

1921 MR 16

Sir A. Herchenroder C. J.

This action is brought by four Mahomedans, describing themselves as proprietors and traders of Rose Hill, and as HANAFI Mahomedans belonging to the SUNNI sect.

The Statement of Claim reads as under: -

1°. - Plaintiffs are Mahomedans belonging to the Hanafi Sunni Congregation and as such are in the habit of offering up prayers and attending services behind Hanafi Imams in every Mosque dedicated in Mauritius to the Mahomedan religion and used by the Hanafi sect. 2°. - Plaintiffs have been in the habit for years and years of praying and attending services more especially in the mosque situate at Rose-Hill and erected on a portion of land purchased on the 16th June 1863 by Ismael Jeewa with collections made among Mahomedans and dedicated to the Mahomedan religion. 3°. - Since that time the said mosque has been exclusively used for prayers by members of the Hanafi sect. 4°. - Defendants are the followers of a new sect of Sunnis which was founded by Mirza Gholam Ahmad of Kadian a village in the Punjab about thirty - five or 36 years ago and they are generally known as Ahmadis or Kadianis. 5°. - The Defendants have begun about two years ago to offer their prayers not only individually but as a congregation under their own Imam in the said Mosque of Rose-Hill in spite of repeated objections on the part of the members belonging to the Hanafi sect. 6°. - The Ahmadis hold beliefs which are widely different from those of the Hanafis. 7°. - Defendants allege that they are Mahomedans and followers of Mirza Gholam Ahmad and that they are entitled as such to offer up their prayers both individually and as a congregation behind their own Imam in the mosque of Rose-Hill. 8°. - Plaintiffs aver that according to the tenets of Hanafis nobody can officiate as Imam without the permission of the permanent Imam and that the Ahmadi sect is so different from the Hanafi sect that the Ahmadis who are about a dozen of members including Defendants cannot be allowed to disturb the old-standing arrangements for the conduct of worship in the mosque of Rose Hill by offering up prayers in the said Mosque either individually or as a separate congregation behind their own Imam. Therefore Plaintiffs pray for a judgment ordering that the Mahomedan Mosque of Rose-Hill has, since its creation been used by the Hanafi sect and that the followers of the Ahmadi sect cannot offer prayers in the said Mosque either individually or as a separate congregation behind an Imam chosen by themselves.

Plaintiffs, in addition, furnished the following particulars: - 1°. - So far as Plaintiffs are aware the only document referring to the dedication is the Notarial Deed witnessing the purchase, mentioned in par. 2 of the Statement of Claim, which deed was drawn up by Mr. Joseph Arthur Giblot Ducray, is dated the 16th June 1863 and is registered in Reg C 102 No 80. 2°. - The Mosque has been dedicated to the Hanafi sect and to such other sects of the Mahomedan religion which hold the same tenets, but not to such sects as the Ahmadi sect, which was not even in existence at the time. 3°. - So far Plaintiffs are not aware that any written objections were made by the Hanafis to the use by the Defendants of the said mosque. 4°. - The permanent Imam, according to the Hanafis, is the Imam chosen by them for the holding of services in the mosque used by them and behind whom they offer up prayers.

Defendants joined issue as follows: - 1°. - The Defendants like the Plaintiffs are members of the Sunni sect (firka) of the Hanafi school of thought (Mazhab) of the Muhammadan religion (din). 2°. - As such they are the followers of Mirza Ghulam Ahmad of Qadian, a Hanafi Sunni Muhammadan by birth and the founder of the Ahmadi movement (silsilah). 3°. - The Defendants admit that unlike the Hanafis: (i) They do not offer and in fact are prohibited from offering prayers to the Sultan of Turkey behind the officiating Imam in the mosque (ii) They do not accept that the world will be converted to Islam by a crusade Jihad headed by a bloodthirsty Mahdi who will reign with the sword. 4°. - Apart from the aforesaid differences, the Defendants emphatically deny that there are widely different beliefs (akaid) separating them from the Plaintiffs, as Hanafis. 5°. - The Defendants record the Plaintiffs' admission that the Mosque under reference was not dedicated to the use of the Hanafis to the exclusion of other sects (firka) or schools (Mazhab) of the Muhammadan congregation in Mauritius. 6°. - The Defendants aver that it is furthermore expressly forbidden by Muhammadan law to deny any son of Islam the access to a mosque. 7°. - The Defendants record Plaintiffs' admission that no written objections were made by Hanafis to their (Defendants') offering prayers in the said mosque behind their (Defendants') own Imam. They further deny and traverse that there were repeated objections on the part of the members belonging to the Hanafi sect to their so doing, and put the Plaintiffs to the proof thereof. 8°. - The Defendants deny and put the Plaintiffs to the proof that according to "Hanafi tenets." nobody can officiate as Imam without the permission of the permanent Imam. 9°. - The Defendants aver that according to long-established practice and usage in the said Mosque, the permanent Imam has invariably made way for a more learned colleague and stood with the rest of the congregation behind the latter at the time of prayers, whenever occasion arose. 10°. - In keeping with this practice and usage, the permanent Imam, Miajee Ahmud, made way for Imam Ghulam Mahomed B. A. (fourth Defendant) from March 1916 till his (the permanent Imam's) death. In the same way, a Shafei Imam had also led the prayers in the said Mosque. 11°. - The Defendants aver that of the Plaintiffs, two viz: Ibrahim Assenjeje Adia and Ahmode Issop Atchia have actually said prayers behind Imam Ghulam Mahomed B. A. 12°. - The Defendants aver accordingly that they are entitled to the use of the said mosque and that the fourth Defendant, Imam Ghulam Mahomed B. A. should lead prayers in the said mosque. 13°. - The Defendants also aver that following the purchase of 1863 by Ismael Jeewa, two adjacent portions of land were purchased by Ibrahim Sulliman Atchia, the first Defendant's father and various buildings have been erected thereon by him and the first Defendant, Ahmode Ibrahim Atchia. 14°. - The value of the said land and buildings is approximately Rs. 20,000, of which only Rs. 5,000 represent subscription money, the balance having been contributed by the said Ibrahim Sulliman Atchia and the firm Atchia Bros of which Amode Ibrahim Atchia was the leading partner. 15°. - The Plaintiffs have never contributed a cent towards the said buildings and purchases of land; and, Hanafis are now in fact praying in a mosque of their own at Rose Hill which has been in existence for about two years. 16°. - The present action is the result of spite and ill-will to the Ahmadi movement and has been brought by the Plaintiffs out of malice and without their having any real interest at stake. The Defendants therefore pray that Plaintiffs' action be dismissed with costs,

## II. The following are the main circumstances that have led to this suit:

1. - Maulvi Goolam Mahomed B.A., an Ahmadi missionary came to Mauritius from Qadian on the 15th June 1915 with the object of preaching the teaching of the Kuran as it is interpreted by Mirza Ahmad of Qadian. The Maulvi came on the invitation of several local Ahmadis (inter alios: one Nooraya, a school-master; one Azim Sultan Goss, a teacher, and one Mamode Sooban Rajabally) who had written to Qadian, the head-quarters of the Ahmadi movement, asking the leader

to send somebody with a knowledge of English and Arabic to make people aware of the teachings of the Kuran.

2. - The Ahmadis or Qadianis are the followers of Mirza Ghulam Ahmad of Qadian in the Punjab, who claimed to be the Promised Messiah and Mahdi, and was the founder of the Ahmadiyyah movement, Qadian. Ahmad was born in 1836 or 1837. His first work was published in 1880, when he was 44 years old; from 1880 onwards, he went on writing, he proclaimed himself as prophet in 1889 when he began to get followers and to take baiats (oaths of admission). About the year 1891, he announced to the world that he was the Promised Messiah. The beginning of the 14th century since the Hejirah is the year 1884 and Ahmad claimed to be the Messiah promised in that century. He died in 1908.

