfaction on the question of Khilafat and the Punjab—and give us what is necessary. If so, well and good.

Gentlemen, there is a well-known Persian proverb —you call me a Haji and I call you a Haji—“*Man tura Haji begoyam, to mara Haji bego.*”

Gentlemen, I have told you, I want to be fair and square. I am a frank man—and I know my brother also. I brought him up as a little boy—at Aligarh ate up his pocket money—I thrashed him when he questioned about it—I educated him—I sent him to Oxford. I have followed him as a friend and I now follow him as a leader: There is one weakness in him that I tease him about. There are two—one is that he cannot forget the 4 years he had at Oxford. He had a certain affection for England and its people and the second is by nature he is a believer in constitutionalism. If there is one constitutional man in India—it is Mahomed Ali and that's why he was so much worrying the Judge and the Jury. But circumstances are different. We are being forced—we are doing all this because we must. You know my faith—you have heard my brother—you have heard Dr. Kitchlew—you have heard Maulana Hussain Ahmad Saheb—all of them have told you that we must work and induce others to work

for a good cause—it is my faith as a Muslim—it is a perfectly good thing for me to die for God and truth and it is equally a good thing for me to kill for a good cause. I am not afraid of this.

But we have thought over the whole thing. We still give the Government every chance possible. Mahatma Gandhi and we all of us in the Congress Special Sessions in Calcutta in September 1920—we said within one year we will get Swaraj and that we will start Non-Violent Non-Co-operation. The Congress took up our Khilafat programme—adopted it—this period expired on the 30th September. But on account of the Congress decision we have extended it till 31st December 1921, and in this period to make every possible effort that lies in our power to bring this Government to realise its duty to carry out the promise made—and to give us every satisfaction. You may think, Sir, that we are shewing discourtesy to you—that we mean any insult to your person. No, personally I am as humble as any thing. If you wish I may make a honest and sporting offer to you. To-day if any personal humiliation you may require from us—from me—from my brother or from Mahatma Gandhi—if you ask us without any show of force—without any threat—if you want us to crawl for you—if you want me to crawl on my belly—though I am so heavy, I will do so—I will write poetry on the ground with my nose and whitewash my face and body. I will do all gladly and cheerfully only on this promise that you will give me satisfaction as regards my demands. To-day, believe me, when I go to say my prayers five times a day—and turn my face to Kaaba (Mecca) not always but sometimes when God's light is on me my heart tell me "You coward, your Kibla (Kabba) is not yours. It is in the hands of men who are not going to give it back to you. The custodian appointed can't afford even to keep it clean or light. You ought to be ashamed of yourself." Yes, this is true. The law of the Quran says that no Non-Muslim should have any control whatever over any part of sacred places, in the Jazerat-ul-Arab. Take it from me that what I am saying I am speaking from facts. I am perfectly willing, if you satisfy me on those points to do whatever you like. You may hang me—you may transport me for life—I will not object—I am perfectly willing to go on my knees—if you (judge) will only throw away—the file, run and go to Simla to-morrow and tell the Viceroy there that we are not blackguards—that you are convinced of our sincerity and that you cannot convict us under any section of the Penal Code for our adherence to Islamic Law—and tell him to satisfy our just demands. After all, what are we guilty of? We do not want anybody's home—we do not want

any part of England—we do not want anybody's property—I do not want that this Judge should be hanged and I should go and take his place (laughter). No, I want to hurt no body. I only say 'Give me back my own! you have no interest in that; it is a land of sand—it does not produce anything. There is nothing in this country. It is a most uninviting country—the climate is hot and no European can stand that. On that barren country my Prophet and his companions walked barefooted. If I had health and strength, I would like to kneel at every step and kiss every inch of that sacred ground, perchance I may kiss one particle of sand that had touched my Prophet's feet. To-day I am non-violent. We have an army of workers. If I am in jail, my mother is working. My brother is in jail, his wife is working, though she is not as brilliant as my brother—she is working. Thousands of women have come out throwing away their veil. Many thousands of new workers have come out—they are all praying for us. I saw when I came to this hall, old and young women pray for us and point with their heads towards Heaven. Each one of them will tell you that God is with us—children, boys, old and young—they are all with us. I have travelled from Karachi to Assam—I have travelled all over India—and I may tell you, gentlemen, I have seen the same everywhere—these feelings are very strong.

Gentlemen, you have heard a great deal about Malabar. People say that the speech that my brother made in July in Karachi—(Interrupted).

The Court.—I will not allow you to speak on the Moplahs.

M. S. Ali.—I am not going to talk on the Moplahs. You will appreciate what I say. My brother never went to Malabar. Mahatma Gandhi and myself went there. We reached there at 12 o'clock. We were carried in a procession—then we went to the public meeting. The next morning we came back to Madras. I saw that it was our weak point. We had no workers there and what there were were, hampered. Wherever we are strong—wherever our workers have reached—thank God, the peace of India is kept and orders of the Jamiat-ul-Ulema—the orders of the Khilafat Committee—the orders of the Congress and the orders of Mahatma Gandhi have been carried out.

Gentlemen, you know how this Anglo-Indian Press have been flouting the religious demands of the Muslims—how Mahatma Gandhi and others are ridiculed—they say all sorts of things about us—and I may tell

you frankly that some young men they were exasperated at this constant slander against us in the Anglo-Indian Press—these young men—their blood was boiling—they came to us and asked us “what are we going to do?” They said—“We can not remain Non-Violent Non-Co-operators always” and I said—“No” to them. I tell you my reasons. Where a question of killing comes in—I will go and kill myself. But we cannot have two things together. We cannot have peace and war both. We can only have one policy. The order has gone out that we are to carry out Non-Violent Non-Co-operation. You cannot have two things together—either you will have peace or you will have war—Revolution. And up to 31st December we shall have peace. Every order of our Sirdar Mahatma Gandhi, the great Chief in this campaign—we have got to carry out. I may tell you, gentlemen, the danger is there—the feeling is there. It is the feeling everywhere—in my heart—in all the accused’s heart—in every Muslim’s heart—in every Hindu’s heart—in every Indian-man and woman’s heart—and the two, Hindus and Mussalmans are combined—the women have thrown off their veil and have taken up the nation’s work—the feeling is working—it has reached Afghanistan, Persia, Arabia, Turkistan, Khiva, Bokhara and Russian Muslims and to numerous other people—to the Muslims all the world over. As a secretary of C. K. C. I get many informations—it is my business to find what the Muslim world is doing. And I am very glad to tell you—it has reached practically every house in India—to every Muslim in the world. I am not saying all this as a threat. This is a fact which you will have to realise. We went to the Viceroy and we gave him a warning. My brother went to England and spoke clearly to the Secretary of State—we said, we are agreed to make peace—Dr. Ansari, Mr. Chotani and other people did go to England—Mr. Chotani has only just returned. They did their best. We had to tell the Government and I tell it again—through you—and through this Court—I want this message should go to the higher authorities that we are perfectly willing—we are anxious to make peace—but let the Khilafat be satisfied to the satisfaction of Islamic Law, not of any individual Shaukat Ali or Mahamad Ali or Kitchlew—let the Punjab wrongs be righted—and I want you to carry this to the authorities at Simla or elsewhere—let there be a conference of Thirty men—men who have understanding—whom India trusts—reliable men—God-fearing men—who have got truth in them and who in their daily life followed no other law—who will see what the whole Muslim demand is—and if such men (Ulema) give a Fatwa saying that England is going to satisfy your

