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A TREATISE
ON THE
LAW OF SEDITION
AND
COGNATE OFFENCES
IN
BRITISH INDIA,

PENAL AND PREVENTIVE,

WITH
AN EXCERPT OF THE ACTS IN FORCE RELATING TO THE
PRESS, THE STAGE, AND PUBLIC MEETINGS.

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Of the Inner Temple, Barrister-at-Law,
and an Advocate of the High Court at Calcutta,

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"If men should not be called to account for possessing the people with an ill opinion of the Government, no Government can exist."—LORD HOLT.

"If a publication be calculated to alienate the affections of the people by bringing the Government into disesteem, whether the expedient be by ridicule or obloquy, the person so conducting himself is exposed to the inflictions of the law."—LORD ELLENBOROUGH.
PREFACE.

If an apology be needed for the production of a work of this character, it might be possible to justify it on two grounds. One is the prominence which political offences of this type have assumed in India; the other, the importance of the preventive legislation recently introduced on the Statute-book, which, without prejudice to previously existing measures in pari materia, aims at a better control of the Platform and the Press.

Either would afford a valid pretext for the existence of a treatise which purports to combine, in a convenient form, two branches of the law which are closely related. The present work has been designed to accomplish this object. Its aim is to provide a complete handbook of the law on the subject—penal and preventive—for the use not only of those who may be called upon to apply its principles, but also for those who desire a more intimate acquaintance with the subject—a handbook, in short, for both lawyer and layman.

Calcutta,
1st January, 1911.

W. R. D.
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PART I.

PENAL LAW.

CHAPTER I.

ORIGIN AND HISTORY OF THE LAW.

The origin of this provision and the history of its introduction into the Indian Statute Book is both interesting and important. In 1837 it existed in gremio, as one of the clauses of Macaulay's draft Penal Code. That Bill, strange to say, was shelved for more than twenty years, and when at last it saw the light in 1860, the sedition clause for some unaccountable reason had been omitted. It was not in fact till 1870, ten years later, that the want of such a provision in a complete Code of Crimes came to be recognised, with the result that a Special Act (XXVII of 1870) was passed by way of amendment to the Penal Code, introducing Macaulay's original clause practically unaltered, thirty-three years after its conception.

Sir James Fitzjames Stephen, when introducing this Bill to amend the Penal Code, on the 2nd of August 1870, observed that the provision in question "was one which, by some unaccountable mistake, had been omitted from the Penal Code as ultimately passed. It stood as section 113 in the draft Code published in 1837, and Sir Barnes Peacock was quite unable to account for its omission when the Code was enacted. It punished 'attempts to excite feelings of disaffection to the Government,' but it distinguished between disaffection and disapprobation, and explained that 'such a disapprobation of the measures of the Government as was compatible with a disposition to render obedience to the lawful authority of the Government, and to support the lawful authority of the Government against unlawful attempts to subvert or resist that authority, was not disaffection,' so that 'the making of comments on the measures
of the Government with the intention of exciting only this species of disapprobation' was not an offence within this section."

On a subsequent occasion (25th November 1870), when presenting the report of the Select Committee, the Hon'ble Member once more reverted to the subject. In repudiating a suggestion that the Bill had been hastily drawn, he referred to a letter written by Sir Barnes Peacock to Mr. Maine his predecessor, on the subject of the omission of Macaulay's clause from the Code. In that letter Sir Barnes Peacock had said—

"I have looked to my notes and I think the omission of a section in lieu of section 113 of the original Penal Code must have occurred through mistake, though I have no distinct recollection of it. After the original Code had been carefully revised, the original Code and the revised Code were printed in double columns. I send herewith a copy of the section proposed in the revised Code to be substituted for section 113." And he concluded his letter with the remark: "I am sorry that I cannot throw any further light upon the matter, as I have no note as to the adoption or rejection of that clause. I feel, however, that it was an oversight on the part of the Committee not to substitute some section for section 113." Commenting on these facts Sir James Stephen thought that the letter was "as strong evidence as it was possible to obtain for the assertion made by him that there was a section to the present effect, which ought to have been submitted to the Council and to have been passed, and that it was omitted through a mistake or oversight which it was difficult now to account for. He had referred to the debates which took place in the Council, but there was no reference in those debates to any such provision. The result seemed to him to be clear, that when a Bill was finally passed through the Committee, a section equivalent to the present section was omitted by some mistake."

"In an event of this kind," he asked, "what was the duty of the Government? It was to repair the omission, whoever might have been to blame for it." He then proceeded to explain that the Select Committee had anxiously considered the section drawn by Sir Barnes Peacock, when he was Law Member, which had been appended to his letter as the provision "proposed to be substituted for one which appeared in the original draft of the
The Committee," he added, "with all respect to Sir Barnes Peacock, came to the conclusion that it was not an improvement on the original draft. For one thing, it was very much more severe." He then quoted the rejected section to demonstrate the fact. It is unnecessary to cite the provision here, but it will be sufficient to note the somewhat remarkable circumstance that the highly judicial mind of the most eminent of Indian judges should have conceived a more drastic provision than the illustrious biographer of Warren Hastings and Clive.

Referring to the adopted clause Sir James Stephen added that "although he was not prepared to say that it was the best that could have been adopted, the Committee unanimously came to the conclusion that the best course was to leave it as the Commissioners had settled it."

"The clause," he continued, "was somewhat lengthy, but its substance was sound good sense. It provided that any body who attempted to excite disaffection might be punished, but it insisted on the distinction between disaffection and disapprobation. It expressly provided that people might express or excite disapprobation of any measure of the Government that was compatible with a disposition to render obedience to the lawful authority of the Government; in other words, you might say what you liked about any Government measure or public man; you might publish or speak whatever you pleased, so long as what you said or wrote was consistent with a disposition to render obedience to the lawful authority of Government."

He next proceeded to assert that "this law was substantially the same as the law of England at the present day, though it was much compressed, much more distinctly expressed, and freed from a great amount of obscurity and vagueness with which the law of England was hampered."

He then went on to state how the law of England stood on this subject. "It consisted of three parts. There was first the Statute, commonly called the Treason-Felony Act (11 Vic., c. 12); secondly, the Common Law with regard to seditious libels; and thirdly, the law as to seditious words. He might observe in regard to this law that section 2 of the Penal Code enacted that
every person shall be liable 'to punishment under this Code
and not otherwise for every act or omission contrary to the pro-
visions thereof.' Hence the criminal law which prevailed before
the passing of the Penal Code was still in force as to such offences
as the Code did not punish. The result might very possibly
surprise some gentlemen, especially those who were connected
with the Press in the presidency towns, and he would draw
attention to it. In the presidency towns the Criminal law of
England was still in force, except in so far as it was superseded
by the Penal Code. Any person who within the Mahratta ditch
or in Bombay or Madras wrote anything which at Common Law
would be a seditious libel would be liable to the penalties which
the law of England inflicted, which were fine and imprisonment
at least, to say nothing of whipping and the pillory. No doubt
the penalties last mentioned would not now be enforced, but the
law still existed, and he wished to point out that, so far from
enacting a severe law they were, in truth, doing away to a
considerable extent with severe laws. As for the Mofussil, it
appeared that the Muhammadan Criminal law prevailed so far
as it was not superseded by the Penal Code. He had tried
to ascertain what the Muhammadan law was. He had found
nothing on the subject of seditious libel, but had found much on
the subject of rebellion, which however was so vaguely expressed
that it might possibly justify the infliction of very strange
penalties for sedition and libel." Such were the dangers that
beset the path of the unwary journalist, prior to 1870.

The further observations of Sir James Stephen on the law
of England as then adapted to the exigencies of India are also
of much weight. Section 3 of the Treason-Felony Act (1848)
was as follows:—'And be it enacted that if any person what-
soever after the passing of this Act shall, within the United King-
dom or without compass, imagine, invent, devise or intend to
depose or deprive our most Gracious Lady the Queen, Her heirs
or successors, from the style, honour, or royal name of the Im-
perial Crown of the United Kingdom, or of any other of Her
Majesty's dominions and countries, or to levy war against Her
Majesty, her heirs or successors, within any part of the United
Kingdom, in order by force or constraint to compel her or them
to change her or their measures or counsels, or in order to put
any force or constraint upon or in order to intimidate or overawe both houses or either house of Parliament, or to move or stir any foreigner or stranger with force to invade the United Kingdom, or any other Her Majesty's dominions or countries under obeisance of Her Majesty, her heirs or successors, and such compassings, imaginations, inventions, devices, or intentions, or any of them, shall express, utter, or declare, by publishing any printing or writing, or by open and advised speaking, or by any overt act or deed, every person so offending shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court, to be transported beyond the seas for the term of his or her natural life, or for any term not less than seven years, or to be imprisoned for any term not exceeding two years, with or without hard labour, as the Court shall direct."

That in plain English meant that "any one who conceived in his heart any one of all these intentions, and who showed that intention either by any act or any writing was liable to transportation for life." This clearly showed that of the two "the law of England was more severe." "The proposed section says, if you excite feelings of disaffection, either by speaking or writing, you shall be liable to punishment; and the law of England says, in substance, that if you yourself feel disloyal towards the Queen and show that feeling by any writing, you shall be liable to punishment. The proposed section did not relate to a man's feelings or wishes, but simply to his writings or words, and the feelings which they were intended to produce in others. But the great peculiarity of the English law of treason was to regard every thought of the heart as a crime which was to be punished as soon as it was manifested by any overt act. That was the English law as it stood according to the Treason-Felony Act."

After such a lucid exposition of the Statute law of England and its analogy to the proposed measure, it is to be regretted that the learned jurist did not proceed to expound the principles of seditious libel in the Common Law, and trace their analogy in the same manner. But he merely added that "in the book which was commonly quoted on all subjects connected with English Criminal law (Russell on Crimes), there was a very long history about seditious libel compiled from various authorities. The law was very vaguely expressed, and he hoped that
some one might soon reduce to a few short sentences the great mass of dicta on the subject."

Whether the vagueness of expression complained of was reflected in the proposed measure, or the great mass of judicial dicta which adorn the English State trials created unforeseen difficulties it is impossible to say. But the fact remains that shortly after the new law began to operate and was brought to the test of concrete cases, though that was not till more than twenty years later, it was found necessary to amend it.

The Hon'ble Member next addressed himself to the various objections that had been raised in derogation of the Bill, and his observations on its probable effect on the freedom of the Press are terse and forcible. "There was one last objection to which he would refer in a more general way. It was the general phrase that this was an interference with the liberty of the Press. Short phrases of this kind involved a surprising quantity of nonsense. He thought that that unfortunate phrase in particular had been made the subject of more fallacies than almost any other sentence. Liberty and law simply excluded each other: liberty extended to the point at which law stopped: liberty was what you might do, and law was what you might not do. To advocate the liberty of the Press absolutely would be nothing else than to advocate the doctrine that everybody should be allowed to write what he liked. That was obviously absurd. Everybody admitted that personal slander ought not to be permitted. Hence the phrase 'liberty of the Press' was mere rhetoric. It contained no definite meaning whatever. The question was not whether the Press ought or ought not to be free, but whether it ought to be free to excite rebellion. He did not believe that any sane man would say in so many words that all people ought to commit any crime whatever, so long as they did not commit overt acts themselves; but no degree of liberty short of this would justify a journalist or any one else in exciting people to commit rebellion."