3. - The 8th, 9th and 10th articles of faith of the Ahmadiyyah Community, as they appear in the "Claims and Teachings of Ahmad" (2nd Edition, 1917, p. 414) read as follows: (viii) - We firmly believe that the man about "whom prophecies have been made by the old Prophets under different names and of whom the Holy Quran speaks in the verse "he it is who raised a Prophet among the Meccans... and among others of them who have not yet overtaken them" as the second advent of Mohammad and whom our Lord Mohammed calls Messiah the Prophet and the Mahdi (the man) is Hazrat Mirza Ghulam Ahmad of Qadian and besides him nobody is the Promised Messiah. (ix) - It is our firm belief that the Holy Quran is a perfect Book and that no new law will be required till the day of Resurrection and that our Lord Mohammad possesses collectively all the qualities of the Prophets and that after him none can, far from gaining any spiritual eminence, even become a true believer except by complete obedience to him. We, not for a moment, believe that any old Prophet will come to his place a second time, because in that we will have to admit some defect in the spiritual powers of our Lord Mohammad; but we believe among his followers, reformers have appeared and will continue to appear with spiritual knowledge of a very high order. Not only this, but a man can even gain prophethood by the help of our Lord Mohammad's spiritual powers. But no Prophet with a new book or having been appointed direct will ever come, for in this case it would be an insult to the perfect prophethood of our Lord and this is the meaning of the seal of the Prophets and in this sense the Lord has on the one hand said: "There is one prophet (i.e. an independent prophet with a new Law) after me," and on the other hand has called the coming Messiah a Prophet of God. "(x) - According to this we believe that a man, the Promised Messiah, has gained prophethood in spite of his being a follower of our Lord. We believe in the miracles of the Prophets which in the words of the Quran are called signs of God and this is our firm faith that God for the manifestation of His glory and for proving the truth of His Apostles has been, through His servants showing signs which are beyond the power of human beings."

4. - The duties of the Ahmadiyya Community are described as follows: - The Ahmadiyya Community is neither an Anjuman nor is it a religion. But the meaning of the Ahmadiyya movement, is this, that it is a body of Muslims that having recognised the Promised Messiah as a means of Guidance have accepted the true Islam which was given to the world through Our Lord Mohammad and who have accepted all the claims of the last Messenger of God, viz: the Promised Messiah. Hence the obligations of the Ahmadis are the same as have been fixed by the Holy Quran for a Muslim and which have been sanctioned by the usage and practice of our Lord Mohammed and of his Companions. Hence acting upon the laws of the Quran, the practices and sayings of the Prophet is a distinct duty of every Ahmadi. But since Islam considers the proclamation of the truth as one of the important duties of a Muslim and it has been considered as one of the distinguishing features of the Moslems that they ask the people to do good and prohibit them from doing evil - a duty the performance of which made the Muslims

so successful in the beginning, hence the Promised Messiah has laid much stress upon this point and has made it obligatory for the members of the Community that they should send a part of their income to Qadian for this purpose. This money is spent for the propagation of Islam on the lines fixed by the Promised Messiah. Hence every Ahmadi should make it a rule for himself to send a part of his income for the furtherance of the objects of the Movement. The amount of this contribution has not been fixed but left to be determined by the love and zeal of a man for the movement. Be the sum small or great, it is obligatory on every Ahmadi to help the Movement with his mite. Some friends spend one tenth and even more of their income for the help of their religion."

5. - The management of the Movement is indicated as under "As had been the Custom of God from time immemorial that he starts a line of successors for looking after the welfare of the Community which is prepared by the Messengers of God, so in this age too he has started a line of successors. Without it no progress is possible, for a disorganised body is incapable of performing anything great. Hence for the purpose of keeping the Community united, and for using its potentialities collectively for the welfare of Islam a line of successors has been started. This is our firm conviction as it is also mentioned in Chapter XXIV, 55, that successors are appointed by God. Hence it is the duty of every Ahmadi, as long as it pleases God to favour us with this blessing, to accept the Baiat of the Caliphs one after another. All the new converts should also enter into the Baiat of the successors to the Promised Messiah or their representatives". The passage ends as follows... "The first Khalifa of the Promised Messiah was the Hazrat Maulavi Noorruddin Sahib and the present Khalifa is Hazrat Mirza Bashiruddin Mahmud Ahmad Sahib."

6. - On Goolam Mahomed's arrival, very adverse comment appeared in one of the evening papers of the Colony, Le Petit Journal, in articles published on the 16th June, 21st June and 26th October 1915.

7. - Noormamode Nooraya, above referred to, acting as Secretary of the Ahmadiyya Association, asked for and obtained on behalf of that Association, the permission of the Government to hold meetings at Rose Hill (22nd October 1915). This gentleman who was one of the first in Mauritius to be converted to Ahmadism (embrasser l'Ahmadisme) first heard of Ahmadism in 1907, when he was the editor of a publication called "L'ISLAMISME". He had become acquainted with the Ahmadi movement through the "Review of Religions", a publication issued by the Ahmadist Society of Qadian. He doubted, he searched, he studied and, in the end, he became an Ahmadi.

Seemingly in answer to the Petit Journal of the 26th October 1915, he caused to be published an explanatory note on Ahmadism in another evening paper, the Radical of the 28th October 1915.

8. - Both the Petit Journal of the 26th October 1915 and the Radical of the 28th October 1915 may conveniently be reproduced here: -

LES AHMADISTES Le Journal La Patrie nous a envoyé, hier, un communiqué annonçant que le missionnaire Ahmadi Ghulam Mohamed avait obtenu l'autorisation de faire des conférences pour convaincre les véritables musulmans qu'ils croient à des stupidités. Tous les musulmans éclairés de l'univers répudient avec mépris cette doctrine qui prétend que Mirza Goolam Ahmode, un Mogol, de Kadiane, est le Messie Maoud. Voilà Mirza (un Mogol) qui prétend être le Messie et en même temps le Mahdi. Ne connaissant pas la doctrine islamique, et cette note n'ayant pas été eu par un musulman capable de nous éclairer, nous l'avons publiée en fait par surprise. Nous sommes autorisé à dire que la Société Soonee Soortee a fait venir

un Mufti, Molvi pour mettre en garde ses frères musulmans contre cette pernicieuse doctrine. Tous les musulmans qui la professent sont tenus à l'écart comme des schismatiques par leurs coréligionnaires. Nous prions notre confrère de la Patrie - s'il veut, lui, publier de pareils communiqués, de ne plus se charger à l'avenir de pareilles missions pour nous. Nous sommes invité à faire savoir à tous les musulmans du pays qu'ils doivent s'abstenir d'assister à ces conférences, de participer aux manoeuvres de cette secte qui, dans un moment où l'union est indispensable, va semer la division et la discorde dans la population musulmane. Nous avons reçu la visite des musulmans de différentes parties de l'Ile qui nous ont déclaré qu'ils avaient appris avec un grand plaisir que la Société Soonee Soortee avait pris des mesures, en faisant venir un Mufti pour enrayer le mal que l'on cherche à semer parmi les pauvres d'esprit et les crédules. Si le gouvernement a accordé l'autorisation au missionnaire Ahmadiste, nous n'avons rien à y voir sinon de lui dire qu'il a peut-être ouvert la porte à la discorde. Les musulmans qui assisteront aux conférences qui suivront l'enseignement, ils seront boycottés. Nous sommes de plus autorisé à dire aux musulmans pouvant avoir un doute quelconque, que le Mufti Mulvi Fazloollah se tient à leur disposition pour leur prouver l'erreur de la doctrine, le faux enseignement de la secte et leur faire voir la vraie voie à suivre. Nous refusons d'ouvrir nos colonnes aux discussions religieuses. Que ceux qui désirent se livrer à ce passe-temps nuisible et toujours pénible, s'adressent à qui ils voudront.

LES AHMADIS - Cher M. le Rédacteur, Vous seriez bien aimable de publier cette note dans votre prochain numéro.

Les Ahmadis appartiennent à une secte musulmane de l'Inde et ne reconnaissent pas le Sultan de Turquie comme Calife ou chef spirituel de l'Islam. C'est une des raisons pour lesquelles ils ne sont pas bien vus de certains musulmans. Le chef spirituel de cette secte est en ce moment Mirza Bashirouddine Mahmoud Ahmad, le successeur du Mahdi promi. Il est un sujet britannique et habite à Qadian (Inde). Il a fait imprimer des brochures dans lesquelles il fait les éloges du gouvernement anglais, et exhorte ses adhérents à être des sujets loyaux et à rendre à l'Angleterre les services qui lui sont dus. Ces articles ont été lus avec plaisir par Son Excellence le Gouverneur et par le chef de l'armée. Votre serviteur, (S) N. NOOROYA.