demand and now you can co-operate with them—I shall be very glad to go and shake hands with every English officer and be a subject of the King again. This is honest truth. But suppose this is not done, you may say ‘what you will do, do it at once.’ Well, I shudder to think. I cannot forget—I who was most friendly with the English people—among whom I count some of my intimate friends—I who was educated by Englishmen—next to my mother, I owe everything to Englishmen—I cannot forget this—when I wish to fight against Englishmen the figure of my revered Professor Theodore Beck comes to my mind. I know what he is to me. This is honest truth. I wish that we should, as soon as possible, get our quarrels settled without any further unpleasantness. My true feeling is this—that as India is my country—it is the country of every one—Hindus, Muslims, Sikhs, Jains, Christians and Jews—who has made it his home—and even of every Englishman or woman who has made it his or her home and is ready to serve and love my country—and I hope no body will be tormented here—when I have my Swaraj—on account of his conscience. Whosoever is true to India—whosoever will serve her will find his place here and the laws of the country will protect him. That is why I am anxious that India should not become another Ireland or Egypt. We are 33 crores here—we can very well look to our coasts—we can very well guard our frontiers.—Look at the hugeness of its coast—at its land frontiers—there is a corridor from Constantinople right up to Saharanpur where the majority are Mahomedans—all through Muslim countries—Afghanistan, Persia, Arabia, Bokhara, Khiva, Russian Muslims—we know there are 40 crores of Muslims in the world and our brother Hindus—22 crores of Hindus—they have thrown in their lot with us—and is it worth while to fight 62 crores? We fully realise our strength. I can assure you that this is not bluff. We know our strength. Our chief, our great Sirdar Mahatma Gandhi will prove to be one of the greatest Generals if he could believe in violence. I have also the blood of a soldier in me (laughter). But the battles will be fought in India. If we kill a few Englishmen here—many Karachi houses—my relatives’ tombs—Muslim tombs—Muslim houses—Hindu houses—many Muslims and Hindus—they will be killed and destroyed if we kill a few Englishmen here. But I know my strength from what is happening in Malabar. In spite of all the resources and powerful military strength, the Government cannot subdue the handful of Moplahs. I can draw my strength from every district in India. Malabar is a small district—it is only a few Mahomedans—they are fighting and fighting for two months—Every district in India is stronger than Malabar,—You can take it from

me—every district in India is stronger than Malabar. The Muslims in every district, in the Punjab—United Provinces—and Bengal—they are stronger people—they have more brains—they are more educated. What would be the effect if the whole country was like Malabar? But I want to avoid all this because it is not by bloodshed that we want to satisfy our demands—it is not bloodshed that we want. We have made every possible effort to make the Government realise the situation—we have given them time to think up to 31st December. We were working hard—day and night. But our object was that we wanted to the Government to think, “Why was all this done.” I asked Mr. Ross Alston—he knows me from my boyhood, I told him—look at me—I who had had a large number of English friends.—I who was a Government servant for 17 years in the Superior grade of the Opium Department in which there are very few Indians—I am still on the Pension list, though I do not draw the pension—I have friends among the Englishmen there—I know there are many English men and English women who will be sorry that I have taken this attitude. But to-day I know none but God. I am not bitten by a mad dog—I am not insane—I am perfectly in my senses when I make this speech—but what is it that has made me this? How is it that we have come to this pass? I know I am making an incoherent speech—but it is my heart that is speaking—I am putting my heart before you. But how is it that we have come to this pass—we who were Khushamat is (flatterers of this Government). What has happened to us? How is it that we who were so much against the Hindus and the Congress are more forward than even Hindus in general? I asked Mr. Ross Alston this question when I met him to-day. He said that an English officer only last night asked him the same question about my brother. Well, I am perfectly willing to make peace with any body—to make friends with the Hindus—with the Christian—with any man—whatever nationality he may belong to so long as they do not mean any harm to my country or to my religion—I am perfectly willing to do so. Gentlemen, looking at my big size, I look terrible—I look like an awful ruffian—you would not like to meet me in a dark lane at 12 in the night—looking at my heavy body, you will not judge me, I pray. I was a great swimmer, I was a good boxer, I was one of the best bats (cricketeers) in India—for nine months in the year I used to be in camp walking a happy careless fellow—and yet to-day—I make a confession that my religion demands, my country demands all I have—I am obliged to throw away

my personal feelings—I have thrown in my lot for my God and for my country—and I am now in the service of God.

Somebody said something about my home in Moradabad. The P. P. asked Mr. Lakhte Husein who said that I had a house and lived there. I think he did not tell a lie intentionally. But I may tell you at once that we have no house there. As I cannot go to Rampur so whenever my mother wants to see me or I want to see her I go to my cousin who has got a house at Moradabad and she comes there and meets us.

People say that there is no want of toleration in this country—but I should like to tell you why I and my brother are not allowed to go home to Rampur. During the time of the Mutiny my grandfather saved the lives of many Englishmen and English women—he was then the right-hand man of the Nawab of Rampur and he had received a big Jagir as reward for his loyal services. My father got a share out of it and so did we though we have sold all our share in the Jagir when we were interned in the Betul Jail to defray our expenses—thank God that we have done with it and nothing is left. And I may tell you we have never been unfaithful to the Prince—we have never been traitors. This is my family tradition. The Nawab of Rampur personally has the greatest affection for me. He respects us. But one day, when we came back to our home after our release—after we had dined with him—His Highness said—“ Few days ago Sir Harcourt Butler sent for my Chief Secretary and he said Mahomed Ali and Shaukat Ali give us a lot of trouble—do ask them to give up what really meant the Khilafat cause.” And he said “ you have to give up this work or go out of Rampur.” I said Sir Harcourt Butler himself can do it—there are plenty of Regulations—they sent us under Reg. 3 of 1918, to jail—well, he can do it even now, but why should you ?—we have done no political work in Rampur—we have only come to our home for rest and comfort. Why should Your Highness do this dirty work for him ? He said “ I can’t help it ” “ You must choose either to give up work or go out of Rampur ” and that is why I rented a house at Moradabad as a sort of Rest House. We have not rented a house there that we may send out those writings from there. I do not want to prove it. You may take it from me if you like. That kind of work is not our style. But I think when our C.K.C., the Jamiat-ul-Ulema and all other people decided and ordered us to actively carry out this Non-Co-operation propaganda and when thousands of workers are actively

