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19. Supplement No. 2 to the Review containing Arabic Extracts from the following works referred to in para. 21 at p. 168n of the Review containing the following extracts:—

Miratool Asool, p. 62.

1. Azmery, p. 272; Miratool Asool, p. 78, 79 and 281.

2. Azmery, p. 361; Miratool Asool, p. 289; Kushf-i-Bazdawee, Vol. I. p. 268.

Raddool Moobtar, Vol. IV, p. 3. p. 303n.

20. Supplement No. 3 to the Review referred to in Item No. 6, being Appendix B to the Review referred to at p. 157n, containing Arabic Extracts from certain authors, viz.:—

1. Azmery, p. 291, etc.

2. Azmery, p. 444 (omitted); Miratool Oosool, pages 66 and 67. p. 316n.

21. Supplement No. 4, being Extracts of Texts from Arabic Authorities bearing on the question of Taamuloon Nass or custom and practice of mankind, referred to in para. 30 to be found in Supplement No. 3, Item 1—Extract from (red book). p. 317n.

22. List of Errata. p. 138n.

## REVIEW OF THE LAW OF WAKF.

## LIST OF CONTENTS OF PARAGRAPHS OF THE REVIEW.

*Part I.—Introduction and Explanation.**Para.*

1. State of the Administration of the Mahomedan Law before the abolition of the Cazees by the Cazee's Act and after it. p. 117*n*.

NOTE.—Act II of 1864 G. G. is the Act abolishing Hindu and Mahomedan Law Officers, appointed under Regulation 12 of 1793. Act 12 of 1880 is the Cazee's Act, *viz.*, the Cazee to preside at marriages.

2. After the act—Unsatisfactory state of materials for knowledge of Mahomedan Law : cause thereof. p. 117*n*.

3. 2 C.L.J. 166—Supreme satisfaction : it recognises the principle that Wakf is based on consideration of Sawab. p. 118*n*.

4. This encourages me to write on Wakf. Full Bench did not appreciate real arguments. p. 119*n*.

5. P.C. compares Wakf with gifts : Their challenge is answered by recent decision of High Court. p. 121*n*.

6. Theory of Sawab governs the Law of Wakf : Case of renegade : Male apostate and female apostate. High Court case between heirs : Meaning of void under Mahomedan Law. p. 122*n*.

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8. 3rd August 1900—Answer of Government of India. p. 124*n*.

9. Recent High Court decision is the thin end of the wedge. p. 125*n*.

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12. Difficulty of realising the arguments based on rules of jurisprudence on the Wakf question. A word of caution and advice. p. 126*n*.

Part II. Principles of Jurisprudence necessary to understand the Mahomedan Law in general and the law of Wakf in particular.

13. In what respects the P.C. ruling is contrary to Rules of Jurisprudence. p. 127*n*.

A. Wordly prosperity not in immediate view.

B. God produces effect of all actions.

C. Intention has no place : volition determines the effect.

D. P.C. rules that Wakf of a small portion to the poor is void.

14. Propositions based on Appendix A, 1 C.L.J. p. 119*n*, p. 128*n*.

- I. God's will is necessary in every case: Illut: Pre-ordination and Predestination.
  - II. There must be a person or subject to invoke the will of God.
  - III. Some object.
  - IV. Means of invocation must be in conformity with the Shera.
  - V. Invocation must pass from the subject to the object.
15. Therefore. p. 128n.
- (I) Ahleut as involved in II.
  - (II) Formulæ as involved in IV.
  - (III) Mahal as involved in III. Hoosn and Koobuh: Suheeh and Batil. Instances of Ahul and Mahal.
  - (IV) The formula to be unaccompanied by a condition or Shurt. This is the same as V.

15A. How I work out my conclusion from the four propositions stated in paragraph 15 is this: *viz.*, the conclusion I have to establish is that a Mahomedan Wakf, such as the Privy Council has held to be void, is absolutely and positively valid according to Mahomedan Law; and the steps to arrive at that conclusion are these. p. 130n:—

1°. God produces effects of all human actions. (See paragraphs 13B and 13C.)

2°. The Shera has laid down how man can know whether God has produced the resulting effect of a particular human action: the ways to know 'the how' are amongst others as follows.

3°. There must be a fit person to make use of a sign established and recognised to rouse God's will to activity. The qualifications necessary for such a person are concentrated in a short word, *viz.*, Ahul, which is carefully defined: *e.g.*, if it is sought that a Wakf should get created by the will of God or that a sale should get accomplished by such will, or that a marriage should be established by such will, the first thing necessary is that there must be some person to move the will of God, and that person is called an Ahul. Who is an Ahul and what is Ahleut is discussed in paragraphs 16 and 17. And as regards Ahleut in Wakf it will be noted that the Wakif or Wakf maker must continue to be a fit subject to receive Sawab; and he must not, after the Wakf, become a heretic otherwise his Wakf would be nullified. See para. 6 of the Review.

