CHAPTER XIII.

JUDICIAL REFORMS.

The Capitulations—Their Abuse in Egypt—Resultant Scandals—First Action of the Government for their Reform—Memorandum of Nubar Pasha—Negotiations with the English and French Governments—Appointment of an International Commission—Its Favourable Report—Opposition of the Porte—French Resistance—Assent of the other Powers—Inauguration of the New Courts—Their Organisation and Jurisdiction—Great Success of the Reform—Its Effect on the Future of Justice in Egypt.

THE subject of this chapter ranks first among the many administrative improvements effected in Egypt since the death of Mehemet Ali, and politically is second in importance only to the change in the succession and the promotion of the Viceroy to the rank of Khedive. For the first time in Egyptian history it inaugurates a reign of LAW, limited as yet in its jurisdiction, but preparing the way for a much larger measure of reform, which shall protect from executive abuse both natives and foreigners as neither have ever been protected before.

One of the worst consequences hitherto of the relation of Egypt to Turkey has been its common subjection to the Capitulations between the Porte and the Christian Powers, in virtue of which the latter have jurisdiction over their own subjects within the Ottoman dominions. The original purpose of these conventions—the earliest of which dates from Mahomet II.'s confirmation of the privileges enjoyed by the Genoese traders under the Lower Empire—was to protect foreigners adventuring into the then perilous fields of Turkish commerce from oppression by the native authorities; and, with this

view, during the next couple of centuries a body of further immunities and concessions was granted by the successive Sultans, which conferred on aliens the right of trading freely throughout the empire, subject only to such Customs duties as might be fixed by treaty; protected them from arbitrary taxation; ensured the inviolability of their domicile; entitled them to have commercial disputes between themselves settled by their own Consuls; and secured the protecting presence of these functionaries, or of their dragomans, at either civil or criminal trials to which their countrymen might be parties before the native tribunals. Valuable and necessary as these privileges were 200 years ago, when the Porte was shut out from the pale of European fellowship even more by its barbarous system of Government than by voluntary isolation, it must be confessed that by the sheer advance of civilisation, to say nothing of change in the balance of power, they have now lost much of their original justification. Not only have foreign ambassadors long ceased to be imprisoned in the Seven Towers, and their dragomans to be tripped up and bastinadoed at a nod from the Reïs Effendi, but Europeans of every rank and nationality are now nearly as safe from administrative abuse as they would be at home. In Turkey proper the sufficiency of this protection has been practically recognised by the foreign embassies, and, with rare exceptions, no attempt has been made to abuse it by carrying this extra-territorial jurisdiction beyond its treaty limits. The tendency of recent years has, indeed, been rather the other way—not merely to confine the privileges of foreigners to the strict letter of Capitulation right, but to bring them within the range of native authority to an extent which would neither have been claimed or allowed half a century ago.

In Egypt, however, the case has been very different. There the consular prerogative had been so extended by successive usurpations that not only were the native authorities ousted of every scrap of control over foreigners, but the Government itself was forced to submit to consular jurisdiction for the prosecution of charges or claims against foreign criminals or debtors; the Capitulations had, in fact, been superseded by arbitrary usage, founded on abuses to which the force of things on the one hand, and the desire of the Viceroys to attract foreigners on the other, had given the weight of law —with the practical result of depriving the executive of all power, and the native population of all justice in their relations with Europeans. This state of things was, however, of quite modern growth. Down till the death of Mehemet Ali consular authority in Cairo and Alexandria was as limited as in Smyrna, Erzeroum, or Baghdad. But during the weak rule of his successors, Abbas and Saïd, a fashion of encroachment sprung up, which, even before the death of the latter in January, 1863, had in every matter relating to foreigners placed both the Government and its subjects at the mercy of some seventeen petty consular tribunals, all of which were independent of and more or less in conflict with each other. The practical outcome of such a state of things need hardly be described. In civil matters, it compelled an Egyptian farmer or merchant, with a claim against an Englishman, Frenchman, or other foreigner, to sue the debtor in his own consulate, and, in the usual event of losing his cause there, either to abandon his claim, or pursue justice through the tedious, costly, and uncertain course of appealing to the defendant's home court anywhere in Europe. Nor was this all. The abuse had reached a point at which some of the consuls actually claimed jurisdiction over natives as defendants, and delivered judgments against them which, though as bad in law as they generally were in equity, were afterwards enforced by diplomatic pressure on the Government—which in its turn fared no better than its subjects. Not only was it also forced to follow a defaulting debtor or contractor into his particular consulate, with a minimised chance of success, but it was estimated that in the four years preceding 1868 consular "influence" extorted from it the enormous total of 2,880,000*l.* in satisfaction of claims without judicial sanction of any kind. Driven to bay by this Olympiad of spoliation, the Viceroy has since opposed a firmer front to these exactions; but it is notorious that down to the beginning of last year the Daïra, especially, continued to be annually squeezed of many thousands for which the claimants could plead no right that would be recognised by a European tribunal. The success of these demands was locally explained in a way that said more for the zeal than the disinterestedness of the official advocacy employed.

Nor was it only the natives and the Government who suffered from this abuse of the Capitulations in Egypt. In their dealings with each other the system worked almost as mischievously for Europeans themselves. Thus, a foreign plaintiff was compelled to sue his foreign debtor in the consulate of the latter, and as a rule his chances of success were as slight as those of the Egyptian reduced to a similar strait, and, equally, he had no ultimate remedy but the illusory right of appeal just described. A bill of exchange might, and often did, thus become the cause of as many actions, in as many different tribunals, and under as many different systems of law, as there were parties to it, from the maker down to the last endorsee. How many and scandalous were the miscarriages of justice resulting

from this state of things need not be said: the whole system was, in fact, a scandal and a denial of justice all round.

