

**A SUPPLEMENT TO
THE ANGLO-INDIAN
CODES 1887, 1888**

Published @ 2017 Trieste Publishing Pty Ltd

ISBN 9780649504022

A Supplement to The Anglo-Indian Codes 1887, 1888 by Whitley Stokes

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WHITLEY STOKES

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THE ANGLO-INDIAN
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Indian Laws, statutes, etc.

A SUPPLEMENT

TO

THE ANGLO-INDIAN CODES

1887, 1888

BY

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Oxford

AT THE CLARENDON PRESS

LONDON: HENRY FROWDE

OXFORD UNIVERSITY PRESS WAREHOUSE, Aiken Corner

AND

STEVENS & SONS, LIMITED

119 & 120 CHANCERY LANE

1889

PREFATORY NOTE.

MY edition of the Anglo-Indian Codes (vol. i. 1887, vol. ii. 1888) brings Indian legislation and Indian judicial decisions, so far as they affect the Codes, down to the end of May, 1888. The following Supplement does the like for the year ending May 31, 1889. References to about sixty recent English decisions, which may usefully be consulted by those engaged in studying or administering the Codes, will be found in their proper places.

The importance of the Indian Merchandise Marks Act, 1889, and of the Succession Certificate Act, 1889, has induced me to print these enactments at length. In future editions of my work the former will be inserted as an appendix to the Penal Code, the latter as an appendix to the Succession Act. As to the Probate and Administration Act, 1881 (*The Anglo-Indian Codes*, i. 317-321), there is now some hope that this useful law will be extended to the whole of British India. For at a recent meeting of the Governor General's Council, a member of the Government of India stated that the Home Department would address the Local Governments pointing out the necessity of authorising, under Act V of 1881, all District Courts to grant administration.

I have, in conclusion, to express my gratitude for information received from the India Office and from the Legislative Department of the Government of India.

W. S.

July 15, 1889.

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SUPPLEMENT.

VOLUME I.

INTRODUCTION.

P. xvi, note 1, *add* See L. R. 14 I. A. 96: 'equity and good conscience, generally interpreted to mean the rules of English law if found applicable to Indian society and circumstances.'

— note 2, line 4, *after* 907 *insert* against the right to sue for oral abuse merely causing mental distress.

P. xviii, note, *add* Moreover, these decisions are sometimes so silent as to general principles and so conflicting with each other that they cannot be taken to represent any defined rule of the common law of India, 10 All. 439, per Mahmūd J., referring to the question whether an action will lie for slander uttered by a witness when actually under examination.

P. xx, l. 9, *add a footnote* As to this matter see *infra*, vol. i. pp. 70, 71, and vol. ii. p. 949. It has lately been said that the widest possible construction should be put upon codes of procedure as distinguished from substantive law, 15 Cal. 435, per Norris J.

THE PENAL CODE.

- P. 7, *insert in alphabetical order* :
Merchandise Marks (IV of 1889).
Metal Tokens (I of 1889).
Reserve Forces (IV of 1888).

And dele Contagious Diseases (XIV of 1868).

P. 8, Madras Presidency, col. 2, *after* l. 9 *insert* Places of Public Resort (Mad. Act. II of 1888). In l. 11, *for* VIII of 1867 *read* III of 1888.

P. 8, Bombay Presidency, col. 1, *insert* Aden Port Trust (Bom.

Act V of 1888, secs. 67-75), and under 'Municipal Acts,' for III of 1872, IV of 1878, read VI of 1873, III of 1888.

P. 8, Lower Provinces, col. 1, *insert* Calcutta Municipal Act (Ben. Act II of 1888).

P. 9, Lower Burma, *insert* Acting as advocate without authority. Touting (Act XI of 1889 secs. 78, 81).

P. 11, note 3, *add* In 12 Bom. 362, West J. defined malice as 'a conscious violation of the law to the prejudice of the plaintiff.'

P. 17, note 3, *add* and see 16 Cal. 206.

P. 21, l. 29, *add* and for the offences mentioned in sec. 9 of the Merchandise Marks Act, 1889.

P. 25, note 1, *add* But the Indian Judges are well aware that the three great deterrents from crime are the *adequacy*, the certainty, and the nature of the punishment.

P. 26, l. 9, *add* and see Act IV of 1889, sec. 9.

P. 28, note 2, *add* A Bill to prevent the disclosure of documents and information by means either of spies or of breaches of official trust is now before the House of Commons.

P. 39, note 1, *add* But see the recent case in 12 *Mud.* 72.

P. 55. As to Possession in the Common Law, see now Pollock and Wright's essay on the subject, Oxford, 1888.

P. 98, sec. 28. For the Explanation, Act I of 1889 (the Metal Tokens Act) substitutes the following:—

Explanation 1.—It is not essential to counterfeiting that the imitation should be exact.

Explanation 2.—When a person causes one thing to resemble another thing, and the resemblance is such that a person might be deceived thereby, it shall be presumed, until the contrary is proved, that the person so causing the one thing to resemble the other thing intended by means of that resemblance to practise deception, or knew it to be likely that deception would thereby be practised¹.

P. 115, note 6, *add* Sec. 78 would protect the governor of a gaol who keeps a prisoner in confinement under a warrant good on the face of it, see *Henderson v. Preston*, 21 Q. B. Div. 362.

