

## PREFACE

THIS is a revised edition of a book which was published in 1898.

In the year 1873 the Secretary of State for India sent to the Government of India the rough draft of a Bill to consolidate the enactments relating to the Government of India. This draft formed the subject of correspondence between the India Office and the Government of India, and an amended draft, embodying several proposals for alteration of the law, was submitted to the India Office by the Government of India in the month of February, 1876. After that date the matter was allowed to drop.

The case for consolidating the English statutes relating to India is exceptionally strong. The Government of India is a subordinate Government, having powers derived from and limited by Acts of Parliament. At every turn it runs the risk of discovering that it has unwittingly transgressed one of the limits imposed on the exercise of its authority. The enactments on which its authority rests range over a period of more than 120 years. Some of these are expressed in language suitable to the time of Warren Hastings, but inapplicable to the India of to-day, and unintelligible except by those who are conversant with the needs and circumstances of the times in which they were passed. In some cases they have been duplicated or triplicated by subsequent enactments, which reproduce with slight modifications, but without express repeal, the provisions of earlier statutes; and the combined effect of the series of enactments is only to be ascertained by a careful study and comparison of the several parts. A consolidating Act would repeal and supersede more than forty separate statutes relating to India.

In England the difficulty of threading the maze of administrative statutes is mitigated by the continuity of administrative tradition. In India there is no similar continuity. The Law Member of Council, on whom the Governor-General is mainly dependent for advice as to the nature and extent of his powers, brings with him from England either no knowledge or a scanty knowledge of Indian administration, and holds

office only for a term of five years. The members of the Civil Service who are posted at the head-quarters of the Central and Local Governments are engaged in climbing swiftly up the ladder of preferment, and rarely pause for many years on the same rung. Hence the risk of misconstruing administrative law, or overlooking some important restriction on administrative powers, is exceptionally great.

During various intervals of leisure after my return from India in 1886 I revised and brought up to date the consolidating draft of 1873, and endeavoured to make it an accurate reproduction of the existing statute law. The revised draft was submitted to the Secretary of State, but the conclusion arrived at, after communication with the Government of India, was adverse to the introduction of a consolidating measure into Parliament at that time. It was, however, suggested to me by the authorities at the India Office that the draft might, if published as a digest of the existing law, be useful both to those who are practically concerned in Indian administration, and to students of Indian administrative law. It has accordingly been made the nucleus of the following pages.

The first chapter contains such amount of historical introduction as appeared necessary for the purpose of making the existing law intelligible. The sources from which I have drawn are indicated in a note at the end of the chapter. There are many excellent summaries of British Indian history, and the history of particular periods has been treated with more or less fullness in the biographies of Indian statesmen, such as those which have appeared in Sir William Hunter's series. But a history of the rise and growth of the British Empire in India, on a scale commensurate with the importance of the subject, still remains to be written. Sir Alfred Lyall's admirable and suggestive *Rise and Expansion of the British Dominion in India* appears to me to indicate, better than any book with which I am acquainted, the lines on which it might be written.

The second chapter contains a short summary of the existing system of administrative law in India. This has been carefully revised in the present edition, and brought up to date.

The third chapter is a digest of the existing Parliamentary enactments relating to the government of India, with ex-

planatory notes. This digest has been framed on the principles now usually adopted in the preparation of consolidation Bills to be submitted to Parliament; that is to say, it arranges in convenient order, and states in language appropriate to the present day, what is conceived to be the net effect of enactments scattered through several Acts. When this process is applied to a large number of enactments belonging to different dates, it is always found that there are *lacunae* to be filled, obscurities to be removed, inconsistencies to be harmonized, doubts to be resolved. The Legislature can cut knots of this kind by declaring authoritatively how the law is to be construed. The draftsman or the text-writer has no such power. He can merely state, to the best of his ability, the conclusions at which he has arrived, and supply materials for testing their accuracy.

The fourth chapter, which deals with the application of English law to the natives of India, is based on a paper read at a meeting of the Society of Comparative Legislation. It points to a field in which useful work may be done by students of comparative jurisprudence.

In the fifth chapter I have tried to explain and illustrate the legal relations between the Government of British India and the Governments of the Native States by comparison with the extra-territorial powers exercised by British authorities in other parts of the world, such as the countries where there is consular jurisdiction, and in particular the modern protectorates. The subject is interesting and important, but full of difficulty. The rules and usages which govern the relation between States and peoples of different degrees and kinds of civilization are in a state of constant flux and rapid growth, and on many topics dealt with in this chapter it would be unsafe to lay down general propositions without qualifying and guarding words. There are quicksands at every step.

Since the date of the first edition of this work important changes have been made in the Orders in Council which regulate the exercise of jurisdiction in African protectorates, and the jurisdiction exercised by the Governor-General in Council in the Native States of India has been brought into line with the extra-territorial jurisdiction exercised under authority of the

British Crown in other parts of the world by shifting its basis from an Act of the Indian legislature to an Order in Council under the Foreign Jurisdiction Act, 1890.

I am indebted for valuable assistance to friends both at the India Office and in India. Frequent reference has also been made to the minutes of Sir H. S. Maine printed for the Indian Legislative Department in 1890.

But although the book owes its origin to an official suggestion, and has benefited by the criticisms of official friends, it is in no sense an official publication. For any statements or expressions of opinion I am personally and exclusively responsible.

I have omitted from this edition certain reprints of documents which are to be found elsewhere. The charters of the Indian High Courts are now to be found in Vol. VI of the Statutory Rules and Orders revised. The first Charter to the East India Company, with some omissions, will be found in Prothero, *Statutes and Constitutional Documents*. The other illustrative documents printed in ch. viii of the first edition would find an appropriate place in a selection of documents illustrating the constitutional history of British India. Such a selection would be of great use to students.

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