"Journalism," he continued, "when properly conducted, was as honourable a pursuit as any other. He could not imagine a worse policy than to permit journalists to do what they would not permit other people to do. If we wished the Indian Press to be what it ought to be; if we wished it to be con-
ducted honestly, and to criticise the proceedings of Government fairly; we could not do worse than treat it like a spoiled child. It would be monstrous to say to any newspapers, native or English, 'we permit you to slander private persons and to excite the public at large to rebellion and massacre, because we want to nurse you up into something great.' That was not the way to bring the Press or any other profession to good. We should protect them so long as they did not commit crime, and punish them if they did. It had been said that a few prosecutions would crush the native Press, and that they were not strong enough to bear the possibility of being misunderstood and punished for expressing intentions which they had never entertained. Such apprehensions appeared to him contemptible. Men must be content to take the risks incidental to their profession. A journalist must run the risk of being misunderstood, and should take care to make his meaning plain. If his intentions were really loyal there could be no difficulty in doing so. If not, he could not complain of being punished."

He then went on to consider whether such a danger really existed. "One paper had said, 'If this law passes, we shall never know what we might say and what we might not.' If they wanted to see what they might say, all they had to do was to read the English newspapers, which were published under the same law, and they did not write very much as if they were under tyrannical rules. Their liberty included the following items at least. They might refute any thing which had been put forward and abuse anybody for bringing it forward; and if they wanted to see more particularly what sort of things they were perfectly at liberty to say, they had only to refer to the files of the English newspapers printed during the last eight months, and read the articles on the Income-tax. Nobody ever said or thought that the authors of those articles were exciting disaffection. So long as the English papers in this country published what they did publish, about every man, every measure, every principle which they thought it right to discuss, the native papers need not be under the smallest apprehension that they would fall under the pale of the law. He would appeal to anybody who knew what English public life was, whether any Government which existed in this country was ever likely to bring
a newspaper published in this town into Court on a charge of exciting sedition for mere discussion, however violent, personal or unfair."

The concluding remarks of the Hon'ble Member on this point are equally forcible. To his mind the position was perfectly clear. There was not the slightest danger of any one who honestly meant to be loyal, infringing the law unwittingly. "So much with regard to what people might say. He would now state what they might not say. They might not say anything of which the obvious intention was to produce rebellion. It might be difficult to frame a definition which would, by mere force of words, exactly include the liberty of saying all that you meant to allow to be said, and exclude the liberty of saying all that you did not mean to allow to be said. But although there was considerable difficulty in framing a definition of the kind, there was none whatever in drawing the line for yourself. Every man who was going to speak, every man who was going to write, ought to know perfectly well whether he intended to produce disaffection. If he did, he had himself to thank for the consequences of his acts: if he did not, he was quite sure of this, that no words which that man could write would convey to other people an intention that he did not intend to express. He did not believe that any man who sincerely wished not to excite disaffection ever wrote anything which any other honest man believed to be intended to excite disaffection."

"You could no more mistake the severity of criticism, or the severity of discussion, for the writing of a person whose object was to produce rebellion or excite disaffection against the Government than you could mistake the familiarity of friendship for the familiarity of insult. Try to define what it was that made a difference between that neglect of ceremony which you expect from a friend, and that neglect of ceremony which was intended for insult, and you would be unable to express it in words. But no one could mistake the two things, and it was the same with exciting political disaffection."

The Bill then passed into law as Act XXVII of 1870, an Act to amend the Indian Penal Code. The provision relating to sedition is contained in section 5, and is as follows:—
"Whoever by words, either spoken or intended to be read, or by signs, or by visible representation or otherwise, excites or attempts to excite feelings of disaffection to the Government established by law in British India, shall be punished with transportation for life or for any term, to which fine may be added, or with imprisonment for a term which may extend to three years, to which fine may be added, or with fine.

Explanation.—Such a disapprobation of the measures of the Government as is compatible with a disposition to render obedience to the lawful authority of the Government, and to support the lawful authority of the Government against unlawful attempts to subvert or resist that authority, is not disaffection. Therefore the making of comments on the measures of the Government, with the intention of exciting only this species of disapprobation, is not an offence within this clause."

Section 13 of the Act made Chapter IV (General Exceptions), and Chapter V (Abetment) of the Penal Code applicable to the offence. It also applied Chapter XXIII (Attempts to Commit Offences), but with what object it is difficult to see, for the section itself provides for attempts.

Section 14 provided that no charge of such an offence should be entertained by any Court unless the prosecution be instituted by order of, or under authority from, the Local Government.

The law of sedition thus inaugurated on the 25th November 1870, continued in force unmodified till the 18th February 1898, a period of twenty-seven years. It will be necessary to consider how it operated during this long period, but before doing so, it seems desirable to interpose a short summary of the law of sedition in the Common Law, a subject which was left untouched by Sir James Stephen in his speech in Council.
CHAPTER II.

SEDITION AT COMMON LAW.

It has been seen that Sir James Stephen, in his memorable speech in Council in support of the Bill, referred to "a very long history about seditious libel compiled from various authorities," in a well-known work entitled "Russell on Crimes," and at the same time expressed a hope "that some one might soon reduce to a few short sentences the great mass of dicta on the subject."

Strangely enough the hope thus casually expressed was fulfilled by the learned jurist himself not long after. Seven years later his "Digest of the Criminal Law" of England appeared, wherein he defined, "in a few short sentences," the offence of seditious libel in Common Law. His definition was as follows:—"Every one commits a misdemeanour who publishes verbally or otherwise any words or any document with a seditious intention. If the matter so published consists of words spoken, the offence is called the speaking of 'seditious words.' If the matter so published is contained in anything capable of being a libel, the offence is called the publication of a 'seditious libel.'"

It will be observed that in the offence thus defined, of uttering seditious language, whether written or spoken, there are two essential conditions—publication and a seditious intention. "To publish a libel," it is explained, "is to deliver it, read it, or communicate its purport in any other manner, or to exhibit it to any person other than the person libelled, provided that the person making the publication knows, or has an opportunity of knowing, the contents of the libel if it is expressed in words, or its meaning if it is expressed otherwise."

"A seditious intention is an intention to bring into hatred or contempt, or to excite disaffection against the person of Her Majesty, her heirs or successors, or the Government and constitution of the United Kingdom, as by law established, or either House of Parliament, or the administration of justice, or to
excite Her Majesty's subjects to attempt, otherwise than by lawful means, the alteration of any matter in Church or State by law established, or to raise discontent or disaffection amongst Her Majesty's subjects, or to promote feelings of ill-will and hostility between different classes of such subjects."

Then it is explained further that, "An intention to show that Her Majesty has been misled or mistaken in her measures, or to point out errors or defects in the Government or constitution as by law established, with a view to their reformation, or to excite Her Majesty's subjects to attempt by lawful means the alteration of any matter in Church or State by law established, or to point out, in order to their removal, matters which are producing, or have a tendency to produce, feelings of hatred and ill-will between classes of Her Majesty's subjects, is not a seditious intention."

Finally, the intention referred to might be presumed from conduct, which would, of course, include the language employed. "In determining whether the intention with which any words were spoken, any document was published, or any agreement (i.e., for seditious conspiracy) was made, was or was not seditious, every person must be deemed to intend the consequences which would naturally follow from his conduct at the time and under the circumstances in which he so conducted himself."

Seditious conspiracy is thus defined:—"Every one commits a misdemeanour who agrees with any other person or persons to do any act for the furtherance of any seditious intention common to both or all of them."

"If a meeting is held for the purpose of speaking seditious words to those who may attend it, those who take part in that design are guilty of a seditious conspiracy."

These were the terms in which the English law of sedition was defined by one of the highest authorities on the Criminal law. But to this must be added the elaborate definitions now to be found in the monumental treatise expressly referred to by the learned jurist, as "Russell on Crimes."

In the latest edition of that work sedition is thus defined:—"Sedition consists in acts, words, or writings, intended or calculated, under the circumstances of the time, to disturb the tranquillity of the State, by creating ill-will, discontent, disaffection,
hatred, or contempt, towards the person of the King, or towards the Constitution or Parliament, or the Government, or the established institutions of the country, or by exciting ill-will between different classes of the King's subjects, or encouraging any class of them to endeavour to disobey, defy, or subvert the laws or resist their execution, or to create tumults or riots, or to do any act of violence or outrage, or endangering the public peace."

This admirable definition leaves nothing to be desired in completeness, lucidity, and expressiveness. It comprises in fact the essence of the English case-law extending over a long period of years, and may be accepted as the final result of a careful selection of the most approved authorities.

To this is appended a second definition founded upon the older authorities, which may be cited for its historical interest. It is stated thus:—"According to the older authorities it is seditious wantonly to defame or indecorously to calumniate that economy, order, and constitution of things which make up the general system of the law and Government of the country; and more particularly to degrade or calumniate the person or character of the Sovereign, or the administration of his Government by his officers and ministers of State, or the administration of justice by his judges, or the proceedings of either House of Parliament."

From a comparison of these definitions it will be seen that the new measure introduced in 1870 by Sir James Stephen, was, as he described it, substantially the same as the law of England, as in fact it was intended to be.

For a complete exposition of the law, however, recourse must be had to the two leading cases of Reg. v. Sullivan (11 Cox, 44) and Reg. v. Burns (16 Cox, 355): and to the celebrated charges, delivered respectively by Lord Fitzgerald and Justice Cave. The former was a trial for 'seditious libel,' and the latter for uttering ' seditious words.'

In the first of these cases the defendants Sullivan and Pigott were in the year 1868, indicted for printing and publishing seditious libels upon Her Majesty's Government in their newspapers—the Weekly News and the Irishman.

Lord Fitzgerald, in addressing the grand jury for the County of Dublin, said:—"I have now to direct your attention
to two cases of great public importance, in which the Attorney-General prosecutes the publishers of two weekly newspapers for a series of printed articles alleged to be seditious libels of a very dangerous character. As such prosecutions are unusual, I think it necessary, in the first instance to define sedition, and point out what is a seditious libel. Sedition is a crime against society, nearly allied to that of treason, and it frequently precedes treason by a short interval. Sedition in itself is a comprehensive term, and it embraces all those practices, whether by word, deed, or writing, which are calculated to disturb the tranquillity of the State, and lead ignorant persons to endeavour to subvert the Government and the laws of the empire. The objects of sedition generally are to induce discontent and insurrection, and to stir up opposition to the Government, and bring the administration of justice into contempt; and the very tendency of sedition is to incite the people to insurrection and rebellion. Sedition has been described as disloyalty in action, and the law considers as sedition all those practices which have for their object to excite discontent or dissatisfaction, to create public disturbance, or to lead to civil war; to bring into hatred or contempt the Sovereign or the Government, the laws or constitution of the realm, and generally all endeavours to promote public disorder."

Having thus defined the character of the offence, the learned Judge continued:—"It is scarcely necessary to point out that to accomplish treasonable purposes, and to delude the weak, the unwary, and the ignorant, no means can be more effectual than a seditious Press. With such machinery the preachers of sedition can sow widecast those poisonous doctrines, which, if unchecked, culminate in insurrection and revolution. Lord Mansfield likened a seditious and licentious Press to Pandora's box—the source of every evil. Words may be of a seditious character, but they might arise from sudden heat, be heard only by a few, create no lasting impression, and differ in malignity and permanent effect from writings. Sir Michael Foster said of the latter: 'seditious writings are permanent things, and if published they scatter the poison far and wide. They are acts of deliberation, capable of satisfactory proof, and not ordinarily liable to misconstruction; at least they are submitted to the judgment
of the Court naked and undisguised, as they came out of the author's hands.'"