carrying this propaganda, God willing, it will reach tens of thousands of Subedars, thousands and thousands of soldiers—it will reach every Muslim soldier—it will reach every Hindu soldier—there will be tens of thousands of workers working everywhere—in every village—in every town—there would be thousands of females working, you cannot wrap up these soldiers in Cotton wool—you cannot shut these soldiers up in a glass case only for show—they have got to go to their homes—they have got their relatives and friends—we shall approach every Sepoy—we shall approach him in every possible way—his mother will speak to him—his wife will speak to him—our ladies have thrown off their veil—my mother will go to them—my brother's wife will go to them—my daughters will go to them—our women will go to them and give them the message of God—even if we are punished they will do it. How can you stop that? But still, even now, up to 31st December there is every chance of reconciliation—if there is no reconciliation—no settlement before 31st December then you will see—you (pointing to the Judge will not be there where you are now—the power that is in your hands we will snatch it—God willing, we will do it. We have strength enough. We have the power of self-sacrifice. We have the power of suffering. We have got power of organisations and brains. Our country is powerful—it is strong and it can look after itself. Whatever you decide, personally it is nothing to me. I am ready for everything—I am told there is a man-of-war sent from Colombo to take us somewhere—well, I shall be very happy in jail—I am still gaining in weight—my brother is also improving. So it is not a question of anything personal to me or to him.)

One thing more and I shall have done. After all, you would like to know why this prosecution has been started? I would like to tell you and the whole world— (interrupted by the Court).

Maulana Shaukat Ali continuing said—There is a vast difference between Mahatma Gandhi and myself. He belongs to the party—God's good people, I belong to God's *budmashes*. Mahatma Gandhi, Maulana Hussain Ahmed and Maulana Abdul Bari are God's good subjects and I and the large number of Hindus and Mahomedans—we are God's *budmashes*. Thank God—we belong to God. But we trust him (Mahatma Gandhi) and he trusts us. The Mussalmans and the Hindus have now united and every possible effort has been made and is being made to part us. If you read the pro-Government newspapers you will find, somebody says—Mahatma Gandhi is a saint—he is a good man but his

meeting with these ferocious people, the wicked Maulana Shaukat Ali and Mahomed Ali who are in touch with the Afghans and in pay of the Turks and that Mahatma Gandhi is nothing as so much of clay in their hands. Others say Shaukat Ali and Mahomed Ali are very simple and straightforward, it is the wily Bania of Ahmedabad, it is he who has won over these Mussalmans and he is going to ruin them and the Mussalmans. It was said that Ali Brothers had apologised to Government when Mahatmaji and myself met at Allahabad in May last, we heard that Pundit Madan Mohan Malaviya was the peace-maker. He sent a message that the Viceroy would like to see Mahatma Gandhi and Mahatma Gandhi went to him to Simla. He went because you know he was always willing to step forward because he does not want bloodshed and we, too, do not want bloodshed so long as there is hope of success by means of Non-Violent Non-Co-operation. So he went to Simla and had six interviews lasting sixteen hours with the Viceroy, and Mahatma Gandhi sent us a wire to me and my brother to meet him at Khandwa—I was busy so my brother went and met him. Mahatma Gandhi said that there is an impression outside among friends and others that you (Mahomed Ali and Shaukat Ali) mean violence though you make a declaration to the world that you stand for non-violence. And he told all about the talk he had with the Viceroy. Mahatma Gandhi wanted us to make a statement to the people of India. He was very earnest about it. He said that he wanted us to go to jail but only on a clear issue, and he himself wanted to do the same. So I and my brother issued a statement that we do not mean violence while talking of non-violence. You know, gentlemen, day and night, for days and months, I have been working for the success of Non-Violent Non-Co-operation. And thanks be to God, tremendous changes are going to take place, India is marching with hundred bangle-boots on—with thousands and thousands of new recruits consecrated to the cause of the country and religion. India to-day is something new, and to-morrow she will be a newer thing altogether. There was one disease that Indian suffered from, thanks to the efforts of Mahatma Gandhi, they have shaken that off. We Indians were deemed as cowards, God be thanked, no body can say that now. The history of India is being shaped in a new fashion. So we obeyed Mahatma Gandhi's order and sent that message to the Press. Gentlemen, I may tell you even if we meant it for the Government of India, the Government of India ought to have been chivalrous enough to make peace with us. They would have said well, when even the Ali Brothers have put in the statement it is easy

for us to sit on a round table conference." But this was not to be done. We were ridiculed. Mahatma Gandhi was ridiculed and the whole host of the Anglo-Indian press came upon us. And I am sorry our co-workers in jail were told that we had apologised to Government. Well, I could see there was no change of heart in Government, even in the Viceroy—we were told he was a very suave and persuasive man. He and his Government wanted to discredit us in the eyes of the Muslims. They wanted to discredit us in the eyes of the Hindus—they wanted to discredit us in the eyes of the world and we were to be as the "*Leader*" said "Ali Brothers were as bad as a door nail." However, I am very glad indeed—I am very happy indeed that this time the issue is very clear. I want your decision, —I want the decision of the Judge whatever it may be. Thank God, that before this our message could not reach the Army as we might have wished. By this prosecution it has reached every one of them—it has reached every home—every Mussalman—every Hindu—every Indian—man and woman. New workers are coming out and I am not afraid that there will be any dearth of them. Gentlemen, I leave everything to my God. Personally I do not care, jail or no jail. I want to tell you that all the gifts God has given me, every power, every little thing that I can do, and all that lies in my power, I will do for my God and for my country so long as the Government to which you belong—so long as this Government to which this Court belongs does not do justice to Khilafat, does not satisfy us, gives us back the power of Khilafat, does not satisfy us about the Punjab wrongs and does not give us Swaraj—all that lies in my power I will do, and God willing we will uproot you altogether. To-day I am a Non-Violent Non-Co-operator, to-morrow if, God forbid, Mahatma Gandhi fails, if the country fails I shall do whatever lies in my power. Thank God, we have got the courage, we have got the strength, we have learned the value of suffering and sacrifice and we will do whatever our great chief Mahatma Gandhi will ask us to do. God willing, we will face all dangers, face death with eyes front. (Here the Maulana was returning when friends reminded him about some verses, he turned back and said :—

Gentlemen, I want to say one thing more. Thousands of speeches I have made, attended hundreds of meetings, but when I am pleased and when the feeling comes in me and there is nothing to do I sing—though I

am not a singer. In jail now when I am locked up in my cell I recite the following four verses ;

ني پورويي قصه نه فرهاد كړيښكي - هم طرز جـون اـر به ايسـد كړيښكي
 ("We will follow neither the greatest lover Kais nor Ferhad....we will invent a newer kind of madness of our own).

جفا پر جان د مړتۍ په نوم هم لري - پر نا كـم مـحـبـت سـمـجـتـو لـري
 هي كـم كـولي به

("They give their lives on your tyranny, they die on your cruelty. It is really these careless failed lovers who in truth do something great).

جفا خو عشق په نوم نه لري - د دغه په نوم نه لري - محبت به كچه ده د اهرې په نوم
 ("The cruelty and tyranny practised on the lover and in love is no crueltyIf there was no cruelty in love, there would be no pleasure in love, and lastly though I hope there will be no need for it).

