Session and Chapter.	*Title and Short Contents.*	*Remarks.*
21 & 22 Vict. c. 106, s. 29 (*continued*).	Appointment of members of councils of governor-general and governors.	Repealed, S. L. R. Act, 1878.
	Appointment of lieutenant-governors.	Reproduced by s. 55 (2).
s. 30.	Regulations as to the making of appointments in India.	Reproduced by s. 90.
	Power to restore officers suspended or removed.	Not reproduced.
s. 31.	. . . . .	Repealed, S. L. R. Act, 1878.
s. 32.	Regulations for admission to covenanted civil service.	Reproduced by s. 92.
s. 33.	Cadetships and other appointments.	Reproduced in substance by s. 20 (1).
s. 34.	Regulations for admission to cadetships.	Spent.
s. 35.	Selection for cadetships .	Reproduced in substance by s. 20 (1).
s. 36.	Mode of making nominations for cadetships.	Not reproduced. Virtually repealed by abolition of Indian Army.
s. 37.	Regulations as to appointments and admission to service.	Reproduced by s. 20 (2).
s. 38.	Removal of officers by Crown to be communicated to Secretary of State in Council.	Reproduced by s. 21 (2).
s. 39.	Property, &c., of East India Company—	
	To vest in Crown . .	Not reproduced. Spent.
	To be applied for purposes of government of India.	Reproduced by s. 22 (1).
s. 40.	Power of Secretary of State—	
	(1) To sell, mortgage, and buy property.	Reproduced by s. 31.
	(2) To make contracts .	Reproduced by s. 32 (1).
s. 41.	Control of Secretary of State over revenues of India.	Reproduced by s. 23.

Session and Chapter.	*Title and Short Contents.*	*Remarks.*
21 & 22 Vict. c. 106, s. 42.	Application of revenues. . Money vested in Crown or accruing from property to be applied in aid of revenues.	Reproduced by s. 22 (4).
s. 43.	Account of Secretary of State in Council with Bank.	Amended by 22 & 23 Vict. c. 41, s. 3, and 26 & 27 Vict. c. 73, s. 16. Reproduced by s. 25.
s. 44.	. . . . .	Repealed, S. L. R. Act, 1878.
s. 45.	Stock accounts to be opened at Bank.	Not reproduced. Spent.
	Every such account to be a public account.	Reproduced by s. 25 (6).
s. 46.	. . . . .	Repealed, S. L. R. Act, 1878.
s. 47.	Powers of Secretary of State as to sale and purchase of stock.	Reproduced by s. 22.
s. 48.	Disposal of other securities .	Reproduced by s. 27.
s. 49.	Exercise of borrowing powers.	Reproduced by s. 28.
s. 50.	Forgery of bonds . . .	Repealed, S. L. R. Act, 1892.
s. 51.	System of issuing warrants for payment.	Not reproduced. Superseded by Order in Council of August 27, 1860.
s. 52.	Audit of Indian accounts .	Reproduced by s. 30.
s. 53.	Accounts to be annually laid before Parliament.	Reproduced by s. 29.
s. 54.	Communication to Parliament of orders for commencing hostilities.	Reproduced by s. 16.
s. 55.	Expenses of military operations beyond the frontier.	Reproduced by s. 24.
s. 56.	Military and naval forces of East India Company transferred to the Crown.	Not reproduced.
s. 57.	Indian forces of Crown . .	Not reproduced. Superseded by 23 & 24 Vict. c. 100.
s. 58.	Servants of East India Company transferred to the Crown.	Not reproduced.

Session and Chapter.	*Title and Short Contents.*	*Remarks.*
21 & 22 Vict. c. 106, s. 59.	Orders of East India Company.	Reproduced by s. 123.
s. 60.	Cesser of functions of proprietors and directors of East India Company.	Repealed, S. L. R. Act, 1892.
s. 61.	Board of Control abolished .	
s. 62.	Records, &c., of East India Company to be delivered to Secretary of State in Council.	
s. 63.	Exercise of powers of governor-general before taking seat in council.	Reproduced by s. 84.
s. 64.	Existing provisions to be applicable to Secretary of State in Council, &c.	Not expressly reproduced. See general saving in s. 121.
s. 65.	Rights and liabilities of the Secretary of State in Council.	Reproduced by s. 35.
s. 66.	. . . . .	Repealed, S. L. R. Act, 1878.
s. 67.	Treaties, liabilities, and contracts of East India Company.	Reproduced by s. 122.
s. 68.	Secretary of State and Council of India not personally liable.	Reproduced by s. 35 (4).
ss. 69, 70.	. . . . .	Repealed, S. L. R. Act, 1878.
s. 71.	East India Company not to be liable in respect of claims arising out of covenants made before Act.	Not reproduced. East India Company dissolved.
ss. 72, 73.	. . . . .	Repealed, S. L. R. Act, 1878.
s. 74.	Commencement of Act . .	Repealed, S. L. R. Act, 1892.
s. 75.	. . . . .	Repealed, S. L. R. Act, 1878.
22 & 23 Vict. c. 41,	**The Government of India Act, 1859.**	
s. 1.	Power to sell, mortgage, and buy property and make contracts in India.	Reproduced by s. 33 (1), (2), (4).

Session and Chapter.	*Title and Short Contents.*	*Remarks.*
22 & 23 Vict. c. 41, s. 2.	Form of execution of assurances in India.	Amended by 33 & 34 Vict. c. 59, s. 2. Reproduced by s. 33 (2).
	Enforcement by or against Secretary of State.	Reproduced by s. 33 (2).
	Secretary of State, &c., not personally liable.	Reproduced by s. 33 (3).
s. 3.	Mode of signing drafts on Bank of England.	Reproduced by s. 25 (3).
s. 4.	Validity of contracts made before passing of Act.	Not reproduced. Spent.
s. 5.	Ditto	Not reproduced. Spent.
	Execution of contracts made by Secretary of State.	Amended by 3 Edw. VII, c. 11, s. 2. Reproduced by s. 32.
s. 6.	Actions by or against Secretary of State.	Covered by s. 35 (1).
24 & 25 Vict. c. 54,	**The Indian Civil Service Act, 1861.**	
s. 1.	Validation of appointments .	Repealed, S. L. R. Act, 1892.
s. 2.	Offices reserved to covenanted civil service.	Reproduced by s. 93.
ss. 3, 4.	Power to make provisional appointments in certain cases.	Reproduced by s. 95.
s. 5.	Offices not reserved to covenanted civil service.	Covered by s. 93.
s. 6.	Saving as to lieutenant-governor.	Schedule II does not include lieutenant-governor.
s. 7.	Repeal of 33 Geo. III, c. 52, s. 56, &c.	Not reproduced. Spent.
Sch.	List of offices reserved to covenanted civil service.	Reproduced by Schedule II.
24 & 25 Vict. c. 67,	**The Indian Councils Act, 1861.**	
s. 1.	Short title	Not reproduced. Spent.
s. 2.	Repeal of enactments . .	Not reproduced. Spent.
s. 3.	Number of members of governor-general's council.	Amended by 37 & 38 Vict. c. 91, s. 1. Reproduced by s. 39 (2).

Session and Chapter.	*Title and Short Contents.*	*Remarks.*
24 & 25 Vict. c. 67, s. 3 (*continued*).	Number of appointments to be made by Secretary of State.	Repealed by S.L.R. Act, 1878.
	Proportion of members who must have served in India.	Reproduced by s. 39 (3).
	Member to relinquish military duty.	Reproduced by s. 39 (4).
	One member to be a barrister.	Reproduced by s. 39 (3).
	Number of appointments to be made by Crown.	Reproduced by s. 39 (1). All members are now appointed by the Crown. See 32 & 33 Vict. c. 97, s. 8.
	Power to appoint commander-in-chief an extraordinary member.	Reproduced by s. 40 (1).
s. 4.	Present members of governor-general's council to continue.	Not reproduced. Spent.
	Power to appoint a fifth member.	Not reproduced. Spent.
	Salary of members . .	Reproduced by s. 80.
s. 5.	Power of Secretary of State, or Crown, to make provisional appointment to office of member of governor-general's council.	Reproduced by s. 83. As to Secretary of State superseded by 32 & 33 Vict. c. 97, s. 8.
s. 6.	Appointment and powers of president of governor-general's council.	Reproduced by s. 45.
	Powers of governor-general when absent from council.	Reproduced by s. 47 (1).
s. 7.	Absence of governor-general or president from council.	Reproduced by s. 46. Amended by 9 Edw. VII, c. 4, s. 4.
s. 8.	Power to make rules and orders for governor-general's executive council.	Reproduced by s. 43 (2).
s. 9.	Council, where to assemble .	Reproduced by s. 42 (1).
	Governor of Madras or Bombay, when to be an extraordinary member of governor-general's council.	Reproduced by s. 40 (2).
	Lieutenant-governor, when to be an additional member of the council.	Reproduced by s. 60 (5). As to chief commissioners, see 33 & 34 Vict. c. 3, s. 3.

Session and Chapter.	*Title and Short Contents.*	*Remarks.*
24 & 25 Vict. c. 67, s. 10.	Appointment of additional members of council for legislation.	Amended by 9 Edw. VII, c. 4, s. 1 (1). Repealed in part by 9 Edw. VII, c. 4, s. 8. Reproduced by s. 60.
s. 11.	Term of office of additional members.	Reproduced by s. 60. Repealed in part by 9 Edw. VII, c. 4, s. 8.
s. 12.	Resignation of additional member.	Reproduced by s. 88 (1).
s. 13.	Power for governor-general to fill vacancies of additional members.	Repealed, 55 & 56 Vict. c. 14, s. 4.
s. 14.	Incompleteness of proportion of non-official members not to invalidate law.	Reproduced by s. 79 (6).
s. 15.	President, quorum, and casting vote at legislative meetings of the governor-general's council.	Reproduced by s. 62. Amended and repealed in part by 9 Edw. VII, c. 4, ss. 4, 8.
s. 16.	First legislative meeting .	Repealed by S.L.R. Act, 1892.
s. 17.	Times and places of subsequent legislative meetings.	Reproduced by s. 61.
s. 18.	Rules for conduct of legislative business.	Reproduced by s. 67.
s. 19.	Business at legislative meetings.	Amended by 9 Edw. VII, c. 4, s. 5. Reproduced by s. 64.
s. 20.	Assent of governor-general to acts of his council.	Reproduced by s. 65.
s. 21.	Power of Crown to disallow Acts.	Reproduced by s. 66.
s. 22.	Legislative power of Governor-General in Council.	Reproduced by s. 63 (1), (4).
	Governor-General in Council not to have power to repeal or affect—	Reproduced by s. 63 (2).
	(1) The Indian Councils Act, 1861, or	Reproduced by s. 63 (2) (*a*).

Session and Chapter.	*Title and Short Contents.*	*Remarks.*
24 & 25 Vict. c. 67, s. 22 (*continued*).	(2) 3 & 4 Will. IV, c. 85, 16 & 17 Vict. c. 95, 17 & 18 Vict. c. 77, 21 & 22 Vict. c. 106, or 22 & 23 Vict. c. 41, or	Not reproduced. So much of these Acts as is now in force is embodied in the Digest. As to 3 & 4 Will. IV, c. 85, ss. 84 and 86, see 32 & 33 Vict. c. 98, s. 3, as partially repealed by S. L. R. (No. 2) Act, 1893.
	(3) Any Act enabling the Secretary of State to raise money, or	Reproduced by s. 63 (2) (*c*).
	(4) The Army Acts, or	Reproduced by s. 63 (2) (*d*).
	(5) Any Act of Parliament passed after 1860 affecting Her Majesty's Indian territories.	Reproduced by s. 63 (2) (*b*).
	Governor-General in Council not to have power to pass laws affecting authority of Parliament, &c.	Reproduced by s. 63 (2). The reference to the East India Company is omitted as obsolete.
s. 23.	Power to make ordinances .	Reproduced by s. 69.
	Such ordinances may be superseded by Acts.	Not reproduced; covered by s. 63 (4).
s. 24.	Laws made by Governor-General in Council not invalid because affecting prerogative of the Crown.	Reproduced by s. 79 (*a*).
s. 25.	Validation of laws made for the non-regulation provinces.	Not reproduced. Spent.
s. 26.	Leave of absence to ordinary members of council.	Reproduced by s. 81.
s. 27.	Vacancy in office of ordinary member of council.	Reproduced by s. 87.
s. 28.	Power to make rules and orders for Executive Councils of Madras and Bombay.	Reproduced by s. 54 (2).
s. 29.	Appointment of additional members of council for Madras and Bombay.	Reproduced by s. 71. Repealed in part by 9 Edw. VII, c. 4, s. 8.
s. 30.	Term of office of additional members.	Reproduced by s. 71 (7). Repealed in part by 9 Edw. VII, c. 4, s. 8.
s. 31.	Resignation of additional member.	Reproduced by s. 88 (1).