The learned Judge next referred to the various articles published in the Irishman, which he divided into three classes. "As to the articles extracted from other papers," he said, "it was recently contended that, even if these articles were of a seditious or treasonable character, yet the defendant was justified in publishing them as foreign news. I am bound to warn you against this very unsound contention, and I may now tell you, with the concurrence of my learned colleague, that the law gives no such sanction, and does not in the abstract justify or excuse the republication of a treasonable or seditious article, no matter from what source it may be taken. In reference to all such republications the time, the object, and all the surrounding circumstances are to be taken into consideration, and may be such as to rebut any inference of a criminal intention in republication." But in the absence of such circumstances "it would be reasonable to infer that the publisher intended what would be the natural consequences of his acts—namely, to promote some seditious object. If the law be powerless in the case of such publications, then we may as well blot out from the Statute book the chapter on seditious libel, which would take away from society the great protection which the law affords to their institutions."

The learned Judge then referred to the articles in detail and continued:—"The crime is laid in the intent, and you can only find a Bill against the accused when you come conscientiously to the conclusion—assuming you find the articles to be seditious—that they were published with the intent laid in the indictment—namely, to spread, stir up, and excite disaffection and sedition amongst the Queen's subjects, to excite hatred and contempt towards Her Majesty's Government and administration, to encourage, foster, and keep alive the Fenian conspiracy. The intention charged is varied in each Court.'"

"With respect to the question of the freedom of the Press," his lordship added, "I feel bound to say a few words. Since 1692 there was complete liberty of the Press in great Britain and Ireland. By liberty of the Press I mean complete freedom to write and publish without censorship and without restriction, save such as was absolutely necessary for the
preservation of society. Our civil liberty is largely due to a free Press, which is the principal safeguard of a free State, and the very foundation of a wholesome public opinion. Every man is free to write as he thinks fit, but he is responsible to the law for what he writes; he is not, under the pretence of freedom, to invade the rights of the community, or to violate the constitution, or to promote insurrection, or endanger the public peace, or create discontent, or bring justice into contempt or embarrass its functions. Political or party writing, when confined within proper and lawful limits, is not only justifiable, but is protected for the public good, and such writings are to be regarded in a free and liberal spirit. A writer may criticise or censure the conduct of the servants of the Crown or the acts of the Government—he can do it freely and liberally—but it must be without malignity, and not imputing corrupt or malicious motives. With the same motives a writer may freely criticise the proceedings of Courts of justice and of individual judges—nay he is invited to do so in a free and fair and liberal spirit. The law does not seek to put any narrow construction on the expressions used, and only interferes when plainly and deliberately the limits are passed of frank and candid and honest discussion. Lord Kenyon has quaintly said, 'a man may publish whatever a jury of his countrymen think is not blamable.' In ordinary cases the facts are for the jury and the law for the judge; but in cases of libel, and with a view to the true freedom of the Press the law casts on the jury the determination of both law and fact. You are to determine whether or not the publications in question are or are not seditious libels.'

In conclusion his lordship observed:—'In dealing with the question whether the articles were published with the seditious intention charged in the indictment, you will fairly consider the surrounding circumstances, coupled with the state of the country and of the public mind when the publication took place, for these may be most material in considering the offence. For example, if the country was free from political excitement and disaffection, was engaged in the peaceful pursuits of commerce and industry, the publication of such articles as have been extracted from American papers might be free from danger and comparatively innocent, but in a time of political trouble
and commotion, when the country has just emerged from an attempt at armed insurrection, and whilst it is still suffering from the machinations and overrun by the emissaries of a treasonable conspiracy, hatched and operating in a foreign land, the systematic publication of articles advocating the views and objects of that conspiracy seems to admit but of one interpretation. The intentions of men are inferences of reason from their actions where the action can flow but from one motive, and be the reasonable result of but one intention.''

"Now I would invite you to a careful examination of these articles. You should deal with them in a broad and candid and liberal spirit, and subject them to no narrow and jealous criticism. But if on the other hand, from their whole scope, you are coerced to the conclusion that their object and tendency is to foment discontent and disaffection, to excite to tumult and insurrection, to promote the objects of a treasonable conspiracy, to bring the administration of justice into disrepute, or to stir up the people to hatred of the laws and the constitution, then you may, if you think fit, and you ought to find the bills." The grand jury having brought in true bills in both cases, the trials came on in due course.

In Sullivan's case Lord Fitzgerald, in charging the jury, made the following observations: — "You are here in this trial the sole judges of the law and the facts. My duty is to simplify the case you have to determine, assist you if I can, and address you solely in the calm voice of reason. This is a prosecution of a very unusual nature. There has not been one of this character certainly for the last twenty years. The jury are constituted by law the sole judges to determine every question between the Queen and the defendant. I would remind you in the outset that there will be four questions for you to apply your attention to. The first is a question of fact—Did the defendant publish the libels? Upon that there will be no difficulty, for it is not a matter of controversy that Mr. Sullivan, the defendant, is the proprietor and publisher of the Weekly News, and that the several articles and wood-cuts were published in that paper. The next question for you to examine into is this—Do these publications, whether printed matter or wood-cuts, fairly bear the interpretation which the Crown has put upon them by the
innuendos? The next question is one of paramount importance, and it is one of which the jury are the sole judges—whether these publications are seditious libels? That question of law and fact is entrusted to the jury alone.

"If you come to the conclusion," the learned Judge continued, "that the defendant published these articles, that the true meaning has been given to them, that they are seditious libels, published with the intention imputed to them, you have all the elements which would warrant you in bringing in a verdict of guilty."

"The man who criticises the conduct of the Government," he added, "ought not to impute improper motives, and though he may point out that there is bad administration of justice, yet he should not use language that would indicate contempt of the laws of the land. When a public writer exceeds his limit and uses his privilege to create discontent and dissatisfaction he becomes guilty of what the law calls sedition."

"Now I would invite your attention to the indictment. There are three allegations. It is alleged that the defendant intended by these publications and prints to excite hatred or contempt of Her Majesty's Government, and the administration of the laws; and further, that these prints were intended to create dissatisfaction, to excite hatred and contempt of the Government, and to disturb the tranquillity of the realm. Without defining sedition further than for the purposes of this trial, I have to tell you if you in your honest judgment come to the conclusion that these publications, or any of them, are calculated and intended to excite hatred of the Government and the administration of the laws, or create dissatisfaction, or disturb the public peace, then they are seditious libels. I do not think I can put the matter plainer than that."

With regard to the pictorial prints which were charged as seditious, the learned Judge remarked:—"It was open to the Attorney-General to call intelligent witnesses, and ask them what the true meaning of this picture was; for, after all, the question is not how Mr. Sullivan meant it, but how it would be understood by an ordinary intelligent individual. It will be for you to take into account the letterpress that accompanies this, in order to assign the true meaning to it; but there is not much
difference between the meaning assigned to it by the Crown and assigned by the defendant. It is one of those means of deliberate and gigantic deception by which the people of this country are periodically misled. I call it deliberate and gigantic deception, because they were dealing with an acute race—with a people amongst whom education is every day spreading further and further—a people who, if only allowed to know the truth and to form judgments for themselves, are quick-witted and able to form judgments upon what is their true and real interest.

"But we cannot shut our ears to this, that for many years, as well as during the present time, the people were not allowed to know the truth. Can any one say that this picture really and truly represents the state of the Irish nation when it represents Hibernia cast upon the ground, held down by the violent hand of England."

The learned Judge then dealt with the remaining woodcuts in detail, and finally with the articles which formed the subject of the indictment. In considering these he made the following observations:—"I concur with the counsel for the defendant that if the law of libel was carried out in the full strictness of its letter, it would materially interfere with the freedom of the Press. Hence a great deal depends upon the forbearance of Government, the discretion of judges, and, above all, on the protection of juries. For instance, it is open to the community and to the Press to complain of a grievance. Well, the mere assertion of a grievance tends to create a discontent, which, in a sense, may be said to be seditious. But no jury, if a real grievance were put forward and its redress bonâ fide sought, although the language used might be objected to—no jury would find that to be a seditious libel."

"If the article," he added, "had simply been a free discussion of these questions, or of the acts of the Government, this prosecution would never have taken place. But the Attorney-General says that the bounds of criticism have been passed."

"To constitute crime, the criminal intent and the criminal act should concur. But every person must primâ facie be taken to intend the natural consequences of his own acts. You cannot dive into the intentions of a man’s heart, save so far as
they are indicated by his acts and their natural consequences. This rule may at times operate harshly, but public policy requires that it should be put in force."

Finally, in summing up the whole case, the learned Judge said:—"With these observations I leave the case in your hands. I invite you to deal with the case, which is a grave and important case, in a fair, free, and liberal spirit. In dealing with the articles you should not pause upon an objectionable sentence here, or a strong word there. It is not mere strong language, such as 'desecrated Court of justice,' or turgid language, or language that should influence you. You should, I repeat, deal with the articles in a free, fair, and liberal spirit. You should recollect that to public political articles great latitude is given. Dealing as they do with the public affairs of the day—such articles if written in a fair spirit, and bona fide, often result in the production of great public good. Therefore I advise and recommend you to deal with these publications in a spirit of freedom, and not to view them with an eye of narrow criticism."

"Again I say, you should not look merely to a strong word or a strong phrase, but to the whole article. Viewing the whole case in a free, bold, manly and generous spirit towards the defendant, if you come to the conclusion that the publications indicted either are not seditious libels, or were not published in the sense imputed to them, you are bound, and I ask you in the name of free discussion, to find a verdict for the defendant. I need not remind you of the worn-out topic—to extend to the defendant the benefit of the doubt. If, on the other hand, on the whole spirit and import of these articles, you are obliged to come to the conclusion that they are seditious libels, and that their necessary consequences are to excite contempt of Her Majesty's Government, or to bring the administration of the law into contempt and impair its functions—if you come to that conclusion, either as to the articles or prints, or any of them, then it becomes your duty, honestly and fearlessly, to find a verdict of conviction upon such counts as you believe are proved." The defendant was found guilty.

These were the principles laid down by Lord Fitzgerald in his two memorable charges, the main portions of which have
been set out above. These are the passages which have been, and are likely to be, cited, on either side, at trials for sedition in India, and may therefore prove useful for reference.

In the trial of Pigott, which immediately followed (11 Cox, 60) and at which Baron Deasy presided, the observations of the learned Judge on the limits of public journalism, may also be cited with advantage.

"A public journalist," he said, "must respect the existence of the form of Government under which he exercises those very extensive rights and privileges to which I have referred. He must not either covertly or openly devote the pages of his journal towards the overthrow of the Government. He must not when a treasonable conspiracy exists in this land make his journal ancillary to the treasonable purposes of that conspiracy, or supply the members of it with intelligence, or devote his journal to encourage them to persevere in that conspiracy, or to encourage others who may not be embarked in it to become involved in its meshes. He must not spread discontent in the land or inflame the minds of the people, so that they may be more ready to join in the insurrection which conspirators are seeking to bring about."

"You should make every allowance for freedom of discussion, make every allowance for excitement and passion; and if, after making all these allowances, you think that the limits of fair discussion have been overstepped, and that the defendant has devoted his paper to these purposes or any of them, and with the intention ascribed to him in the indictment, it will be your duty, great as your regard may be for the liberty of the Press, to pronounce a verdict upon such of the counts as you think are sustained by the publications."