پژا فليک کو کېږي دل جلون نه كـم نه لري - جـلا كـي خـاك نه كـودون دـاغ نام نه لري
 ("The sky—stars—enemy of lovers—has not really come in contact with one having fire in his heart....Well ; don't call me Dag (great poets' name) if I don't burn the whole into ashes.)"

SEVENTH DAY'S PROCEEDINGS.

TUESDAY, 1ST NOVEMBER 1921.

The Sessions Trial against Ali Brothers and 5 others was resumed by Mr. Kennedy on Tuesday, 1st November, in the Khalikdina Hall. The people on this day began to pour in the Hall earlier than usual to try their best to catch the inaudible voice of Mr. Kennedy. Anxiety mingled with keen interest characterised the minds of the audience who were awaiting that fateful moment when the jurors would deliver their verdict and the presiding authority, his judgment. The lack of proper organisation was writ large on the management of the authorities. The Press table was largely occupied by the members of the bar and even those who held ordinary visitors' tickets.

The staff of the Court had trebled-nay quadrupled itself and several clerks were found occupying chairs in front of the dais even in a better position than the press reporters. The leaders entered the Hall at about 10-50 and the audience as usual greeted them by standing up. Before the Judge entered, a clerk of the Court handed over typed copies probably of the Karachi resolution No. 6 to the jurors to read. The whole audience was waiting for the Judge. The clock struck 11 and then 11-30 but where was the Judge? the people asked. The Judge though he had arrived earlier than even the accused, was sitting in the chamber all the while and he was anxiously awaited.

Serishtedar came in from the back door at about 11-50 and the people thought the Judge will follow him. They were however disappointed in this expectation. The Serishtedar placed a copy of 6th resolution on the table of the Judge.

In came after all the judge Mr. Kennedy at 11-55.

He at once asked Mr. Atmaram, the Serishtedar, to read his charge to the "gentlemen of the Jury." The charge ran as follows :—

JUDGE'S ADDRESS TO THE JURY.

IN THE COURT OF THE JUDICIAL COMMISSIONER OF SIND.

SESSIONS COURT JURISDICTION.

SESSIONS CASE No. 33 OF 1921.

The King Emperor *v.* Mahomed Ali and six others.

HEADS OF CHARGE TO THE JURY.

Accused 1. Mahomed Ali of Rampur.

2. Moulvi Hussain Ahmed of Deoband.

3. Dr. Shifuddin Kitchlew of Amritsar.

4. Pir Ghulam Mujadid of Matiari.

5. Moulvi Nisar Ahmed of Cawnpore.

6. Bharti Krishna Tirathji *alias* Vekantraman.

7. Shaukat Ali of Rampur

are charged as follows :—

(read charges)

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

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

3. And further that you Mahomed Ali on or about the 9th day of July 1921 at Karachi, made a statement of wit, that "it is in every way religiously unlawful for a Mussalman 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 Mussalman Officers

and soldiers in the Army of His Majesty to disregard or fail in their duty, as such, and thereby committed an offence—punishable under section 505 of the Indian Penal Code and within the cognizance of the Court of Sessions, Karachi.

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

5. And further that you Mahomed Ali, on or about 9th day of July 1921 at Karachi abetted the commission of an offence punishable under Section 505 and-or Section 131 I.P.C. by more than 10 persons ; in that you stated in the All-India Khilafat Conference that "It is the duty of all Mussalmans and the Ulema in particular to see that these religious commandments (referring to the words quoted above) are brought home to every Mussalman in the Army" and thereby committed an offence under section 117 I. P. C. and within the cognizance of the Court of Sessions, Karachi.

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

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

Before we begin I wish to say one word about the proceedings in the Court below and in this Court, which have been the subjects of some remarks from two of the Accused. There were no irregularities in the trial in the committing magistrate's Court, and if the magistrate in a case triable exclusively by the Court of Sessions, where the evidence is of the character which it is, and where the Accused reserved their defence contemplated at an early stage the probability that there must be a committal, he acted merely as a prudent magistrate should. The accused

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

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

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

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

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

On the other hand it is possible that one might reasonably feel some sympathy and respect for some of the accused. Some of the accused seem learned and pious men; of some it might be said "there are no citizens to whom the laws would owe more did they follow the right path." I do not give the rest of the quotation because I hope and trust it is not opposite. I think that Islam and this Empire and this country might have profited much by them had they not taken up this course, which whether criminal or not, is the path of faction and separation which can lead only to ruin and disruption instead of the path of union and co-operation which is the only one which can lead to peace and prosperity. Yet though we cannot but deeply regret that some of the accused are here at the bar of their Sovereign's Court instead of being high in the service or councils of His Majesty. We must not let that sorrow lure us from the path of duty which is to judge the prisoners at the bar according to the law of the land and the evidence before the Court.

Nor are we in any way to be swayed by our feelings as to the Turkish question. Some of us may think that Turkey has had hard measures meted to her. And as regards the house of Othman we may feel that whether or no it has any claims to the Khilafat, it has been for centuries the inheritor of the championship, the guardian of the frontier forts of Islam, the custodian of the sacred places, and the sword and buckler of that great faith and great civilisation, and we may sympathise with

those who feel aggrieved, that in these days when every petty nationality claims independence and an assigned territory, Islam alone should be menaced in its ancient seats. Others on the other hand may think that there is no wonder if that which came by the sword goes by the sword, and that there is no cause for repining if God has given to one Constantine what he had taken from another. But the accused at the bar are to be judged according to the law of the land, and the evidence and not according to our feelings, one way or the other in respects of the sides they have taken in this matter.

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

The accused in their defence have strenuously maintained the propositions, *first* that their religion compels them to do certain acts, *secondly* that no law which restrains them from doing those acts which their religion compels them to do, has any validity, and *thirdly* that in answer to a charge of breaking the law of the land it is sufficient to raise and prove the plea, that the act which is alleged to be an offence is one which is enjoined by their religion. The first proposition is utterly irrelevant in this trial because the second two propositions are not true.

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

Fortunately there is no such conflict visible here. The proclamation assures to every man the free exercise of his religion. It does not permit him under the colour of his religion to attack the rights of others, or the

rights of the Sovereign whose protection he invokes. What a chaos any country would be and particularly this country if the doctrine *Sicutere Tuo, ut alienum non Laedas* were not strictly applied. There are so many jarring sects and creeds in this Empire that there is hardly a single crime which some person or other might not commit under the colour of religion. Therefore the legislature of this country (careful as it has always been of the religious rights of the subjects) has laid down as prohibited certain actions, which must be prohibited in the interests of civilisation, applies penalties to the breach of such prohibitions, and calls on us to apply those penalties if the prohibitions are disregarded.

If by some mischance a person finds himself in the painful position that his religion and conscience clearly and sincerely impel him to a course of action which the law of the land forbids, he must if he wishes to escape the penalties of the law, either procure the law to be changed or leave the country. If he will do neither and proceeds to break the law then he must be punished. He cannot approbate and reprobate, he cannot invoke the protection of the law of the land when it suits him, and break it when it suits him.