9. - Meanwhile the Maulvi Goolam Mahomed had taken his quarters for his missionary work at Rose Hill where he was at first received with friendliness and probably with curiosity. From his evidence, the evolution of his activities at Rose Hill may be summed up thus: At first, he went several times to the Rose Hill mosque where he prayed or occasionally officiated with a congregation of some Ahmadis, using his quarters for regular prayers until he was satisfied that the prayers in the Rose Hill mosque were proper Mahomedan prayers to say. Thereupon (4th February 1916) he went there to offer prayers with the other Ahmadis, but he and his congregation prayed seperately, as it was not permissible for him to offer prayers behind non Ahmadis. From the 4th February 1916 for a period of about 4 weeks Goolam Mahomed and the Ahmadis attended the mosque regularly; the non Ahmadis praying in turn behind their Imam Meeajee Ahmed. The latter after a time started to pray behind Maulvi Goolam Mahomed and in the end, on the 14th March 1916, he became an Ahmadi. He continued, however to be a permanent Imam until his death which occurred on the 11th November 1916. Goolam Mahomed thus lead the prayers for some nine months: for three months the united congregation prayed behind him: he preached some 12 sermons in which he touched on controversial subjects between Ahmadis and non-Ahmadis.

10. - Then in June 1916 the split occurred between Ahmadis and non-Ahmadis: some of whom from the first appear to have had misgivings as to the wisdom of allowing the Maulvi Goolam Mohamed gradually to take an ascendancy in the Mosque and in June 1916, non-Ahmadis remonstrated with and tried to obtain redress from the President of the Mosque, Hajee Ibrahim Sulliman Atchia and his son Ahmode Ibrahim Atchia (known under the name of "Major") both of whom had become or were on their way to become Ahmadis; another son of the Hajee Atchia

(known under the name of Mota) remaining a staunch non-Ahmadi. The non-Ahmadi Mahomedans having been warned by the Police Authorities against creating any disturbance during war time, reluctantly left the Rose Hill Mosque and used a building on the property of one Mowlah Baccus as Mosque, pending further developments; permission having been applied for from the Government under letter to the Colonial Secretary, dated 10th August 1916, which reads thus:

"Vous avez été assez aimable pour nous faire savoir par votre lettre 2291/1916 datée du 15 Juin 1916, que Son Excellence le Gouverneur n'avait aucune objection à nous permettre de réunir dans l'immeuble Mowlabaccus Courbanally, No. 34, Route Hugnin à Rose-Hill, pour dire des prières en commun.

Je viens solliciter la faveur de continuer ces réunions tout-à-fait religieuses. Si nous nous réunissons ailleurs que dans la mosquée, c'est afin d'éviter toute difficulté avec les Ahmadistes qui en ont pris possession et dont nous ne partageons pas les idées, les doctrines. Conséquemment afin de n'avoir aucun contact avec eux en attendant que nous bâtions une nouvelle Mosquée ou que nous prenions une action légale pour la rétrocession de la Mosquée actuelle, je viens vous prier de permettre la continuation des réunions religieuses que Son Excellence le Gouverneur nous a gracieusement autorisés à avoir. Je n'ai pas besoin de vous dire que ces réunions sont exclusivement religieuses et qu'elles n'ont lieu que pour nous permettre de dire nos prières en commun. Dans l'espoir que ma demande rencontrera un accueil favorable.

"DOWLUT SIRDAR Jamat Soonee Mahometan, "Rose-Hill" Meanwhile, Maulvi Goolam Mahomed and his congregation remained in possession of the Rose-Hill Mosque.

11. - Goolam Mahomed's activities and tests in respect of the other mosques in the Island appear in the shape of visits to some sixteen mosques, between the period ranging from June 1915 to June 1917. With the exception of the Jumma Musjid Mosque, of Port-Louis and the St Pierre Mosque those visits may, for the purposes of this case be dismissed with the mere statement that no objection was raised; that some of those mosques, he visited once, others twice, and that in some, he was permitted, on the occasions of his visits, to officiate as Imam.

In March 1916, the following article appeared in the "Review of Religions", Vol. XV, p. 151: - "The Ahmadiyya movement has taken firm roots in the small but important island of Mauritius, and the efforts of our learned Missionary, Maulvi Hafiz Ghulam Muhamad, B.A., are being crowned with success. Those who turned a deaf ear to our entreaties for giving us a patient hearing, says Mr Nooraya, the energetic secretary of the Ahmadiyya Association, Rose Hill, are now listening attentively, and in spite of strong opposition on the part of non-Ahmadis, we are accorded a welcome wherever we go." The Secretary sends by every mail a report of the work that is being done in the Island. His latest report, dated the 29th February 1916, runs as follows: "After having visited Chemin Grenier village, and Souillac, we have visited Mahebourg, the ancient capital of Mauritius, where we breakfasted at a Head Teacher's house who is a Hindu. On Friday last (25th February 1916) we said Joomah prayers at the mosque. We were about 35 persons. The service took place at 1.30 . p.m. immediately after the non-Ahmadis had performed theirs. The non-Ahmadis got all in the verandah and listened attentively to the Khutba. Men and women were present to hear the sermon and see the grand spectacle. Praise be to Allah. A gentleman from Cape Colony is in Mauritius. His name is Mr. Osman Rajabally. He is a believer in Ahmad of Qadian. He knows English. To-day, we hope to attend a funeral and explain Admadiyyat at the cemetery where people of different places are going to meet."

12. - With regard to the Jumma Musjid of Port-Louis, Mulvi Goolam Mahomed went there once on the 11th August 1915 - the present Pesh Imam not being in Mauritius then: - another time in 1916 with one Abdool Rahim, a third time again in June 1916, on the occasion of a certain festival: the Pesh Imam was preaching and after the sermon, he and the Maulvi shook hands and there was some mention of an-interview at some future date which was to be arranged by Dr. Sakir, a prominent non-Ahmadi Mahomedan and a member of the Council of Government. That contemplated interview, however, never took place. The Maulvi was advised by the Inspector of Police not to try and see the Pesh Imam. The Pesh-Imam of the Port Louis mosque was evidently not in the least disposed to help or to favour the Ahmadi Movement in Mauritius; in December 1916, he issued a poem cautioning orthodox Mahomedans against the activities of the Ahmadis; and when in April 1917, the Maulvi with other Ahmadis went to the mosque to say midday prayers there, - possibly to feel their ground, - they were prevented from entering and the Chief Inspector of Police requested the Maulvi not to enter the Jumma mosque any more.

13. - As regards the St. Pierre (Moka District) Mosque, the Maulvi and some other Ahmadis went there on the 3rd February 1917 on the invitation of one Bhunnoo senior, an Ahmadi. There was no trouble on that occasion, but when in July or August 1917, some Ahmadis went there again, there was a scuffle, the outcome of which was that the Inspector General of Police intimated to the Maulvi Goolam Mahomed, to Nooraya and to one of the St Pierre Bhunnoos that the Ahmadis should visit no other mosques than that of Rose Hill. The Maulvi states that he submitted to the order and restricted his activities as a Missionary to Rose Hill, pending the termination of the war, pending further developments, and probably, also, pending final settlement of the Rose Hill opposition.

14. - Here it should be noted that in February 1916, two Rose Hill Mahomedans were deported by the Government (1) one Haffiz Ibrahim Mal and (2) Maulvi Ayatostah, an Hanafi Imam, the uncle of second Plaintiff and an energetic non-Ahmadi. It is asserted on the Plaintiffs' side that the Rose Hill non-Ahmadis were frightened into temporary submission through being given to understand that the Maulvi Goolam Mahomed was not altogether a stranger to those deportations a surmise which is emphatically repudiated by the Maulvi. On the other hand, as appears from the pleadings and the evidence, Defendants ascribe the hostility which gradually evinced itself against the Hamadi movement to the belief that the Maulvi had some occult influence in the selection of Mahomedan deportees. I shall here at once dispose of this incidental feature as in the case by stating my opinion that there is no evidence which gives a reasonable ground for any such belief among the non-Ahmadis; and, on the other hand, - (making due allowance for the existence of such belief, however imaginary it may have been) - that I do not think that the hostility to the Ahmadi movement originated in or was materially influenced by those deportations. The action of the Port Louis and of the St. Pierre Mahomedans - which concerns this case but indirectly, - and that of the Rose Hill Mahomedans, which is directly in issue - appears to me to have been due to a genuine feeling which developed in a deep rooted conviction, - (whether justifiable and reasonable or not I am, of course, neither prepared nor called upon to say - that the religious views, tenets and teachings of Ahmad, as expounded by the Ahmadi Misionary Maulvi Goolam Mahomed, were utterly irreconcilable with Mahomedan orthodoxy.

