

PART C.—JURISDICTION OF CRIMINAL COURTS IN
REGARD TO OFFENCES COMMITTED BEYOND THE
LIMITS OF BRITISH INDIA.

1. Section 188 of the Code of Criminal Procedure renders British subjects and servants of the Crown liable to be tried in British India or offences committed beyond the limits of British India in certain cases.

Persons
liable to be
tried.

2. When the acts has been committed in British territory the nationality of the offender does not, of itself, prevent him from being subject to the law of India and the jurisdiction of its Courts, and the locality of the act is comparatively unimportant. But when the act has been committed beyond the limits of British India, it is necessary to ascertain whether the accused is or is not-

- (i) a Native Indian subject of His Majesty, or
- (ii) a British subject or
- (iii) a servant of the Crown.

The locality to the act varies in importance according as the accused falls under one or the other of the above categories.

3. A person, who is not a British subject, is ordinarily not bound by the law of India and is not subject to the jurisdiction of its Courts in respect of an act done by him outside British India. But an exception is created in the case of a servant of the Crown in respect of offences committed by him in the territories of any Native Prince or Chief. For such offences, a servant of the Crown, whether he is a British subject or not; is liable to be tried" in British India. Whenever, it appears to the Court that an alien is liable to its jurisdiction for an act done by him beyond the limits of British India the special provisions of the law which is held to give jurisdiction to the Court should be expressly stated.

Liability of
Crown
servants and
aliens.

4. By section 188 of the Code of Criminal Procedure a Native Indian subject of His Majesty is liable to be dealt with by the British Courts in India for

Liability of
Native Indian
subjects.

any offence committed by him in any place whatever beyond the limits of British India as if it had been committed at any place in British India at which he may be found; and he is liable to be punished for it, if it is an offence under the Indian Penal Code, by force of section 3 of that Code.

Liability of other British subjects.

5. Any other British subject and any servant of the Crown is, by force of the same section, similarly liable to be punished in India in respect of any offence committed by him in any place in the dominions of a Native Prince or Chief in India.

Trial permissible only on the certificate of Political agent or sanction of Government.

6. The proviso to section 188 of the Code of Criminal procedure requires that no charge as to any such offence as is referred to in that section shall be inquired into in British India, without a certificate of the Political Agent if there be one for the territory in which the offence is alleged to have been committed. If there is no Political Agent, the sanction of the Provincial Government is necessary.

Even inquiry not permissible without certificate.

7. The aforesaid proviso does not merely prohibit a trial upon a charge framed after an inquiry, but even an inquiry into the accusation in the absence of a certificate, when requisite. The section itself, however, still leaves a Court competent to issue process, such as a summons or a warrant or to take any other step which is merely preliminary to an inquiry.

Court should first record a finding where the offence has been committed.

8. It follows from what has been said that it is the duty of every court, dealing with an accusation of an act alleged to be an offence and to have been committed in a place near the limits of British territory, to inquire and ascertain and record a clear finding as to whether it has been committed within or beyond those limits.

Court to record a finding about nationality of offender and insert it in charge.

9. It is also the duty of every Court, dealing with an act alleged or found to have been committed beyond the limits of British India, to inquire and ascertain and record a clear finding as to whether the accused is or not a British subject, and if he is, whether he is a Native Indian subject of His Majesty.

In every formal charge of an offence alleged to have been committed beyond the limits of British India, it should be explicitly stated either that the accused is not a British subject or if he is a British subject that he is a Native Indian subject of His Majesty or otherwise as the case may be.

10. It seems expedient to add (1) that a Magistrate is not at liberty to shirk an inquiry into nationality of an accused person merely because it may appear to him a question of nicety or difficulty, and (2) that a Magistrate is not competent to dispense with the enforcement of the law and absolve a British subject from the penal consequences of an offence, prima facie established against him; merely because the offence was not committed within the limits of British India. Both these mistakes were found to have been committed in 9 P.R. (Cr.) 1893.

Court to
record a
finding
about
nationality
of offender
and insert it
in charge.

11. In cases in which the question of nationality arises the rulings of the Chief Court (22 P.R. (Cr.) 1883, I.P.R. (Cc.) 1885, 9 P.R. (Cr.) 1893) may be consulted,

Nationality
of accused.

12. Section 189 contains a special rule of evidence for inquiries and trials under section 188. The object is to render admissible evidence taken before Courts which are not Criminal Courts of British India, in order to supply evidence which might not be otherwise procurable

Special rule
of Evidence.