

COMMUNICATIONS.

Judicial Oaths and Affirmations.

EDITOR OF THE CENTURY MAGAZINE.

SIR: Archdeacon Paley, in his "Moral and Political Philosophy," said that in no country are the words of an oath worse contrived to convey its meaning or impress its obligations than in England; the accusation applies with equal justice to most of our States, where the same form still prevails. The concluding words of the oath upon which all the other words are understood to depend are "So help me God"; and their meaning, as defined by the principal writers upon the subject, is that the swearer thereby invokes the vengeance of the Almighty, and renounces His pardon if what he swears to be not strictly true. The tendency of such an oath, as usually administered, must be, if no worse, to confuse the mind of the person taking it as to its true meaning, to impair the reverence which is due to the sacred name of Deity, and thereby to defeat the very object for which an oath is designed. The force of the sentence quoted is said to lie in the word *so*, meaning *upon condition* of my speaking the truth, or performing the promise, and not otherwise may God help me or save me. An ancient form had the additional words *at thy holy dome*; that is, so help me at the last day, or day of judgment. The Latin words known to have been used as early as the sixth century, whence the English form was taken, ran thus: *Sic me Deus adjuvet et hæc sancta Evangelia*. With the latter clause, which is now omitted in the English form, originated the custom of kissing the Gospels. This oath was imitated from the pagan form of the ancient Romans, wherein the juror held a stone in his hand and invoked a curse upon himself, should he swear falsely.

Thus, it will be seen that the idea of a curse or imprecation has been attached to the words from the earliest times, and an imprecation of some sort appears indeed to have been an essential feature of every ancient form of oath with which we are acquainted. But the primitive Christians, who interpreted literally the command of their Master, "Swear not at all," refused to utter any imprecation, and for judicial purposes under the Christian emperors of Rome there was substituted a form of religious asseveration as *in the presence* of God. When, however, priestly power began to flourish, and the Church fell away from its pristine purity, oaths of cursing or imprecation were again introduced, and thus became imported into the customs of England. Although, by the common law, no special form of oath was requisite, yet, by the practice of the Courts, an oath concluding with the imprecatory words before referred to was universally tendered to witnesses and jurors who professed a belief in the Deity. But as there were some who, upon conscientious grounds, refused to swear, it became necessary, in the interest of justice, no less than of humanity, that some provision should be made for those who were thus scrupulous. The first

British statute on this subject was enacted in 1696 [7 and 8 Wm. 3., Ch. 34] for the benefit of the people called Quakers, and provided that instead of an oath they should be permitted to make a solemn affirmation or declaration in these words: "I, A. B., do declare, in the presence of Almighty God, the witness of the truth of what I say." By subsequent legislation, the privilege was extended to the sects called Moravians and Separatists, and in the case of the Quakers all appeal to the Deity was stricken from the required form. Yet the evidence of those persons who refused to take an oath was not admitted in criminal cases for still a century later. All such disability is, however, removed by the Common Law Procedure Act, and under it all persons, without distinction of sect, who shall satisfy the court or officer of his conscientious scruple, may affirm without any appeal to the Deity, subject, however, to the penalties of perjury in case of a false affirmation.

In this country, nearly all the States have passed similar acts, substituting a solemn affirmation in all cases where the person is conscientiously scrupulous of taking an oath. In some of the States, no question of conscience is raised, but the taking of the one or the other is a mere matter of choice. In many of them also, when forms of oath in certain cases are prescribed by statute, words of imprecation have no place in such forms. In the Federal Courts, and in all proceedings under the general laws of the United States a solemn affirmation may be taken by any one in lieu of an oath. These changes show that with us and in England, the oath is no longer deemed essential in order to bind a man to veracity.

According to Lord Hardwicke, all that is necessary to an oath is an appeal to the Supreme Being, as thinking Him the rewarder of truth and avenger of falsehood. And Lord Coke himself, although generally esteemed somewhat narrow in his conception of an oath, inasmuch as he considered that none but a Christian was qualified to take one, yet was so far advanced as to define its essential feature to be simply "calling Almighty God to witness" the truth of the testimony. The design of an oath is now understood to be, not to call the attention of God to man, but of man to God. Not to call on Him to punish the wrong-doer, but on man to remember that He will. In this view, the imprecatory words become totally unnecessary, and for a believer in the Deity a solemn affirmation taken as in His presence expresses all that is required in an oath.