The jury found the defendant guilty.
CHAPTER III.

SEDITION AT COMMON LAW.—cont’d.

The second of the two leading cases on this subject, Reg. v. Burns, is regarded by some as even more important than the first. The learned editors of ‘Russell on Crimes’ assert (p. 302) that "the present view of the law is best stated in R. v. Burns (16 Cox, 355)," and thereafter set out in extenso Justice Cave’s memorable charge to the jury (pp. 303—6), as containing probably the most comprehensive summary of the law. It will therefore be necessary in the present chapter to refer to it in considerable detail, setting out the main portions, or those at least which seem to be applicable to trials in this country.

In this case John Burns, now a member of the Privy Council and of the present Cabinet, was, in the year 1886, indicted, along with three other persons, for "unlawfully and maliciously uttering seditious words of and concerning Her Majesty’s Government with intent to incite to riot, and, in other counts, with intent to stir up ill-will between Her Majesty’s subjects and for conspiring together to effect the said objects."

The indictment was in respect of certain speeches delivered by the four defendants to a large mob of persons, chiefly composed of unemployed workmen, first in Trafalgar Square and subsequently in Hyde Park. The speeches were, on each occasion, followed by serious disturbances, which were alleged to be the immediate result of the inflammatory language employed by the defendants. It was in evidence that after the delivery of the speeches in Trafalgar Square a procession was formed of some 3,000 to 4,000 persons, in which the defendants took part, and the crowd moved en masse towards the West-end. On the way a demonstration took place in front of the Carlton Club, where the mob indulged in stone-throwing and a number of windows were broken. Further disturbances occurred en route to Hyde Park, where more speeches were delivered. These again were followed by similar disorderly occurrences.
It was not suggested by the Crown "that the defendants desired the disturbances to take place, or that they directly incited the crowd to cause those disturbances;" but that they "must have been aware of, and were answerable for, the natural results of the language they used."

Justice Cave in charging the jury said:—"It is now my duty to explain to you the rules of law which ought to govern you in considering this case, and also to summarise shortly for your benefit the evidence which has been given, so that you may have the less difficulty, in applying the principles of the law to that evidence. There is undoubtedly no question at all of the right of meeting in public, and the right of free discussion is also perfectly unlimited, with the exception, of course, that it must not be used for the purpose of inciting to a breach of the peace or to a violation of the law.

The law upon the question of what is seditious and what is not, is to be found stated very clearly in a book by a learned judge, who has undoubtedly a greater knowledge of the criminal law than any other judge who sits upon the bench, and what he has said upon the subject of sedition was submitted to the other learned judges, who some time back were engaged with him in drafting a Criminal Code, and upon their report the Commissioners say that his statement of the law appears to them to be stated accurately as it exists at present. So that that statement has not only the authority of Stephen, J., but also the authority of the very learned judges who were associated with him in preparing the Criminal Code. This is what he says on seditious words and libels: 'Every one commits a misdemeanour who publishes verbally or otherwise any words, or any document, with a seditious intention. If the matter so published consists of words spoken the offence is called the speaking of seditious words.' That is what we have to do with to-day. 'If the matter so published is contained in anything capable of being a libel, the offence is called the publication of a seditious libel.'"

"The next question that one asks is this: There are two offences, one is the offence of speaking seditious words, and the other offence is the publication of a seditious libel. It is obviously important to know what is meant by the word sedition, and Stephen, J., proceeds in a subsequent article to give a definition of it.""
The learned Judge here cited Sir James Stephen's definition of a 'seditions intention,' which has been set out in the previous chapter, and continued:—"He goes on to point out what sort of intention is not seditious. It is also important to consider that, because there we get a light thrown upon the subject from another side." After citing the explanation to the foregoing definition (see Ch. ii) his lordship added:—"So there he gives in these two classes what is, and what is not, sedition. Now, the seditious intentions which it is alleged existed in the minds of the prisoners in this case are: first, an intention to excite Her Majesty's subjects to attempt otherwise than by lawful means the alteration of some matter in Church or State by law established; and, secondly, to promote feelings of ill-will and hostility between different classes of Her Majesty's subjects. This is necessarily somewhat vague and general, particularly the second portion, which says it is a seditious intention, to intend to promote feelings of ill-will and hostility between different classes of Her Majesty's subjects. I should rather prefer to say that the intention to promote feelings of ill-will and hostility between different classes of Her Majesty's subjects may be a seditious intention according to circumstances, and of those circumstances the jury are the judges; and I put this question to the Attorney-General in the course of the case: 'Suppose a man were to write a letter to the papers attacking bakers or butchers generally with reference to the high prices of bread or meat, and imputing to them that they were in a conspiracy to keep up the high prices, would that be a seditious libel—being written and not spoken?' To which the Attorney-General gave me the only answer which it was clearly possible to give under the circumstances: 'That must depend upon the circumstances.' I, sitting here as a judge, cannot go nearer than that. Any intention to excite ill-will and hostility between different classes of His Majesty's subjects may be a seditious intention; whether in a particular case this is a seditious intention or not, you must judge and decide in your own minds, taking into consideration the whole of the circumstances of the case."

It will be observed that promoting class hatred is not included in the offence of sedition in India. It is, however, none the less an offence, and punishable under the Penal Code, though
not under section 124A. It must therefore be dealt with hereafter under the head of Cognate offences.

"You may not unnaturally say," his lordship continued, "that that is a somewhat vague statement of the law, and ask by what principle shall we be governed in deciding when an intention to excite ill-will and hostility is seditious and when it is not. For your guidance, I will read you what was said by Fitzgerald, J., in the case of *Rey.* v. *Sullivan,* which was a prosecution for a seditious libel, the only difference between the two cases being of course that, while seditious speeches are spoken, a seditious libel is written, but in each of them the adjective 'seditious' occurs, and what is seditious intention in the one case will equally be a seditious intention in the other." The learned Judge here cited Lord Fitzgerald's well-known definition of sedition, which has been set out in the previous chapter, as well as the dictum of Sir Michael Foster, and continued:—"That points to the nature of the proof between seditious writing and words, and also points to a difference in the effect which they have, and the extent to which that effect goes, though of course in regard to seditious words there may be a very great distinction between words uttered to two or three companions in social intercourse and words uttered to a large multitude."

The learned Judge then cited Lord Fitzgerald's concluding remarks, in which he summed up the whole case at the trial, which have also been set out in the previous chapter, and went on to add:—"Now that language was used in reference to a seditious libel, but changing the language so as to apply to a speech, the principles thus laid down are clearly applicable to the case which you have now got before you."

"If you think that these defendants, from the whole matter laid before you, had a seditious intention to incite the people to violence, to create public disturbances and disorder, then undoubtedly you ought to find them guilty. If from any sinister motive, as, for instance, notoriety, or for the purpose of personal gain, they desired to bring the people into conflict with the authorities, or to incite them tumultuously and disorderly to damage the property of any unoffending citizens, you ought undoubtedly to find them
guilty. On the other hand, if you come to the conclusion that they were actuated by an honest desire to alleviate the misery of the unemployed—if they had a real bonâ fide desire to bring that misery before the public by constitutional and legal means, you should not be too swift to mark any hasty or ill-considered expression which they might utter in the excitement of the moment. Some persons are more led on, more open to excitement than others, and one of the defendants, Burns, even when he was defending himself before you, so prone was he to feeling strongly what he does feel, that he could not refrain from saying that he was unable to see misery and degradation without being moved to strong language and strong action. I mention that to you to show you the kind of man he is, and for the purpose of seeing, if you come to the conclusion that he was honestly endeavouring to call the attention of the authorities to this misery and honestly endeavouring to keep within the limits of the law and the constitution, that you should not be too strong to mark if he made use of an ill-considered, or too strong an expression."

His lordship then dealt with the particular charge in the case. "It divides itself," he said, "roughly into two heads. There is, first, the charge that they uttered certain words upon the occasion of this demonstration, and that is separated into nine counts, and then there comes a general charge which involves the whole of them, namely, that they agreed together before they went to this meeting that they would make speeches with the intention of exciting the people to disorder. I am unable to agree entirely with the Attorney-General when he says that the real charge is that, though these men did not incite or contemplate disorder, yet, as it was the natural consequence of the words they used, they are responsible for it. In order to make out the offence of speaking seditious words there must be a criminal intent upon the part of the accused, they must be words spoken with a seditious intent; and although it is a good working rule to say that a man must be taken to intend the natural consequences of his acts, yet if it is shown from other circumstances, that he did not actually intend them, I do not see how you can ask a jury to act upon what has then become a legal fiction."
"I am glad to say," he continued, "that with regard to this matter I have the authority again of Stephen, J., who, in his 'History of the Criminal Law,' has dealt with this very point; he deals with it in reference to the question of seditious libel. Stephen, J., says: 'To make the criminality of an act dependent upon the intention with which it is done is advisable in those cases only in which the intent essential to the crime is capable of being clearly defined and readily inferred from the facts. Wounding, with intent to do grievous bodily harm, breaking into a house with intent to commit a felony, abduction with intent to marry or defile, are instances of such offences. Even in these cases, however, the introduction of the term 'intent' occasionally led either to a failure of justice or to the employment of something approaching to a legal fiction in order to avoid it. The maxim that a man intends the natural consequences of his acts is usually true, but it may be used as a way of saying that because reckless indifference to probable consequences is morally as bad as an intention to produce those consequences, the two things ought to be called by the same name, and this is at least an approach to a legal fiction. It is one thing to write with a distinct intention to produce disturbances, and another to write violently and recklessly matter likely to produce disturbances.' Now if you apply that last sentence to the speaking of words, of course it is precisely applicable to the case now before you. It is one thing to speak with the distinct intention to produce disturbances, and another thing to speak recklessly and violently of what is likely to produce disturbances."

The doctrine here cited by the learned Judge, as enunciated by Sir James Stephen in his 'History,' would seem, at first sight, to be in conflict, with what he has laid down in his 'Digest.' In the passage cited in the previous chapter from his 'Digest,' he lays down the doctrine of intention in the following terms:—

"In determining whether the intention with which any words were spoken, (or) any document was published, was or was not seditious, every person must be deemed to intend the consequences which would naturally follow from his conduct at the time and under the circumstances in which he so conducted himself."
But this again is only a re-statement of the maxim enunciated by Lord Tenterden, C. J., in the case of *Haire v. Wilson* (9 B. & C., 643), where he said:—"Every man is presumed to intend the natural and ordinary consequences of his act. If the tendency of the publication was injurious to the plaintiff, the law will assume that the defendant by publishing it, intended to produce the injury which it was calculated to effect."

And so also Lord Kenyon, C. J., in *R. v. Cuthell* (21 St. T., 641), observed:—"God only knows the hearts of men, and we can collect their meaning only from what they do. These are fallible modes of arriving at knowledge, but we have no better, and we must pronounce men innocent or guilty according to this standard."

The same principle was laid down by Lord Fitzgerald in Sullivan's case (see *Ch. ii*) when he said:—"Every person must *prima facie* be taken to intend the natural consequences of his own acts. You cannot dive into the intentions of a man's heart, save so far as they are indicated by his acts and their natural consequences. This rule may at times operate harshly, but public policy requires that it should be put in force."

And again in the case of *Reg. v. Burdett* (4 B. & A., p. 120), Justice Best said:—"With respect to whether this was a libel, I told the jury that the question whether it was published with the intention alleged in the information was peculiarly for their consideration; but I added that this intention was to be collected from the paper itself, unless the import of the paper were explained by the mode of publication, or any other circumstances. I added that if it appeared that the contents of the paper were likely to excite sedition and disaffection, the defendant must be presumed to intend that which his act was likely to produce."