Session and Chapter.	*Title and Short Contents.*	*Remarks.*
24 & 25 Vict. c. 67, s. 32.	Power for governor of presidency to fill vacancies of additional members.	Repealed, 55 & 56 Vict. c. 14, s. 4.
s. 33.	Incompleteness of proportion of non-official members not to invalidate law.	Reproduced by s. 79 (c).
s. 34.	President of governor's council.	Amended by 9 Edw. VII, c. 4, s. 4. Reproduced by s. 72 (2).
	Quorum and casting vote at legislative meetings.	Repealed in part and amended by 9 Edw. VII, c. 4. Reproduced by s. 72 (1), (4).
s. 35.	First legislative meeting	Repealed, S. L. R. Act, 1892.
s. 36.	Time and place of legislative meetings.	Reproduced by s. 72 (5).
s. 37.	Rules for conduct of business at legislative meetings.	Reproduced by s. 77 (5).
s. 38.	Business at legislative meetings.	Reproduced by s. 77 (1), (2), (4).
s. 39.	Assent of governor to Acts of local council.	Reproduced by s. 78 (1).
s. 40.	Assent of governor-general to such Acts.	Reproduced by s. 78 (3), (4).
s. 41.	Power of Crown to disallow such Acts.	Reproduced by s. 78 (5), (6).
s. 42.	Legislative powers of local councils.	Reproduced by s. 76 (1).
	Power to repeal laws made in India before 1861.	Amended by 55 & 56 Vict. c. 14, s. 5. Reproduced by s. 76 (2).
	Local legislature not to have power to affect Acts of Parliament.	Reproduced by s. 76 (4).
s. 43.	Sanction required to legislation by local councils in certain cases.	Reproduced by s. 76 (3), (5).
s. 44.	Power to establish legislatures in Bengal, the North-Western Provinces, and the Punjab.	Spent. See s. 70.

Session and Chapter.	*Title and Short Contents.*	*Remarks.*
24 & 25 Vict. c. 67, s. 45.	Constitution of councils of lieutenant-governors.	Superseded in part by 9 Edw. VII, c. 4, ss. 1 (2), 6. Reproduced by s. 73 (1), (2), (3).
	Procedure at meetings of lieutenant-governor's council.	Reproduced by s. 75. Repealed in part by 9 Edw. VII, c. 4, s. 8. Amended by 9 Edw. VII, c. 4, s. 4.
s. 46.	Power to constitute new provinces and to appoint a lieutenant-governor for each, and declare and limit his authority.	Reproduced by s. 74.
s. 47.	Power to fix and alter boundaries.	Reproduced by s. 74 (1).
	Saving as to laws . . .	Reproduced by s. 74 (2).
s. 48.	Legislative powers of Lieutenant-Governors in Council.	Reproduced by s. 76.
	Nomination of members of lieutenant-governors' councils.	Reproduced by ss. 73, 79 (6).
	Conduct of business in lieutenant-governors' councils.	Reproduced by s. 77.
	Assent to, and disallowance of, acts of lieutenant-governors' councils.	Reproduced by s. 78.
s. 49.	Previous assent of Crown to proclamation—	
	Constituting councils .	Reproduced by s. 74.
	Altering boundaries . .	Reproduced by s. 74.
	Constituting new provinces	Reproduced by s. 74.
ss. 50, 51.	Governor of Madras or Bombay to fill vacancy in office of governor-general.	Reproduced by s. 85. Amended as to Bengal by 2 & 3 Geo. V, c. 6, s. 4.
s. 52.	Saving of certain rights, powers, and things done.	Reproduced by s. 121.
s. 53.	Meaning of term 'in council.'	Effect reproduced by language of Digest, see ss. 50–54, &c.
s. 54.	. . . . .	Repealed, S. L. R. Act, 1878.

Session and Chapter.	*Title and Short Contents.*	*Remarks.*
24 & 25 Vict. c. 104,	**The Indian High Courts Act, 1861.**	
s. 1.	Power to establish high courts at Calcutta, Madras, and Bombay.	Repealed, S. L. R. Act, 1892.
s. 2.	Constitution of those courts .	Reproduced by s. 96. Amended by 1 & 2 Geo. V, c. 18, ss. 1, 3.
s. 3.	. . . . .	Repealed, S. L. R. Act, 1878.
s. 4.	Tenure of office of judges .	Reproduced by s. 97 (1).
	Resignation of judges to be submitted to governor-general or local Government.	Reproduced by s. 97 (2).
s. 5.	Precedence of judges .	Reproduced by s. 98.
s. 6.	Salaries, &c., of judges . .	Reproduced by s. 99.
s. 7.	Vacancy in office of chief justice or other judge.	Reproduced by s. 100.
s. 8.	Abolition of supreme and sadr courts.	Repealed by S. L. R. Act, 1892.
s. 9.	Jurisdiction and powers of high courts.	Reproduced by s. 101 (1).
s. 10.	. . . . .	Repealed, 28 & 29 Vict. c. 15, s. 2, which section is itself repealed by S. L. R. Act, 1878.
s. 11.	Provisions applicable to supreme courts and judges thereof to apply to high courts and judges thereof.	Covered by ss. 101, 105–8.
s 12.	Pending proceedings . .	Not reproduced. Spent.
s. 13.	Exercise of jurisdiction by single judges or division courts.	Reproduced by s. 103 (1).
s. 14.	Chief justice to determine what judges shall sit alone or in the division courts.	Reproduced by s. 103 (2).
s. 15.	Powers of high courts with respect to subordinate courts.	Reproduced by s. 102.
s. 16.	Power to establish new high court.	Not reproduced. Exhausted by establishment of high court at Allahabad. Since revived by 1 & 2 Geo. V, c. 18, s. 2.

Session and Chapter.	*Title and Short Contents.*	*Remarks.*
24 & 25 Vict. c. 104, s. 16 (*continued*).	Number and qualifications of judges of new courts. Provisions applicable to new courts.	Covered by ss. 96–103.
s. 17.	Power to revoke, alter, or supplement letters patent of high courts.	Spent. Repealed as to U. K. by S. L. R. Act, 1893.
s. 18.	. . . . .	Repealed by 28 & 29 Vict. c. 15, s. 2, which section is itself repealed by S. L. R. Act, 1878.
s. 19.	Definition of 'barrister .	Reproduced by s. 96.
	Local government . .	Reproduced by ss. 97 (2), 100, 102.
28 & 29 Vict. c. 15,	**The Indian High Courts Act, 1865.**	
s. 1.	Extension of time for granting new letters patent for high courts.	Repealed, S. L. R. Act, 1893.
s. 2.	. . . . .	Repealed, S. L. R. Act, 1878.
s. 3.	Power to make orders altering local limits of jurisdiction of high courts.	Reproduced by s. 104.
s. 4.	Power to disallow such orders.	
s. 5.	. . . . .	Repealed, S. L. R. Act, 1878.
s. 6.	Saving of legislative powers of Governor-General in Council.	Reproduced by s. 104.
28 & 29 Vict. c. 17,	**The Government of India Act, 1865.**	
s. 1.	Power of Governor-General in Council to legislate for British subjects in Native States.	Reproduced by s. 63 (1) (*b*).
s. 2.	Foregoing section to be read as part of s. 22 of 24 & 25 Vict. c. 67.	Section 22 is reproduced by s. 63.
s. 3.	. . . . .	Repealed, S. L. R. Act, 1878.
s. 4.	Power to appoint territorial limits of presidencies and lieutenant-governorships.	Reproduced by s. 57.

Session and Chapter.	*Title and Short Contents.*	*Remarks.*
28 & 29 Vict. c. 17, s. 5.	Disallowance by Secretary of State of proclamation altering boundaries of province.	Reproduced by s. 57, prov. (2).
	Sanction of Crown to proclamation transferring entire district.	Reproduced by s. 57, prov. (1).
32 & 33 Vict. c. 97,	**The Government of India Act, 1869.**	
s. 1.	Vacancies in Council of India to be filled by Secretary of State.	Reproduced by s. 3 (2).
s. 2.	Term of office of member of Council of India.	Reproduced by s. 3 (4). Amended by 7 Edw. VII, c. 35, s. 4.
s. 3.	Power to reappoint member.	Reproduced by s. 3 (5).
s. 4.	Former Acts to apply to future members.	Effect reproduced by language of Digest.
s. 5.	. . . . .	Repealed, S. L. R. Act, 1883.
s. 6.	Resignation of member . .	Reproduced by s. 3 (7).
	Pension of members appointed before the Act.	Repealed as to U. K. by S. L. R. (No. 2) Act, 1893.
s. 7.	Claims to compensation .	Reproduced by s. 5.
s. 8.	Appointment of ordinary members of the councils of the governor-general and governors.	Reproduced by ss. 39 (1) and 51 (1).
32 & 33 Vict. c. 98.	**The Indian Councils Act, 1869.**	
s. 1.	Power of Governor-General in Council to legislate for native Indian subjects.	Reproduced by s. 63 (1) (*c*).
s. 2.	. . . . .	Repealed, S. L. R. Act, 1883.
s. 3.	Power to repeal or amend ss. 81 to 86 of 3 & 4 Will. IV, c. 85.	Effect reproduced by language of Digest.
33 & 34 Vict. c. 3,	**The Government of India Act, 1870.**	
s. 1.	Power to make regulations .	Reproduced by s. 68.
s. 2.	Regulations to be sent to Secretary of State.	Reproduced by s. 68 (3).
	Laws and regulations to control and supersede prior regulations.	Covered by ss. 63 (1), 68.

Session and Chapter.	*Title and Short Contents.*	*Remarks.*
33 & 34 Vict. c. 3, s. 3.	Lieutenant-governor or chief commissioner, when to be an additional member of governor-general's council.	Reproduced by s. 60 (5).
s. 4.	. . . . .	Repealed, S. L. R. Act, 1883.
s. 5.	Power of governor-general to act against opinion of council.	Reproduced by s. 44 (2), (3).
s. 6.	Power to appoint natives of India to offices reserved to the covenanted civil service.	Reproduced by s. 94.
33 & 34 Vict. c. 59,	The East India Contracts Act, 1870.	
s. 1.	Validity of deeds, &c. . .	Repealed, S. L. R. Act, 1883.
s. 2.	Power to vary form of execution of assurances.	Reproduced by s. 33 (2).
34 & 35 Vict. c. 34,	The Indian Councils Act, 1871.	
s. 1.	Validation of Acts of local legislatures conferring jurisdiction over European British subjects.	Reproduced by s. 79 (c).
s. 2	Committal of European British subjects.	Not reproduced. Made unnecessary by Indian Act V of 1898.
s. 3.	Power of local legislatures to amend and repeal Acts declared valid by Indian Act XXII of 1870.	Not reproduced. Superseded by 55 & 56 Vict. c. 14, s. 5. See s. 76 (4).
34 & 35 Vict. c. 62,	The Indian Bishops Act, 1871.	
s. 1.	Power to make rules as to leave of absence of Indian bishops.	Reproduced by s. 114.
	Proviso as to limits of expense.	Reproduced by s. 113.
37 & 38 Vict. c. 77,	The Colonial Clergy Act, 1874.	
s. 13.	Provisions as to Indian bishops.	Reproduced by s. 110 (5).