A man whose conscience tells him to break the law of the land and who does break it, may possibly merit our respect and sympathy, but cannot escape our punishment. Whether the executive should in such cases invoke the law is a question of expediency only. There have been martyrs in all ages from Antigone to Cavell and there have been perverse fanatics in all ages. The law cannot discriminate. All it can do is to find the alleged offenders guilty or not guilty and if he be found guilty inflict the penalty, leaving it in the hands of the Executive Government to exact the penalty or not at its discretion, and leaving to the offender the prospect of a reward (if he has merited it) which will compensate him richly for our temporal censures.

The questions therefore whether the Mahomedan religion renders it unlawful for a Mussalman to kill another Muslim, and whether the accused were bound to propagate that doctrine, or whether the accused genuinely believed that they were so bound and that such killing is unlawful are really not at all relevant to this case and I should have wished to keep all such questions out of this charge. But the accused have per-

sisted in raising it with much eloquence and show of learning. I endeavoured to stop them, though the discussion was one which was highly interesting, because I did not wish to confuse the issues and did not wish to allow the present trial to be a means of propagating doctrines which I consider dangerous and unsound. I was unable to do so without prejudicing their defence and had to permit much propagandist matter of an irrelevant description to appear on the records of this case and to be expounded to you and to the audience. I have therefore reluctantly come to the conclusion that I ought to express my own opinion on the matter. I am not of course pronouncing what is actually the right doctrine in the matter, I am merely tentatively submitting certain doubts which I have to the orthodoxy of the position of the accused to your consideration.

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

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

We have little guidance during the life time of the Prophet, which will help us in the present age. The Quran is of course a perpetually binding law and not subject to fluctuations, being co-eternal with the Almighty, but the application of the rules to existing circumstances depends on the condition of things at the time when we seek to apply it. During the life time of the Prophet the temporal Kingdom extended over Arabia only. The Muslims were a homogenous people speaking the same language, living the same sort of life, townsmen and pastoralists, under much the same sort of Government that of noble

chieftains, divided only by the deeply feeling between Yemen and Mudharr, which for the moment was lulled by the supremacy of Islam. Its boundaries were the sea on three sides, and the shattered empires of Rome and Persia on the fourth. It needed no permanent Army, no salaried officials, no roads or fortifications. The Army was the occasional levy of the tribesmen, the judges were the companions of the Prophet and the learned ancients, the administrators were the chiefs and the principal burghers, and the roads and the fortresses were the deserts within 10 years of the death of the Prophet. The Empire of the Muslims extended over a vast area bounded by the Berbers on the West, the revived Roman Empire on the North and Turks on the east ; it contained a vast heterogeneous population of very diverse origin, language, customs and faith, accustomed to a highly centralised administration. All the requisites of the Empire had to be provided and paid for, and it became very soon apparent that neither the Quran nor the traditions adequately provided for the necessity of rule. It is related of an early Caliph that the news of his election, reached him while he was reading the Quran. He is said to have shut it with a sigh and to have said "This is my last time with thee," meaning thereby, not that he intended to disobey the precepts of his religion, but that he could not devote himself exclusively thereto. Accordingly very soon the rules of "Siasat" began to be developed and pious Muslims began to wonder. What is this secular code of use and wont which, if not contrary to the divine law, is at any rate not sanctioned directly by it? You will find innumerable discussions on this topic, some persons going so far as to say that all kingship is unlawful, because the king must necessarily levy unauthorised taxes which he spends partly on his self support and because he must kill men for offences which are not adequately punishable by the religious law with death. There is an interesting discussion on this topic by an Indian Historian in the form of dialogue between Ala-ud-din Khilji and Sheikh-al-Islam, but the approved opinion is, that while no man is bound to take the kingship yet if he *does* he is guilty of sin, if he allows the temporal kingdom and the affairs of the Muslims to go to ruin for lack of the due enforcement of the necessary temporal rules, which must no doubt not *contravene* the sacred laws, but are not directly sanctioned by it, and I have seen severe strictures written by pious men on kings who acted not like kings but like ascetics. But almost the first requisite of temporal rule is that the authority of the ruler should be upheld. Now when the Prophet and his immediate successors were alive there was no dispute in Islam, the church and state were coterminous and there

could be no rival claimants to the temporal headship. Any Muslim who drew the sword against his fellow Muslim must be a rebel and a renegade. But the succession of Ali was challenged because the Beni Umayyā and the adherents of murdered Othman would not acknowledge him. Accordingly the first person to draw the sword against his fellow Muslims was Ali (with whom God is satisfied) the head of the Holy House, at the Day of The Camel. It is true that at the battle of Siffin, Amru Al Aaas, the general of Muawiya of the Beni Ummaiyya did much what the accused are said to have done, he imported purely into a temporal matter a question of religion and by binding the Quran to the lances of his soldiers forced Ali to submit to an arbitration, but all schools reprobate this action. It is true also that for a short time Ali was Officially cursed and that he was assassinated by a non-co-operator of the time, but all schools now regard Ali as one whose actions are worthy of imitation.

Thereafter the Beni Ummaiyya retained the Caliphate with some slight and temporary interruptions. Some of them were tyrants, some of them great princes, some of them pious and learned men, but none of them showed the slightest hesitation in putting down rebel or rival claimants, without much regard to the sanctity of the claimants or the validity of their claims. What Muslim Bin Okba and Ali Hajjaj did with the holy cities is known, as also what Ziyad did in Irak, and why did Hussain Bin Ali go to Irak, not I think, to drink the waters of the Euphrates or the Tigris or to deliver lectures in Kufa or Basra but to maintain his rights, sword in hand, like a valiant prince. I cannot therefore at once admit without doubt the proposition that it always is unlawful for Muslims to slay Muslim on the field of battle. But perhaps it may make a difference if the Muslims are attacking the Caliph.

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

But many orthodox *princes* have stood up against the Caliph. The Caliphate passed by War from the house of Ummaiyya to that of Al Abbas and the house of Al Abbas became thereon lawful Caliphs. Yet Abdur Rahman the Amir of Spain held out against Al Mansur ; defeated his armies, decapitated his general, and suspended that general's head in the Mosque at Kairwan. Al Mansur did not curse him, he declared him to be " the falcon of the Koreish." The Ulema of Cardova, Seville and Tol Toledo, issued no Fatwa against *him*. He lived and reigned gloriously, and was the progenitor of a mighty line of princes for ages the protector of Islam in the West. After the reign of Al Mansur, province after province fell away and became a principality under a separate prince. This process went on till after the reign of Al Radhi. The Caliph had no territory under his immediate rule. All these princes recognise the Abbassid of the time as lawful Caliph, and read the Khutba in his name, but none of them had the slightest hesitation in attacking him and defeating his forces and making him prisoner if he attempted to recover any actual territory. Princes like Beni Buyya the house of Seljuk, Zengi of Edessa, Khawaris Shah were all at one time or another warring against the Caliph or keeping him prisoner.