15. - We are now brought, chronologically, to December 1917 when, in connection with the alleged conversion of the old patriarch Hajee Ibrahim Atchia, two letters appeared in Le Journal de Maurice et Le Petit Journal of 10th and 11th January 1918 which illustrate the then existing tension and the position which matters had reached at Rose Hill. Those letters read thus:

Notre confrère du Mauricien ayant publié ce matin un article signé S. I. ATCHIA en réponse à un articulet signé un Rose-Hillien publié par nous, nous avons immédiatement fait une enquête à l'effet de nous assurer si notre correspondant n'avait pas fait erreur. Nous avons appris que l'articulet de notre correspondant est parfaitement correct. Du reste, la note parue chez notre confrère est signé S. I. ATCHIA, qui n'est pas la signature de M. HAJEE IBRAHIM SULLIMAN ATCHIA. L'auteur aurait dû signer en grand pour éviter toute équivoque. De plus, le fils de M. HAJEE IBRAHIM SULLIMAN ATCHIA, M. Mahomed alias Mota nous adresse la lettre ci-dessous qui met les choses au point. - Monsieur, "Veuillez je vous prie, publier dans votre estimable feuille, la note suivante: - Permettez-moi de vous dire que j'ai lu l'articulet signé un Rose-Hillien, paru dans votre numéro de Mardi dernier, et celui publié ce matin dans le Mauricien et la Planters' Gazette (les frères siamois) et signé S. I. ATCHIA. La signature de mon père est I. S. ATCHIA c.a.d. IBRAHIM SULLIMAN ATCHIA et non S. I. ATCHIA. "Après avoir lu votre articulet et celui de deux autres journaux ci-dessus nommés, je déclare tout ce qui a été publié dans le Petit Journal est absolument exact et que la chose a eu lieu en ma présence. De plus, je suis le fils aîné de M. Hajee Ibrahim Sulliman Atchia et ai la direction des affaires de mon père. Vu son grand âge, c'est moi qui m'occupe de la mosquée de Rose Hill. (S) M. I. ATCHIA, alias MOTA."

#### PETITE RÉPONSE

"Notre confrère du Mauricien écrit que c'est nous qui avons été mystifié, au sujet de la déclaration faite par H. Hajee Ibrahim Sulliman Atchia. Nous pouvons l'assurer du contraire. La lettre que nous avons publiée hier, en réponse à la correspondance parue dans le Mauricien et la Planters, nous a été remise personnellement, par M. M. I. Atchia, fils aîné de M. Hajee Ibrahim Sulliman Atchia que nous connaissons, que beaucoup de personnes connaissent: c'est le propriétaire de l'Industrie. Donc, il n'y a pas d'équivoque, d'erreur possible. De plus, la correspondance publiée par nos confrères, est signée I. S. Atchia. Si elle émanait de M. Hajee Ibrahim Sulliman Atchia, elle porterait sa signature, et non S. I. Atchia. Si quelqu'un est dans l'erreur, ce n'est donc pas nous. Notre confrère nous dit qu'il tient la lettre à notre disposition. Nous ne doutons pas de sa parole, mais M. Atchia, bien connu généralement connu sous le nom de Mota pourrait, si notre confrère s'adressait à lui, lui dire que c'est bien lui qui nous a donné la lettre rectificative et déclarant que M. Hajee Ibrahim Sulliman Atchia avait effectivement déclaré à Rose Hill, à une fête, qu'il était séparé des Ahmadistes. Or, la correspondance publiée par le Mauricien et la Planters dit que les Ahmadistes ont raison. Elle fait M. Hajee Ibrahim Sulliman Atchia se déjuger et c'est pour que ses amis ne le croient, que son fils aîné a fait publier la correspondance que nous avons insérée hier."

16. - The Atchias and some other leading Musulmans at this stage must have endeavoured to bring about an amicable solution of their difficulties. They requested the Pesh Imam of the Port Louis Juma Mosque to meet the Ahmadi Maulvi at Rose Hill. The Pesh Imam did so in April 1918, but no useful purpose was effected by the interview; and, in July 1918, the Pesh Imam issued a pamphlet entitled "A present to the Muslims" the object of which was to show that Ahmad in the writer's opinion did nothing else but prove that he was an imposter: and that he was therefore neither a Prophet nor the Promised Messiah and Mahdi. The Ahmadis were challenged to prove that what was said in the Pamphlet was false.

17. - Following on that pamphlet, some further efforts appear to have been made towards the adoption of a peaceful modus vivendi. On the 1st of August 1918, an Appeal to the Pesh-Imam of Port Louis Mosque was made in the form of an open letter published in the "Revue Islamique" of that date: - Amode Ibrahim Atchia ("Major"), on the 8th of August, signed a document in which he undertook to abstain from entering the Rose Hill Mosque from the 31st August 1918 and accepted his brother Mota as its President. On the same date, certain Musulmans signed a document in which they accepted Mamode Ibrahim Sulliman Atchia (Mota) as President of the Rose Hill Mosque with a committee of five persons to control the acts and administration of the President. Further it seems that the Ahmadis were to be provided with a building which they would use as a Mosque. However,

on the 23rd August 1918, "Major" repudiated one document and I take it, also the other, for reasons given in the letter conveying that repudiation.

18. - All attempts at an amicable settlement having thus hopelessly failed, legal proceedings were instituted, and the Statement of Claim was served on the Defendants on the 6th September 1918.

III. 1. - On that point, Mamode Issackjee's evidence (which I accept as substantially correct), is to the effect that he and the other Plaintiffs were selected to act as Plaintiffs, on behalf of the non-Ahmadi Mahomedans of Rose Hill with the help of the Musulman community of Mauritius; the Rose Hill non-Ahmadis having been deprived of their mosque for more than 3 years, and being unable to suffer this any longer. I hold accordingly that Plaintiffs have a sufficient interest in this action.

2. - The attitude to be taken by Ahmadis towards Non-Ahmadis is set down in the Instructions for the New Ahmadis as follows: -

#### SOME INSTRUCTIONS FOR THE NEW AHMADIS.

"Since the Promised Messiah was a Messenger of God and the denying of the Apostles of God is a dangerous boldness and deprives a man of faith, hence according to the Quran, the Traditions of the Seal of Prophets and the sayings of the Promised Messiah, it is the duty of every Ahmadi that he should pray under the leadership of Ahmadi Imams only. But in those places where Ahmadi Imams cannot be found, he should offer his prayers alone and should pray to God to give him a Jamaat or Society of his own, because a true believer can never remain alone. Similarly, it has been prohibited that Ahmadis should give their daughters to marriage to non-Ahmadis, for wives are generally influenced by their husbands and thus it is making a soul apostate. Likewise, Ahmadis should not attend the funeral service of non-Ahmadis, for it would amount to interceding with God for a man who has proved himself an enemy by denying and opposing the Promised Messiah".

3. - I gather from the Maulvi's evidence that he is not inclined to take those instructions literally, in respect of marriages, burials and social directions. But he is immutable on the precept that an Ahmadi may not pray behind a Non-Ahmadi Imam. This is a canon which may not be infringed. The learned Counsel for Defendants submitted that rule was made by Ahmad as a counter-stroke to some 200 fatwas purporting to ban him from the Mahomedan male in India. Granting that this may be so, the fact remains that, at the present day, Non-Ahmadis, similarly will not pray behind an Ahmadi Imam; and in this case, we have it that the Rose Hill non-Ahmadi Musulmans have preferred to abandon temporarily what they claim to be their mosque rather than to tolerate the presence of an officiating Ahmadi Imam in that Mosque.

4. - The followers of Ahmad are admittedly Mahomedans, within the short and decisive creed which sums up the Faith of Islam: There is no God but the Lord, and Mahomed is His Prophet. And it was admitted on the Plaintiffs' side that no objection could be made to their using the Rose Hill Mosque for individual prayers: - but what Plaintiffs are asking is that Ahmadis should be restrained from praying in that Mosque as a separate congregation behind an Ahmadi Imam. With this, Defendants join issue and maintain that they have a right to offer prayers in the Rose Hill Mosque (or in any other mosque) behind Defendant Maulvi Goolam Mahomed, or any other Ahmadi Imam; they, however, concede that those prayers should take place in the Rose Hill Mosque at such

times and under such arrangements as not to interfere with the Non-Ahmadi congregations behind their own Imam. They claim that the right of Ahmadi Muslims to pray as a congregation into a Mosque should be recognised by the Court, - and deny that the claims and teachings of Ahmadi are so different from or antagonistic to the doctrines of Islam as to entitle the Plaintiffs to succeed in their pretensions.