It will thus be seen that though it may be correct to say—"It is one thing to write or speak with a distinct intention to produce disturbances, and another to write or speak violently and recklessly of what is likely to produce disturbances"—for the distinction no doubt exists, and is capable of demonstration; yet this in no wise affects the well-established rule which is cited
above, and a presumption will always arise from the acts of a man or his language, and continue to operate against him until it is rebutted.

It would appear, moreover, from the further observations of Justice Cave, that the doctrine enunciated was made subject to some reservation, for he goes on to add:—"I must, however, notwithstanding what I have said upon that subject, go on to tell you that it is not at all necessary to the offence of uttering seditious words that an actual riot should follow, that there should be an actual disturbance of the public peace; it is the uttering with the intent which is the offence, not the consequences which follow, and which have really nothing to do with the offence. A man cannot escape from the consequences of uttering words with intent to excite people to violence solely because the persons to whom they are addressed may be too wise or too temperate to be seduced into that violence. That has, however, no important bearing in this case. If you come to the conclusion that language was used by the defendants or any of them upon the occasion of that meeting in Trafalgar Square, and that it was their intention to excite the people to violence, to a breach of the law, why then that would undoubtedly be the uttering of seditious words." The learned Judge here evidently means that the intention is to be gathered from the language used, and he goes on to say:—"And I apprehend that the Attorney-General was anxious to fortify himself with this, that the actual disturbances were the natural consequence of what was said, and perhaps for more than one reason. In the first place, the Government undoubtedly declined to prosecute on the assumption that the defendants had actually incited to these particular disturbances, and although that, as I have said, is not at all necessary or essential to the procuring of a conviction, yet undoubtedly that is the moral justification, so to say, the grounds upon which the Government do place the action which they take." Here the learned Judge seems to indicate very clearly that "actual incitement to particular disturbances is by no means essential to a conviction." He then goes on to add:—"As something, no doubt, may be gathered from the effect which was actually produced, there does come a point when one must say, 'This
was so violent and reckless that it is impossible to conceive that the man who uttered this did not intend the consequence which must ensue from it.' These observations obviously demonstrate the rule that 'after all a man's language is the only index to his thoughts, his motives, and his intentions.

Lastly, as to the charge of conspiracy the learned Judge said:—"Again with reference to conspiracy there is another passage of Stephen, J.'s book, where he says—'If a meeting is held for the purpose of speaking seditious words to those who may attend it, those who take part in that design are guilty of a seditious conspiracy.' Now in order to have a conspiracy you must have an agreement formed beforehand between the parties to that conspiracy that they will hold or have a meeting, and that the words there spoken shall be words of sedition."

"But, although there may have been no previous conspiracy, yet when people do go to a meeting there are circumstances under which a man may be responsible not only for what he says, but also for what some one else says. Now what are those circumstances? Stephen, J., says: 'If at a meeting lawfully convened seditious words are spoken of such a nature as are likely to produce a breach of the peace, that meeting may become unlawful, and all those who speak the words undoubtedly are guilty of uttering seditious words, and those who do anything to help those who speak to produce upon the hearers the natural effect of the words spoken.' You must do something more than stand by and say nothing. If you express approval of the statements of speakers who utter seditious language that equally will do. But there must be something of that kind. If one man uses seditious words at a meeting, those who stand by and do nothing, although they do not reprobate them, are not guilty of uttering the seditious words. Those even who make a speech themselves are not guilty of uttering seditious words unless you can gather from the language they use that they are endeavouring to assist the other man in carrying out that portion of his speech, and by that course endeavouring to assist him in causing his words, which excite to disorder, to produce their natural effect upon the people." The jury found the defendants not guilty on any of the counts.
"It is sedition," says Mr. Odgers (citing Holt) in his 'Law of Libel,' "to speak or publish of the King any words which would be libellous and actionable per se, if printed and published of any other public character. Thus any words will be deemed seditious which strike at the King's private life and conduct, which impute to him any corrupt or partial views, or assign bad motives for his policy, which insinuate that he is a tyrant, careless of the welfare of his subjects, or which charge him with deliberately favouring or oppressing any individual or class of men in distinction to the rest of his subjects."

"Generally speaking, any words, acts, or writing in respect of the public acts or private conduct of the King, which tend to vilify or disgrace the King or to lessen him in the esteem of his subjects, or any denial of his right to the Crown, even in common and unadvised discourse, may be punished as sedition:"

"It is sedition to speak or publish of individual members of the Government words which would be libellous and actionable per se, if written and published of any other public character. It is also sedition to speak or publish words defamatory of the Government collectively, or of their general administration, with intent to subvert the law, to produce public disorder, or to foment or promote rebellion. Where corrupt or malignant motives are attributed to the ministry as a whole, and no particular person is libelled, the jury must be satisfied that the author or publisher maliciously and designedly intended to subvert our laws and constitution, and to excite rebellion or disorder. There must be a criminal intent. But such an intent will, of course, be presumed, if the natural and necessary consequence of the words employed be 'to excite a contempt of Her Majesty's Government, to bring the administration of its laws into disrepute, and thus impair their operation, to create disaffection, or to disturb the public peace and tranquillity of the realm.'" (Odgers: and see R. v. Collins, 9 C. & P., 456.)

"The measures of the King and his advisers, and the proceedings and policy of his Government, may be criticised within due limits without incurring the penalties of sedition. Every man has a right to give every public matter a candid, full, and free discussion; but although the public have a right to discuss
any grievances they have to complain of, they must not do it in a way to excite tumult. This right extends to the Press. But the discussion of political measures cannot lawfully be made a cloak for an attack upon private character. Libels on persons employed in a public capacity may tend to scandalise the Government by reflecting on those who are entrusted with the administration of public affairs, for they not only endanger the public peace, as all other libels do, by stirring up the parties immediately concerned to acts of revenge, but also have a direct tendency to incline the people to faction and seditious:

"To say," said Lord Holt, C. J., in the case of R. v. Tuchin (14 St. T., 1095), "that corrupt officers are appointed to administer affairs is certainly a reflection on the Government. If men should not be called to account for possessing the people with an ill opinion of the Government, no government can subsist; nothing can be worse to any government than to endeavour to procure animosities as to the management of it: this has always been looked upon as a crime, and no government can be safe unless it be punished."

And so, in the case of R. v. Cobbett (29 St. T., 1), where the libel was directed against the administration of the Irish Government and the Lord Lieutenant and Chancellor of Ireland, Lord Ellenborough, C. J., said:—"It is no new doctrine that if a publication be calculated to alienate the affections of the people by bringing the Government into disesteem, whether the expedient be by ridicule or obloquy, the person so conducting himself is exposed to the inflictions of the law. It is a crime; it has ever been considered as a crime, whether wrapt in one form or another. The case of R. v. Tuchin, decided in the time of Lord Chief Justice Holt, has removed all ambiguity from this question.

In reviewing these weighty observations, Mr. Odgers, in his 'Law of Libel,' justly remarks that they must be construed with reference to the times in which they were made. Lord Holt, he says, "clearly was not referring to a quiet change of ministry which in no way shakes the throne, or loosens the reins of order and government. In 1704 the present system of party-government was not in vogue. And even in Lord
Ellenborough's time the ministry were still appointed by the King, and not by the people. By 'the Government' both judges meant, not so much a particular set of ministers, as the political system settled by the constitution, the general order and discipline of the realm."

It will be seen at once that these remarks on the conditions of government now prevailing in England would have no application to India, where the system of government is entirely different. On the contrary, the political system which obtains in this country, approaches more closely to the conception of government attributed to these eminent Judges. This distinction was pointed out at the very first trial for sedition in India.
CHAPTER IV.

THE LAW IN OPERATION—THE FIRST TRIAL.

This digression into the English Common Law has been rendered necessary by two circumstances. The first was the assertion by Sir James Stephen at the time he introduced his Bill that the new law 'was substantially the same as the law of England at that date, though much compressed.' The other is the important influence which the English case-law exerted, as it was bound to do, on the first trials for sedition in India. It was moreover the law which in fact prevailed in the Presidency towns up to 1870.

Now the long interval of twenty years which succeeded the legislation of 1870, whatever be the cause, was not marked by a single trial. The only incident which seems to break the monotony of that period was the preventive legislation of 1878, known as the Vernacular Press Act, which had but a brief career of four years, being repealed in 1882.

The first State trial for sedition on record is the case of Queen-Empress v. Jogendra Chunder Bose (19 Cal. 35), better known as the 'Bangobasi' case,' that being the name of the newspaper in which the alleged seditious matter appeared.

It is admitted on all hands that the articles in question were the direct outcome of the legislation of 1891, commonly known as the "Age of Consent Act." At the trial, which took place in the High Court at Calcutta, it was urged on behalf of the Crown that "no attempt at a reasonable discussion of the 'Age of Consent Bill' was to be found" in the articles charged, while the defence on the other hand contended that they "did not exceed the bounds of legitimate criticism" of the measure in question. To understand the case properly, therefore, it will be necessary to review briefly the circumstances which attended the passing of that Act.

Those who have any personal acquaintance with the incidents referred to at the trial, or have read the speeches delivered in Council at the time, will know that a good deal of
public excitement prevailed in Hindu circles in certain parts of Bengal. The situation was thus described by one of the Members of Council. The Hon’ble Mr. Nugent, speaking on the very day the Bill was passed (19th March), said:—“That a Bill on so delicate a subject as that dealt with in this measure should lead to much agitation and excite considerable opposition is inevitable, and it cannot be denied that the proposed legislation has in many quarters met with a hostile reception.” But he went on to add, “It is satisfactory, however, to find that a large and influential volume of public opinion, notably in the Bombay Presidency, is in favour of the measure, and that of those persons really competent to judge the question on its merits, a majority would appear to support the course pursued by the Government. It may, I think, safely be assumed that at most, if not all, of what are described as ‘monster meetings’ held to protest against the Bill, nine out of ten of those present had but the most vague and nebulous notions concerning either the provisions of the Bill or the effects it was likely to produce. When once, however, the Bill has become law, all agitation will, I anticipate, speedily subside; the baseless clamour regarding religion being endangered will rapidly die out; the beneficial and salutary character of the enactment hedged round with safeguards as it now is, will be recognised; and gradually a practice which no right-minded man can defend, and every kindly-hearted woman must abhor, will become as extinct as is Sati or any other barbarous custom, which has already been swept away by the progress of education and civilisation.”

It cannot be denied that a very strong case had been made out for the necessity of legislation by the Member in charge of this Bill, Sir Andrew Scoble. Memorable speeches had been made in support of it by other Members, and notably by Sir Griffith Evans, Rao Bahadur Nulkar, and last, but not least, by His Excellency Lord Lansdowne, the President of the Council.

Sir Andrew Scoble after citing the observations of Justice Wilson in his memorable charge to the jury at the trial of Hari Maiti (18 Cal., 49), on the inadequacy of the law to meet the evils complained of, as well as a mass of data collected through reliable sources from all parts of the province said:—“There
is no gainsaying this evidence. It establishes the existence in Bengal of a horrible practice, condemned alike by the Hindu religion and by the commonest feelings of humanity and with which the present law is powerless to cope in any adequate way. The records of the Criminal Courts are full of cases in which child-wives between the ages of ten and twelve have been done to death in the exercise of marital rights by their husbands.