Session and Chapter.	*Title and Short Contents.*	*Remarks.*
37 & 38 Vict. c. 91,	**The Indian Councils Act, 1874.**	
s. 1.	Power to appoint a sixth member to governor-general's council.	Reproduced by s. 39 (1), (2).
	Provisions as to other members to apply to the sixth member.	
	The sixth member to be called member for public works.	Repealed by 4 Edw. VII, c. 26.
s. 2.	Power to diminish number of members of governor-general's council to five.	Reproduced in substance by s. 39 (2). Repealed in part by 4 Edw. VII, c. 26.
	When number diminished, no temporary appointment to be made.	Reproduced by s. 87.
s. 3.	Saving of— (1) 24 & 25 Vict. c. 67, s. 8, and 33 & 34 Vict. c. 3, s. 5. (2) Powers of governor-general in respect of his council.	Provisions saved, reproduced by Digest.
39 & 40 Vict. c. 7,	**The Council of India Act, 1876.**	
s. 1.	Appointment to Council of India of persons with professional or other peculiar qualifications.	Repealed by 7 Edw. VII, c. 35, s. 5.
43 Vict. c. 3, s. 1.	**The Indian Salaries and Allowances Act, 1880.** Short title	Not reproduced. Spent.
s. 2.	Allowances of certain officials for equipment and voyage.	Reproduced by ss. 80, 113 (1).
s. 3.	Power to fix salaries and allowances of bishops and archdeacons of Calcutta, Madras, and Bombay.	Reproduced by s. 113 (1).
	Saving as to salaries at commencement of Act.	Not reproduced. Spent.
s. 4.	Charges on Indian revenues not to be increased.	Reproduced by ss. 80, 113.
s. 5.	Repeal of enactments .	Repealed, S. L. R. Act, 1894.

Session and Chapter.	*Title and Short Contents.*	*Remarks.*
44 & 45 Vict. c. 63,	**The India Office Auditor Act, 1881.**	
s. 1.	Superannuation allowance of India Office auditor and his assistants.	Reproduced by s. 30 (10).
s. 2.	Short title	Not reproduced.
47 & 48 Vict. c. 38,	**The Indian Marine Service Act, 1884.**	
s. 1.	Short title	Not reproduced.
ss. 2, 3.	Power of Governor-General in Council to make laws for the Indian Marine Service.	Reproduced by s. 63 (1) (*d*), (5), (6).
s. 4.	Such laws—	
	to have same force as Acts of Parliament.	Not reproduced. There is no such provision in 24 & 25 Vict. c. 67.
	to be judicially noticed by all courts.	Not reproduced. As to Indian courts, see Indian Act I of 1872, s. 57.
s. 5.	Restriction on legislation authorizing sentence of death.	Reproduced by s. 63 (3).
s. 6.	Power to place Indian Marine Service under Naval Discipline Act in time of war.	Left outstanding.
52 & 53 Vict. c. 65,	**The Council of India Reduction Act, 1889.**	
s. 1.	Power to reduce number of Council of India.	Repealed by 7 Edw. VII, c. 35, s. 5.
s. 2.	Short title	
55 & 56 Vict. c. 14,	**The Indian Councils Act, 1892.**	
s. 1.	Increase of number of members of Indian legislative councils.	Repealed by 9 Edw. VII, c. 4, s. 8.
s. 2.	Business at legislative meetings	Repealed by 9 Edw. VII, c. 4, s. 8.
s. 3.	Meaning of expressions referring to Indian territories.	Reproduced by s. 63.

Session and Chapter.	*Title and Short Contents.*	*Remarks.*
55 & 56 Vict. c. 14, s. 4.	Vacancies in number of additional members of councils.	Reproduced by s. 88. Repealed in part by 9 Edw. VII, c. 4, s. 8.
s. 5.	Powers of Indian local legislatures.	Reproduced by s. 76.
s. 6.	Definitions	Reproduced by ss. 70, 74, 124.
s. 7.	Saving of powers of Governor-General in Council.	Not reproduced.
s. 8.	Short title	Not reproduced.
56 & 57 Vict. c. 70,	The East India Loan Act, 1893.	
s. 5.	Signature of debentures and bills.	Reproduced by s. 28 (3).
3 Edw. VII, c. 11.	The Contracts (India Office) Act, 1903.	Reproduced by s. 32.
4 Edw. VII, c. 26.	The Indian Councils Act 1904.	Effect given by language of s. 39.
7 Edw. VII, c. 35,	The Council of India Act, 1907.	
s. 1.	Number of members . .	Reproduced by s. 3 (1).
s. 2.	Newly appointed members to have last left India within five years.	Reproduced by s. 3 (3).
s. 3.	Salary of members . .	Reproduced by s. 3 (9).
s. 4.	Term of office of members .	Reproduced by s. 3 (4).
s. 5.	Repeals	Spent.
9 Edw. VII, c. 4,	The Indian Councils Act, 1909.	
s. 1.	Election of members; number of members; quorum; term of office; casual vacancies.	Reproduced by ss. 60, 71, 73.
s. 2 (1)	Number and qualification of members of Madras and Bombay Councils.	Reproduced by s. 51 (2), (3).

Session and Chapter.	*Title and Short Contents.*	*Remarks.*
9 Edw. VII, c. 4, s. 2 (2).	Casting vote of President of Madras or Bombay Council.	Covered by s. 53.
s. 3 (1).	Bengal Executive Council .	Spent as to Bengal. Applied to Bihar and Orissa by 2 & 3 Geo. V, c. 6, s. 2. Referred to in note to s. 55 (1).
s. 3 (2).	Executive Councils for Lieutenant-Governors.	Referred to in note to s. 55 (1).
s. 3 (3).	Rules and orders for transaction of business in Lieutenant-Governors' Councils.	
s. 3 (4).	Appointment and functions of members of Lieutenant-Governors' Councils.	
s. 4.	Appointment and functions of Vice-Presidents.	Referred to in notes to ss. 45, 72, 75, and reproduced by ss. 62 (1), (2), 72 (2), 75 (1), 85 (4), 86 (1).
s. 5.	Conduct of non-legislative business in Legislative Councils.	Reproduced by ss. 64, 77.
s. 6.	Regulations as to nomination and election of members, &c.	Reproduced by ss. 60, 71, 73.
s. 7.	Proclamations, &c., to be laid before Parliament.	Reproduced by s. 123A.
s. 8.	Short titles, commencement, repeals.	Spent.
Sch. I.	Maximum numbers of members of Legislative Councils.	Repealed in part and amended by 2 & 3 Geo. V, c. 6, s. 4 (1). Reproduced by Appendix II.
Sch. II.	Repeals	Spent.
1 & 2 Geo. V, c. 18,	**The Indian High Courts Act, 1911.**	
s. 1.	Maximum number of Judges.	Reproduced by s. 96 (1).
s. 2.	Additional High Courts .	Referred to in note (*a*) to s. 96 and note (*b*) to s. 104.

Session and Chapter.	*Title and Short Contents.*	*Remarks.*
1 & 2 Geo. V, c. 18,		
s. 3.	Temporary Judges . .	Referred to in note (*b*) to s. 96.
s. 4.	Salaries of Judges . .	Reproduced by s. 22 (2).
	The Government of India Act Amendment Act, 1911.	
1 & 2 Geo. V, c. 25,		
s. 1.	Gratuities to personal representatives.	Reproduced by s. 19.
s. 2.	Confirmation of past grants of gratuities.	Spent.
	The Government of India Act, 1912.	
2 & 3 Geo. V, c. 6,		
s. 1 (1).	Powers of Governor and Council of Fort William in Bengal.	Reproduced by language of Digest.
s. 1 (1), prov. (*b*).	Advocate-General of Bengal .	Referred to in footnote to s. 71 (4).
s. 1 (2).	Power to extend limits of Calcutta.	Reproduced by s. 59.
s. 2.	Bihar and Orissa Executive Council.	Referred to in note to s. 55 (1).
s. 3.	Legislative Councils for Chief Commissioners.	Referred to in notes to ss. 58, 74.
s. 4 (1).	Amendments . . .	Reproduced by language of Digest.
	Repeals	Spent.
s. 4 (2).	Power to transfer territories .	Reproduced in note to s. 57.
Schedule, Part I.	Amendments . . .	Reproduced by s. 85 and Appendix II.
Schedule, Part II.	Repeals	Spent.

CHAPTER IV

APPLICATION OF ENGLISH LAW TO NATIVES OF INDIA[1]

Introduction of English law into India.

ENGLISH law was introduced into India by the charters under which courts of justice were established for the three presidency towns of Madras, Bombay, and Calcutta. The charters introduced the English common and statute law in force at the time, so far as it was applicable to Indian circumstances. The precise date at which English law was so introduced has been a matter of controversy. For instance, it has been doubted whether the English statute of 1728, under which Nuncomar was hanged, was in force in Calcutta at the time of his trial, or of the commission of his offence. So also there has been room for argument as to whether particular English statutes, such as the Mortmain Act, are sufficiently applicable to the circumstances of India to be in force

[1] This chapter is based on a paper read before the Society of Comparative Legislation in 1896.

Among the most accessible authorities used for the purpose of this chapter are Harington's *Analysis of the Bengal Regulations*, Beaufort's *Digest of the Criminal Law of the Presidency of Fort William*, the introduction to Morley's *Digest of Indian Cases*, the editions published by the Indian Legislative Department of the Statutes relating to India, of the general Acts of the Governor-General in Council, and of the Provincial Codes, and the Index to the enactments relating to India. The numerous volumes of reports by Select Committees and by the Indian Law Commissioners contain a mine of information which has never been properly worked.

The best books on existing Hindu law are those by Mr. J. D. Mayne and by West (Sir Raymond) and Bühler, written from the Madras and Bombay points of view respectively. Sir R. K. Wilson has published a useful Digest of Anglo-Mahomedan Law. Reference should also be made to the series of Tagore Law Lectures. There are books by the late Sir C. L. Tupper and Sir W. H. Rattigan on the customary law of the Punjab.

On the general subject dealt with by this chapter *see* Bryce, *Studies in History and Jurisprudence*, Essay II (now published separately).

there.[1] But Indian legislation, and particularly the enactment of the Indian Penal Code, has set at rest most of these questions.

Charter of 1753.

George II's charter of 1753, which reconstituted the mayors' courts in the three presidency towns of Madras, Bombay, and Calcutta, expressly excepted from their jurisdiction all suits and actions between the Indian natives only, and directed that such suits and actions should be determined among themselves, unless both parties should submit them to the determination of the mayor's court. But, according to Mr. Morley, it does not appear that the native inhabitants of Bombay were ever actually exempted from the jurisdiction of the mayor's court, or that any peculiar laws were administered to them in that court.[2]

Warren Hastings's 'Plan' of 1772.

It was not, however, until the East India Company took over the active administration of the province of Bengal that the question of the law to be applied to natives assumed a seriously practical form. In 1771 the Court of Directors announced their intention of 'standing forth as Diwan;' in other words, of assuming the administration of the revenues of the province, a process which involved the establishment, not merely of revenue officers, but of courts of civil and criminal justice. In the next year Warren Hastings became Governor of Bengal, and one of his first acts was to lay down a plan for the administration of justice in the interior of Bengal. What laws did he find in force? In criminal cases the Mahomedan Government had established its own criminal law, to the exclusion of that of the Hindus. But in civil cases Mahomedans and Hindus respectively were governed by their personal laws, which claimed divine authority, and were enforced by a religious as well as by a civil sanction.

[1] The question is discussed at length in Mr. Whitley Stokes's preface to the first edition of The Older Statutes relating to India, reprinted in his Collection of Statutes relating to India (Calcutta, 1881). See also the *Mayor of Lyons* v. *East India Company*, 3 State Trials, N. S., 647, and the other authorities cited in note (*a*) to s. 108 of the Digest.

[2] Morley's *Digest*, Introduction, p. clxix.

Gradual modification of criminal law.