And how did the house Ottoman get its doubtful claims to the Caliphate, not by election but the marching of Salim on Egypt, the defeat of the Sultan of Egypt who was the representative of the Caliphate and the forced abdication of the legitimate Abbassid Caliph (then stationed in Egypt) in his favour. It cannot therefore be denied that Orthodox princes have warred against the Caliph and coerced him in the exercise of his power by the fear of the sword ; without incurring the guilt of sacrilege. And this doctrine of any particular sanctity in the Office of the Khilafat seems to be a new thing among the Sunnis, invented, I believe, by the very band of rebels and innovators who actually deposed Abdul Hamid. I was surprised to see in one of the papers in this case, (I think) in one of the Fatwas, an assertion that the Caliph was the representative of *God*. I thought it was sufficiently known that God is universally and eternally present and does not need a deputy or representative. Also that on the day of Alastu the contract was between God and person and each individual soul of every man without deputy or intermediary and that therefore there is no priestly caste or profession or semi-divine ruler to stand between the Creator and the creature. The Caliph is the representative of the Prophet but he is not supposed to have any share in the apostolic gifts. He is the temporal Lord of the Muslims and may without

sin be opposed by the temporal weapon. I know that the Shiah's views are different ; some of the extreme Shiahs holding very peculiar views as to the nature of the Imمامate—but the orthodox Shiah Imمامe is for the present in a state of abeyance and the Ismailis have not had a *reigning* Caliph for 800 years. I cannot therefore think it established that it is an act worthy of damnation to war against the Caliph simpliciter.

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

And look at the question from a reasonable point of view. An enlightened and civilized Mahomedan people is living in a fertile province under the benign sway of some Hindu power. Bordering the plains are hills inhabited by ferocious Muslim tribes independent and continually raiding without attempting to conquer the plains below. Is the Mahomedan who fights to repel these tribes from the hearths and homes of the Mahomedan population to go to hell, because, he does so in the armies of a Hindu prince ? But it may be said that this is defensive warfare.

There is no real distinction between the offensive and defensive warfare. Aggressive warfare is at all times and circumstances a sin, but offensive warfare may be the only possible form of defence.

I think, therefore, when we come to analyse it, the meaning of the doctrine preached with so much rhetoric and learning by the accused is merely this, that, any Muslim soldier who fights in a War of which the accused disapprove, is to go to hell, and leaving the dwellers in dark corners of the mosque and the grubbers along old records to say what they think fit I would ask any Muslim who may be a Sayyed and a Faties what he thinks of this doctrine ; that a Muslim may voluntarily engage himself in the service of his prince, may take his pay and provisions and be his partner in the glory of the kingdom and then, when the day of peril comes, and his prince calls on his soldier for help, the soldier is to break his plighted oath, and the ties of fealty and leave his prince to be dethroned and slain, because, his prince is a non-Muslim and his enemy is a Muslim. I cannot believe that these are the two doctrines of a religion the Prophet of which was the 'Best of man' and had the title of Al Amin.

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

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

Section 131 forbids an attempt to seduce a soldier of the King from his allegiance or duty. Such attempt is therefore an offence and it is punishable with maximum sentence of transportation for life, and with lesser penalties. Section 120B forbids persons from entering into a criminal conspiracy to commit an offence punishable with transportation for life or with certain lesser penalties. Whether such an offence is actually committed in consequence of the conspiracy or not, and section 120A defines conspiracy as an agreement by two or more persons to commit (inter alia) an illegal act or offence. It is here laid down that when the conspiracy is to commit an offence there need be no act done in consequence of the conspiracy to render the conspiracy criminal; and it is further laid down that it is not necessary that the offence contemplated should be the sole or ultimate object of the conspiracy. To give an example, suppose some people agreed to gamble in cotton. That is not an offence. They buy futures in cotton at a certain rate. The market begins to go against them. They agree to forge telegrams from America, saying, that the American crop has been a total failure, and to corrupt some Telegraph Officer to send out these forged telegrams to various merchants as if they were genuine. If this agreement to forge telegrams passes beyond the initial stage of mere contemplation as a possibility, and the gamblers actually make their minds to do so, then they are guilty of conspiracy even if they do not after all procure to be issued such forged telegrams. So here, if the accused or any two or more of them agreed to attempt to seduce the troops, whether that was the main object of their agreement or not, then such of the accused as entered into that agreement are guilty of the substantive offence of criminal conspiracy even if nothing further was done and are punishable under Section 120 B and 115 which provide that when an offender abets a crime of the nature described which is not committed in consequence of such abettment he is liable to maximum seven years' rigorous imprisonment.

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

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

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

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

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

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

These questions cover the first two charges.

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

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

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

Let us take an example. E is found murdered in a river. It is proved that A, B, C and D were great friends and all had common reasons for disliking E and wishing him out of the way. They were continually meeting together just before the disappearance of E. A asks E to dine with him in a lonely house and makes E drink; E's carriage comes for him, but B says to the coachman that E has already gone home, so that when E comes to leave he has to walk through lonely streets. C drives up a cab which he leaves at a certain point-D shoots E at that point, puts his body into the cab and drives it to the river where he throws the corpse in. A and B then write to the police and give the information that on the day of the murder they had seen E leaving by train for some distant city. The Court might legitimately deduce from these facts that A, B, C, and D, were in a conspiracy to kill E, and that he had been killed in consequence thereof. But it is clear that it would be *possible* that A, B, C, had been acting innocently, only the *prima facie* case against them would be so strong, that the Court might legitimately call on A, B, C, to prove their innocence. And if they failed to do so, it would be justified in convicting them on this circumstantial evidence.

The Crown alleges that there was a far-reaching and wide-spread conspiracy which included among its objects the seduction of the troops. The accused deny this. I am much embarrassed as to this part of the case by the failure of the accused to defend themselves as to the facts and it was for that reason that I asked the accused to allow a professional gentleman who is in their confidence to argue for them as *amicus*

curiae, but they refused. So we must do the best we can by ourselves. My own opinion by which you are in no way bound is that there was, but I shall try to put the case for and against this theory as fairly as I can.

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

And it appears to me very likely that the movement was originally started with no particular intention to incite to illegal acts. It is quite likely that the intention was to strengthen the hands of the Pro-Turk party at home in their attempts to get the allies to deal leniently with Turkey or at any rate to prevent the powers from supporting the Greeks. The friends of Turkey in this country could best do so by getting a noisy and frothy agitation. This has of late been a very common policy in India. And from what M. Shaukat Ali said the other day it is no entirely beyond the reasonable bounds of conjecture and the accused must be given the benefit of any conjecture that may help them that the agitation was at first looked on with favour if not encouraged by eminent persons both in India and Europe. It would be a great weapon in the hands of the number of the Philo-Turk party if he could put pressure on the members of the Cabinet at Home or on the body of Ambassadors abroad, by representing that Indian Muslim feeling was violently excited on subject of

Peace terms with Turkey or on the question of support to Venezilos or Constantine. There is thus nothing wildly improbable in the idea supported by the allegation of accused 7 that the Khilafat movement met with certain amount of support at its inception. But even if that was not the case, and the movement was purely spontaneous, there would be nothing illegal or improper in an agreement amongst some Mahomedans to carry on an agitation in favour of Turkey ; even a very forcible agitation, as long as they did not agree to commit any crime in connection therewith or to carry it on by illegal means. Once it was in contemplation to carry on the agitation by illegal means or to support the agitation by committing the offence of abetting (that is inciting to) crime, then the agreement to agitate would become a conspiracy and all who join the conspiracy knowing that its objects were generally criminal would be guilty of every criminal act committed in furtherance of the conspiracy.

