

PREFACE TO THE FOURTH EDITION.

The last edition of this work was brought out by Mr. Mayne more than ten years ago and the extent and importance of the changes effected by the statute law as well as the range of judicial interpretation during this rather long period, have been thought to justify the work being rewritten to a considerable extent. The publishers also allowed the editor a very free hand in doing everything possible to enhance the usefulness of the book to the Bench and to the Bar and of this generous permission the editor has taken full advantage, so that while the credit will always belong to Mr. Mayne for those qualities of the work which have gained for it the general approbation of the profession, the editor has to take full responsibility for such shortcomings as must inevitably be found in bringing up to date a work of such magnitude.

When regard is had to the fact that more than half the population on whom the Penal Code in some shape or other is binding has not the good fortune to live under the protection of one or the other of the four Chartered High Courts, no apology will be expected for having incorporated into this work the rulings of the several High Courts in British India, other than the Chartered High Courts and for occasional references to the decisions of the highest tribunals in the more prominent of the Native States. A close study of the decisions of the various

Chief Courts* and of Judicial Commissioners has revealed the fact that the legal talent available in those courts is of a very high order and in no way inferior to that which is responsible for the bulk of the pronouncements of the Chartered High Courts; and these decisions have thrown light on many a point which would have been left obscure if the editor had confined himself to the reported decisions of the Chartered High Courts.

The enormous multiplication during the past ten years of private reports has not been such an un-mixed evil as it is thought to be in some quarters, but it is calculated to multiply tenfold the difficulty of the Legal Commentator, since some of these private reports apparently have no other guiding principle in the selection of cases than that of complying with the exigencies of space, with the natural result that all manner of decisions, good, bad and indifferent, are welcomed by them and the same case thus finds reported in perhaps half a dozen different sets of reports. Great care has been taken to help the busy practitioner by indicating the substantial identity of what the ordinary digests often exhibit as different rulings on a point.

Care has also been taken to incorporate into the book such of the recent English decisions as are calculated to elucidate the general principles of law, and also such as, owing to a similarity of statutory provisions in the two countries, might be of real help in interpreting the language of the Penal Code. It need hardly be pointed out that even in England, since the establishment of the Court of Criminal

Appeal, the number of important criminal cases reported is rapidly increasing.

All this has led to considerable increase in the bulk of the book and consequently it has been thought advisable to omit the last three chapters of the third edition, dealing with Criminal Pleadings and Procedure.

Several important Acts and Regulations which have constantly to be referred to by the practitioner in handling criminal cases have been put into the appendices and annotated with rulings arranged in the order of the sections, while changes in the statute law which are likely to be made in the near future have also, as far as possible, been anticipated. The case law has been brought up to the end of July, 1914.

25th August, 1914.

HIGH COURT HOUSE,
MADRAS.

S. SWAMINADHAN.

PREFACE TO FIRST EDITION.

THIS work is entirely different, both in arrangement and scope, from my Commentary on the Penal Code which it will supersede. It is divided into two parts. The first contains the Indian Penal Code with some notes, which seemed most suitably placed in connection with the text. References are appended to every section which is discussed in Part II., so as to enable the reader to find at once everything that has been said about it. In Part II. I have attempted to offer a methodized view of the Criminal Law at present administered in India, so far as it is based on the Penal Code.

It will be observed that I have made a more extensive use of the decisions of the Civil Courts than is usual in works on Criminal Law. This seems to me necessarily to follow from a perception of the fact that Criminal Law is itself only a branch of the general law of the country. With the exception of purely statutory offences, nothing is a crime which has not previously been a wrong, and in most cases, before the accused can be convicted of a crime, it is necessary to show that he has committed an act which would be treated as illegal by a Civil Court. In England, where knowledge is highly specialized, and where every practitioner has ready access to extensive libraries, it may be sufficient to cite decisions of the Criminal Courts. In India, where, outside of the Presidency Towns,

law books are often unattainable, both Advocates and Judges will, I think, be assisted by being supplied with information of a more wide and ample character.

It may, perhaps, be charged against me, that I have adopted a line of discussion which has frequently been reprobated by the Judicial Committee—that of attempting to explain the Code by reference to English authorities. My chief answer must be that, in doing so, I am following the example of the Indian Courts, as will be seen in every volume of their reports. It is quite certain that whenever an appeal is preferred to the High Courts, if any question of law is not covered by Indian authority, it will be discussed with reference to English text-books and decisions. I have attempted to supply the local Bar and Bench with the authorities by which their proceedings will undoubtedly be tested on appeal. In most cases, however, the objection is itself inapplicable. The Penal Code supplies a series of clear and definite rules, which are to be found in numbered sections, instead of having to be hunted for through a library of law books. The application of the rules depends upon the facts of each case, which shade away by infinite degrees from absolute certainty to the slightest suspicion. In such cases the recorded experience of centuries of English experts must be of the highest importance.

I have to acknowledge my continual obligation to the great works of the late Sir James Stephen, which can never be overlooked by anyone who is

interested in Criminal Law. I have also constantly borrowed from the Code of English Criminal Law, drawn up and reported on in 1879. The first draft of this Code was prepared by Sir James Stephen under instruction from the Government. It was introduced as a Bill in the House of Commons by the Attorney-General, and was at once referred to a Committee, consisting of Lord Blackburn, Lord Justice Lush, Mr. Justice Barry (an eminent Irish Judge), and Sir James Stephen. By them it was minutely examined, line by line, and again issued with their emendations, and with a report, which was written by Sir James Stephen. There the matter ended as regards Parliament; but although the draft Code will probably never become law, it and the Report upon it will remain as an authentic record of what the English Criminal Law was believed to be by the greatest Criminal lawyers of the day.

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May, 1896.