The object of the East India Company was to make as little alteration as possible in the existing state of things. Accordingly the country courts were required, in the administration of criminal justice, to be guided by Mahomedan law. But it soon appeared that there were portions of the Mahomedan law which no civilized Government could administer. It was impossible to enforce the law of retaliation for murder, of stoning for sexual immorality, or of mutilation for theft, or to recognize the incapacity of unbelievers to give evidence in cases affecting Mahomedans. The most glaring defects of Mahomedan law were removed by regulations, and an interesting picture of the criminal law, so patched and modified, as it was administered in the country courts of Bengal about the year 1821, is given in Mr. Harington's Analysis of the Bengal Regulations.[1] The process of repealing, amending, and supplementing the Mahomedan criminal law by enactments based on English principles went on until the Mahomedan law was wholly superseded by the Indian Penal Code in 1860.[2] A general code of criminal procedure followed in 1861, and the process of superseding native by European law, so far as the administration of criminal justice is concerned, was completed by the enactment of the Evidence Act of 1872.

Observance of native rules as to family law.

With respect to civil rights, Warren Hastings's plan of 1772 directed, by its twenty-third rule, that 'in all suits regarding marriage, inheritance, and caste, and other[3] religious usages and institutions, the laws of the Koran with respect to Mahomedans, and those of the Shaster with respect to Gentus (Hindus) shall be invariably adhered to.' 'Moulavies or Brahmins' were directed to attend the courts for the purpose

[1] See also Sir R. K. Wilson's *Introduction to Anglo-Mahomedan Law*, p. 113; and for a description of the criminal law of India as it existed in 1852, see the evidence given in that year by Mr. F. Millett before the Select Committee of the House of Lords on the East India Company's Charter.

[2] It had been previously superseded, in 1827, by a written code in the Bombay Presidency (Morley, *Digest*, Introduction, pp. cliv, clxxvi).

[3] The use of 'other' implies that marriage and inheritance were treated as religious institutions.

of expounding the law and giving assistance in framing the decrees.[1]

The famous 'Regulating Act' of 1773 empowered the Governor-General and Council of Bengal to make rules, ordinances, and regulations for the good order and civil government of the settlement at Fort William (Calcutta) and other factories and places subordinate thereto, and in 1780 the Government of Bengal exercised this power by issuing a code of regulations for the administration of justice, which contained a section (27) embodying the provisions and exact words of Warren Hastings's regulation. A revised code of the following year re-enacted this section with the addition of the word 'succession.'

The English Act of 1781 (21 Geo. III, c. 70), which was passed for amending and explaining the Regulating Act, recognized and confirmed the principles laid down by Warren Hastings.

Whilst empowering the Supreme Court at Calcutta to hear and determine all manner of actions and suits against all and singular the inhabitants of Calcutta, it provided (s. 17) that 'their inheritance and succession to lands, rents, and goods, and all matters of contract and dealing between party and party, shall be determined in the case of Mahomedans by the laws and usages of the Mahomedans, and in the case of Gentus (Hindus) by the laws and usages of Gentus; and where one only of the parties shall be a Mahomedan or Gentu, by the laws and usages of the defendant.' It went on to enact (s. 18) that 'in order that regard should be had to the civil and religious usages of the said natives, the rights and authorities of fathers of families and masters of families, according as the same might have been exercised by the Gentu or Mahomedan law, shall be preserved to them respectively within their said families; nor shall any acts done in consequence of the rule and law of caste respecting the members of the said families only be held and adjudged a crime, although

[1] This direction was repealed by Act XI of 1864.

the same may not be held justifiable by the laws of England.' Enactments to the same effect have been introduced into numerous subsequent English and Indian enactments.[1]

These provisions of the Act of 1781, and the corresponding provisions of the Act of 1797 relating to the recorders' courts of Madras and Bombay (afterwards superseded by the supreme courts, and now by the high courts), are still in force, but are not included in the list of English statutory provisions which, under the Indian Councils Act of 1861 (24 & 25 Vict. c. 67), Indian legislatures are precluded from altering. Consequently they are alterable, and have in fact been materially affected, by Indian legislation. For instance, the native law of contract has been almost entirely superseded by the Contract Act of 1872 and other Acts. And the respect enjoined for the rights of fathers and masters of families and for the rules of caste did not prevent the Indian legislature from abolishing domestic slavery or suttee.

The Lex Loci Act.

A Bengal regulation of 1832 (VII of 1832), whilst re-enacting the rules of Warren Hastings which had been embodied in previous regulations, qualified their application by a provision which attracted little attention at the time, but afterwards became the subject of considerable discussion.[2] It declared that these rules 'are intended and shall be held to apply to such persons only as shall be *bona fide* professors of those religions at the time of the application of the law to the case, and were designed for the protection of the rights of such persons, not for the deprivation of the rights of others.

[1] See, e.g., Bengal Regulation III of 1793, s. 21; Bengal Regulation IV of 1793, s. 4; 37 Geo. III, c. 142 (relating to the recorders' courts at Madras and Bombay), ss. 12, 13; Bombay Regulation IV of 1827, s. 26; Act IV of 1872, s. 5 (Punjab), as amended by Act XII of 1878; Act III of 1873, s. 16 (Madras); Act XX of 1875, s. 5 (Central Provinces); Act XVIII of 1876, s. 3 (Oudh); Act XII of 1887, s. 37 (Bengal, North-Western Provinces, and Assam); Act XI of 1889, s. 4 (Lower Burma); and clauses 19 and 20 of the Charter of 1865 of the Bengal High Courts, the corresponding clauses of the Madras and Bombay Charters, and clauses 13 and 14 of the Charter of the North-Western Provinces High Court.

[2] See Morley's *Digest*, Introduction, pp. clxxiii, clxxxiii.

Whenever, therefore, in any civil suit, the parties to such suits may be of different persuasions, where one party shall be of the Hindu and the other of the Mahomedan persuasion, or where one or more of the parties to such suit shall not be either of the Mahomedan or Hindu persuasion, the laws of those religions shall not be permitted to operate to deprive such party or parties of any property to which, but for the operation of such laws, they would have been entitled. In all such cases the decision shall be governed by the principles of justice, equity, and good conscience; it being clearly understood, however, that this provision shall not be considered as justifying the introduction of the English or any foreign law, or the application to such cases of any rules not sanctioned by those principles.'

In the year 1850 the Government of India passed a law (XXI of 1850) of which the object was to extend the principle of this regulation throughout the territories subject to the government of the East India Company. It declared that 'So much of any law or usage now in force within the territories subject to the government of the East India Company as inflicts on any person forfeiture of rights or[1] property, or may be held in any way to impair or affect any right of inheritance, by reason of his or her renouncing or having been excluded from the communion of any religion, or being deprived of caste, shall cease to be enforced as law in the courts of the East India Company, and in the courts established by Royal charter within the said territories.'

This Act, which was known at the time of its passing as the Lex Loci Act,[2] and is still in force, excited considerable opposition among orthodox Hindus as unduly favouring converts, and has been criticized from the Hindu point of

[1] An attempt has been made to argue that this phrase was an accidental misprint for 'rights *of* property.' But there seems no foundation for this suggestion.

[2] This title is a misnomer. It was properly applied to other provisions which were subsequently dropped. See the evidence of Mr. Cameron before the Select Committee of the House of Lords in 1852.

view with respect to its operation on the guardianship of children in a case where one of two parents had been converted from Hinduism to Mahomedanism.

Law applicable to persons neither Hindus nor Mahomedans.

It will have been observed that Warren Hastings's rule and the enactments based upon it apply only to Hindus and Mahomedans. There are, of course, many natives of India who are neither Hindus nor Mahomedans, such as the Portuguese and Armenian Christians, the Parsees, the Sikhs, the Jains, the Buddhists of Burma and elsewhere, and the Jews. The tendency of the courts and of the legislatures has been to apply to these classes the spirit of Warren Hastings's rule and to leave them in the enjoyment of their own family law, except so far as they have shown a disposition to place themselves under English law.

Rules as to local usage in Bombay and the Punjab.

When Mountstuart Elphinstone legislated for the territories then recently annexed to the Bombay Presidency, Anglo-Indian administrators had become aware that the sacred or semi-sacred text-books were not such trustworthy guides as they had been supposed to be in the time of Warren Hastings, and that local or personal usages played a much more important part than had previously been attributed to them. Accordingly, the Bombay regulation deviated from the Bengal model by giving precedence to local usage over the written Mahomedan or Hindu law.[1] Regulation IV of 1827 (s. 26), which is still in force in the Bombay Presidency, directed that 'The law to be observed in the trial of suits shall be Acts of Parliament and regulations of Government applicable to the case; in the absence of such Acts and regulations, the usage of the country in which the suit arose; if none such appears, the law of the defendant, and, in the absence of specific law and usage, justice, equity, and good conscience alone.' The same principle has since been applied

[1] It is also important to observe that the Mahomedan criminal law had not been introduced into the territories under Bombay to anything like the same extent as into Bengal. See on this subject the Judicial Letters from Bombay of July 29, 1818, pars. 186 seq., printed in the Reports to Parliament on East India Affairs for the year 1819.

to the Punjab, which is pre-eminently the land of customary law, and where neither the sacred text-books of the Hindus nor those of the Mahomedans supply a safe guide to the usages actually observed. In this province the Punjab Laws Act[1] expressly directs the courts to observe any custom applicable to the parties concerned, which is not contrary to justice, equity, or good conscience, and has not been altered or abolished by law, or declared by competent authority to be void.

Native Christians and Armenians.

Native Christians have for the most part placed themselves, or allowed themselves to be placed, under European law. As long ago as 1836 the Armenians of Bengal presented a petition to the Governor-General, in which, after setting forth the destitution of their legal condition, they added, 'As Armenians have ceased to be a nation since the year of our Lord 1375, and no trace of their own law is now to be discovered,[2] your petitioners humbly submit that the law of England is the only one that can, upon any sound principle, be allowed to prevail.'[3]

Parsees.

The Parsees have obtained the enactment of an intestate succession law of their own (XXI of 1865).

Justice, equity, and good conscience.

In matters for which neither the authority of Hindu or Mahomedan text-books or advisers nor the regulations and other enactments of the Government supplied sufficient guidance, the judges of the civil courts were usually directed to act in accordance with 'justice, equity, and good conscience.' An Englishman would naturally interpret these words as meaning such rules and principles of English law as he happened to know and considered applicable to the case; and thus, under the influence of English judges, native law and usage were, without express legislation, largely supplemented, modified, and superseded by English law.

State of law at passing of

The inquiries and reports which preceded the Charter Act of 1833 directed attention to the unsatisfactory condition

[1] IV of 1872, s. 5, as altered by XII of 1878, s. 1.

[2] This, of course, is merely the statement of the Bengal Armenians of 1836. See Dareste, *Études d'Histoire du Droit*, pp. 119 seqq.

[3] Morley's *Digest*, Introduction, p. clxxxvii.

of the law in British India at that time, and, in particular, to the frequent difficulty of ascertaining what the law was and where it was to be found. The judges of the Calcutta Supreme Court, after describing generally the state of the law, went on to say: 'In this state of circumstances no one can pronounce an opinion or form a judgement, however sound, upon any disputed right of persons respecting which doubt and confusion may not be raised by those who may choose to call it in question; for very few of the public or persons in office at home, not even the law officers, can be expected to have so comprehensive and clear a view of the Indian system as to know readily and familiarly the bearings of each part of it on the rest. There are English Acts of Parliament specially provided for India, and others of which it is doubtful whether they apply to India wholly, or in part, or not at all. There is the English Common Law and Constitution, of which the application is in many respects still more obscure and perplexed; Mahomedan Law and Usage; Hindu Law, Usage, and Scripture; Charters and Letters Patent of the Crown; regulations of the Government, some made declaredly under Acts of Parliament particularly authorizing them, and others which are founded, as some say, on the general power of Government entrusted to the Company by Parliament, and as others assert on their rights as successors of the old Native Governments; some regulations require registry in the Supreme Court, others do not; some have effect generally throughout India, others are peculiar to one presidency or one town. There are commissions of the Governments, and circular orders from the Nizamut Adawlut, and from the Dewanny Adawlut; treaties of the Crown; treaties of the Indian Government; besides inferences drawn at pleasure from the application of the "*droit public*," and the law of nations of Europe, to a state of circumstances which will justify almost any construction of it, or qualification of its force.'[1]

Charter Act of 1833.

[1] See Hansard (1833), xviii. 729.