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

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

Then in June accused 1, 3, and 7 went to the large Military Station of Poona where a meeting was held which those accused attended, and where the accused 7 Shaukat Ali made a speech in which he said that

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

We now come to the Karachi Conference which was a meeting of the general body of the Khilafatists. It was held with great publicity in a large town to which Mahomedans of all classes resort, which is an embarkation Centre and a Military Station, and in some ways the commercial Capital of an area largely inhabited by Mussalmans of the fighting classes.

Accused 1, 6, and 7 arrived in Karachi on the 7th July and went in a procession round the city. Accused 1 and 7 put up in a Girls' School near the place where the Conference was to be held. Accused 3 also put up there. A Subjects Committee was formed which held the meeting at the Girls' School twice on the 9th of July. Accused 1, 3, 6 and 7, attended one or both meetings. In the evening of the 9th July there were various resolutions proposed and passed and among them was this resolution No. 6 (Read it out).

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

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

Furthermore this meeting also announces that if the British Government were to take any Military measures against the Angora Government directly or indirectly, openly or secretly, then the Mussalmans of India will be compelled to commence breaking laws, that is Civil Disobedience with the concurrence of the Congress and to proclaim in the forthcoming Annual Session of the Congress Committee to be held at Ahmedabad the complete Independence of India (and) the Indians and the establishment of a Republic Government in India."

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

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

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

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

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

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

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

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

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

That an appeal to the troops to desert is a criminal offence, cannot be disputed. It is no crime under 131 section, to urge people not to join the Army, because no one is legally bound to do so, but Col. Gwyer's evidence makes it clear that a soldier is not at liberty to resign his ser-

vices except at the end of the time for which he was enlisted, and that to leave the army before the arrival of that time would be the crime of desertion and would be an act in derogation of his allegiance and duty.

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

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

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

The Mahomedan accused say also that there was no *need* of conspiracy. It is they allege a clear precept of the Law of Islam that no Mussalman should kill another. I will for the present purpose admit that this is so. They say also that it is the bounden duty of every Mussalman, if he sees a man infringing the law of Islam to point out the error of his ways to the offender. Therefore they say that individually and without any previous concert they proceeded to preach these doctrines. I do not believe this. Admitting that the Law of Islam makes it incumbent on every pious Mahomedan to make himself a busy body, and go round preaching to his bretheren at all times and seasons in respect of irregularities he may perceive to be committing instead of extended his own life and perhaps quietly admonishing his friends. I do not see why the accused should all unanimously have picked out *this* particular sin (if it be such) to reprove. There is a fine field for missionary activity among pious Mussalmans. The accused might have gone to Stamboul or Angora and admonished their brethren to give up the reprehensible practices of

slaughtering Zimmis and Mustamins, or to the Hajaz to admonish the ruler thereof to cease from what the accused consider to be his rebellion against the Sultan, or nearer at home they might have preached against fornication, sodomy, wine-bibing, the use of silk apparel, the excessive use of music, the neglect of prayers, fasting and pilgrimage and the like actions Haram and Makruh, which are not wholly unknown in India or might even have admonished their Hindu allies as to the dangers of Shrik or polytheism. They ask us to believe that they fortuitously and without previous concert picked out this particular action as one in respect of which they thought their duty impelled them to preach. I find it difficult to believe this.

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

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

It is alleged by the witness Abdul Ghani that his obtaining and circulation of the book of Fatwas through the Central Committee was on his own responsibility and that none of the accused were responsible for this action on his part. This seems very difficult to suppose the system in force in the office of the Khilafat Committee is extraordinarily lax but it may be so. But that does not I think help the accused much. In

my opinion the obtaining and circulation of the Fatwa is a side branch of the conspiracy clearly intended to further its general aims, and the accused are responsible for it if they knew nothing about it.

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

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

"It was in every way unlawful religiously for a Mussalman to remain in the British Army." With the intention of causing or knowing that it was likely to cause Mussalman Officers and soldiers to disregard or fail in their duty. This is an offence under section 505 of I. P. C.

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

Suppose the Government is sending troops to a very unhealthy place like West Africa. The owner of some patent medicines writes a letter to all Officers Commanding in the Regiments detailed for the expedition and paints the horrors of the climate in vivid colours saying the only hope of surviving is to fortify the constitution with daily use of Potts Patent Piliules. The law says that he is not guilty of an offence under section 505 because the statement is true as to the climate and though calculated to alarm the troops and make them reluctant to proceed on the expedition, was not made in order to produce that effect by the quack, but for his own private profit. But suppose then some wily agitator gets hold of the circular and reprints it and sends it to every man in the regiments detailed for duty, saying " you see what the eminent authority doctor so and so says about the place to which the Government is sending you" hoping and expecting that the troops will refuse to go or go reluctantly and sullenly. Then the law says he is guilty because his intent is evil. Here the question therefore would be not whether Mahomed Ali believed this statement to be true but whether he made with the sincere wish to cause his brethren to repent or with a wicked intention of making them mutiny or desert. He himself seems to leave no doubt on the point. His only regret is that the troops are not yet contaminated and that there is at present no chance of a mutiny on the scale of 1857.

I had some doubts at first as to whether an expression of opinion by a private person, could be a statement within the meaning of section 505. For instance if some one sent round a circular saying " Mr. Smith is of the opinion that soldiers are sinful men" that would not be a statement of the character referred to in 505 because it is not very probable that any soldier would pay much attention to the opinion of an

unknown Mr. Smith. But I now think that Mahomed Ali, as President, Khilafat Conference, is a person of sufficient importance to make his opinion have some weight with Mahomedans in general.

The other accused are charged with having conspired with accused No. 1 to commit the said offence. This conspiracy is not the far reaching conspiracy referred to in the previous charge. If the other accused or any of them agreed with Mahomed Ali that such an opinion should be published even 5 minutes before the uttering of such opinion with that criminal intent then they are clearly guilty of conspiring with him. Now all the accused were there in Karachi and had opportunities of talking over the matter with Mahomed Ali and they showed by their signs and speeches that they approved of his formulating that opinion. It is not therefore a very violent deduction that they agreed with him, that he should utter it and that they should support it. The next charge against Mahomed Ali is the abetment by the public of an offence under Section 505 or 131. It is in reference to the same resolution which was introduced by him at the Karachi meeting and that resolution urges on all Mussalmans in general and the Ulama in particular of the duty of bringing this statement to the notice of the troops. I have already expressed my provisional opinion that this statement is of the character referred to in Section 505 and is calculated to produce the effect made penal in section 131. The number of Mussalmans present was considerably more than ten and resolution was intended to reach the public in general. It seems to me therefore that this is a case where there was an abetment by the accused of the public—consisting of more than ten persons to commit these offences, the punishment for which is laid down in Section 117 I.P.C. Similarly as the other accused agreed with the accused 1 that he should commit this offence of inciting the public of the Mussalmans and the Ulama to spread those statements or make those attempts with that criminal conspiracy in respect of those that committed offence of abetment.