P. 116, sec. 79. See another illustration, 12 Bom. 377.

P. 122, note 1, l. 10, *add* or the destruction of an unstamped

¹ i. e. a person who makes one thing to resemble another shall be assumed to intend the natural consequences of his act, namely that some person should be deceived by mis-

taking the one for the other. Good authorities have held that this was always the law; but Expl. 2 puts the matter beyond doubt.

document purporting to be a valuable security and required by law to be stamped, 12 Mad. 149.

— note 2, *add* No right of private defence is conferred save as against the perpetrators of offences under the Penal Code. There is no such right as against a mere trespasser, 16 Cal. 206, at p. 218.

P. 123, sec. 99, clauses 1 and 2, *see* 13 Bom. 168.

P. 143, sec. 141, note 9, l. 1, *after vi. insert* 16 Cal. 206, at p. 219.

P. 157, sec. 176. If an executor or administrator, on being required by the Court to exhibit an inventory or account under the Indian Succession Act, 1865, sec. 277, intentionally omits to comply with the requisition, he shall be deemed guilty of an offence under the Penal Code, sec. 176. *See* Act VI of 1889, sec. 7, cl. (4).

P. 159, sec. 182. *See* 14 Cal. 314.

P. 161, sec. 186, note 4. Nor is resistance to a surveyor illegally ordered by a Collector to execute a *mámlatdár's* decree for possession, 13 Bom. 168.

P. 166, sec. 193. The exhibition of an intentionally false inventory or account under the Indian Succession Act, 1865, sec. 277, shall be deemed to be an offence under the Penal Code, sec. 193. *See* Act VI of 1889, sec. 7, cl. (4).

P. 173, sec. 210, 'after it has been satisfied;' i.e. in fact. It matters not that the satisfaction was of such a nature that it could not be recognised by the Court executing the decree, 16 Cal. 126, where the adjustment of the decree had not been certified as required by the Civil Procedure Code, sec. 258.

— note 8, *add* *See* 5 All. 598; 14 Cal. 633.

P. 181, sec. 225. Custody need only be authorised by law, 11 Mad. 441.

P. 184, sec. 230. *Add a note:* No piece of metal which is not coin as here defined shall be received as money by or on behalf of any railway-administration or local authority: and if any person on behalf of a railway administration or on behalf of a local authority or on behalf of the lessee of the collection of any toll or other impost leviable by a railway-administration or local authority receives as money any piece of metal which is not such coin as aforesaid, he shall be punished with fine which may extend to ten rupees, Act I of 1889, sec. 8.

P. 194, sec. 268, note 5, para. 2, l. 8, *insert* or the cutting up meat for a dinner in sight of some Jains whose temple was close by, 12 Bom. 437.

P. 198, note 4. Sec. 283 should be read with sec. 431. Any one sustaining special injury by reason of an obstruction to a highway

may sue for damages and any other appropriate relief; and further, under sec. 133 et seq. of the Cr. P. Code, summary proceedings may be taken by a magistrate to prevent or remove any such obstruction injurious to the public, 15 Cal. 460, at p. 467.

P. 211, sec. 304 A, note 3, l. 10. When death is caused by an act in its nature criminal this section does not apply, 12 Mad. 56.

P. 219, sec. 330, l. 8, 'demand,' i.e. apparently, in respect of property, 11 Mad. 257, not e.g. a demand to return to A's house.

P. 232, sec. 372, note 5, *add* and 11 Mad. 393, at p. 401, where Muttusami Ayyar J. said that the object of the prohibition was to protect the chastity of girls under sixteen years of age.

P. 245, sec. 403, note 3. The dishonest intention may be inferred from the circumstances of the case, 12 Mad. 49; and see *Queen v. Proud*, 31 L. J. (M. C.) 71.

P. 250, sec. 411. To constitute the offence of receiving stolen property there must be proof that some person other than the prisoner had possession of the goods before the prisoner got possession of them, 15 Cal. 511, following *R. v. Cordy*, 2 Russell on Crimes, 5th ed. p. 484.

P. 254, note 4, *add* See 12 Mad. 151.

P. 268, sec. 463. As to forging answers to University examination papers, see 12 Mad. 151.

P. 273, sec. 471. See 11 Mad. 411 (fabricating receipt as voucher to cover a contemporaneous embezzlement).

P. 275, sec. 477, note 9, *add* So are a promissory note, 12 Mad. 54, and an unstamped account signed by A showing indebtedness to B, 12 Mad. 148.

Pp. 275-278. For secs. 478-489 new sections have been substituted by section 3 of the following Act, which deals with three classes of offences: (1) the imitation of trade marks; (2) the application to goods of false trade descriptions, that is, of words or figures indicating that goods are something which in fact they are not; and (3) trading in falsely-marked goods:—

ACT IV OF 1889.

(Received the assent of the Governor General on the 1st March, 1889.)

AN ACT TO AMEND THE LAW RELATING TO FRAUDULENT MARKS ON MERCHANDISE.

WHEREAS it is expedient to amend the law relating to fraudulent marks on merchandise; It is hereby enacted as follows:—

Title, extent, and commencement.

1. (1) This Act may be called the Indian Merchandise Marks Act, 1889.