First Indian Law Commission.

It was for the purpose of remedying this unsatisfactory state of things that an Indian Law Commission was appointed under the Charter Act of 1833, with Macaulay at its head. The commission sat for many years, and produced several volumes of reports, which in some cases supplied the basis of Indian legislation. But it was not until 1860 that the Indian Penal Code, its most important achievement, was placed on the Indian Statute Book. The first edition of the Code of Civil Procedure had been passed in 1859, and the first edition of the Code of Criminal Procedure was passed in 1861.[1] The law of Procedure has been supplemented by the Evidence Act (I of 1872) and the Limitation Act (IX of 1908), and by the Specific Relief Act (I of 1877), which stands on the borderland of substantive and adjective law. These Acts apply to all persons in British India, whether European or native, and wholly displace and supersede native law on the subjects to which they relate.

Penal Code, Codes of Civil and Criminal Procedure, &c.

But when the time came for codifying the substantive civil law, it was found necessary to steer clear of, and make exceptions with respect to, important branches of native law.

Indian Succession Act.

The Indian Succession Act, 1865 (X of 1865), which is based on English law, is declared by s. 2 to constitute, subject to certain exceptions, the law of British India applicable to all cases of intestate or testamentary succession. But the exceptions are so wide as to exclude almost all natives of India. The provisions of the Act are declared (s. 331) not to apply to the property of any Hindu, Mahomedan, or Buddhist. And the Government of India is empowered (s. 332) to exempt by executive order from the operation of the whole or any part of the Act the members of any race, sect, or tribe in British India, to whom it may be considered impossible or inexpedient to apply those provisions. Two classes of persons have availed themselves of this exemption —Native Christians in Coorg, and Jews in Aden. The former

[1] These are now represented by Act V of 1908 and Act V of 1898 respectively.

class wished to retain their native rules of succession, notwithstanding their conversion to Christianity. The Jews of British India had agreed to place themselves under the Act, but it was not until some twenty years after the Act had become law that the Jews of Aden, who lived in a territory which is technically part of British India, but who still observed the Mosaic law of succession,[1] discovered that they were subject to a new law in the matter of succession. They petitioned to be released from its provisions, and were by executive order remitted to the Pentateuch.

The operation of the Indian Succession Act has, however, been extended by subsequent legislation.

Oudh Estates Act.

The Oudh Estates Act, 1869 (I of 1869), expressly enabled the taluqdars of Oudh to dispose of their estates by will, and applied certain provisions of the Indian Succession Act to their wills.

Hindu Wills Act.

The Hindu Wills Act (XXI of 1870) applied certain of its provisions to—

(1) all wills and codicils made by any Hindu, Jaina, Sikh, or Buddhist, on or after September 1, 1870, within the territories subject to the Lieutenant-Governor of Bengal, or the local limits of the ordinary original civil jurisdiction of the High Courts of Judicature of Madras and Bombay; and

(2) all such wills and codicils made outside those territories and limits so far as relates to immovable property situated within those territories or limits.

But nothing in the Act is to

(3) authorize a testator to bequeath property which he could not have alienated *inter vivos*; or

(4) deprive any persons of any right of maintenance of which, but for the Act, he could not deprive them by will; or

(5) affect any law of adoption or intestate succession; or

[1] See the rulings in Zelophehad's case, Numbers xxvii. 6, xxxvi. 1; and the chapter on Le Droit Israélite in Dareste, *Études d'Histoire du Droit*.

(6) authorize any Hindu, Jaina, Sikh, or Buddhist to create in property any interest which he could not have created before September 1, 1870.

Probate and Administration Act.

The Probate and Administration Act, 1881 (V of 1881), which extends to the whole of British India, applies most of the rules in the Succession Act, 1865, with respect to probate and letters of administration, to the case of every Hindu, Mahomedan, Buddhist, and person exempted under s. 332 of the Indian Succession Act, dying on or after April 1, 1881 (s. 2).

The same section provides that a court is not to receive application for probate or letters of administration until the local Government has, with the previous sanction of the Governor-General in Council, by notification in the official Gazette, authorized it so to do. Such notifications have been since given by the local Governments. The Act, however, is merely a permissive measure, and authorizes, but does not require, application for probate or administration. And it must be remembered that Hindus do not, as a rule, make wills.

Indian Contract Act.

The Indian Contract Act (IX of 1872) does not cover the whole field of contract law, but, so far as it extends, is general in its application, and supersedes the native law of contract. However, it contains a saving (s. 2) for any statute, Act, or regulation not thereby expressly repealed, and for any usage or custom of trade or incident of contract not inconsistent with its provisions. The saving for statutes has been held to include the enactment of George III, under which matters of contract are, within the presidency towns, but not elsewhere, directed to be regulated by the personal law of the party, and thus, paradoxically enough, certain rules of Hindu law have maintained their footing in the last part of British India where they might have been expected to survive.[1]

Negotiable Instruments Act.

The Negotiable Instruments Act, 1881, which corresponds to and formed the precedent for the English Bills of Exchange Act, extends to the whole of British India, but is declared

[1] See note (*a*) to s. 108 of Digest.

(s. 1) not to affect any local usage relating to any instrument in an Oriental language. It therefore preserves the customary rules as to the construction and effect of 'hundis,' or native bills of exchange and promissory notes, except so far as those rules are excluded by the agreement of the parties.[1]

Transfer of Property Act.

The Transfer of Property Act, 1882, which lays down rules with respect to the sale, gift, exchange, mortgage, and leasing of land, and on other points supplements the Contract Act, does not apply to the Punjab or to Burma (except the town of Rangoon); and, within the parts of India to which it extends, it reserves, or keeps in operation, native rules and customs on certain important subjects. For instance, nothing in the Act is to affect the provisions of any enactment not thereby expressly repealed, e.g. the Indian Acts which expressly save local usages in the Punjab and elsewhere. And nothing in the second chapter, which relates to the transfer of property by the act of parties, is to affect any rule of Hindu, Mahomedan, or Buddhist law (s. 2). The provisions as to mortgages recognize and regulate forms of security in accordance with native as well as English usage. Local usages with respect to apportionment of rents and other periodical payments (s. 36), mortgages (s. 98), and leases (ss. 106, 108), are expressly saved. And finally, there is a general declaration (s. 117) that none of the provisions of the chapter relating to leases are to apply to leases for agricultural purposes, except so far as they may be applied thereto by the local Government, with the sanction of the Government of India. Thus the application of these provisions is confined within very narrow limits. The law relating to the tenure of agricultural land is mostly regulated by special Acts, such as the Bengal Tenancy Act (VIII of 1885), and the similar Acts for other provinces.

Trusts Act.

The Indian Trusts Act, 1882 (II of 1882), which codifies the law of trusts, does not apply to the province of Bengal

[1] It is said, however, that the Indian banks refuse to discount hundis unless the parties agree to be bound by the Act.

or to the Presidency of Bombay. And nothing in it is to affect the rules of Mahomedan law as to *wakf*, or the mutual relations of the members of an undivided family as determined by any customary or personal law, or to apply to public or private religious or charitable endowments (s. 1).

Easements Act.

The Indian Easements Act, 1882 (V of 1882), which is in force in most parts of India outside Bengal,[1] also embodies principles of English law, but is not to derogate from certain Government and customary rights (s. 1).

Guardian and Wards Act.

The Guardian and Wards Act, 1890 (VIII of 1890), which declares the law with respect to the appointment, duties, rights, and liabilities of guardians of minors,[2] provides (s. 6) that, in the case of a minor who is not a European British subject, nothing in the Act is to be construed as taking away or derogating from any power to appoint a guardian which is valid by the law to which the minor is subject. And in the appointment of a guardian the court is, subject to certain directions, to be guided by what, *consistently with the law to which the minor is subject*, appears in the circumstances to be for the welfare of the minor (s. 17).

Law of torts.

The law of torts or civil wrongs, as administered by the courts of British India, whether to Europeans or to natives, is practically English law. The draft of a bill to codify it was prepared some years ago, but the measure has never been introduced.

Subjects to which English and native law respectively apply.

If we survey the whole field of law, as administered by the British Indian courts, and examine the extent to which it consists of English and of native law respectively, we shall find that Warren Hastings's famous rule, though not binding on the Indian legislatures, still indicates the class of subjects with which the Indian legislatures have been chary of inter-

[1] Its operation was extended by Act VIII of 1891.

[2] The age of majority for persons domiciled in British India is by Act IX of 1875 (as amended by s. 52 of Act VIII of 1890) fixed at eighteen, except where before the attainment of that age a guardian has been appointed for the minor by the court, or his property has been placed under the superintendence of the Court of Wards, in which case the minority lasts until twenty-one.

fering, and which they have been disposed to leave to the domain of native law and usage.

The criminal law and the law of civil and criminal procedure are based wholly on English principles. So also, subject to some few exceptions,[1] are the law of contract and the law of torts, or civil wrongs.

But within the domain of family law, including the greater part of the law of succession and inheritance, natives of India still retain their personal law, either modified or formulated, to some extent, by Anglo-Indian legislation. Hindus retain their law of marriage, of adoption, of the joint family, of partition, of succession. Mahomedans retain their law of marriage, of testamentary and intestate succession, and of *wakf* or quasi-religious trusts. The important branch of law relating to the tenure of land, as embodied in the Rent and Revenue Acts and regulations of the different provinces, though based on Indian customs, exhibits a struggle and compromise between English and Indian principles.

Attempt to govern natives by native law, Englishmen by English law.

It will have been seen that the East India Company began by attempting to govern natives by native law, Englishmen by English law. This is the natural system to apply in a conquered country, or in a vassal State—that is to say, in a State where complete sovereignty has not been assumed by the dominant power. It is the system which involves the least disturbance. It is the system which was applied by the barbarian conquerors of the provinces of the Roman Empire, and which gave rise to the system of personal law that plays so large a part in the long history of the decay of that empire. It appears to be the system now in force in Tunis, where the French have practically established an exclusive protectorate, and where French law appears to be administered by French courts to Frenchmen and European foreigners, and Mahomedan law by Mahomedan courts to

[1] e. g. the Mahomedan rules as to the right of pre-emption, which are expressly recognized by the Punjab Laws Act, 1872 (as amended by Act XII of 1878), and by the Oudh Laws Act, 1876.

the natives of the country. It is the system which is applied, with important local variations, in the British protectorates established in different parts of the world over uncivilized or semi-civilized countries. The variations are important, because the extent to which native laws and usages can be recognized and enforced depends materially on the degree of civilization to which the vassal State has attained.

Causes of its failure.

The system broke down in India from various causes. In the first place there was the difficulty of ascertaining the native law.

Warren Hastings did his best to remove this difficulty by procuring the translation or compilation of standard text-books, such as the Hedaya, the Sirajiyah, and the Sharifyah for Mahomedan law, the Code of Manu, the Mitakshara, and the Dayabhaga for Hindu law, and by enlisting the services of native law officers as assessors of the Company's courts. His regulations were based on the assumption that the natives of India could be roughly divided into Mahomedans and Gentus, and that there was a body of law applicable to these two classes respectively. But this simple and easy classification, as we now know, by no means corresponds to the facts. There are large classes who are neither Mahomedans nor Hindus. There are various schools of Mahomedan law. There are Mahomedans whose rules of inheritance are based, not on the Koran, but on Hindu or other non-Mahomedan usages. Hinduism is a term of the most indefinite import. Different text-books are recognized as authoritative in different parts of India and among different classes of Hindus. Even where they are so recognized, they often represent what the compiler thought the law ought to be rather than what it actually is or ever was. Local, tribal, caste, and family usages play a far larger part than had originally been supposed, and this important fact has been recognized in later Indian legislation.

Then, the native law, even where it could be ascertained, was defective. There were large and important branches of

law, such as the law of contract, for which it supplied insufficient guidance. Its defects had to be supplied by English judges and magistrates from their remembrance, often imperfect, of principles of English law, which were applied under the name of justice, equity, and good conscience.

And lastly, native law often embodied rules repugnant to the traditions and morality of the ruling race. An English magistrate could not enforce, an English Government could not recognize, the unregenerate criminal law of Indian Mahomedanism.

