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T H E L A W

RELATING TO

INDIA,

AND

THE EAST-INDIA COMPANY;

WITH

NOTES AND AN APPENDIX.

THIRD EDITION.

LONDON:

Wm. H. ALLEN & CO., LEADENHALL STREET.

1842.

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PREFACE TO THE THIRD EDITION.

THE third Edition of this volume has been corrected to the end of the First Session of the Second Parliament of Her present Majesty. It comprehends the new By-Law, substituting a Declaration for the Oath, Affidavit, or Affirmation, formerly required to be made by Proprietors of East-India Stock, at any Election of Directors or Ballot; and a continuation of the Acts of the Government of India (as far as required by the object of the work) to the latest period to which they have been received. The nature and intent of the work having already been sufficiently explained, little remains for the Editor but to express his gratitude for the encouragement which he has received to continue his labour.

While, however, in this country the work has been honoured with a degree of approbation, for which the Editor could scarcely have permitted himself to hope, some remarks of a contrary tendency have been made in India, and to these he feels called upon to offer some reply. They occur in the Preface to a publication entitled "The Rules of the Supreme Court of Judicature at Fort William in Bengal, and the Court for the Relief of Insolvent Debtors. Edited by W. H. Smoult and E. B. Ryan, Esqrs." The

writer of these remarks observes, indeed, that it " is evident that great labour and industry have been bestowed upon the work ;" but he complains that all notice is omitted of the Charters granted by the Crown in 1726 and 1753, under which Courts of Justice were erected at the Company's principal Settlements, and that subsequent Charters of similar character are only casually referred to. The latter part of the objection does not apply to the Second Edition of this Volume, which the writer of the remarks had not seen. In answer to the former, it is only necessary to state, that the Charter of 1726 was devoted solely to the creation of certain Courts of Justice which have long since been superseded, and that the Charter itself was surrendered on the grant of the subsequent Charter of 1753. The main object of this Charter was the same with that of the former, and so far it is now inoperative. It is true, as stated, that it " contains other provisions affecting the Company only, and confirms some of their most extensive powers, which to this day are in full force, and of vast importance to their political existence, though their commercial character is gone; namely, the power to appoint Generals, to raise and maintain standing Forces, Seamen, and Ships of defence, and to repel Invasions," &c.* But these powers were not then first conveyed. By the Charter of William the Third, the Company were empowered to " name and appoint Governors and Officers from time to time, in and for " their " Forts, Factories, and Plantations;" which " Governors and Officers," it is declared, " shall and may, according to the direction of the said Company, raise, train, and muster such Military Forces as shall or may be necessary for the defence of the said Forts, Places, and Plantations." How far these powers were confirmed or modified by the Charter of Justice of 1753, is a question rather of curious inquiry than practical importance; and it is certain, that their exercise has since been subjected to regulation in various respects by Act of Parliament.

* Preface, page xxiv.

The reason for retaining in force those provisions of the Charter of 1753, when the remainder was about to be abrogated, is obvious. To rescind them might have seemed to imply an intention of diminishing the powers of the Company for war and defence; which, although those powers would not, in fact, have been affected, it was desirable to avoid. On these grounds, it is submitted, that the omission complained of affords no just cause of objection.

Three other grounds of complaint are alleged. First, that the work "contains, for the most part, certain sections only of the statutes relating to India and the East-India Company, omitting repealed or altered sections." This is inaccurately, although it is hoped not uncandidly, stated. By the plan of the work repealed sections are excluded, but sections merely altered are retained, accompanied by a note pointing out the alterations. The second ground of complaint is, the omission of "some of the statutes given in former collections, and forming part of the law [introduced by the Charter of 1726 and]* still in force." The bearing of this objection is not perfectly clear. All, therefore, that can be said in answer is, that no statutes or parts of statutes still in force have been knowingly omitted, and that the object of the work was not to exhibit the history of the law, but to afford a view of its present state. The third of this series of objections is, that the collection contains statutes not peculiarly or specially affecting the East-India Company. This is undoubtedly true; and if the Editor has erred in giving too much, he must rest his defence upon his desire to render the work practically and generally useful to those for whom it was intended.

The liberal reception of the work in this country has already been noticed; but the Editor feels too deeply on the subject to refrain from recurring to it. In avowing his gratitude, more especially to those members of the various branches of the legal profession to whom he stands indebted, he feels

* The brackets are contained in the original, and copied into the quotation.

bound expressly to advert to the generous interest taken by Edward Lawford, Esq., Solicitor to the East-India Company, both in the improvement and success of the compilation. The extensive practical knowledge of the subject possessed by that gentleman, the result of long experience and of the unremitting application of a vigorous mind, gives a peculiar value to his approbation; and the flattering opinion which he has expressed of the work is one of the most gratifying circumstances accompanying its completion.