It was, however, in respect of criminal matters that this abuse of treaty privilege was carried farthest. In Turkey, the native tribunals still assert their right to try foreigners for all offences committed not only against subjects of the Sultan, but against other foreigners of a different nationality; and, as a rule, the right is exercised both in Constantinople and throughout the provinces. In Egypt, on the other hand, although the letter of Capitulation law is the same, the native authorities have for nearly thirty years past been unable to do more than arrest a foreign robber or murderer, caught red-handed, and deliver him over to his own consulate, where, through lack of technical evidence, or from other causes equally unfavourable to justice, the chances are at least even that he will escape punishment for his crime—and this, too, in a country where it is not too much to say that at least 10 per cent. of its 90,000 or more of foreign inhabitants are the worst *mauvais sujets* of the Levant.

In 1867 such a state of things had at length become intolerable, and the Egyptian Government began a movement for its reform. The vices of the system were made the subject of a memorandum addressed to the Viceroy by Nubar Pasha, then Minister of Foreign Affairs, in which the writer forcibly described the effect of these abuses on both the social and material progress of the country, and suggested a scheme of reform for which he claimed that, while adhering to the spirit of the Capitulations, it would even add to the guarantees of justice enjoyed by foreigners under their letter. The project was first submitted to the French Government, whose influence was then paramount in Egypt, but on being referred to a special commission of Paris lawyers and officials, it

was, on their report, unfavourably received. With our own Government, however, the Egyptian Minister was more successful. Lord Stanley [Earl Derby], then Foreign Secretary, freely admitted that the abuses complained of were "as injurious to the interests of all parties, as they were certainly without warrant of any treaty engagement," and promised the cordial co-operation of Her Majesty's Government in the proposed reform, if the concurrence of the other Powers should be obtained. This general consent to consider the subject was not, however, given till the autumn of 1869, when, all initial difficulties having then been overcome, a Commission was appointed, consisting of British, French, Austrian, Prussian, Russian, and Italian delegates, who met in Cairo, under the presidency of Nubar Pasha, in October of that year. During the two previous years' negotiations the scheme first sketched by the Egyptian Minister had been so changed and extended as to have become virtually a new project, and thus improved, it was now submitted to the Commission for acceptance or further modification. It proposed—(1) to substitute for the existing chaos of jurisdictions one sole authority, which should deal alike with natives and foreigners, and be vested in three Courts of First Instance, sitting respectively at Alexandria, Cairo, and Zagazig, and in a Court of Appeal sitting at Alexandria; (2) that a majority of the judges should in each instance be foreign lawyers, who should be paid by the Government, but not be removable by it; (3) that all these courts should admit Christian evidence; and (4) that they should all have jurisdiction in real property as well as personal suits—the only reservation made being in respect of civil disputes between foreigners of the same nationality, which were to be left, as before, to the decision of their own Consuls.

After several sittings the Commission, with a view to more completely ensuring the independence and efficiency of the new judiciary, proposed various amendments to this version of the scheme, which were all accepted by the president. As regarded the civil jurisdiction, it recommended the establishment—(1) of a Court of First Instance, composed of five judges, three of whom should be foreigners; (2) a Court of Appeal with three native and four foreign judges; and (3) a Court of Revision, similarly instituted to the last. It was also agreed that the real control of all the mixed tribunals should be exercised by foreign vice-presidents, and that the law to be administered by the whole should be embodied in a compendious code based on European legislation; and, finally, that at the end of five years the Powers, in concert with the Egyptian Government, should be free to modify the new arrangement, to maintain it, or to revert to the old consular system.

With respect to the criminal half of the viceregal scheme, the Commission accepted this also in principle, and reported—(1) "That one single jurisdiction in matters of crime and police offences was necessary in the interests of all concerned; (2) that its introduction should be preceded by a full examination of the guarantees resulting from a complete legislation, comprising a Penal Code and preliminary rules; and (3) that the reform of civil justice and that of penal justice should be simultaneously introduced, or, at latest, that the penal jurisdiction should come into operation one year after the civil and commercial courts have commenced functioning."

Having thus secured an international verdict in favour of the reform, the Egyptian Government lost no time in drawing up the Civil Code prescribed by the Commission. This was done by harmonising such rules of Arabic jurisprudence as were not repugnant to European legislation with the chief provisions of the Code Napoléon—the result being a concise and easily administered body of law, which experience has already shown to be well adapted to the country and its mixed populations. The outbreak of the Franco-German war, however, stopped the negotiations, and it was not till the autumn of 1871 that they were effectively resumed. In the meantime the jealousy of the Porte had been excited, and when Nubar Pasha again pressed the reform on the attention of the Pera embassies, A'ali Pasha, then Grand Vizier, interposed with a veto, on the plea that the whole measure was of imperial rather than of merely Egyptian concern. For the double reason, therefore, that the Khedive had not negotiated with the Powers through the Porte, and that the proposed scheme was not such as the Sultan's Government could accept for the whole empire, the Grand Vizier in effect declared all that had been done to be null and void. This high-handed action was, however, resisted by the British and Russian embassies, and after a while A'ali perforce allowed the negotiations to proceed, merely covering his retreat by requiring some trifling changes to be made in the details of the project as approved by the Cairo Commission.

The French Government now put forward a counter-scheme, which, while agreeing in the main with that of the Commission, proposed to suppress the Court of Revision as a "*rouage inutile*," and to increase the staff of the Court of Appeal from seven to eleven members, of whom seven should be foreigners, and only four Egyptians, thus in effect swamping the native element altogether. The Austrian Government, too, refused to surrender its criminal jurisdiction, and most of another year was thus again lost in negotiations at Paris and Vienna.