In France, there is no appeal in words to the Supreme Being, but the person whilst making his declaration, holds up his right hand, which action is understood to imply an oath. Formerly an exception to this form was made in the case of the clergy, who instead of raising the hand placed it upon the breast. Recent action in the Chamber of Deputies in that country; the discussions growing out of the Bradlaugh case in the British Parliament, and the com-

ments thereupon which have from time to time appeared in the public journals on this side the water, indicate a growing sentiment in Christian communities against the use of any oath.

Of the evil tendency of the imprecatory clause so lightly taken in the multiplicity of oaths used among us, no argument can at this day be needed to convince any thoughtful person. If then, the evil of a custom which has so long had a hold upon our institutions be acknowledged, some may ask, what is the remedy? My answer is that, there are three. (1) Let every conscientious person without regard to sect, invariably refuse to take an oath in the form objected to, and claim his right, which, as we have seen, is now almost universally accorded, of substituting an affirmation. (2) Let the judges of our courts having authority to prescribe rules for the qualifying of witnesses and jurors strike from the oath the imprecatory words in all cases within their respective jurisdictions. (3) Let the legislatures of each of our states when assembled, pass an act definitely prohibiting the use of such words in every form of oath, or providing for an affirmation (subject for its violation to the penalties of perjury) to be taken in lieu of an oath by every one without distinction. The first of these remedies is a very simple one. If it were generally availed of the second and third would speedily follow, and the form of oath now so common would come to be looked upon with just abhorrence. Yours truly,

Benjamin P. Moorc.

BALTIMORE, MD., Dec. 10, 1882.

Vandalism in "Saint Sophia."

EDITOR OF THE CENTURY MAGAZINE:

SIR: AMONG the multitudes of tourists who almost daily visit the mosque of Saint Sophia, in Constantinople, there are probably few who do not carry away with them a number of fragments of the colored glass used in the Byzantine mosaic with which this ancient edifice is profusely decorated. The youth who has undertaken to supply the increasing demand for these interesting mementos, is usually found in the gallery against the rear wall of the mosque, and any one may

purchase as many fragments as he desires at the expense of a few piastres. It must be that the methods resorted to in obtaining a sufficient supply of this commodity have not come to the knowledge of the traveling public, else the great majority would hardly make themselves even indirectly responsible for the most outrageous vandalism which it has been my fortune to encounter.

Our guide, an intelligent and apparently honest fellow, who most certainly was not interested in misrepresentation in this instance, informed us at the conclusion of our visit to the mosque that the bits of mosaic purchased by foreigners in the building had not fallen from the vault on account of some defect in the cement as represented, but had been rubbed off by the persevering application of a bamboo rod in the hands of a small boy!

Comment upon the irreparable injury which will surely be caused by the continuance of this nineteenth century iconoclasm seems hardly necessary, but tourists might somewhat delay the work of destruction by discouraging the advances of the pious Mahometan who thus ingeniously combines religious duty and worldly advantages. Yours truly,

J. S. Seymour.

BLOOMFIELD, N. J., December, 1882.

The Supreme Court of the United States: A Correction.

EDITOR CENTURY MAGAZINE:

SIR: In the December number of your magazine, on page 175, the author of that very valuable and interesting article, "The Supreme Court of the United States," is made to say: "In 1799 President Adams, on the recommendation of a Senate Committee, sent a commission to France to negotiate a treaty. Oliver Ellsworth, Patrick Henry, and William Van Murray were the commissioners." The fact is that Ellsworth, Henry, and Van Murray were appointed, but Patrick Henry having declined the appointment, William R. Davie, of North Carolina, was named in his stead and served with the commission.

Yours truly,

W. R. Davie.

LANDSFORD, CHESTER CO., S. C.,

Dec. 7, 1882.

LITERATURE.

Leland's "Gypsies."*

COMPARED with "The English Gypsies and their Language" and "Anglo-Romany Ballads," the latest publication from Mr. Leland on his favorite hobby is more a collection of short essays than a connected work. As Liszt became inspired by the music of Hungarian gypsies, so the study of Romany words and ways appears to breed in a man a very pleasant species of monomania. In the case of Mr. Leland it results

in bright, agreeable literature of a light sort, and incidentally in not a little solid information which ought to lose nothing in the eyes of serious persons, because it happens also to be picturesque. Whether Mr. Leland's firm belief that the history of the gypsies has been traced will be always gospel; whether it be true beyond peradventure or not that they are descended from a certain tribe of Hindostan which still has representatives in India,—the pictures he draws are fascinating, and the book, like those that went before, may be hailed as a fresh and stirring addition to the literature of the subject. Mr. Leland's enthusiasm is

* The Gypsies. By Charles G. Leland. Boston: Houghton, Mifflin & Co. London: Trübner & Co.