London, January, 1842.

PREFACE TO THE FIRST EDITION.

THE present work was undertaken from a conviction, the result of experience, of the necessity of such a publication.

The laws affecting India and the East-India Company are dispersed through more than a hundred volumes of the Statutes; they are to be found, in some cases, in entire Acts of Parliament of great length, specially devoted to the subjects; in others, in scattered provisions, surrounded by enactments applying to objects and interests totally unconnected with India. A very large portion of what once was law has ceased to be so, either from having been directly repealed, or being substantially at variance with subsequent Acts of the Legislature. Of that which still remains in force, much has been limited, extended, and in various respects, modified by later provisions. No one therefore, referring to any one enactment relating to the point upon which he sought information, could rely upon that which he found until he had collated the provision before him with all others existing on the subject, and from a comparison of the whole deduced the present state of the law.

Many years have elapsed since any collection of the laws relating to the East-India Company appeared, and in the period that has succeeded since the publication of the latest work on the subject, changes greater and more important than any which the Company had previously experienced, have taken place. On this account, little assistance could be derived from preceding works in preparing the present. A careful search throughout the whole of the Statutes was indispensable, as well as a careful comparison of such parts as bore on the subject. The time, labour, and thought, demanded by the task, were great, and the duties imposed by the undertaking were not unfrequently of considerable delicacy. Its execution, however, will, it is

hoped, afford what was previously wanting—a guide to the state of the Law relating to India and the East-India Company. The necessity of seeking through the Statutes at large for the various provisions on any subject will be removed, and the inquirer will here find the entire law presented to his view. A reference to the Index will afford a direction to every Act and Section relating to any given point, while the illustrative notes which are attached to the more important enactments, will answer the purpose of a Digest of the Law upon the subjects to which they relate. A few of the more recent Acts of the Government of India, to which the opportunity of reference might be desirable, have been placed in an Appendix.

After adverting to the magnitude of the labour necessary to the completion of this Volume, it would be unjust to refrain from noticing the means by which that labour has been lightened and its ends facilitated. Access has been afforded to a series of valuable legal opinions given by Mr. Lawford, Solicitor to the East-India Company, and by their present and former standing Counsel; as well as by other distinguished members of the profession, some of whom now occupy the highest judicial stations in her Majesty's Courts at Westminster.

The assistance afforded by Mr. Melvill, the Secretary of the East-India Company, calls for distinct and grateful acknowledgment. The interest which he has taken in the progress of the work, and the valuable suggestions made by him for its improvement, have greatly added to its comprehensiveness and utility.

Under these circumstances the work is submitted, in full confidence that, upon all material points, entire reliance may be placed on its accuracy and completeness.

London, 9th March, 1840.

PREFACE TO THE SECOND EDITION.

THE Second Edition of this work has been undertaken under circumstances to which it will be proper briefly to refer.

At the General Court of Proprietors of East-India Stock, held on the 17th of June last, the work was noticed in terms of warm commendation, and several Members of the Court having expressed a wish that Copies should be supplied to the Proprietors, the Chairman intimated that measures would be taken for the purpose. The Court of Directors, with the concurrence of the President of the Board of Commissioners for the Affairs of India, having thereupon been pleased to extend their approbation to the design, the present revised and enlarged edition of the work was forthwith commenced. The greatest care has been taken to render it not altogether unworthy of the distinguished favour which it has obtained. Every part of the work has been carefully examined with a view to the total exclusion of error; many new notes have been introduced; the Acts of the British Parliament are brought down to the close of the last Session, and those of the Government of India to the latest period to which they have been received. Many other additions have been made, tending greatly to increase the value of the work. Among the more important may be mentioned the introduction, at the suggestion of an influential Proprietor, of the By-Laws of the Company. It will also be observed, that the Statutes affecting the Queen's Courts in India, and the

Ecclesiastical Establishment in that country, are now illustrated by the insertion of the necessary portions of various Letters Patent from the Crown, under which their respective authorities are exercised.

The practical utility of a work like the present must greatly depend upon the facilities of reference which it offers. Under this impression, a new Index has been prepared for the present Edition, which, whether in regard to accuracy, copiousness, or convenient arrangement, will, it is confidently hoped, be found entirely satisfactory to all who may have occasion to consult the work.

London, 9th December, 1840.

W. H. L. per- *S*

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