After recounting some of these cases he proceeded, "I might multiply cases of this kind, which show not only that Hari Maiti's case is not exceptional, but that the present law, though not absolutely a dead letter, does not go far enough to efficiently protect this helpless class of children. No one can say that a few months' imprisonment is a sufficient penalty for crimes of this description, or that the marital relation ought to be allowed to be pleaded in extenuation or justification of such outrages on humanity. There is, moreover, much reason to fear that comparatively few cases of this class find their way into the Criminal Courts, and not many perhaps into the hospitals. But I would invite the attention of the Council to the terrible list sent up by Mrs. Mansell and other lady doctors, of cases which had come under their personal observation, of little girls, aged from nine to twelve, who had died, become paralysed, or crippled, or been otherwise severely injured, as the result of premature cohabitation."

The Hon'ble Rao Bahadur Nulkar in the course of his elaborate and exhaustive argument in support of the measure, alluded to the same overwhelming testimony as follows:—"In a petition sent to His Excellency the Viceroy in September last, praying that the age of consent be raised to fourteen years, fifty lady doctors practising among Native women in India have given the harrowing details and cruel deaths among thirteen cases of child-wives which came before them within a few years' practice. The ages of the girls ranged between seven and twelve years."

He then proceeded to quote some of the "harrowing details" which it is unnecessary to reproduce here, but his concluding comments were as follows:—"If all this evidence fails to convince the opponents that the evil does exist and
requires a more stringent remedy at the hands of the Legislature to secure adequate protection of child-wives against such fiendish husbands, we can only pity them for their moral depravity."

Sir Griffith Evans in the course of his forcible speech said:—"Looking at the mass of evidence before us it does seem impossible to deny that a state of things exists which imperatively calls for legislation. Intercourse with immature female children is so utterly revolting, so contrary to the first principles of civilised society, and such a physical outrage upon the poor little children themselves, that I should have thought it was beyond the pale of discussion to consider whether it should be treated as a vice like drunkenness, or as what it is, a heinous crime against these poor little infants. It has been clearly established that this crime, this odious practice prevails, and prevails very largely. The terms in which the Raja of BHINGA has just referred to it show what the real nature of it is, and also the abhorrence with which all right-minded people must view it. Then what are the consequences of it? Not only is there the physical outrage itself, but it is clearly shown that in a very large number of cases serious hurt, and sometimes even death, are the result to the victims; in other cases injury to their constitution of a lasting and grave character. So far then it would seem clear beyond all doubt that some legislation is necessary."

His Excellency Lord Lansdowne, the President, summed up the whole case with consummate tact and moderation. In dealing with the religious aspect of the question, His Excellency said:—"In all cases where there is a conflict between the interests of morality and those of religion, the Legislature is bound to distinguish, if it can, between essentials and non-essentials, between the great fundamental principles of the religion concerned, and the subsidiary beliefs and accretionary dogmas which have accidentally grown up around them. In the case of the Hindu religion such a discrimination is especially needful, and one of the first questions which we have to ask ourselves is, assuming that the practice with which our proposed legislation will interfere is a practice supported by religious sanctions, whether those sanctions are of first-rate importance and absolutely obli-
gatory, or whether they are of minor importance and binding only in a slight degree. Now I venture to affirm that the discussion which has taken place has established beyond controversy that the particular religious observance which we are urged to respect is, in the first place a local observance, and one far from being universally recognised by those who profess the Hindu faith. It is a practice which is, in the main, peculiar to the Province of Bengal, and which is followed only in a portion of that province, and only by certain classes within that portion. It will not be contended that devout Hinduism is not to be found outside this restricted area, but the Hindus of other parts of India do not share the alarm with which this Bill is regarded in Bengal. In the next place it is admitted that the religious sanctions by which the practice is supported are of the weakest kind.”

His Excellency referred to the testimony of eminent Hindu scholars, of Maharajas, Chiefs, Judges, and leaders of Hindu society by way of corroboration, and continued:—“I feel that the time is not far off when their fellow citizens, without exception, will recognize that such men as these, rather than they who have so noisily, and so thoughtlessly repeated the parrot-cry ‘our religion is in danger’ are the true leaders of public opinion in this country.”

His Excellency’s concluding remarks were as follows:—“The necessity of an age-limit being admitted, the only question which the Council has to decide is whether our proposal fixes that limit at the proper point. We contend that the point at which we propose to fix it accords at all events more closely with the physiological facts than any other. We have been pressed to adopt a higher limit, but we desire to keep on the safe side. We justify our proposal on the ground that the British law would fail to provide adequately for the safety of the children of this country if, while it protects them from all other kinds of ill-usage, it failed to protect them from a particular form of ill-usage infinitely more revolting, and infinitely more disastrous in its direct, as well as its remoter results, than any other form of ill-treatment to which they are liable.”

The Bill was then passed by the Council by a practically unanimous vote, amending section 375 of the Penal Code, and the age of consent was thereby raised from ten to twelve years.
There was reason to hope that better counsels had prevailed among its opponents, and there were indications of a complete subsidence of hostile agitation, as had been in fact anticipated. Such were the circumstances attending the passing of that important measure, without some knowledge of which it would be difficult to follow the drift of the Bangobasi’s criticism. They had moreover been freely alluded to in the course of the trial.

The Bangobasi, of which the four accused were respectively the proprietor, editor, manager and printer, was a weekly vernacular newspaper published in Calcutta, and having a large provincial circulation.

The Bill had been passed on the 19th March, 1891, and the first of a series of articles appeared in the Bangobasi on the 28th March, i.e., the following week. The material passages in the articles charged as seditious were as follows:

"The English ruler is our lord and master, and can interfere with our religion and usages by brute force and European civilisation. The Hindu is powerless to resist; but he is superior to your nation in good morals, in gentle conduct and in good education. Hindu civilisation and the Hindu religion are in danger of being destroyed. The Englishman stands revealed in his true colours. He has the rifle and bayonet and slanders the Hindu from the might of the gun. How are we to conciliate him? We cannot expect mercy or justice from him. Our chief fear is that religion will be destroyed, but the Hindu religion will nevertheless remain unshaken. We suffer from the ravages of famine, from inundations, from the oppressive delays of the law courts, from accidents on steamers and railways. All these misfortunes have become more prevalent with the extension of English rule in India; but our rulers do not attempt to remove these troubles or to ameliorate our condition. All their compassion is expended in removing the imaginary grievances of girl-wives and interfering with our customs. We should freely vent our real grievances. We are unable to rebel, but we are not of those who say it would be improper to do so if we could. We have been conquered by brute force, but we are superior to the English in ethics and morality, in which we have nothing to learn from them. You may crush-
the body but you cannot affect the mind. Others like Aurungzebe and Kalapahar have tried before you and failed. You should not try and suppress girl-marriage because you won at Plassey and Assaye. It is error and presumption on your part to attempt to reform our morals.

At the trial the defence contended that this “did not exceed the bounds of legitimate criticism, when allowance was made for the difference between European and native methods of thought and the conservative character of the paper.” It was further argued that as the articles “contained no direct excitement to rebellion” they were not seditious.

It was contended on behalf of the Crown that there was “no attempt at a reasonable discussion of the Age of Consent Bill to be found” in the articles. There was “nothing but vituperation and invective.” In one of them it was stated that “rebellion was not possible.” The intention was to bring the people into this frame of mind—“We would rebel if we could.” which was “inconsistent with loyalty to Government.” “The intention of the articles in referring to famines and high prices, and charging the Government with persecuting the Hindu religion,” was to make the people “discontented and dissatisfied.” It was “always dangerous to excite the religious feelings of the people, and when the Government is compared to the Emperor Aurungzebe, one of the most persistent persecutors of the Hindu religion, and to Kalapahar, whose name was held in the greatest abhorrence by Hindus, surely the public peace is imperilled.”

It is to be regretted that the comments of Sir C. Petheram, C. J., on these articles have been omitted from the report of his charge to the jury, but doubtless he referred to the arguments advanced on both sides. The leading English authorities had been freely cited during the trial, in support of either view, and their influence is distinctly traceable in his lordship’s charge. After reading the section as it then stood (see Ch. I) to the jury, he proceeded to expound its meaning.

After disposing of the contention advanced by the defence that the word “disaffection” meant simply disapprobation, as clearly unsustainable, his lordship proceeded:—“Disaffection means a feeling contrary to affection, in other words dislike or
hatred. If a person uses either spoken or written words calculated to create in the minds of the persons to whom they are addressed a disposition not to obey the lawful authority of the Government, or to subvert or resist that authority, if and when occasion should arise, and if he does so with the intention of creating such a disposition in his hearers or readers, he will be guilty of the offence of attempting to excite disaffection within the meaning of the section, though no disturbance is brought about by his words, or any feeling of disaffection in fact produced by them. It is sufficient for the purposes of the section that the words used are calculated to excite feelings of ill-will against the Government, and to hold it up to the hatred and contempt of the people, and that they were used with the intention to create such feeling."

It will be observed that the expressions employed in the last sentence are clearly imported from the English case-law, and, as they were the direct cause of further legislation in 1898, the matter is worthy of note. This interpretation of the section was subsequently cited with approval by the High Courts of Bombay and Allahabad.

His lordship's further directions to the jury for the construction of the articles in question are also of much value, and may be taken as a guide for the construction of seditious matter generally.

"You will have to bear in mind," he said, "the class of paper which is being prosecuted, and the class of people among whom it circulated, taking into consideration the articles which have been made the subject of the indictment, and the others which have been put in during the course of the trial. Those articles are not addressed to the lowest or most ignorant mass of the people. They are addressed to people of the respectable middle class, who can read and understand their meaning—more or less the same class as the writers. You will have to consider not only the intent of the person who wrote and disseminated the articles among the class named, but the probable effect of the language indulged in. Then you will have to consider the relations between the Government and the people, and having considered the peculiar position of the Government and the consequence to it of any well-organised disaffection, you
will have to decide whether there is an attempt or not to disseminate matter with the intention of exciting the feelings of the people till they become disaffected."

"British India," his lordship continued, "is part of the British Empire, and is governed like other parts of the Empire by persons to whom the power is delegated for that purpose. There is a great difference between dealing with Government in that sense and dealing with any particular administration. Were these articles intended to excite feelings of enmity against the Government, or on the other hand, were they merely expressing, though in strong language, disapprobation of certain Government measures? You will bear in mind that the question you have to decide has reference to the intention; and, in fact the crime consists of the intention, for a man might lawfully do the act without the intention. The evidence of intention can only be gathered from the articles. The ultimate object of the writer may be one thing, but if, in attaining that object, he uses as the means the exciting of disaffection against the Government, then he would be guilty under section 124A. If you think that these people, with the object of procuring the repeal of the Age of Consent Act, or of increasing the sale of their paper, disseminated these articles intending to excite feelings of enmity, you will be bound to find a verdict of guilty. As to the evidence of intent, the articles are the only evidence."

As the jury were unable to return a unanimous verdict, they were discharged, and the case was set down for retrial. The accused however in the meanwhile tendered an apology, and the proceeding was dropped. Thus ended the famous Bangobasi case.
CHAPTER V.

SOME NOTABLE TRIALS.