5. - The stage has now been reached when the history of the foundation, development and management of the Rose Hill Mosque should be gone into: I find that on the 16th June 1863, there was a sale for the sum of 1,200 piastres to one Ismael Jeewa of a portion of land (un terrain) "pour être affecté pour culte Mahometan, la dite acquisition étant faite des deniers provenant de souscriptions". That on the 11th January 1893, there was a sale to Mr Ibrahim Sulliman Atchia, trader and landowner at Rose-Hill, of another portion of land for the sum of Rs 1,800, the purchase being made "pour le culte Mahometan". That by deed dated 14th June 1912 and 12th January 1915 there was a sale to the "Communauté de l'église musulmane de Rose Hill" with the consent of the same Ibrahim Sulliman Atchia (ce qui est accepté par le sieur I. S. Atchia) of a portion of land and buildings thereon, for the sum of Rs 550. "(Pour la Communauté de l'église Musulmane à jouir, faire et disposer comme bon lui semblera et comme de chose lui appartenant.)" I am of opinion that those three deeds must be read and construed together, and that the purchases were made for and on behalf of the Mahomedan cult and the Mahomedan community of Rose Hill: - and I agree with Plaintiffs that at the time and on the occasion of these purchases (whatever may have been the recent subsequent events which culminated in the present suit), neither Ahmad nor Ahmadism had been heard of, or, at any rate, taken into consideration or account: - this being chronologically indisputable in regard to the time when the mosque was created and built. It results in my opinion from those documents and from all the facts of this case, that the present tenure or occupation of the mosque by the Defendant Ahmadi is one precarious in the extreme and that the Plaintiffs, in their afore-recognized capacity have a "preferential right" over that mosque and in respect of the police and order of its proper use and management.

6. - The question therefore resumes itself into one whether their prayer for relief against Defendants has no foundation and is otherwise unreasonable.

7. - Counsel for Defendants has quoted the following cases which it may be convenient shortly to analyse seriatim:

(i) ATTAH ULLAH & ANOR v/s AZIM ULLAH & ANOR (a)

In that case, the Appellate Court affirmed the right of members of the Muhammadi or Wahabi sect to say Amin loudly during worship. There are other differences between the Wahabis and the other Muhammadans, but the one which excited most animosity was the Amin pronounced loudly. Edge. C.J. stated inter alia that a mosque to be a mosque at all must be a building dedicated to God and not a building dedicated with a reservation that it should be used only by particular persons holding particular views of the ritual... although he thought it better that persons who differ in matters of ritual should have separate mosques.

(ii) JANGU AND ORS v/s AHMAD ULLAH AND ORS (b) In that appeal, it was held that a Mahomedan who, in the bona-fide exercise of his religious duties in a public mosque open to the use of all Mahomedans pronounces the word Amin in a loud tone of voice, does nothing which is contrary to the Muhammadan Ecclesiastical law. Appellants were Hanafis whose position as Muhammadans was thus referred to by Mahmood, J., as belonging to the Sunnis. The Sunnis, or followers of the Prophet's traditions, recognize as great exponents of the

orthodox doctrines four principal Imams or founders of the Schools of Jurisprudence, viz: Abu Hanifa, Shafei, Malik, Hambal, whose doctrines have been accepted by the bulk of the Mahomedan population of the world: the doctrines of those Imams proceeding upon the same principles, the differences of opinion being limited only to matters of detail, such as the form or manner of the performance of religious ritual. Mahmood, J., held that it was an indisputable matter of the Muhammadan ecclesiastical law that the word "Amin" should be pronounced in prayers after the first chapter of the Kuran - and that the only difference of opinion among the four Imams was whether it should be pronounced aloud or in a low voice. "Amin" is a word of semitic origin, used in Arabic and Hebrew adopted in prayers by Muhammadans as much as by Christians. Mahmood, J., held that the Plaintiffs were obviously Muhammadans, and had a right to enter the **Mosque** and to use it for divine worship and to say the word "Amin" aloud or in a low voice in their prayers, since the Muhammadan ecclesiastical law permitted them to have their choice as to the tone of voice in which the word is to be pronounced.

(iii) FUZUL KARIM & ANOR vs. HAJY MOWLA BUKSH & ORS (c) This was an appeal from a decree of the High Court passed on second appeal (1887) reversing a decree of the additional subordinate Judge of Tirhoot (1886) and restoring that of the second Moonsif of Mozufferpore (1884). The point in dispute was whether the introduction of the loud amin and Rafadain showed such a change of tenets or was in itself such an important custom as to disqualify the Imam from acting in a **mosque** where those ceremonies had not been previously used. Their Lordships found it clear that the general charge against the Plaintiffs of having become Wahabis, (whatever Defendants may have meant by it) in the words of Lord Hobhouse resolved itself into this, that they had adopted two observances which the Defendants thought to be wrong: one being the pronunciation of the word amin in a loud instead of a low voice and the other, the performance of Rafadain which is a ceremonial gesture of raising the hands to the ears at a particular point of the service. It was clear that the Defendants made no charge of false or heretical doctrine except so far as it was to be inferred from the offending ceremonial. It was also clear that the use of the loud amen and of Rafadain was consistent with Sunni ritual, for both practices are prescribed by one or more of the four Imams whom the Sunnis follow. The Defendants, however, alleged that the **mosque** was built by Sunnis of the school of Abu Hanifa, who prescribes the low-toned amen and the omission of Rafadain - and that this was inconsistent with being an Hanafi. The Privy Council found for the Plaintiffs, materially in the sense of the judgment of the additional subordinate Judge in March 1886. That Judge had held inter alia that the only difference between Amil-bil-Hadis (called Wahabis by Defendants) and Hanafis was that Amil-bil-Hadis perform Rafadain and say Amin in a loud tone; and that such difference was no ground for a religious objection on the part of an Hanafi to pray behind an Amil-bil-Hadi.

Their Lordships mentioned the case of ATA ULLAH v/s AZIM ULLAH, and the finding of the High Court of Allahabad that a **mosque** being dedicated to God, was for the use of all Mahomedans, and could not lawfully be appropriated to the use of any particular sect. They stated that if that principle were accepted, it would be decisive of the case before them, so far as it did rest on the judgment of the High Court - that they thought that the facts of the case did not properly raise the question and they therefore expressed no opinion on it.

(iv) ADAM SHEIK AND ORS v/s ISHA SHEIK AND ORS. (d) In that case, it was decided that any Mahomedan to whatever sect he belongs may offer his prayers according to his own ritual in any **mosque** so long as he does not wilfully disturb or annoy the other members of the congregation. I find in substance the following dictum in the reported judgment: Each sect supporting its ritual by an appeal to the traditions or example of the Prophet, the Mahomedan law does not recognise any disability - resulting from the adoption of another form of

worship, though it declares that there may not be two Azans (calls to prayers) and two Jamats at one and the same time in one Mosque.

(v) MIR BADDI & ORS v/s MULVI MUBARIK ALI (e) In that case, Plaintiffs claimed the dismissal of Defendant from office of Imam of the Gama Mosque at Slalkot Cantonment on account of his having become a follower of Mirza Ghulam Ahmad of Kadian. The Divisional Judge (Chevis) found that Defendant had been a follower of Ahmad since 1890: that at least a considerable portion of the Mahomedan community followed the Defendant in prayers after it was known he had become a follower of the Mirza; he accepted the evidence of Non-Ahmadi witnesses for the Defendant who stated that it was permissible for them to read prayers after a follower of the Mirza, and held that it had not been proved that it was not lawful according to Mahomedan religion for a Mahomedan to say prayers after a follower of the Mirza. He held that although Defendant on account of his doctrines was most unpopular with most of the local Mahomedans, it had not been proved that being a follower of Mirza Ahmad disqualified Defendant from the office of Imam, no ground sufficient to warrant a decree being passed against him had been proved - and he upheld the decision of the lower Court and dismissed the Appeal.

