institution with the object of improving the condition of their subjects, the British in India allowed the study of every branch of Mahommedan learning to fall into decay. The mischief which has resulted from this mistaken policy can hardly be over-rated. Owing to an imperfect knowledge of Mussulman jurisprudence, of Mussulman manners, customs, and usages, it is not infrequent, even now, to find cases decided by the highest law courts against every principle of the Mahommedan law. It is not surprising, therefore, to learn that every miscarriage of justice adds to the long roll of indictment which the popular mind has framed against the British rule in India. Latterly a desire no doubt has been evinced by some of the local governments—notably by the Governments of Bengal and of Madras—to repair, to some extent, the evils caused by the neglect of half a century. Nothing tangible, however, has yet been achieved towards securing efficient administration of justice in Mahommedan cases."

Less than ten years later, however, the writer of the above was appointed to a seat in the High Court of Calcutta, and it may therefore be hoped that this example will be followed in other judicial appointments.

A Law Court from which there is no appeal, the members of which are irremovable, and which may not be criticised, must necessarily stagnate. When England undertook to administer Hindu and Mussulman law in India, the Courts were assisted by Hindu Pundits and Mussulman Ulemá; even when these were dispensed with, English judges in India were able to consult with such persons, and they were more or less conversant with the manners and customs and institutions of the people of India; but the judges of the Judical Committee have not that assistance, and may lack that sympathy which would shed its light upon law books. There is only one remedy for the evils which Her Majesty's Indian subjects now suffer at the hands of the Privy Council: namely, to put a Hindu and a Mussulman lawyer into the Judicial Committee. * * * * * *

No. 12.—Appendix IV to the Memorial; being quotations from English Text-Writers shewing the reason of the rule against Perpetuities according to the Common Law of England, that reason not being accepted by the Mahomedan Jurists as consonant with their Religion.

THE STATUTE OF USES, while it thus enabled owners to dispose of their lands in methods more suitable to the exigencies of social life, and also materially enlarged the power of alienation itself, opened

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Referred to in paragraph 16, page 9, of the Memorial, and paragraph 3, page 44, of Appendix VIII.

the door at the same time to inconveniences of a different description, and which the policy of the law thought fit to regulate by the rule (called the Rule of Perpetuities) against the creation of too remote limitations; and this rule we shall now proceed to explain. We have already had occasion to refer to the doctrine established by Tultarum's case, in the reign of Edward the Fourth, by which (and in order to aid the free alienation of estates and to keep them in the market) a common recovery was allowed to have the effect of unfettering an estate tail; and it was doubtless in the same spirit when limitations by way of springing and shifting uses, and under powers of revocation and of new appointment, came into practice, that the Courts contemplating with alarm the tendency of these devises to a *perpetuity* thought it necessary to fix some period as the latest at which an estate limited by way of executory use should be allowed to vest; and such a period was accordingly established by a series of judicial decisions, and upon the analogy of the estate tail. We have seen that even under a strict settlement, an estate tail could not, after the doctrine established by Tultarum's case, be preserved from alienation longer than during the life of the taker of the first estate of freehold, and the nonage of the tenant in tail next in remainder; for on attaining the age of twenty-one, the latter was competent with the concurrence of the former to suffer a recovery; and accordingly and by analogy to this, it became the rule that the latest period at which an estate limited by way of executory use could be allowed to vest was (with one particular exception) the exception of some life or lives in being, and twenty-one years afterwards, and that is now the limit of time applicable in such cases. Therefore if a man be seized in fee of lands, and gives them to the first son of J. S. that shall attain the age of twenty-one, and his heirs, here the estate vests, at the latest, on the expiration J. S.'s life and the infancy of such son; and this infancy, generally speaking, cannot expire later than twenty-one years after J. S.'s death; but if the son is born posthumously (which brings the case within the exception above alluded to), it will expire later by the addition of the time of gestation *in utero*, which follows upon such death. Also when the period at which the estate is limited to vest comprises no life or lives in being, it is not allowed to exceed twenty-one years from the time when the limitation is created. And the law (it is said) so much abhors a perpetuity that any limitation either for a legal or for an equitable interest by way of executory use, or otherwise, of such a nature as to lead to the possibility, if it were allowed, of exceeding the limit of time prescribed by the Rule of Perpetuities for the vesting of estates in lands is absolutely void, and the rule applies also to terms

of years and to personal property. And in furtherance of the rule, it has been enacted by the Conveyancing Act 1882 (45 and 46 Vict., C. 39) Sec. 10 with regard to instruments coming into operation on and after the 1st January, 1883, that an executory interest in *lands* to take effect in default of issue or on failure of the issue of the tenant of the executed estate, shall become void as soon as any of such issue attains the age of twenty-one years. *See Stephens' Commentaries on the Laws of England, 12th Ed., Vol. I, page* 514, *published in* 1895.

PERPETUITY.—Another restriction imposed by law on the alienation of property is that the disposition shall not be continued to what is called the rule against perpetuities which prescribes certain limit of time beyond which the acquisition or vesting of the absolute interest in or dominion over the property may not be postponed. The object of the rule is in part the same as that of the prohibition of alienation in Mortmain; namely, to prevent the tying up of property in such a way as to withdraw it from ordinary transferability. If there were no rule against perpetuities "that free and active circulation of property, which is one of the springs as well as the consequences of commerce, would be obstructed; the improvement of land checked; its acquisition rendered difficult; the capital of the country gradually withdrawn from trade; and the incentives to exertion in every branch of industry diminished." Another reason of it is the possible embarrassment to the State which might result from toleration of the excessive aggrandizment of some one single person or family. Were property allowed to be tied up and wealth to accumulate in any one line, or in any one possessor, the personal influence and power it would attract to itself might have a tendency to disturb, if not altogether to derange, the State itself; for, however, desirable it is to encourage the general growth of wealth in a community, it might, under some circumstances, prove dangerous to allow any particular citizen to be put in that position of elevation above all others which might be the result of an unrestricted accumulation. *See Goodeve's Modern Law of Real Property, 3rd Ed., page* 97, *published in* 1891.