A period of six years elapsed before another prosecution was instituted for sedition, but in 1897 three notable trials took place. Two of these were held in Bombay and the third at Allahabad, while all of them had a direct bearing on the legislation of 1898. The first in priority of time, if not in importance, was the case of Queen-Empress v. Bal Gangadhar Tilak (22 Bom. 112), commonly known as 'Tilak's case.' This trial, which ended in a conviction, had the distinction of passing through three stages. There was the trial in the High Court, then the application for leave to appeal to the Privy Council, and finally the application before the Privy Council itself, where the accused had for his counsel the present Prime Minister and other eminent barristers. The trial in the High Court was before Justice Strachey, whose celebrated charge to the jury, though repeatedly attacked for misdirection, was ultimately approved and endorsed by the Privy Council.

It is an exhaustive exposition of the law, dealing as well with a great variety of questions incidental to such trials, and may be regarded as a compendium both of the law and the practice which pertains to sedition. It will be necessary, therefore, to refer to this charge very frequently as an authority on many points, but for the present it will suffice to consider it only in its relation to the legislation of the following year, on which it exercised an important influence.

The facts established at the trial were as follows: Tilak was the proprietor, editor, and publisher of a weekly vernacular newspaper called the Kesari, published at Poona, and having a large circulation in the province, with a list of six or seven thousand subscribers. His co-accused was the acting manager. Tilak had some ten years before signed a declaration as publisher under Act XXV of 1867 (see Appx.), which rendered him prima facie liable, as was pointed out to the jury, for the...
publication of every article, and in fact of "every part of any paper bearing a name corresponding to that mentioned in the declaration." This was not disputed, nor indeed was any attempt made to shirk responsibility in respect of the articles in question.

The seditious matter charged was contained in two different series of publications, which appeared in the issue of the 15th June 1897. The first was a highly metaphorical and barely intelligible rhapsody, partly in verse, entitled "Shivaji's Utterances." The other purported to be a report of the proceedings at the Shivaji Coronation Festival, with a summary of the speeches delivered at the celebration of the 12th June, including one from Tilak himself, who was the President.

Among the remarkable utterances attributed to the heroic Shivaji, on his awakening from a sleep of centuries to view the desolation of his native land, were the following:—"By annihilating the wicked I lightened the great weight on the terraqueous globe. I delivered the country by establishing 'Swarajya' (independence), and by saving religion. I betook myself to heaven to shake off the exhaustion which had come upon me. I was asleep; why then did you, my darlings, awaken me? I had planted upon this soil the virtues that may be likened to the Kalpavriksha, of sublime policy, based on a strong foundation. Valour in the battlefield like that of Karna, patriotism, genuine dauntlessness, and unity, the best of all. Perhaps you now wish to show me the fruits of these. Alack! What is this? I see a fort has crumbled down. Through this misfortune I get a broken stone to sit upon. Why does not my heart break like that this day? Alas! alas! I now see with my own eyes the ruin of my country. Those forts of mine, to build which I expended money like rain, to acquire which fresh fiery blood was spilled, from which I sallied forth roaring like a lion through the ravines, have crumbled down. What a desolation is this! Foreigners are dragging out Lakshmi (affluence) violently by the hand (or by taxation), by means of persecution. Along with her plenty has fled, and after that health also. This wicked Akabaya stalks with famine through the whole country. Relentless death moves about spreading epidemics of diseases."
Then follows a wild metrical rhapsody full of covert allusions to the tribulations of the people, the miseries of toil and hunger, the ruthless slaughter of cows, the brutal treatment of women, and the killing of natives on trivial pretexts. "How do the white men escape by urging these meaningless pleas? This great injustice seems to prevail in these days in the tribunals of justice. Could any man have dared to cast an improper glance at the wife of another, a thousand sharp swords would have leapt out of their scabbards instantly. Now however opportunities are availed of in railway carriages, and women are dragged by the hand. You eunuchs! How do you brook this?"

This terrible picture of India under British rule concludes with the following peroration. "Give my compliments to my good friends, your rulers, over whose vast dominions the sun never sets. Tell them 'How have you forgotten that old way of yours, when with scales in hand you used to sell your goods in your warehouses!' As my expeditions in that direction were frequent, it was at that time possible to drive you back to your own country. The Hindus, however, being magnanimous by nature I protected you. Have you not been laid under deep obligations? Make then your subjects, who are my own children, happy. It will be good for your reputation if you show your gratitude now by discharging this debt.' The sign of a Bhawani sword was affixed to the end of this.

The second extract charged as seditious consisted of a report of various lectures, discourses, and speeches delivered in celebration of the great Shivaji, who was freely compared by the speakers with other historical personages, such as Cæsar, Napoleon, Mazini, Clive, and Hastings, though much to the disadvantage of the latter. One learned Professor devoted his lecture specially to the justification of Shivaji for the 'Killing of Afzul Khan,' at the conclusion of which he pointed the following moral—"Every Hindu, every Maratha, to whatever party he may belong, must rejoice at this Shivaji festival. We all are striving to regain our lost independence, and this terrible load is to be uplifted by us all in combination. It will never be proper to place obstacles in the way of any person, who, with a true mind, follows the path of uplifting this burden in the manner he deems
SOME NOTABLE TRIALS.

fit. Our mutual dissensions impede our progress greatly. If any one be crushing down the country from above, cut him off; but do not put impediments in the way of others. All occasions like the present festival, which tend to unite the whole country, must be welcome.''

Another Professor following in the same strain said:—

"If no one blames Napoleon for committing two thousand murders in Europe, if Cæsar is considered merciful, though he needlessly committed slaughter in Gaul many a time, why should so virulent an attack be made on Shri Shivaji Maharaja for killing one or two persons? The people who took part in the French revolution denied that they committed murders, and maintained that they were only removing thorns from their path. Why should not the same principle be made applicable to Maharashtra" (i.e., the Mahratta country)?

Whatever other speakers may have lacked in animation and vigour was amply compensated by the President himself, who brought the meeting to a close. The following are some passages from his speech—"If thieves enter our house, and we have not strength in our wrists to drive them out, we should without hesitation shut them up and burn them alive. God has not conferred upon the Menchhas (foreigners) the grant inscribed on copperplate of the Kingdom of Hindustan. The Maharaja strove to drive them away from the land of his birth; he did not thereby commit the sin of coveting what belonged to others. Do not circumscribe your vision like a frog in a well. Get out of the Penal Code, enter into the extremely high atmosphere of the Shrimat Bhagavatgita, and consider the actions of great men."

In commenting on these extracts from the Kesari it was contended, on behalf of the Crown, that, though "there was nothing necessarily disloyal in celebrating the anniversary of Shivaji, who was unquestionably a great and distinguished man, advantage had been taken of the celebration to use language with reference to the British Government which was intended to excite disaffection," and to incite its readers "to follow the example of Shivaji and overthrow British rule." One of the articles "contained a clear attempt to justify political assassination," and it was a significant fact, though no connection could be ac-
tually traced, that "within a week of their publication Mr. Ayerst and Mr. Rand had been murdered at Poona." It was also contended that a comparison had been drawn "between the condition of the people under Shivaji and under British rule altogether unfavourable to the latter," and that this was done "for the purpose of exciting disaffection."

For the defence it was argued that "the articles describing the sufferings of the people were quite consistent with loyalty. They no doubt set forth grievances, but it was not seditious to do that." "The articles on the Jubilee showed a genuine loyalty." "No doubt there were articles in praise of Shivaji," but they "only expressed a general admiration for him as a man of extraordinary power and talent;" and further that "the object of the accused was clearly only to create a national sentiment, just as the Scotch, Welsh and Irish people by their national celebrations endeavour to keep alive and foster a national spirit." There was no suggestion of "overthrowing the British Government."

It was further sought to construe the section by reference to the speech of Sir James Stephen in Council, on the passing of the Bill in 1870, as had been done in the Bangobasi case, but this was disallowed by the Judge on the authority of the Privy Council ruling in the case of The Administrator-General of Bengal v. Premlal (22 I. A., 107). Counsel also referred to the charge of Cave, J., in Reg. v. Burns, and of Fitzgerald, J., in Reg. v. Sullivan (see Chs. ii—iii).

His lordship in charging the jury explained first the individual responsibility of each of the accused, and then proceeded to expound the law as follows:—"In the first place, in construing the section, I do not propose to discuss the English law of seditious libel, though I have most fully considered the cases to which counsel has referred, and the writings of Sir James Stephen and others on the subject. I believe that the explanation which I shall give you is not in any way inconsistent with the best English authorities; but in England the offence of seditious libel is not a statutory offence defined by Act of Parliament, but a common law misdemeanour elaborated by the decisions of Judges. In this country the law
to be applied is the Penal Code. I will now ask you to look at the section and the way it is worded.”

His lordship thereupon read the section as it then stood (see Ch. i), and continued:—“You will observe that the section consists of two parts: first a general clause, and then an explanation. The object of the explanation is a negative one, to show that certain acts which might otherwise be regarded as exciting or attempting to excite disaffection are not to be so regarded. We must, therefore, first consider the first or general clause of the section by itself, and then see how far the explanation qualifies it. The offence as defined by the first clause is exciting or attempting to excite feelings of disaffection to the Government. What are ‘feelings of disaffection?’ It means hatred, enmity, dislike, hostility, contempt, and every form of ill-will to the Government. ‘Disloyalty’ is perhaps the best general term, comprehending every possible form of bad feeling to the Government. That is what the law means by the disaffection which a man must not excite or attempt to excite; he must not make or try to make others feel enmity of any kind towards the Government.” He subsequently added, “The word ‘disaffection’ covers, in my opinion, all those terms.”

“You will observe,” he continued, “that the amount or intensity of the disaffection is absolutely immaterial except perhaps in dealing with the question of punishment: if a man excites or attempts to excite feelings of disaffection, great or small, he is guilty under the section. In the next place it is absolutely immaterial whether any feelings of disaffection have been excited or not by the publication in question. You will observe that the section places on absolutely the same footing the successful exciting of feelings of disaffection, and the unsuccessful attempt to excite them, so that if you find that either of the prisoners has tried to excite such feelings in others, you must convict him even if there is nothing to show that he succeeded.”

“Again,” he added, “it is important that you should fully realise another point. It is not the exciting or attempting to excite mutiny or rebellion, or any sort of actual disturbance, great or small. Whether any disturbance or outbreak was caused by these articles is absolutely immaterial.
I am aware that some distinguished persons have thought that there can be no offence against the section unless the accused either counsels or suggests rebellion or forcible resistance to the Government. In my opinion, that view is absolutely opposed to the express words of the section itself, which as plainly as possible makes the exciting or attempting to excite certain feelings, and not the inducing or attempting to induce to any course of action, such as rebellion or forcible resistance, the test of guilt. I can only account for such a view by attributing it to a complete misreading of the explanation attached to the section, and to a mis-application of it beyond its true scope."

In dealing with the explanation in the latter portion of the section his lordship said: "Its object is to protect from the condemnation pronounced by the first clause certain acts which it distinguishes from the disloyal attempts which the first clause deals with. The thing protected by the explanation is 'the making of comments on the measures of the Government' with a certain intention. This shows that the explanation has a strictly defined and limited scope.' "It does not apply to any writing which consists not merely of comments upon Government measures, but of attacks upon the Government itself, its existence, its essential characteristics, its motives, or its feelings towards the people."