4°. The Ahul or fit person having been ascertained, the next requisite is that this Ahul must use signs laid down by the Shera calculated and designed to provoke God's will, and influence that will so as to produce a worldly effect; these signs consist of certain formulæ which must be uttered by the Ahul if effect is sought to be produced on behalf of God:

These formulæ are also called Illut, *i.e.*, creating cause; but this is only in a metaphorical sense, because the real Illut or creating cause is God himself; *e.g.*, in order that a Wakf, a sale, or a marriage should come into existence from a state of non-existence, it is necessary that the Ahul should use the necessary formulæ, *viz.*, "I make Wakf"; "I sell" and "I purchase"; "I marry thee," and "I accept thee." The effect of the use of the formulæ is discussed in paragraphs 18, 19, 22. Thus the operation of all contracts arises not from the agreement incorporated in the contract or from any matter of estoppel or any equitable principle, but the same is the result of Illut showing a mandate from God the creator of all things small and great, insignificant or serious and solemn.

4°A. The reasons which influence the Shera to hold the view that when an Ahul uses the formulæ (other necessary conditions relating to Mahal, etc., being fulfilled) the result must be created by an Act of God, are shown in paragraphs 20, 21, 22, 23 and 24.

4°B. As a corollary from the rule in respect to the effect of signs or formulæ which operate by the way of Illut, intention has no place in Mahomedan Law, and this point is discussed in paragraph 25.

Another corollary is the rule which enables a volunteer (or Fuzoollee) to sell another person's property for that other person, he being absent, and the sale is valid subject to the real owner's consent. This point is discussed in paragraph 25A, and to put it so as to attract attention to the main thread which runs throughout the Mahomedan Jurisprudence, *viz.*, there must be an Ahul, a Mahal, an Illut and the impact of that Illut from the Ahul to the Mahal, I say that the rule by which a third party, *i.e.*, a Fuzoollee or a volunteer, is enabled to sell another man's property for him is of greater practical use, in a homely and unpretentious way, than more elaborate provisions in other institutions, *e.g.*, provisions relating to executor *de son tort* and that the sale by a Fuzoollee is not open to the sneer that Mahomedan Law allows a man in the street to sell another man's property: on the other hand that rule illustrates a general principle which permeates throughout the Mahomedan Jurisprudence.

5°. Another requisite is that there must be a fitting subject in reference to which God's will is to be exercised: this fitting subject or object is called the Mahal, *e.g.*, in the three instances mentioned above, the Mahal is property such as the Shera recognises in the case of Wakf and sale, and the woman or female is the Mahal in the case of the marriage: if the Mahal in the case of Wakf and sale is pork or wine or any other thing not coming within the definition of property under the Shera, the formulæ uttered by the Ahul, should be uttered in vain, for in that case God's will would not be aroused: and it is for this reason (and for no other) that there could be no marriage between a man and a beast, the latter being no

Mahal whatever; and therefore God's will aroused by the Ahul using the formulæ falls short of producing a result, that is to say, it is not aroused at all just as if the electric current either refuses to act or in its course meets a non-conductor. The question of Mahal is discussed in paragraph 26.

6°. Thus there being an Ahul and a Mahal, and a sign in the shape of a formula or Illut, the next requisite is that the Ahul must so use the sign that the same must pass on from him to the Mahal: in other words, his volition must be so exercised that the Illut should apply to the Mahal and not fall short of reaching it: *e.g.*, in the case of a Wakf "the appropriation must be at once complete and not suspended on any thing," as Baillie puts it; because no space of time should intervene between an Illut and its effect: This question is discussed in paragraph 27.

7°. When there is (1) a fit Ahul; and (2) a fit Mahal; (3) an appropriate Insha or formula to stand for and serve the purpose of the Illut or in fact to be itself the Illut; and when (4) the Illut moves on from the Ahul to the Mahal, then the effect gets produced by the Will power of God and no human power can prevent it or anticipate it.

8°. When the four conditions mentioned in the above paragraph are established, then the result, for the purposes of this world, is Sihut or validity of the transaction, and for the purposes of the other world the result is Sawab or future reward. (See Mira, p. 276 and p. 277.)

9°. If there is absence of Ahul or absence of Mahal, then the will of God does not get moved by the invocation of the formulæ: *e.g.*, if there is insanity, then the person is not Ahul; and if there is impurity or defect in the property it is not Mahal: in such cases the will of God not being moved at all, the result for the purposes of this world is that the transaction is Batil or void and of no worldly effect; and as regards the world to come the result is Huram, that is, it involves future punishment. (See para. 26).

16. As to (I)—of paragraph 15 Ahleut, Meesak: Akl, Buloogh; 15 years. p. 130n.

17. Awariz to Ahleut. p. 132n.

18. As to No. (II) of paragraph 15, 1 C.L.J., p. 120n, paragraph 7: Consideration: case in 2 C.L.J., p. 166 and 171. p. 132n.