Thus native law was eaten into at every point by English case law, and by regulations of the Indian legislatures.

Hence the chaos described in the passage quoted above from the report of the Calcutta judges.

Reason for codification.

This chaos led up to the period of codification, which was ushered in by Macaulay's Commission of 1833, and which, after the lapse of many years, bore fruit in the Anglo-Indian codes.

In India, as elsewhere, codification has been brought about by the pressure of practical needs. On the continent of Europe the growth of the spirit of nationality, and the consequent strengthening of the central Government and fusion of petty sovereignties or half-sovereignties, has brought into strong relief the practical inconvenience arising from the co-existence of different systems of law in a single State. Hence the French codes, the Italian codes, and the German codes. If codification has lagged behind in England, it has been largely, perhaps mainly, because England acquired a strong central Government, and attained to practical unity of law, centuries before any continental State.[1]

Merits of Indian Codes.

In India it became necessary to draw up for the guidance of untrained judges and magistrates a set of rules which they could easily understand, and which were adapted to the circumstances of the country. There has been a tendency, on the one hand, to overpraise the formal merits of the

[1] See chap. viii of my *Legislative Methods and Forms*.

Indian codes, and on the other to underrate their practical utility as instruments of government. Their workmanship, judged by European standards, is often rough, but they are on the whole well adapted to the conditions which they were intended to meet. An attempt has been made to indicate in this chapter the extent to which they have supplanted or modified native law and custom.

How far codification applicable to native law.

It has often been suggested that the process of codification should be deliberately extended to native law, and that an attempt should be made, by means of codes, to define and simplify the leading rules of Hindu and Mahomedan law, without altering their substance. Sir Roland Wilson, in particular, has pleaded for the codification of Anglo-Mahomedan law. There is, however, reason to believe that he has much underrated the difficulties of such a task. Those difficulties arise, not merely from the tendency of codification to stereotype rules which, under the silent influence of social and political forces, are in process of change, but from the natural sensitiveness of Hindus and Mahomedans about legislative interference with matters closely touching their religious usages and observances, and from the impossibility in many cases of formulating rules in any shape which will meet with general acceptance. It is easy enough to find an enlightened Hindu or Mahomedan, like the late Sir Syed Ahmed Khan, who will testify to the general desire of the natives to have their laws codified. The difficulty begins when a particular code is presented in a concrete form. Even in the case of such a small community as the Khojas, who have contrived to combine adhesion to the Mahomedan creed with retention of certain Hindu customs, it has, up to this time, been found impossible to frame a set of rules of inheritance on which the leaders of the sect will agree. And any code not based on general agreement would either cause dangerous discontent or remain a dead letter. The misconceptions which arose about the Guardians and Wards Act, the authors of which expressly disavowed any intention of

altering native law, illustrate the sensitiveness which prevails about such matters.

Codes and text-books.

And what, after all, is a code? It is a text-book enacted by the legislature. Several of the Anglo-Indian codes extend only to particular provinces of British India. But, as clear and accurate statements of the law, they possess much authority in the provinces to which they have not been formally extended. Indeed, it was Sir Henry Maine's view that the proper mode of codifying for India was to apply a code in the first instance to a particular province, where its enactment would meet with no opposition, and gradually extend its operation after the country had become familiarized with its contents, and accepted it as a satisfactory statement of the law. When this stage had been reached, what had been used as a text-book might be converted into a law. Now, the author of a text-book enjoys many advantages over the legislators who enact a code. He can guard himself by expressions such as 'it is doubtful whether' and 'there is authority for holding.' And he can correct any error or omission without going to the legislature. If a digest such as Sir Roland Wilson's obtains general acceptance with the courts which have to administer Anglo-Mahomedan law, it will supply an excellent foundation for a future code of that law. But the time for framing such a code has not yet arrived.

CHAPTER V

BRITISH JURISDICTION IN NATIVE STATES

It seems desirable to consider, somewhat more fully than has been possible within the compass of the foregoing chapters, the powers of the Indian legislative, executive, and judicial authorities with respect to persons and things outside the territorial limits of British India, particularly in the territories of the Native States of India. For this purpose it may be convenient to examine, in the first instance, the principles applying to extra-territorial legislation in England, and then to consider what modifications those principles require in their application to India. This is the more important because the Indian Act regulating the exercise of extra-territorial jurisdiction was to a great extent copied from the English Act which had been passed for similar purposes.

Territorial character of Parliamentary legislation.

Parliamentary legislation is primarily territorial. An Act of Parliament prima facie applies to all persons and things within the United Kingdom, and not to any persons or things outside the United Kingdom.[1] In exercising its power to legislate for any part of the King's dominions Parliament is guided both by constitutional and by practical considerations. It does not legislate for a self-governing dominion, except on matters which are clearly Imperial in their nature, or are beyond the powers of the dominion legislature. And, apart from constitutional considerations, it is reluctant to deal with matters which are within the competence of a local legislature.

Principles limiting extra-territorial legislation.

In dealing with persons and things outside the King's dominions Parliament is always presumed to act in accordance with the rules and principles of international law, and its enactments are construed by the courts accordingly. It would be contrary to the received principles of international

[1] See *R.* v. *Jameson*, [1896] 2 Q. B. 425, 430.

law[1] regulating the relations between independent States for Parliament to pass a law punishing a foreigner for an offence committed on foreign territory, or setting up courts in foreign territory. It would not be contrary to those principles for Parliament to pass a law punishing a British subject for an offence committed in foreign territory, or giving English or other British courts jurisdiction in respect of offences so committed. But Parliament is reluctant, more reluctant than the legislatures of continental States, to legislate with respect to offences committed by British subjects in foreign territory. Its reluctance is based partly on the traditions and principles of English criminal law, as indicated by the averment that an offence is committed against the peace of the King, an expression inappropriate to foreign territory and by the rules as to venue and local juries; partly on the practical inconvenience of withdrawing offences from the cognizance of local courts to a court at a distance from the scene of the offence and from the region in which evidence is most readily obtainable. The difficulty about evidence is felt more strongly by British courts than by the courts of some other countries, where there is less reluctance to try offences on paper evidence.[2]

[1] i.e. to the principles of international law as understood and recognized by England and the United States. But continental States have asserted the right to punish foreigners for offences committed in foreign territories, especially for acts which attack the social existence of the State in question and endanger its security, and are not provided against by the penal law of the country in the territory of which they have taken place. Westlake, *International Law*, Part I, Peace, p. 251. And the principles of European international law cannot be applied, except with serious modifications, to States outside the European or Western family of nations.

[2] *See* Jenkyns's *British Rule and Jurisdiction*, p. 128. As to the principles on which different States have exercised their powers of punishing offences committed abroad, see Heffter, *Droit International* (fourth French edition), p. 86, note G. Where an offender has escaped from the country in which the offence was committed he can often be handed over for trial under the Extradition Acts, 1870 to 1895, which apply as between British and foreign territory, or under the Fugitive Offenders Act, 1881, which applies as between different parts of the British dominions. Thus the procedure under these Acts often supplies a substitute for the exercise of extra-territorial jurisdiction.

These general principles appear to be consistent with the canons for the construction of statutes laid down in the Jameson case of 1896[1]:—

'It may be said generally that the area within which a statute is to operate, and the persons against whom it is to operate, are to be gathered from the language and purview of the particular statute. But there may be suggested some general rules—for instance, if there be nothing which points to a contrary intention, the statute will be taken to apply only to the United Kingdom. But whether it be confined in its operation to the United Kingdom, or whether, as is the case here,[2] it be applied to the whole of the Queen's dominions, it will be taken to apply to all the persons in the United Kingdom, or in the Queen's dominions as the case may be, including foreigners who during their residence there owe temporary allegiance to Her Majesty. And, according to its context, it may be taken to apply to the Queen's subjects everywhere, whether within the Queen's dominions or without. One other general canon of construction is this—that if any construction otherwise be possible, an Act will not be construed as applying to foreigners in respect to acts done by them outside the dominions of the sovereign power enacting. That is a rule based on international law, by which one sovereign power is bound to respect the subjects and the rights of all other sovereign powers outside its own territory.'

Cases in which Parliament legislates for offences committed out of British territory.

Under these circumstances the classes of cases in which Parliamentary legislation has given jurisdiction to British courts in respect of offences committed out of British territory are not numerous. The most important of them are as follows:—

(1) Offences committed at sea.

(2) Treason.

(3) Murder and manslaughter.

(4) Slave trade offences.

(5) Offences against the Explosive Substances Act, 1883.

(6) Offences, such as forgery and perjury, committed abroad with reference to proceedings in some British court.

(7) Bigamy.

(8) Offences against certain provisions of the Foreign Enlistment Act, 1870.

[1] *R.* v. *Jameson*, [1896] 2 Q. B. 425, 430, Judgement of Lord Russell, L. C. J., on demurrer to indictment.

[2] See 33 & 34 Vict. c 90, s. 2.

(1) The exercise by English courts of jurisdiction in respect of offences committed on the high seas arises from the necessities of the case, i.e. from the absence of territorial jurisdiction. These offences, being committed outside the body of any English county, could not be dealt with by the ordinary criminal courts of the country, in the exercise of their ordinary criminal jurisdiction. They were originally dealt with by the court of the admiral, but are now, under various enactments, triable by ordinary courts of criminal jurisdiction as if committed within the local jurisdiction of those courts.[1] Offences at sea.

The jurisdiction extends to offences committed on board a British ship, whether the ship is on the open sea or in foreign territorial waters below bridges, and whether the offender is or is not a British subject or a member of the crew, and although there may be concurrent jurisdiction in a foreign court.[2] The principle on which Parliament exercises legislative, and the courts judicial, powers, is that a British ship is to be treated as if it were an outlying piece of British territory.[3] Theoretically, Parliament might, without bringing itself into conflict with the rules of international law, legislate in every case in respect of an offence committed by a British subject on board a foreign ship when on the high seas. But it has abstained from doing so in cases where the British subject is a member of the crew of the foreign ship, because he may be treated as having accepted foreign law for the time, and because of the practical difficulties which would arise if members of the same crew were subject to two different laws in respect of the same offence.

The principles on which Parliament has exercised its legislative powers with respect to offences on board ship are

[1] See 4 & 5 Will. IV, c. 36, s. 22; 24 & 25 Vict. cc. 94 and 97; 57 & 58 Vict. c. 60, s. 684; and as to the Colonies, 12 & 13 Vict. c. 96.

[2] *R.* v. *Anderson*, L. R. 1 C. C. R. 161; *R.* v. *Carr*, 10 Q. B. D. 76. The rule is subject to modifications in the case of alien enemies, or aliens on board English ships against their will. See Stephen, *History of the Criminal Law*, ii. 4–8.

[3] The analogy is not complete. For instance, a British ship in foreign territorial waters is, or may be, subject to a double jurisdiction.

illustrated by ss. 686 and 687 of the Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), which run as follows :—

'686.—(1) Where any person, being a British subject, is charged with having committed any offence on board any British ship on the high seas, or in any foreign port or harbour, or on board any foreign ship to which he does not belong, or, not being a British subject, is charged with having committed any offence on board any British ship on the high seas, and that person is found within the jurisdiction of any court in Her Majesty's dominions, which would have had cognizance of the offence if it had been committed on board a British ship within the limits of its ordinary jurisdiction, that court shall have jurisdiction to try the offence as if it had been so committed.

12 & 13 Vict. c. 96. '(2) Nothing in this section shall affect the Admiralty Offences (Colonial) Act, 1849.

'687. All offences against property or person committed in or at any place either ashore or afloat out of Her Majesty's dominions by any master, seaman, or apprentice, who at the time when the offence was committed is, or within three months previously has been, employed in any British ship, shall be deemed to be offences of the same nature respectively, and be liable to the same punishment respectively, and be inquired of, heard, tried, determined, and adjudged in the same manner and by the same courts and in the same places as if those offences had been committed within the jurisdiction of the Admiralty of England; and the costs and expenses of the prosecution of any such offence may be directed to be paid as in the case of costs and expenses of prosecutions for offences committed within the jurisdiction of the Admiralty of England.'