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

I told you that the religious question did not enter into the case at all. If the accused have broken the law of the land they must be punished by the law of the land and that it did not matter to us whether they

were acting under the impulsions of religion. I gave you my reasons for supposing that their views as to the religious question were wrong, but I warned you that I have no authority to pronounce thereon and recommended you to assume that they were right.

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

Then I went on to deal with the further questions of whether any actual attempt to seduce troops had been committed by some of the conspirators in furtherance of the said conspiracy and gave you my doubts on the subject, leaving the matter to your own finding.

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

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

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

1st November, 1921.

After the Sheristedar finished reading of the Judge's charge to the Jury at 1-10 o'clock the Jury at once retired for considering their "verdict" as jury and opinion as "Assessors". At 1-35 p.m. the court broke for lunch to again meet at 3 p.m. when the Jurors and Assessors gave their verdict and opinions one by one to the Judge.

VERDICT OF THE JURY.

In the Court of the Judicial Commissioner of Sind.

Sessions Court Jurisdiction.

Sessions Case No. 33 of 1921.

Crown *versus*. Mohamed Ali and 6 others.

Verdict of the Jury.

The Jurors retired and returned after an absence of 2 hours 15 minutes and stated through their foreman that they unanimously find the accused not guilty of both charges.

Sd. B. C. Kennedy,
Judicial Commissioner of Sind.

OPINIONS OF ASSESSORS.

In the Court of the Judicial Commissioner of Sind.

Sessions Court Jurisdiction.

Sessions case No. 33 of 1921.

Crown *vs*. Mahomed Ali and 6 others.

Opinions of Assessors.

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

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

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

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

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

Assessor No. 2 Mr. Critichel concurs.

„ 3 Mr. De Cruz „

„ 4 Disagrees.

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

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

Sd : B. C. Kennedy,
Judicial Commissioner of Sind.

In the Court of the Judicial Commissioner of Sind.

Sessions Case No. 33 of 1921.

Crown *versus* Mahomed Ali and 6 others.

Finding.

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

Sd. B. C. Kennedy,
Judicial Commissioner of Sind.

1-11-1921.

FULL TEXT OF JUDGMENT.

In the Court of the Judicial Commissioner of Sind.

Sessions Court Jurisdiction.

Sessions Case No. 33 of 1921.

The King Emperor *versus* Mahomed Ali and 6 others.

JUDGMENT.

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

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

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

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

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

THE SENTENCE.

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

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

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

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

(Sd.) B. C. KENNEDY,
Judicial Commissioner-in-Sind.

Signed on 4th November 1921.

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

PUBLIC PROSECUTOR'S APPLICATION.

In the Court of the Sessions, Karachi.

Crown *versus* Mahomed Ali and others—Accused.

Application under sections 269 and 309 Cr. P. C

It is prayed on behalf of the Crown that this Honourable Court will be pleased to give judgment on the 1st charge in this case.

When opening the case the Crown referred to S. 269 (3) Cr. P. C. and rule 3 chapter IV of the Court of the J. C. and pointed out that the first charge was triable by the Court with the assistance of the Assessors. The whole case proceeded on that basis, the opening and closing address of P. P. and the addresses of the general accused repeatedly differentiated between the first charge which was triable by the Court and the second charge which was triable by the Jury.

What was said by the Court on the return of the Jury after considering their verdict could not be heard at all in the Hall. The Jury was sitting at a table on the dais and touching the desk at which the learned Judge was sitting. After the Jury gave their verdict and the Assessors

their opinion, Judgment was dictated to a short hand writer, sitting on the dais on the far side of the learned Judge. Not a word of what was said by the Court to the Jury or to the shorthand writer could be heard in the Hall.

The P.P. therefore asked to be allowed to see the draft judgment when submitted in longhand for correction before it was signed. This has now been shown to him and it appears from it that this Honourable Court intends to accept the opinion of the assessors on the first charge, as though it were verdict of a Jury.

It is respectfully submitted that the first charge must be decided under S. 309 (2) Cr. P. C. by this Honourable Court when it passes Judgment on the other charges triable and actually tried by it, as provided by S. 296 (3) Cr. P.C. and rule 3 chapter XIV of the Rules of the Court of the J. C. of Sind. The whole trial has proceeded throughout on this basis and it is respectfully submitted that the parties cannot be deprived of the rights of appeal on the facts by the Court treating the opinions of the Assessors in an "Assessor case" as if they were a verdict of a Jury.

From the copy of the "Heads of the Charge" to the Jury just received from the Court it appears that, when charging the Jury the opinion of the Court was, that there was a far-reaching and wide-spread conspiracy which included among its objects the seduction of the troop. It also appears that the Court went on to say in its charge that "From that moment (when the doctrine of the unlawfulness of the military service began to be preached) in my opinion the Khilafat agitation became illegal and those who joined it were members of a conspiracy regardless of the fact whether any attempts were made directly to seduce the troops."

Attention is respectfully solicited to the decision reported in 9 Bombay Law Reporter on page 1057 and it is prayed that this Honourable Court will be pleased when passing Judgment on the other charges triable by it to give Judgment. On the first charge also after considering the opinions of the Assessors on this charge."

(Sd.) T. G. ELPHINSTON,
Public Prosecutor for Sind.

Karachi, 3rd November, 1921.

JUDICIAL COMMISSIONER'S NOTE.

Read application of the P.P. dated 3rd November 1921, in Sessions case 33 of 1921.

I am sorry there has been this mistake due to the bad acoustic properties of the Court. I am afraid it is too late for me to do anything.

I am still of the opinion that where there are two charges one triable by the Judge with a Jury and the other by the Judge and Assessors and these charges are very closely connected, so that it will be impossible to find the accused guilty on the Assessors charge without coming to such a decision on facts that it would have been necessary to find the accused guilty on the Jury charge also had that been triable by the Assessors, the Judge can leave the whole case to the Jury. To act otherwise would think be to destroy any sense of responsibility in the Jury. I have always myself proceeded on these lines in Jury cases. I did so in the present case with more assurance because the charges were originally one and were only divided in this Court (as I thought) for convenience and for the better information of the accused.

In any case the question is rather academic because as far as I can see had I found the accused guilty on the first charge, I should not, as I was not prepared to refer the Jury's finding on the second charge to the High Court, have passed any other sentence than I did. If these views of mine are wrong they can be tested if necessary by an appeal. But of course I cannot now change my judgment on a material point after consultation to the shorthand writer though the judgment is not yet signed. I therefore reject this application on the ground that the judgment is already pronounced. I do not think that the fact that circumstances made it impossible for my judgment to be heard makes any difference.

(Sd.) B. C. KENNEDY,

Judicial Commissioner of Sind.

Karachi, 4th November 1921.

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