(vi) CHIRAZ BIBI v/s SIRAJ BUK In that case, Appellant had sued Respondent, her husband, for cancellation of marriage on the ground that Defendant had become a follower of Mirza Goolam Ahmad, and had thus become an apostate from Islam. The Additional Judge found that Ahmadiis had not renounced the Mahomedan faith and he dismissed the claim in appeal, which was one for the reversal of the lower Court's order refusing the cancellation of marriage prayed for by Plaintiff. In his judgment, the Additional Judge quotes without comments a reference by the lower Court to a decision of the Patna High Court (which is relied on by Plaintiffs in this case) where that Court held that Ahmadiis were Mahomedans.

8 - Counsel for Plaintiffs rely on the Patna judgment above referred to: which they submit is on all fours with and covers all the grounds of the present case. That judgment was delivered by the High Court of Judicature of Patna on the 21st December 1916 in the case of:

A. K. AHMAD & ORS v/s M. I. MOKTAR & ORS. (f) In that case, the Plaintiffs, followers of Mirza Ahmad claimed a declaration of their right to offer prayers in a mosque both individually and as a congregation, and claimed an injunction against Defendants accordingly. The Subordinate Judge held that the Plaintiffs were Mahomedans, but that they were not entitled to separate congregations although they could pray individually. The District Judge on appeal came to the same conclusion. The Appellate Court held Ahmadiis or Kadianis were Mahomedans, that they were entitled to enter a mosque and offer up prayers with the regular congregation behind the recognised Imam; that the members of any and every sect were not entitled to pray in every mosque as a separate congregation behind an Imam chosen by themselves. That "Plaintiffs Kadianis" were therefore not entitled to pray as a separate congregation in the mosque in question which had been used all along for about 200 years by orthodox Sunni Mahomedans.

9. - I have not to decide, - viewing the case exclusively from a Mahomedan standpoint whether Ahmad is right or not in his Claims and Teachings, and whether he is really the Promised Messiah as he claims to be, or an imposter and a Kufre, as asserted by the Mahomedans who do not recognize him. If Ahmad is the Promised Messiah of the Mahomedan world, his followers are the best of Mahomedans; if he is not, their faith in him is vain. The question, - always from a Mahomedan standpoint - is whether the differences of opinion between Ahmadiis and non-Ahmadiis are so vital as to justify the prayer of the non-Ahmadi Mahomedans of Rose-Hill that Ahmadiis should be prevented from praying in the

Rose-Hill mosque in separate congregations behind an Ahmadi Imam, in the existing circumstances of the exacerbated differences of opinion between Ahmadis and non-Ahmadis.

10. - In respect of the Claims and Teachings of Ahmad, we have been referred to the following books and publications: -

(1) Claims & Teachings of Ahmad, The Promised Messiah and Mahdi. (From His own Teachings and Sayings) 2nd Ed. 1917.

(2) Excerpts from the Review of Religions, an Ahmadist publication: -

- (i) March 1904 (passage marked E p 87).
- (ii) April and May 1917 (Vol. XVI, Nos 4 & 5).

"The chief points of difference between the Ahmadiyyah community and the orthodox Muslims" (Part III pp. 136 et seq.)  
"The Process of Evolution in the career of the Prophet Ahmad (pp. 162 et seq).

(iii) "August 1917. Ahmad did lay claim to Prophet-hood."

(3) Extracts from the Holy Quran and Authentic Traditions of the Holy Prophet Mahomed (pp. 73 & 104 to 109).

(4) What the Ahmaddiyya Movement has done for the Government (reproduced from the "Review of Religions" for February 1916.

(5) Excerpt from "Ayyam No Salma" (pp. 86-87), stated to be a book written by Ahmad.

(6) The Ahmadiyya Community and the British Government, a pamphlet circulated by Maulvi Ghulam Mahomed.

11. - Defendants admit in their Statement of Defence that unlike the Hanafis: -

(1) they do not and may not offer prayers to the Sultan of Turkey, - behind the officiating Imam:

(2) they say that Jihad with the sword is now at an end, but that the real Jihad by moral persuasion yet remains.

Apart from these two differences, the Defendants emphatically deny that there are widely different beliefs separating them from Hanafis.

Other additional points of difference and controversy have, however, been put forward by Plaintiffs or been developed as the case progressed in Court, viz: -

(3) (i) The second advent of the Quranic Messiah (ii) the time fixed by the Quran for that second advent (iii) the refutation of the false belief that there would be a personal second advent of Jesus - son of Mary, culminating in Ahmad's assertion that he, Ahmad - is that Promised Messiah; and

(4) that he is a prophet of God,

(5) the controversy as to whether the Prophet Mohammed's night journey was a real bodily journey; or was a vision or a dream.

12. - As regards (1) and (2). I find that Maulvi Ghulam Mahomed expresses himself as follows: "The broad distinction is this: Ahmadism does not allow of fanaticism, but it stands for tolerance: non-Ahmadis on the contrary, encourage fanaticism in the way of spreading religion. Ahmad says that truth attracts of its own virtue: it does not stand in need of any compulsion or force and should be put before the public: whilst Non-Ahmadis say that we must preach religion with external force: and resort to external force for spreading religion. One is a way of persuasion and the other a means of compulsion. That is the meaning of "Jehad" as differently interpreted. "Jehad" includes the necessity for non-Ahmadis to accept the Sultan of Turkey as their spiritual Caliph. The Sultan of Turkey is not universally believed in, and the question disputed at Cairo..."

"... The contention of the Ahmadists is that the Sultan of Turkey is not the real Kaliph, but that he is only the temporal King of Turkey..."

On this point, we have been referred to an article headed the Khalifat in No. 6 of the "Islamic Review" of June 1915 (pp. 284,285) and to a letter therein reproduced of Mr. Sayed Ameer Ali C.I.E. in the Times in which he states that to Muslims, the existence of an independent Kaliph, as the spiritual and religious chief or Imam, is essential for the valid performance of prayers and other religious duties; - that the Imams who lead the prayers in **mosques** act as his representatives; - that the family of Osman claim the title to the Khalifate by devolution from the last Abbaside Khalif to which the avowed acknowledgment of the Sunni world for five centuries, the Koreishite claim... having lapsed, has imparted a validity which it would be difficult to question without giving rise to unwelcome problems; and that the subject is one of extreme delicacy and difficulty.

We find also in certain local publications and writings which have been produced, writings and articles in favour of the Kaliph, e.g. (i) L'ISLAMISME of the 2nd November 1906 (A.R.) (ii) L'ISLAMISME of the 13th December 1912 (A.Q.)

13. - As regards (3) & (4) - the assertion of Ahmad is that the correct interpretation of the Kuran is that Jesus is dead; that he cannot therefore come back as the Promised Messiah: that he, Ahmad, is that Promised Messiah, that those who believe in him must believe that no Promised Messiah will come after him, but that successors of Him can come: Ahmad also, as a logical development asserts that he is a prophet of God. By what process of evolution those claims found their ultimate shape is analysed fully in the Review of Religions, Vol. XVI of April and May 1917, pp. 162 et seq. The article or letter containing that analysis also explains how Ahmad came to declare that the saying of prayers behind a non-Ahmadi was absolutely unlawful and to emphasize the prohibition by adding that he was ordered by God to give this commandment; - and how, in the attitude of Ahmad towards non-Ahmadis, the writer observed a gradual progression which culminated in the declaration that non-Ahmadis were infidels. As regards (5), it will be sufficient to say that the controversy appears to be acute between those who believe that Mahomed's journey was a bodily one, and those who hold that it was a vision or a dream.

14. - All the above claims and teachings, - the "orthodox Muslims", as they are termed by Ahmad himself, refuse to accept. I have of course, no means to form, and I still less wish to express an opinion, on questions which can hardly be settled judicially: that is to say on the merits or demerits of Ahmad's claims and on the effect of such claims and teachings on what has been

termed the "Mahomedan Ecclesiastical Law" in some of the Indian judgments quoted to us.

15. - It is, however, sufficient, for the purposes of this case that I should state that, in my opinion, there are, at the present time, irreconcilable differences of opinion between Ahmadis and non-Ahmadis on questions which both Ahmadis and non-Ahmadis consider as being of so great, if not vital importance, that neither will nor may pray behind an Imam of, I am almost tempted to say, the opposite persuasion.

16. - The issue put in this light, seems to me to resolve itself into the question whether the admission, in turns in the Rose Hill Mosque, of congregations of Ahmadis, as prayed for by Defendants would substantively defeat the rights of Plaintiffs quietly and undisturbedly to offer their prayers in the Rose Hill Mosque.