Section 689 gives powers of arrest, &c., in cases where jurisdiction may be exercised under s. 687.

It will be observed that s. 686 draws a distinction between British subjects and others, and between British subjects who do, and those who do not, belong to a foreign ship. The terms in which s. 687 are expressed are very wide, and it is possible that English courts in construing them would limit their application with reference to the principles of international law. See the remarks in *R.* v. *Anderson*, where the case was decided independently of the enactment reproduced by this section.[1]

[1] Piracy by the law of nations, committed on the open sea, whether by a British subject or not, is triable by an English court under the criminal jurisdiction derived from the Admiralty. But this jurisdiction is not conferred by any special statute. As to what constitutes piracy *jure gentium*, see *Attorney-General for the Colony of Hong Kong* v. *Kwok-a-Sing*, L. R. 5 P. C. 179, 199 (1873), and Stephen, *History of the Criminal Law*, ii. 27.

(2) Treason committed abroad is triable in England under an Act of 1543–4 (35 Henry VIII, c. 2). Treason, if committed in the territory of a foreign State, may very possibly not be an offence against the law of that State, and therefore not be punishable by the courts of that State. Treason.

(3) Murder committed by a British subject in foreign territory was made triable in England under a special commission of oyer and terminer by an Act of Henry VIII (33 Henry VIII, c. 23). It was by a special commission under this Act that Governor Wall was, in 1802, tried and convicted of a murder committed in 1782.[1] The Act was extended by an Act of 1803 (43 Geo. III, c. 113, s. 6) to accessories before the fact and to manslaughter. Both these enactments were repealed by an Act of 1828 (9 Geo. IV, c. 31), which re-enacted their provisions with modifications as to procedure. The Act of 1828 was repealed and reproduced with modifications by an enactment in one of the consolidating Acts of 1861 (24 & 25 Vict. c. 100, s. 9), which is the existing law. Murder and manslaughter.

(4) Offences against the Slave Trade Acts are triable by English courts if committed by any person within the King's dominions or by any British subject elsewhere (see 5 Geo. IV, c. 114, ss. 9, 10). Slave trade offences.

(5) Offences against the Explosive Substances Act, 1883 (46 & 47 Vict. c. 3), i.e. offences by dynamiters, are triable by English courts when committed by any person in any part of the King's dominions or by any British subject elsewhere. Offences against Explosive Substances Act.

(6) Offences such as perjury and forgery are triable where the person charged is apprehended or in custody. See s. 8 of the Perjury Act, 1911 (3 & 4 Geo. V, c. 6) and s. 14 of the Forgery Act, 1913 (3 & 4 Geo. V, c. 27). Perjury and forgery.

(7) Under s. 57 of the Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), bigamy is punishable in England or Ireland, whether the bigamous marriage has taken place in England or Ireland *or elsewhere*, but the section does not Bigamy.

[1] Stephen, *History of the Criminal Law*, ii. 2.

extend to any second marriage contracted elsewhere than in England or Ireland by any other than a subject of His Majesty.

Foreign Enlistment Act.

(8) The Foreign Enlistment Act, 1870 (33 & 34 Vict. c. 90), is declared by s. 2 to extend to all the dominions of His Majesty, including the adjacent territorial waters, and some of its provisions, e.g. ss. 4, 7, extend to offences committed by any person being a British subject within or without His Majesty's dominions. The construction and operation of this Act were commented on in the case of *R.* v. *Jameson*, [1896] 2 Q. B. 425.

Classes of British subjects.

British subjects in the proper sense are of two classes :—

(1) Natural-born British subjects ; and

(2) Naturalized British subjects.

Every person born within the King's dominions, whether of British or of foreign parents, is a natural-born British subject, unless he has renounced his British nationality in manner provided by s. 4 of the Naturalization Act, 1870 (33 & 34 Vict. c. 14).

Persons born out of the King's dominions whose fathers or grandfathers in the male line were natural-born British subjects are also by Act of Parliament [1] natural-born British subjects, subject to certain exceptions and qualifications, unless they have renounced their British nationality in manner provided by law.

Naturalized British subjects may have become so either by virtue of the imperial Naturalization Act of 1870, or by virtue of the law of a British possession. The rights of aliens naturalized under the imperial Act are not expressed by the Act to extend beyond the United Kingdom (s. 7). Naturalization by virtue of the law of a British possession does not operate beyond the limits of that possession. But it would seem that the holders of certificates of naturalization granted either under the imperial or under a colonial Act,

[1] 25 Edw. III, stat. 2 ; 7 Anne, c. 5, s. 3 ; 4 Geo. II, c. 21 ; 13 Geo. III, c. 21.

are entitled to claim British protection in all foreign countries other than their country of origin.[1]

The rights of an alien to whom a certificate of naturalization is granted under the Act of 1870 are subject to the qualification that he is not, when within the limits of the foreign State of which he was the subject previously to obtaining his certificate of naturalization, to be deemed to be a British subject, unless he has ceased to be a subject of that State in pursuance of the laws thereof, or of a treaty to that effect (33 & 34 Vict. c. 14, s. 7).

A child born abroad of a father or mother (being a widow) who has obtained a certificate of naturalization in the United Kingdom is, if during infancy he becomes resident with the parent in the United Kingdom, to be deemed a naturalized British subject (see 33 & 34 Vict. c. 34, s. 10 (5)).

In many of these cases there may be a double nationality. This is specially apt to occur in the case of the children or grandchildren, born abroad, of British subjects. The Acts which gave such persons the status of British subjects were passed for a special purpose, are apt to cause conflicts of law, and are not always suitable to Oriental circumstances. Enactments of this kind ought, it may reasonably be argued, to be construed *secundum materiam*. It appears to have been held at one time that the expression 'natural-born subjects' is, in the statutes affecting India, always taken to mean European British subjects,[2] and, although this position can no longer be maintained in its entirety (see, e.g., 21 & 22 Vict. c. 106, s. 32), there is ground for argument that it may be construed subject to restrictions in its application to descendants of non-European subjects of the Crown.

[1] For a discussion of the difficult questions which have been raised as to the effect of the statutory provisions under which certificates of naturalization are granted, and particularly as to the construction of s. 7 of the Naturalization Act, 1870, see the Report of the Interdepartmental Committee on the Naturalization Laws, 1901 ; Cd. 723. The Act of 1870 is now superseded by the British Nationality and Status of Aliens Act, 1914. Naturalization of aliens in India is provided for by Act XXX of 1852, which must be read with reference to the later imperial Acts.

[2] See Minutes by Sir H. S. Maine, No. 97.

Conclusions as to Parliamentary legislation for extra-territorial offences.

The conclusions to be drawn from the enactments and the reported decisions appear to be—

(1) It would not be consistent with the principles of international law regulating the relations between independent civilized States [1] for English courts to exercise, or for Parliament to confer, jurisdiction in respect of offences committed by foreigners in foreign territory. 'I am not aware,' says the late Mr. Justice Stephen, 'of any exception to the rule that crimes committed on land by foreigners out of the United Kingdom are not subject to the criminal law of England, except one furnished by the Merchant Shipping Act of 1854 (17 & 18 Vict. c. 104, s. 267). There may be exceptions in the orders made under the Foreign Jurisdiction Acts.' [2]

(2) English courts are unwilling to exercise, and Parliament is unwilling to confer, jurisdiction in respect of offences committed by British subjects in foreign territory, except in special classes of cases.

With respect to offences committed in British territory and abetted in foreign territory, or vice versa, it is difficult to lay down any general proposition which does not require numerous qualifications.

In the case of felonies committed in England or Ireland and aided in foreign territory, the law is settled by the Accessories and Abettors Act, 1861 (24 & 25 Vict. c. 94, s. 7), which enacts that where any felony has been completely committed in England or Ireland, the offence of any person who has been an accessory, either before or after the fact, to the felony, may be dealt with, inquired of, tried, determined, and punished by any court which has jurisdiction to try the principal felony, or any felonies committed in any

[1] But see the qualifying note above, p. 373.

[2] *History of the Criminal Law*, ii. 12. Section 267 of the Act of 1854 is now represented by s. 687 of the Act of 1894 noticed above. As to the orders under the Foreign Jurisdiction Acts, see below, p. 383. There may also be an exception in the case of a breach of duty to the Crown committed abroad by a foreign servant of the Crown.

county or place in which the act by reason whereof that person has become accessory has been committed; and in any other case the offence of an accessory to a felony may be dealt with, inquired of, tried, determined, and punished by any court which has jurisdiction to try the principal felony or any felonies committed in any county or place in which the person being accessory is apprehended, or is in custody, whether the principal felony has been committed on the sea or on the land, or begun on the sea or completed on the land, or begun on the land or completed on the sea, and whether within His Majesty's dominions, or without, or partly within His Majesty's dominions, and partly without. But there is no similar comprehensive enactment with respect to misdemeanours, and it is obvious that different considerations would apply in the case of such breaches of statutory regulations as are not necessarily offences by the law of another country.

As to offences committed in foreign territory and instigated or aided in England, questions of great importance and delicacy have arisen. These questions were raised in the famous case of *R.* v. *Bernard*,[1] and are touched on by the late Mr. Justice Stephen in his *History of the Criminal Law*. His conclusion is that, 'whatever may be the merits of the case legally, it seems to be clear that the legislature ought to remove all doubt about it by putting crimes committed abroad on the same footing as crimes committed in England, as regards incitement, conspiracy, and accessories in England. Exceptions might be made as to political offences, though I should be sorry if they were made wide.'[2] The English legislature has, however, never gone so far as to adopt these conclusions in general terms, though it has declared the law in particular cases. Thus, with respect to murder and manslaughter, the Offences against the Person Act, 1861 (24 & 25 Vict. c. 100, ss. 4, 9), has enacted in substance that persons who conspire in England to murder foreigners abroad,

[1] Foster and Finlason, 240 (1858); 8 State Trials, N. S., 887.
[2] Vol. ii, p. 14.

or in England incite people to commit murder abroad, or become in England accessories, whether before or after the fact, to murder or manslaughter committed abroad, shall be in the same position in every respect as if the crime committed abroad had been committed in England.

As to theft, it was decided in 1861,[1] on a question which arose under an Act of 1827 (7 & 8 Geo. IV, c. 29), that where goods are stolen abroad, e.g. in Guernsey, there could not be a conviction for receiving the goods in England, and this decision was considered applicable to cases under the Larceny Act, 1861 (24 & 25 Vict. c. 96), by which the Act of 1827 was replaced. This loophole in the criminal law has now been stopped by the Larceny Act, 1896 (59 & 60 Vict. c. 52), which punishes receipt in the United Kingdom of property stolen outside the United Kingdom. A similar question arose at Bombay in 1881[2] on the construction of ss. 410 and 411 of the Indian Penal Code; and it was held by the majority of the Court that certain bills of exchange stolen at Mauritius, where the Indian Penal Code was not in force, could not be regarded as stolen property within the meaning of s. 410 so as to make the person receiving them at Bombay liable under s. 411. In order to meet this decision, Act VIII of 1882 amended the definition of stolen property in s. 410 of the Penal Code by adding the words, 'whether the transfer has been made, or the misappropriation or breach of trust has been committed, within or without British India.' The arguments and judgements in the Bombay case deserve study with reference not merely to the existing state of the law, but to the principles on which legislation should proceed. Legislation with respect to offences committed in foreign territory and instigated or aided in British territory always requires careful consideration, especially in its application to foreigners, and with reference to minor offences, which may be innocent acts under the foreign law.

[1] *Reg.* v. *Debruiel*, 11 Cox C. C. 207.
[2] *Empress* v. *S. Moorga Chetty*, I. L. R. 5 Bom. 338.

Foreign Jurisdiction Acts

Under the Orders in Council made in pursuance of the successive Foreign Jurisdiction Acts British courts have been established and British jurisdiction is exercised in numerous foreign territories in respect not only of British subjects, but of foreigners, i.e. in cases to which Parliamentary legislation would not ordinarily extend. But this jurisdiction, though recognized, confirmed, supported, and regulated by Acts of Parliament, derives its authority ultimately, not from Parliament, but from powers inherent in the Crown or conceded to the Crown by a foreign State.[1]

Origins of consular jurisdiction. The capitulations.