19. Item No. (II)—made more clear. Illut is followed by its result. Tusurroofat. Tumuddoon; Insha embodies the Illut and therefore the result follows. p. 134n.

20. Commands Wazai and Tukleefy—reference to Appendix A. Why two sorts of command. p. 135n.

21. The effect of a legal formula is to create a right because it involves the idea of Sawab: Wakf in its very essence involves the idea of Sawab and that distinguishes it from other legal dispositions. p. 135n.

22. Two propositions. p. 135n.

- (1) Wakf is included in Ahkam-i-Wazai.  
 (2) Wazai commands are founded on Sawab.
23. Division of authorised and recognised human acts or Mahkoom-i-bihi. p. 135n.
- Appendix B, sets out Arabic quotations.
- (a) Nature of Mahkoom-i-bihi or human acts authorised and recognised by the Shera.
- (a1) Acts having Wajood-i-Hissee and which are Sabab for legal effect.
- (a2) Ditto but which are not ditto.
- (a3) Acts which have Wajood-i-Shuryee and which are Sabab for ditto.
- (a4) Ditto but which are not ditto.
- (b) A Moobah act may be a Subub.
- (c) Sabab of Wakf : Its Illut.
- (d) Mirat, p. 301 : Appendix B.
- (e) Hoosn and Koobuh means Sawab, etc., Moosullum, p. 53 ; set out in Appendix B.

24. Proof of the correctness of my working out of the problem. Shuryee Illut in the shape of prearranged formulæ, proceeding from Ahul, and passing to a Mahal without interruption produces the result with unerring effect : Illustrations from Huzl or jest : all results depend on man's Volition or Iradut and none on his Intention or Neeut. Does Mahomedan Law countenance fraud and swindling ? p. 139n.

These two matters, viz., Impact of Illut on Mahal and that Mahomedan Law does not encourage fraud and swindling, are made out as follows. p. 139n :—

- (a) Marriage and divorce ; what is the rule in these cases.  
 (b) The rule is discussed in Jurisprudence in dealing with Huzl.

25. Illustrations of the two propositions in the aforesaid para. p. 139n :—

- (a) Case of Huzl : marriage and divorce : mine explodes.
- (b) Huzl : authorities : Taljeea : Tawazo : Iradut : consent : Taleek : Admu-i-Aslee. Sale is susceptible only of one condition, i.e., Khyar-i-Shurt. Human disposition divided into 3 classes : Tasuroof, akhbar, and aitkad. Iradut or volition of God in human acts,—good or bad,—is exercised when human Qasd is created in human mind.
- (c) Out of disabilities mentioned in paragraph 17, Noum (or sleep) (5), sookr (13), khuta (16), Ikrah (17), remain to be

noticed. Sleep, Iradut and Ikhtear become negatived : therefore words have no effect.

- (d) Sookr—1st kind, *i.e.*, that by medication, in which words have no effect. If by intoxicating drugs, then Ahleut is not affected and words have effect and divorce, etc., take place.
- (e) Khuta : thou art “seated :” by slip, thou art “divorced :” latter takes effect. Shafiei differs: we say the man is ahul : he says no ; we say, *the formula was used with volition though not with intention.*
- (f) Ikrah—Words used are with Iradut or volition although under compulsion.

25a. A Sale by a Fuzoolee.

26. Question No. (III) as in paragraph 15, *viz.*, Mahal, Instances of Mahal, p. 145n. For Mahal of Wakf see paragraphs 53, 54, 55, 59 of arguments before Full Bench, being Item No. 17 of the Table of Contents.

- (a) Upon what principles Ahleut depends, I have already shewn : upon what principles Mahaleut depends, I will now shew.
- (b) Mahal : wife ; subject-matter of sale is Mahal, and not consideration : Goodness or Hoosn ; Wakf has Hoosn.
- (c) Void or Batil : Koobuh or badness : consideration, nudum pactum : Fasid : Khumur and Khinzeer : Ameer Ally and Baillie on the effect of an invalid act, *e.g.*, Marriage, Mr. Ameer Ally's mistranslation.

27. As regards No. (IV) of paragraph 15 : Ballie : Wakf cannot be suspended on a contingency. p. 149n.

28. Therefore a Wakf made as the Mahomedan Law directs is by no means void or Batil and P.C. has interfered with and repealed the law not only as regards Wakf but also as regards what is Batil. p. 149n.

29. Case between heirs I.L.R. 30 Cal. Series, 330 ; Mujibunnessa. v. Abdul 28 I.A. p. 15 ; S.C. 5 Calcutta Weekly Notes, 177, decided in November and December, 1900. p. 149n.

30. Charge of fraud and swindling against Mahomedan Law. p. 149n.