17. - I must answer that question in the affirmative: - I agree with Plaintiffs that of all the judgments quoted, the one materially and immediately in point is that of the High Court of Patna (1916) - That judgment has been ably, if severely criticised by Mr. Pezzani, whose conduct of the Defendant's case deserves the greatest commendation; and I have given the fullest consideration to these criticisms. I am unable, however, to say that I agree that the judgment of the High Court of Judicature of Patna should be passed over as unsound. It is an important guide to and confirms to no small extent the conclusion which I have arrived at.

18. - I find therefore that a claim for the exclusive use of the mosque by an Ahmadi congregation under an Ahmadi Imam is altogether untenable. Further, I find myself unable to assent to the "modus vivendi" suggested by Defendants in the course of the case, that this Court might make an order sanctioning the alternative occupation of the mosque by separate congregations of regular Ahmadi and non-Ahmadi worshippers behind Imams of their own selection. Such an order which, at the best, would only afford an empirical solution of the issue, would not, in my opinion, give to the Plaintiffs the relief which they are entitled to in respect of the Rose Hill mosque, - in the circumstances, as resulting from the mass of evidence, both oral and documentary, - and for the reasons above recited and the additional reasons given by my brother Judge in his written judgment:

19. - The Court finds that the Defendants, followers of the Mirza Ahmad of Qadian - are not entitled to and may not offer prayers in the Rose Hill Mosque referred to in this case as a separate congregation behind an Imam of their own selection, - and to this extent judgment is given for the Plaintiffs in terms of their Statement of Claim. - with costs.

**Roseby J.** - The Mosque which is the subject of dispute has been built, and the land whereon it is erected has been acquired, at various times, by subscriptions among Mahomedans. The dedication contained in the respective deeds of property is, in the first two (16th January 1863, 11th January 1893) for the purposes of the "Culte Mahometan"; in the other (14th June 1912, 12th January 1915), for those of the "Communauté de l'Eglise Musulmane de Rose Hill." In my opinion these purposes may be taken as the same, and we must regard the Rose Hill mosque as dedicated simply to Mahomedan worship at Rose Hill. Plaintiffs and Defendants as to this to not seriously disagree. A great volume of evidence has been adduced before us in regard to the peculiar tenets of Ahmadism. Much of this, I think, has but slight bearing on the issue before us. The simple creed

of Mahometanism seems to be expressed in two essentials; the unity of God, and the Supreme Prothethood of Mahomed. We have it that this is the only declaration required from converts to Islam. Within the limits of this simple creed, Mahometanism, in its long history, has embraced wide diversities in the interpretation of its theology and scriptures. This large tolerance of theory is indeed one of the difficulties in the present case. Other religious bodies have defined with more or less precision of detail their canons of orthodoxy. In some cases, these statements of belief have been annexed to an act of incorporation, so that the tenure of Church property is held in accordance with them. In the Roman Catholic Church, among others, questions of orthodoxy are decided by a Supreme Authority, whose pronouncements on theological matters are final. These conditions do not exist in the Mahomedan Church. There are three different sects or Firkahs of Sunnis, Shiahhs and Khadjis. The Sunni sect is further divided into the Mazhabs or schools - Hanafi, Malik, Shafi, Hambali; and these again may have further subdivisions into Silsillahs. These divisions naturally imply some distinction in their point of view, whether of doctrine or ritual. Different bodies of Ulemes or learned Doctors of the Church publish fatwahs from time to time on various doctrinal questions. But there is no one central body regarded as supremely authoristative in its theological deliverances. And provided a man accept without reservation the two articles of faith of Islam he has the right to claim the status of a Mahomedan. On this basis it is admitted that, however heterodox their opinions may in some respects be regarded, the disciples of Ahmad have not forfeited their right to be called Mahomedans. So, even if we possessed the competence, which I for my part must devoutly disclaim, of deciding whether or not the theological claims of Ahmadism are based upon a proper interpretation of the Koran, it seems to me that such an enquiry is irrelevant to the purposes of the present issue.

I think that the proper solution is only to be arrived at by asking: It being admitted that the Ahmadists are Mahomedans, and as such, have a general right of joining in worship, have they, compatibly with the purpose for which the mosque was founded, a right to use the Rose-Hill mosque in the manner and under the conditions which have characterized their occupation of the Mosque; and on which they themselves insist as essential, and not admitting of compromise. If we find that these conditions are of such a nature as to preclude the harmonious and seemly use of the mosque for general Mahomedan worship in accordance with the purpose of the deeds, we reach surer and more practical ground for a decision.

We may briefly sum up the course of events in this dispute. Mirza Ahmad, claiming to be the Messiah promised by the Koran, attracted a large body of followers in India, and founded an actively proselytising cult, carrying on a propaganda of missionary effort, both by preaching, and the dissemination of Ahmadist literature. We need not follow the fortunes of this cult in India, except to say that its pretension soon aroused fierce opposition among Mahomedans; and that this had resulted in considerable litigation, to which I shall refer later. The extension to Mauritius of the Ahmadist mission can be said to begin from June 1915, at which date, Goolam Mahomed B.A. arrived here at the invitation of certain local Mahomedans, who had for some time previous been students of Ahmadist literature. The Mahomedan congregation of Rose-Hill became the centre of the propaganda in Mauritius. Converts were made, including some of the principal members of the congregation: Hadjee Atchia, who had for a long time been President of the Mosque, was converted, at any rate for a time, to the new movement and his son, Amode Ibrahim Atchia, alias Major, became one of its most steadfast adherents. The office of Imam was at that time held by one Miajee; before long, he made way for the leadership of Goolam Mahomed, who since that time has acted as Imam of the Rose Hill Mosque. We have it that no objection was made to this "peaceful penetration" of Ahmadism at Rose Hill at first. At length, however, in June 1916, objection was made by some members of

the congregation, who protested to the President. Subsequently a portion of the congregation withdrew from the Mosque to another temporary place of worship. Meanwhile there had been considerable ill feeling between leading Ahmadists and non-Ahmadists which seems to have had its origin to some extent in political differences, and pressure was brought to bear on both sides to abstain from demonstrations, the authorities very rightly feeling it their duty to keep a strict control over causes of popular excitement in war time. The Defendants have contended that the present action is brought not out of genuine reprobation of Ahmadism, as a religious movement, but in revenge for the imagined association of Ahmadists with certain political deportations. The Plaintiffs on the other hand, say, that, as soon as they came to realise the real meaning of Ahmadism, they challenged it as obnoxious to their own faith, and they have taken the opportunity of litigating the matter at the end of the war, when political excitement had died down.

To my mind there are two important points to be retained from this summary:  
- (1) Ahmadism, as a school, had no existence in Mauritius at the time of the dedication of the Rose-Hill Mosque, even at the date of the latest deed (12th January 1915). (2) No claim of prescriptive right can be set up by the Ahmadists in respect of the brief period during which they have exclusively used the Mosque.

I do not think, for reasons which I have already given, that it is necessary to examine the details of theological differences between Ahmadists and non-Ahmadists, except as to their effect in practice on the use of the Mosque for general Mahomedan worship. But it is beyond dispute that as a school, the Ahmadis seem to be in strained relations every where with their fellow Mahomedans. Denunciations and fatwahs have been exchanged from both sides. We read this in the writings of Ahmad himself: -

"You have heard that the Mulvis who are opposed to you and who are followed by millions of people in this and other countries, have published in pamphlets, notices and newspapers, judgments declaring that you are heretics and that your murder is a deed of merit... Where then is peace for you?.. certainly you cannot find it under any Muslim rule."... "a danger which is doubled in the case of the Ahmadis on "account of the fatwahs of heresy and grudge against them." (Claims and Teachings of Ahmad pp. 221, 222.)

And in instructions for non Ahmadis, we read that: "it is the duty of every Ahmadi "that he should pray under the leadership "of Ahmadi Imams only".

These teachings, as the Defendant Mulvi Goolam Mahomed has told us with frank sincerity, are faithfully accepted by the followers at Rose Hill. And in answer to repeated questions, all the witnesses for the defence were emphatic that they would refuse to worship behind an Imam other than of the Ahmadi school. Their attitude therefore, at Rose Hill, is in practice avowedly separatist and intransigent. The Rose Hill Mosque has been turned into a centre of propagandist effort, with the result of acute controversy and bitter disputes within the congregation. We see no reason to doubt that whatever may have been their attitude at first, the non-Ahmadi members of the Rose Hill congregation now sharply resent the using of the Mosque for purposes which they consider hostile to their traditions.