The jurisdiction arose historically out of the arrangements which have been made at various times between the Western Powers and the rulers of Constantinople. These arrangements date from a period long before the capture of Constantinople by the Turks. As far back as the ninth and tenth centuries the Greek Emperors of Constantinople granted to the Warings or Varangians from Scandinavia capitulations or rights of extra-territoriality, which gave them permission to own wharves, carry on trade, and govern themselves in the Eastern capital. The Venetians obtained similar capitulations in the eleventh century, the Amalfians in 1056, the Genoese in 1098, and the Pisans in 1110, and thenceforward they became extremely general. When the Turks took Constantinople they did little to interfere with the existing order of things, and the Genoese and Venetian capitulations were renewed.[2] The first of what may be called the modern capitulations was embodied in the Treaty of February, 153$\frac{5}{6}$, between Francis I of France and Soliman the Magnificent.

[1] The first and most important section of the Foreign Jurisdiction Act, 1890 (53 & 54 Vict. c. 37), is in form a declaration as well as an enactment. Section 2 is in form an enactment only, and possibly the difference was intentional.

[2] See the Introduction by J. Theodore Bent to *Early Voyages and Travels in the Levant*, pp. ii, iii—Publications of the Hakluyt Society. Mr. Rashdall has drawn an interesting parallel between the self-governing communities of foreign merchants in Oriental countries and the self-governing communities of foreign students which, at Bologna and elsewhere, were eventually developed into Universities (*Universities of Europe in the Middle Ages*, i. 153). As to the jurisdiction over students at Bologna, see ibid. pp. 178 sqq.

This treaty, although, as has been seen, it embodied no new principle, yet from another point of view marked a new and important departure in international law, if and so far as international law can be said to have existed at the beginning of the sixteenth century. The modern capitulations negatived the theory that the 'infidel' was the natural and necessary enemy of a Christian State, and admitted the Mahomedan State of Turkey for limited purposes into the family of European Christian States. At the same time they recognized the broad differences between Christian and Mahomedan institutions, habits, and feelings by insisting on the withdrawal from the jurisdiction of the local courts of Christian foreigners who resorted to Turkish territory for the purposes of trade, and by establishing officers and courts with jurisdiction over disputes between such foreigners.

The principles on which separate laws and a separate jurisdiction have been at times different and in different countries claimed on behalf of Western foreigners trading to the East were enunciated, many generations afterwards, by Lord Stowell in a passage which has become classical :—

'It is contended on this point that the King of Great Britain does not hold the British possessions in the East Indies in right of sovereignty, and therefore that the character of British merchants does not necessarily attach on foreigners locally resident there. But taking it that such a paramount sovereignty on the part of the Mogul princes really and solidly exists, and that Great Britain cannot be deemed to possess a sovereign right there; still it is to be remembered that wherever even a mere factory is founded in the eastern parts of the world, European persons trading under the shelter and protection of those establishments are conceived to take their national character from that association under which they live and carry on their commerce. It is a rule of the law of nations, applying practically to those countries, and is different from what prevails ordinarily in Europe and the western parts of the world, in which men take their present national character from the general character of the country in which they are resident. And this distinction arises from the nature and habit of the countries. In the western parts of the world alien merchants mix in the society of the natives; access and intermixture are permitted; and they become incorporated to almost the full extent. But in the East, from the oldest times, an immiscible character has been kept up; foreigners are not admitted into the general body and mass of the society of the nation;

they continue strangers and sojourners as their fathers were—*Doris amara suam non intermiscuit undam.* Not acquiring any national character under the general sovereignty of the country, and not trading under any recognized authority of their own original country, they have been held to derive their present character from that of the association or factory under whose protection they live and carry on their trade.' [1]

The Levant Company.

The first of the capitulations granted to England bears date in the year 1579,[2] and two years afterwards, in 1581, Queen Elizabeth established the Levant Company for the purpose of carrying on trade with the countries under the Ottoman Porte. In 1605 the company obtained a new charter from James I, and this charter, as confirmed by Charles II, recognized by various Acts of Parliament, and supplemented by usage, constituted the basis of the British consular jurisdiction in the East until the abolition of the Levant Company in 1825.[3]

By the charter of King James, as confirmed by the charter of King Charles, the company was invested with exclusive privileges of trade in great part of the Levant and Mediterranean seas, and with a general power of making by-laws and appointing consuls with judicial functions in all the regions so designated.

The charter of King James was altogether in the nature of a prerogative grant from home, and was not founded on

[1] *The Indian Chief*, (1800) 3 Robinson, Adm. Rep. p. 28. See also the remarks of Dr. Lushington in the case of the *Laconia*, (1863) 2 Moo. P. C., N. S., p. 183.

[2] The capitulations with England now in force were confirmed by the Treaty of the Dardanelles in 1809, and are to be found in Hertslet's *Treaties*, ii. 346, and in Aitchison's *Treaties*, third edition, vol. xi, Appendix I.

[3] The statements in the following paragraphs, as to the jurisdiction exercised by the officers of the Levant Company, are derived partly from a memorandum written for the Foreign Office by the late Mr. Hope Scott (then Mr. J. R. Hope), by whom the Foreign Jurisdiction Act, 1843, was drawn. [This memorandum, which at the date of the first edition of this book had not been published, is now printed as Appendix VI to Sir Henry Jenkyns's *British Rule and Jurisdiction beyond the Seas.*] See also the case of *The Laconia; Papayanni* v. *The Russian Steam Navigation Company*, 2 Moo. P. C., N. S., 161. As to the history of the Levant Company, see Mr. Bent's *Introduction to Early Voyages and Travels in the Levant*, noticed above, and the article on 'Chartered Companies' in the *Encyclopaedia of the Laws of England.*

any recital of concessions made by the various sovereigns in whose dominions it was to take effect. It did not expressly refer to any such concessions as the basis of a power to withdraw British subjects from the foreign tribunals, and such a power was apparently assumed even in cases in which those tribunals might, according to the local law, supply the legitimate forum. The charter merely provided that there should be no infraction of treaties.

The main strength of the coercive jurisdiction given by the charter appears, in Turkey at least, to have depended, on the one hand, upon the corporate character of the company and the power which it thus had over its own members, and, on the other hand, upon its exclusive privileges of trade which enabled it to prevent the influx of disorderly merchants and seamen.

The charter did not contemplate the exercise of any criminal jurisdiction properly so called, nor any of a civil character in mixed suits. These branches of the consular jurisdiction in the East are probably of gradual acquisition, and perhaps were not claimed at the time when King James and King Charles granted their charters.

Dissolution of Levant Company.

The jurisdiction conceded by the Sublime Porte was exercised mainly[1] by officers called consuls[2], who were appointed by the Levant Company, and whose procedure was regulated by by-laws of the Company made under powers very like those granted to the East India Company.

The Levant Company, with its exclusive privileges of trading and its indefinite legislative and judicial powers, closely resembled the East India Company; and the legal

[1] The jurisdiction was exercised also by the ambassador, who was appointed by the Crown, but was until 1803 nominated and paid by the Levant Company. He continued to be chief judge of the consular court down to 1857.

[2] Of course the use of the word 'consul' is of much older date; see Murray's Dictionary, and Du Cange, s. v., and the Report of the Select Committee of the House of Commons on Consular Establishments, 1835. As to the French consuls in the Levant during and before the seventeenth century, see Masson, *Hist. du Commerce Français dans le Levant*, p. xiv.

difficulties which arose when the East India Company extended the exercise of its legislative powers beyond the staff of its factories illustrate the technical difficulties which arose or might have arisen under the jurisdiction exercised by the consular officers of the Levant Company. But, as the East India Company grew, the Levant Company dwindled, and in 1825 it was formally dissolved. The Act which provided for its dissolution (6 Geo. IV, c. 33) enacted that thereafter all such rights and duties of jurisdiction and authority over His Majesty's subjects resorting to the ports of the Levant for the purposes of trade or otherwise as were lawfully exercised or performed, or which the various charters or Acts, or any of them, authorized to be exercised and performed, by any consuls or other officers appointed by the Company, or which such consuls or other officers lawfully exercised and performed under and by virtue of any power or authority whatever, should be vested in and exercised and performed by such consuls and other officers as His Majesty might be pleased to appoint for the protection of the trade of His Majesty's subjects in the ports and places mentioned in the charters and Acts.

Difficulties arising from dissolution of Levant Company.

The intention of the Act, doubtless, was to transfer to the consular officers appointed by the Crown all the powers formerly vested in the consular officers appointed by the Levant Company. But it soon appeared that the dissolution of the Company materially increased the difficulty of the task imposed on the consuls. The authority which had previously supported them was gone, and the prescriptive respect which might formerly have attached to the powers conferred by the charter was disturbed by the necessity which had now arisen of testing those powers by the recognized principles of the English constitution.

In 1826 the law officers of the Crown threw doubts on the legality of the general powers of fine and imprisonment, and of the power which had previously been held to be vested in the consuls of sending back British subjects in certain

cases to this country, and thus the coercive character of the jurisdiction was greatly shaken.

Moreover, the Act of George IV had made no provision in lieu of the Company's power of framing by-laws, and no method had been devised for meeting the difficulties arising out of a strict adherence to English jurisprudence and out of deviations from it by the consular tribunals.

And, lastly, the criminal and international jurisdiction had gradually assumed a form which the new state of affairs rendered in the highest degree important, but the exercise of which transcended such authority as the Company's consuls might previously have claimed.

In 1836, eleven years after the dissolution of the Levant Company, an Act (6 & 7 Will. IV, c. 78) was passed to meet these difficulties. It recited that by the treaties and capitulations subsisting between His Majesty and the Sublime Porte full and entire jurisdiction and control over British subjects within the Ottoman dominions in matters in which such British subjects are exclusively concerned was given to the British ambassadors and consuls appointed to reside within the said dominions, and that it was expedient for the protection of British subjects within the dominions of the Sublime Porte in Europe, Asia, and Africa, and likewise in the States of Barbary, as well as for the protection of His Majesty's ambassadors, consuls, or other officers appointed or to be appointed by His Majesty for the protection of the trade of His Majesty's subjects in the said ports and places, that provision should be made for defining and establishing the authority of the said ambassadors, consuls, or other officers. And it went on to enact that His Majesty might by Orders in Council issue directions to His Majesty's consuls and other officers touching their rights and duties in the protection of his subjects residing in or resorting to the ports and places mentioned, and also directions for their guidance in the settlement of differences between subjects of His Majesty and subjects of any other Christian Power in the dominions of the Sublime Porte.

The Act of 1836 was a complete failure, and remained a dead letter. Its language and machinery were in many respects defective and open to objection.

Failure of Act of 1836; its causes.

British extra-territorial jurisdiction in the Levant was derived from two main sources: the authority of the Sublime Porte and the authority of the Crown of England. The charters of James and Charles ignored one of these sources, and used language which seemed to treat the jurisdiction exercised by the consular officers of the Levant Company as resting exclusively on the prerogative of the Crown. The language of the Act of 1825 was sufficiently general to include, and was perhaps intended to include, authority derived from the Porte and from the consent of other European Powers, but the Act makes no specific reference to either of these sources. The Act of 1836 erred in the opposite direction. Its language was so framed as to countenance the theory, always disavowed by the English Government, that British ambassadors and consuls were in respect of their jurisdiction delegates of the Porte, instead of being officers of the Crown exercising powers conceded to the Crown by the Porte.

Again, the preamble, by referring specifically to the capitulations, and to cases in which British subjects were exclusively concerned, tended to discredit those important parts of the jurisdiction which had arisen from usage or which related to cases affecting foreign subjects under the protection of Great Britain.

Usage had played an important part in the development of British jurisdiction in the Levant. At the outset that jurisdiction, as has been seen, did not include criminal jurisdiction, properly so called, nor civil jurisdiction in suits of a mixed character. But by 1836 the subject-matter of this jurisdiction appears[1] to have included, either generally and constantly or in some places and occasionally—

(1) Crimes and offences of whatever kind committed by British subjects;

(2) Civil proceedings where all parties were British subjects;

[1] According to Mr. Hope Scott.