No. 11.—Appendix III to the Memorial; being views of Lord Stanley of Alderley on the Wakf question, as shewn in an article to be found at page 1 of the January number, of the year 1897, of "The Imperial and Asiatic Quarterly Review and Oriental and Colonial Record."

The Privy Council as Judges of Hindoo and Mussulman Law.

Although Hindus and Mussulmans should be the best judges of their own laws and of the advantages which those laws secure to them, yet strictures on the judgments of the Judicial Committee taken from the Indian Press carry less conviction to the minds of English readers than what is written by Englishmen in this country *

The October number of the "Asiatic Quarterly Review" contains several passages by different writers which ought to * * throw light upon what is thought in India the action of the Judicial Committee of the Privy Council in respect of Hindu and Mussulman Law. * *

Page 2.—A Commentary on the Hindu Law has been recently published by Mr. Jogendranath Bhattacharyya, M.A., D.L., of some 760 pages, which appears to be very complete. * * * *

I notice one omission in this book; neither the Preface of the first, nor that of the present second edition mentions whether any copies of it have been subscribed for by the Indian Government for the use of its Courts or public libraries. This omission contrasts badly with the practice of the Government of the East India Company, which encouraged and assisted the publications of the Hedáya, the Mishkát-ul-Musábih, and other similar text-books. This omission seems to corroborate the statement of the Reviewer quoted above of the little care now entertained for Sanskrit or Hindu Law by the Courts or the Privy Council. * * * * * * *

Page 3.—In dealing with the failures of the Judicial Committee to interpret rightly Hindu law, I propose to confine myself to Hindu Wills and succession, and to what is called the Tagore case, because this subject-matter is similar to that of family Wakfs, with respect to which the Judicial Committee, in the opinion of many, misinterpreted Mussulman law. Both Hindu and Mussulman law in this respect tend to the maintenance and perpetuation of families. Heads of families or notables are necessary for the progress and government of a country, and in his recent speech at Oxford, Lord George Hamilton quoted Sir George Clark, who told him that when he went to India as

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Referred to in paragraph 5, page 3, of the Memorial.

a young man the only way to govern the country was by making friends with the notables and governing through their opinions. If anyone should contradict this he would be challenged by the question whether he believed that the Indian Government or any Government in its senses expected to govern by the Tarquinian method of striking down the highest poppies. It is related in the "Gulistan" that Alexander the Great was asked how he succeeded in retaining so many countries that he had conquered: and that he replied: "By respecting their great men."

The difficulty of administering Hindu Law without the assistance of a competent Pundit consists in the fact that Hindu Law is divided into six schools, which are divided into 30 sub-divisions. * * *

Page 9.—With regard to the interpretation of Mussulman law by the Judicial Committee in the matter of family Wakfs, I need not repeat what I said in the House of Lords on that subject, but I will give in disproof of the assertions of the Secretary and Under-Secretary of State for India, that the judgment of the Judicial Committee on that subject was in accordance with Mussulman law, a Resolution which has been sent to me by a Mussulman Association in Bengal:

"*Resolution.*—That the heartfelt thanks of this Association be conveyed to the Rt. Hon. Lord Stanley of Alderley for having in the House of Lords given expression to the views and feelings of the Mussulman Community in India with regard to the recent decision of the Privy Council on the question of Wakf which the Mussulmans consider as inconsistent with the provisions of their Law and Religion and as tending to disturb many of their long-cherished social charitable and religious institutions, and to render insecure the existing titles to large properties throughout India."

I received also a Resolution of thanks from another Association, but I do not quote it as it is not so argumentative as the preceding one.

Family *Wakfs* are usual in all Mussulman countries; but it is to be expected that they should be more common amongst the Indian Mussulmans than in other countries, because such family arrangements are in harmony with the Hindu system of joint ownership and ancestral property. It would be a great mistake to suppose that the antagonism between the Mussulman and Hindu Religions prevents territorial ideas and customs permeating the mass of the inhabitants, and being common to the followers of both religions.

In the judgment of the Judicial Committee against family *Wakfs*, there were two noticeable points—one was disregard of the way in which Mussulman law is interpreted and carried out in other Mussulman countries, such as Constantinople where such *Wakfs* are common.

The other point is contained in the following words of the judgment: "Whether it is to be taken that the very same dispositions which are illegal when made by ordinary words of gift, become legal if only the settler says that they are made as wakfs, in the name of God, or for the sake of the poor. To these questions no answer was given or attempted, nor can their Lordships see any."

These words seem to me to express in judicial language much the same as what was said to me by an Agnostic that Mussulman Law made the Almighty a Trustee. But why not? "God is the best of Protectors," is an invocation very commonly inscribed over Mussulman houses. It was so under the Mosaic Law, which, like the Hindu Shasters, did not allow of the alienation of ancestral property. The Jews were not allowed to buy or sell the fee simple of property; they could only give a lease to the next Jubilee year, which could not be more than a 49-years' lease of it.* For the Lord, speaking to Moses from Mount Sinai (Leviticus xxv. i.) said, v. 23—"The land shall not be sold for ever; for the land is mine; for ye are strangers and sojourners† with me." After this it may be said, reverently, that the Lord was Trustee for the children of Israel.

The Government (Imperial or Indian) cannot say that it has not been duly warned that the study of Mussulman Law has been neglected, and that in consequence that Law has been misinterpreted; for in a Preface to "Personal Law of the Mahommedans" dated Reform Club, December 20, 1880, published by W. H. Allen & Co., Syed Ameer Ali wrote:—

"In India even among educated Moslems, a knowledge of the Mussulman Law, if not actually obsolete, has become extremely rare. Few cultivate it as a science or study it analytically as a branch of comparative law. Those who apply themselves to its study are satisfied with a barren and unprofitable acquaintance with the simple rules of inheritance. This is the consequence of the policy inaugurated by Lord William Bentinck. Prior to his time, the Mussalmans occupied the foremost position among the people of India. The cultivation of their law and their literature was encouraged by successive British governors; their traditions were respected, and they themselves were treated with a certain amount of considertion due to the former rulers of the land. All this changed under Lord William Bentinck's administration, and the Indian Mahommedans were relegated into the cold shade of neglect. Their institutions gradually died out, and the old race of *Moulvys* and *Muftys*, who had shed a lustre on the reigns of the Marquis of Wellesley and the Marquis of Hastings became extinct. Whilst the French in Algeria were endeavouring to give a new impetus to the cultivation of Moslem law and literature by subventions and Government assistance, and whilst they were utilising the indigenous

* P. Phelipe Scio, afterwards Bishop of Segovia; Note to Lev xxv. v. 3.

† P. Phelipe Scio, for 'sojourners' has '*colonos*, tenants or husbandmen.'

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.