It is claimed by its adherents that Ahmadism is a movement for the reform of Islam and of the world. This may be so; and one may admit that there is much

that is elevated and inspiring in its teaching. But the alleged superiority of their doctrine can have no bearing on the claims of the Ahmadis to remain in the Rose Hill Mosque as a separate congregation. If, however noble their faith, its practice brings them into irreconcilable conflict with their co-religionists who are non-Ahmadis, this is an element of discord which may defeat the purpose of seemly and peaceful Mahomedan worship for which the property was dedicated. Reformers have had, before now to pay the penalty of dissent by exile to a new home.

This seems a convenient place to refer to the various decisions which have been brought before us: In the case of the General assembly of the free Church of Scotland & Others v/s Lord Overton & Others \* which occupies 250 pages of the report, the House of Lords has dealt very learnedly and exhaustively with the question of modification of the tenets or principles at one time professed by a Christian Association. It was held in connection with the Union of the Free Church of Scotland and the United Presbyterian Church that the establishment principle and the Westminster Confession were distinct tenets of the Free Church; that the Free Church had no power where property was concerned to alter or vary the doctrine of the Church... and that the Appellants (a minority dissenting from the Union) were entitled to hold for the Free Church the property held by the Free Church before the Union. There are essential differences, however, between that case and the one we are considering. Here there is no question as in the Scotch case, of a claim, under the authority of an agreement sanctioned by a majority, to set up a new religious association to cover the ground of an old one. In this case, the claim of Defendants is simply to set up a separate congregation in the same mosque, and under the same title as the others. In the next place, the Scotch Church was one of those religious bodies, to which I have referred, whose tenets were defined with some precision, and indeed embodied in a model Trust deed. I do not think therefore that much guidance for our present decision is to be obtained from this judgment except an indication that the rights of minorities, however small, must be respected.

In Fuzul Karim & another v/s Hajee Mowla Ruksh & ors, (a) it was claimed that Plaintiffs (Imam and Mutwallys of a Mahomedan mosque in India) had forfeited their offices by reason of heresy, they having become Wahabees. "But", say Their Lordships, "in the course of taking the evidence, it became clear what was the real quarrel between the parties. The general charge against the Plaintiffs of having become Wahabees (whatever the Defendants may have meant by it) resolved itself into this: That they had adopted two observances which the Defendants think to be wrong: one being the pronunciation of the word "Amen" in a loud instead of a low voice and the other the performance of Rafadain which is a ceremonial gesture of raising the hands to the ears at a particular point of the service..." The decree of the Subordinate Judge in favour of the Plaintiffs was upheld: the House of Lords treated the dispute as one of ritual, for which Mahomedan Law had made no provision. It was in evidence that learned Mahomedans regarded these as minor matters of difference which should not cause quarrel amongst Mahomedans. This can hardly be said of the difference between Ahmadists and non-Ahmadists. And we have, moreover no evidence that Wahabis keep themselves apart to the extent of refusing to worship behind a non-Wahabi Imam.

The decisions in ATA ULLAH and anor v/s AZIM ULLAH and anor (a) and JANGU and ors v/s AHMAD ULLAH (b) and ors turned on the same question of ritual and were considered by the House of Lords in the above decision.

Another of the cases cited to us was ADAM SHEIK v/s ISHA SHEIK (c): here we read: "The non-conformity of the Plaintiffs," (who had been denied access to the mosque), consists, according to the Munsiff only in the form of the lower

garment worn at the time of prayer. No question here arose of a separate congregation.

In the case of HAKIM KHALIL AHMAD and anor v/s MALIK ISRAFIL MOKHTAR and Ors heard in 1916 before the High Court of Patna (d) the situation is more directly in point. I shall first quote the head note: Ahmadis or Kadianis are Mahomedans notwithstanding their pronounced dissent from orthodox opinion on several important articles of faith and are entitled to enter a mosque and offer prayers with the regular congregation behind the recognized Imam. Every mosque was dedicated to the worship of God and was open to any Mahomedan who chose to pray in it. But the members of any and every sect were not entitled to pray in every mosque as a separate congregation behind an Imam chosen by themselves. The Plaintiffs - Kadianis - were therefore not entitled to pray as a separate congregation in the mosque in question which had been used all along for about 200 years by orthodox Sunnee Mahomedans. (Roe J.) - A Mahomedan who "turns away from the regular prayers with abhorrence cannot be allowed to have a special Imam of his own". Chamier C. J. said inter alia, in his judgment: "It is suggested that certain times might be allotted to the Plaintiffs for congregational worship with their Imam. Such an arrangement appears to be unknown to the Mahomedan Law. It would curtail the time available for the orthodox Sunnees who have used the mosque so many years. As already stated the Plaintiffs regard orthodox Sunnees as infidels. The orthodox Sunnees in their turn regard the Ahmadees as infidels and, we are told, formally denounced them as such... As there is no authority for the contention advanced by the Plaintiffs and it is clear that the rights enjoyed by the orthodox for generations would be seriously impaired by the intrusion of the Plaintiffs as a separate congregation, and it is certain that the admission of their claim would result in unseemly conflicts in the mosque, I am of opinion that their claim should be rejected".

I have come to the conclusion that in the main this reasoning may be applied with justice to the present case. The Rose Hill Mosque was founded for Mahomedan worship. Any and every Mahomedan may worship there, but at the same time the rights of seemly and orderly worship must not be impaired or curtailed. Can it be said that the claim of the Ahmadis to set up a separate congregation, even at different hours from the non-Ahmadis, would not have the effect of impairing or curtailing the seemly and orderly worship for which the mosque was set up? The Ahmadis are admittedly and avowedly reformers and innovators. However they may justify their doctrines, however they may claim superiority, there is no doubt that they are regarded as heterodox by the non-Ahmadis. They continue to proclaim their doctrines with missionary fervour, insisting that they are the only true Mahomedans; they will recognize no Imam, save their own. Under these conditions the orthodox Mahomedans of Rose Hill, in my opinion, are justified in saying that the setting up of a separate Ahmadi congregation in the Mosque would be an element of discord and confusion incompatible with their right to quiet and peaceable enjoyment of Mahomedan worship.

Mr. Pezzani whose industry and research have not neglected any sources of argument in favour of his clients submitted another judgment to our notice, that of the Sub Judge of Sialkot decided in 1904, which he claimed, directly supported his contention. But the circumstances of that case appear to be different. There was an agreement between the congregations as to separate hours of occupation for the Ahmadis and non-Ahmadis. The subsequent litigation was in regard to the office of Matwally or President, and it served to show, incidentally, that the arrangement for sharing the Mosque was not a happy one. The Patna judgment is twelve years later and is that of an Appeal Court. In any case, we have to decide this question in regard to the special circumstances of the Mahomedans of Rose-Hill in Mauritius. And I have come to the conclusion that

we cannot sanction the arrangements asked for by the Defendants for a separate congregation.

There will therefore be a declaration, with costs, in the terms already expressed in the judgment of the Chief Judge.

Plaintiffs: Attorney De Pitray.  
Sauzier K.C., Rouillard K.C. and Esnouf, of Counsel.

Defendants: Attorney André Sauzier.  
Pezzani, of Counsel.

Record No. 32452

\* Omitted from the previous year's report.

(a) (Nov. 5. 1889) High Court of Allahabad (Indian Law Reports: Allahabad Series 1890).

(b) (4 Nov. 1889) High Court of Allahabad (Indian Law Reports: Allahabad Series): -

(c) (1891) on appeal from the High Court of Bengal (Law Reports: Indian Appeals: Cases in the Privy Council on appeal from the East Indies, 1891, part II, August. Vol. XVIII.)

(d) (1894) Calcutta Weekly Notes 4th January 1897, pp. 76 et seq. - Civil Appellate Jurisdiction.

(e) (1905) In the Court of Divisional Judge Sialkot. (Civil Appeal No. 145 of 1904.)

(f) (Reported in the Patna Law Weekly, 1917, Vol. I No 9, pp. 284 et seq. see also certified copy filed of record)

\* 1904 A. C. 515

(a) (1891, Indian Appeals, p, 59)

(a) vide supra page 34

(b) vide supra page 34

(c) vide supra page 36

(d) vide supra page 38.