"A man may criticise or comment on any measure or act of the Government, whether legislative or executive, and freely express his opinion upon it. He may express the strongest condemnation of such measures and he may do so severely, and even unreasonably, perversely and unfairly. So long as he confines himself to that he will be protected by the explanation. But if he goes beyond that, and, whether in the course of comments upon measures or not, holds up the Government itself to the hatred or contempt of his readers—as, for instance, by attributing to it every sort of evil and misfortune suffered by the people, or dwelling adversely on its foreign origin and character, or imputing to it base motives, or accusing it of hostility or indifference to the welfare of the people—then he is guilty under the section, and the explanation will not save him."
In construing the concluding terms of this clause, which have since been altered, his lordship alluded to their very apparent liability to misconstruction as follows:—"I believe that it is an inaccurate reading of this part of the explanation, a too exclusive attention to the expressions about obedience and resistance, and an insufficient attention to other expressions equally important, which has caused some people to misunderstand the whole section, and to imagine that no one can be convicted under it, even if he assails the Government itself and not merely Government measures, unless he counsels or suggests rebellion or forcible resistance."

In view of these significant remarks the obvious necessity of importing plainer language into the law was at once recognised, and legislation speedily followed.

In dealing with the extracts from the *Kesari* his lordship said: "You will thus see that the whole question is one of intention of the accused in publishing these articles." "But you may ask 'how can we tell whether his intention was simply to publish a historical discussion about Shivaji and Afzul Khan, or whether it was to stir up, under that guise, hatred against the Government?" You must gather the intention as best you can from the language of the articles; and you may also take into consideration, under certain conditions, the other articles that have been put in evidence. But the first and most important index of the intention of the writer or publisher of a newspaper article is the language of the article itself. What is the intention which the articles themselves convey to your minds? In considering this, you must first ask yourselves what would be the natural and probable effect of reading such articles in the minds of the readers of the *Kesari*, to whom they were addressed? Would the feeling produced be one of hatred to the Government, or would it be simply one of interest in a poem and a historical discussion about Shivaji and Afzul Khan, and so forth?"

His lordship continued:—"But in the next place, in judging of the intention of the accused, you must be guided not only by your estimate of the effect of the articles upon the minds of their readers, but also by your common sense, your knowledge of the world, your understanding of the meaning of words, and..."
your experience of the way in which a man writes when he is animated by a particular feeling.

"It may not be easy to express the difference in words; but the difference in tone and spirit and general drift between a writer who is trying to stir up ill-will and one who is not, is generally unmistakable, whether the writing is a private letter, or a leading article, or a poem, or the report of a discussion. You can form a pretty accurate notion of what a man is driving at, or what he wants to convey, from a perusal of the writing, and can generally tell whether the writing is inspired by good-will or is meant to create ill-will. It is not very difficult to distinguish between the language of hostility and the language of loyalty and good-will, or of criticism and comment."

Such are the main principles of the law of sedition as laid down by Justice Strachey in his charge to the jury in Tilak's case. It will be necessary to refer to it again as an authority on many incidental questions. This charge derives a special importance from the fact that it came before the Privy Council and was considered by Lords Halsbury, Hobhouse, and Davey, and Sir Richard Couch. The Lord Chancellor in delivering judgment said:—"Their Lordships are of opinion, taking a view of the whole of the summing-up, which is of very great length, that there is nothing in that summing-up which calls upon them to indicate any dissent from it or any necessity to correct what is therein contained."

It was moreover cited at great length and approved by a Full Bench of the Allahabad High Court, and was mainly instrumental in bringing about the legislative changes that followed.

Tilak was found guilty by a majority of six to three, and sentenced to eighteen months' rigorous imprisonment.
CHAPTER VI.

SOME NOTABLE TRIALS—contd.

The next trial of note also took place in Bombay, and about the same time as Tilak's case. It came up on appeal to the High Court a few months later and was heard by a Full Bench. It is the case of Queen-Empress v. Ramchandra Narayan and another (22 Bom. 152), and the decision is of the highest value as affording not only the interpretations of the learned Judges as to the law of sedition, but also their views on its proper application, and the measure of punishment to be awarded for the crime. The first accused was the editor, and the second the proprietor, and publisher of a newspaper called the Pratod, which was printed and published at Islampur in the Satara district. The appellants had been convicted by the Sessions Judge of Satara and sentenced respectively to transportation for life and for seven years.

The article charged as seditious appeared in the issue of the 17th May 1897, and was as follows:—

"Preparations for becoming Independent."

"Canada is a country in North America under the British rule, the people of which have now become intolerant of their subjection to England. Though they are subject to the British people, they are not effeminate like the people of India. It is not their hard lot to starve themselves for filling the purse of Englishmen. They are not obliged to pay a pie to England. Their income from land-revenue and taxes are expended for their own benefit. They enact their own laws independently, and appoint their own officers, except one or two who are sent from England. Of even this nominal dependence they have become impatient, and are now busy making efforts to throw it off. It is natural for them to envy their neighbours, who, after casting off their English nationality, and assuming the designation of Americans, are now enjoying the blessings of a free nation. They have appointed a committee to frame an independent constitution for themselves. This committee
has issued a notification of their aims, copies of which have been distributed even in India. In this notification they have clearly stated their intention of throwing off the English yoke, and establishing a Government of their own. Like us, they are not men given to prattling, but can act up to their word. There is also strong unity amongst them. Spirited men show by their actions what stuff they are made of. There are no people on earth who are so effeminate and helpless as those of India. We have become so callous and shameless that we do not feel humiliation, while we are laughed at by all nations for losing such a vast and gold-like country as India. What manliness we can exhibit in such a condition is self-evident.”

Two other articles were put in evidence to prove animus. The arguments of Counsel are unfortunately not reported. The comments of Sir C. Farran, C. J., on the article in question, however, are as follows:—“It opens with an untruthful representation of the aims and wishes of the Canadian subjects of Her Majesty.” “Having started with this misleading account of the position of the Canadians, their aims and wishes, he proceeds to contrast their political position with that of Her Majesty’s Indian subjects, greatly to the prejudice of the latter. The writer then goes on to address his readers. He informs them that they once possessed a vast and gold-like country—India—and assures them that they are laughed at by all nations for having lost it. He upbraids them for their effeminacy and want of spirit, and urges them to action: ‘Spirited men show by their actions what stuff they are made of.’ He ends with this enigmatic passage: ‘How we can exhibit manliness in such a condition is self-evident.’ The article as a whole has, I think, the object of making its readers impatient of their allegiance to a foreign Sovereign, and creating in them the desire of casting off their dependence upon England—in other words, of exciting disaffection to the Government established by law in British India.”

Justice Parsons, concurring, expressed his views on the article thus:—“Under the false representation of what the Canadians were about to do, it chides the people of India for their effeminacy and want of spirit, and exhorts them to exhibit some manliness, in order to cast off their subjection to the English rule, to
establish a Government of their own, and to become independent.
In veiled language, but in no uncertain tone, it attempts to excite
the readers to subvert the Government, and replace it by
another.”

Justice Ranade, commenting on the same article, said:—
"Its evident animus was to excite a feeling of aversion and
hatred. It was not directed as an attack against any particular
act or measure of Government or its officers, but it appears to
be the outcome of a general sense of vague dissatisfaction with
the existing political constitution and order. As a statement of
well-known contemporary facts, it is not true to state that
Canada is desirous of throwing off the English connection. An
imaginary ideal of independence is held up for imitation, and the
people of this country are blamed for their apathy in the matter,
and scornfully disparaged for their want of spirit. It is quite clear,
therefore, that the words are calculated to create the feeling
which the law reprobates and seeks to punish.”

These observations are of the highest importance as
instances of judicial criticism on concrete examples of
seditious matter, and may furnish a guide for the interpretation
of similar material. It is, however, the judicial interpretation
of the law as it then stood, prior to its alteration, that forms
perhaps the most important part of this Full Bench decision.

Sir C. Farran, C. J., after citing the section (see Ch. i)
observed:—"Neither the section nor the explanation, however,
defines the term 'disaffection,' nor is it defined in other parts of
the Code.” His lordship then proceeded to determine its mean-
ing. Referring to Murray's Dictionary he found the special
signification of the word to be—"Political alienation or discon-
tent, a spirit of disloyalty to the Government or existing author-
ity,” and then proceeded—"An attempt to excite feelings of dis-
affection to the Government is equivalent to an attempt to produce
hatred of Government as established by law, to excite political
discontent, and alienate the people from their allegiance.”

“This,” he added, "is an offence under English law. In Ste-
phen's Criminal Law the publication of a libel with seditious intent
is classed as a misdemeanour, and seditious intention is thus
defined: 'A seditious intention is an intention to bring into hatred
or contempt, or to excite disaffection against the person of Her
Majesty, her heirs or successors, or the Government and constitution of the United Kingdom as by law established, or to raise discontent or disaffection amongst Her Majesty’s subjects' (see Ch. ii). I quote the passage as conveniently summarising the English law. It is, I think, fully supported by the rulings of the English Judges and all the recognised text-books on criminal law.”

“Turning to the explanation,” he continued, “we find that disapprobation of the measures of Government is not disaffection, provided that it is of such a nature as to be compatible with a disposition to obey Government and to support its lawful authority against attempts to resist or subvert it. The meaning of that passage appears to me to be that a loyal subject who disapproves Government measures is not to be deemed disloyal or disaffected on that account if, notwithstanding his disapprobation of such measures, he is ready to obey and support Government. If he is at heart loyal, he is not disaffected merely because he disapproves certain measures of Government. On the other hand “he may be a rebel at heart, though for the time being prepared to obey and support Government. It consequently follows that the publication of a libel exciting to disaffection against Government itself—the constitution established by law—may be an offence, though the libel may insist on the desirability or expediency of obeying and supporting Government.”

It would seem to follow from his lordship’s remarks that a man might be clearly guilty of exciting disaffection and yet have escaped through the meshes of the explanation by the method indicated. If this was so the necessity for altering it is abundantly clear. His lordship added—“The ordinary meaning of the term ‘disaffection’ in the main portion of the section is not, I think, varied by the explanation.”

Justice Parsons’ interpretation of the term ‘disaffection’ is also important. “It must be taken,” he said, “to be employed in its special sense as signifying political alienation or discontent, that is to say, a feeling of disloyalty to the Government or existing power, which tends to a disposition not to obey, but to resist and attempt to subvert that Government or power. Its meaning thus exactly corresponds to the almost, if not quite, universally accepted meaning of its adjective ‘disaffected.’ To
make or attempt to make a person disaffected, that is to excite or attempt to excite in him a feeling of disloyalty to Government, or to excite or attempt to excite in his mind a disposition to disobey, to resist the authority of, or to subvert the existing Government, is the act under this section declared an offence."

Justice Ranade's definition of the same term is a model of precision and apt phraseology. After an elaborate inquiry into the English law of sedition, he said:—"Disaffection, as thus judicially paraphrased, is a positive political distemper, and not a mere absence or negation of love or good-will. It is a positive feeling of aversion which is akin to 'disloyalty,' a defiant insubordination of authority, or when it is not defiant, it secretly seeks to alienate the people, and weaken the bond of allegiance, and prepossesses the minds of the people with avowed or secret animosity to Government, a feeling which tends to bring the Government into hatred or contempt by imputing base or corrupt motives to it, makes men indisposed to obey or support the laws of the realm, and promotes discontent and public disorder."

The convictions of both the accused were confirmed, but the sentences, which were found to be out of all proportion to the gravity of the offence, were reduced to one year's rigorous and three months' simple imprisonment. The reasons for this were specifically set out by the Chief Justice, and will be referred to hereafter (see Ch. xi).

The last of the three notable trials of the year 1897 took place at Allahabad. This was the case of Queen-Empress v. Amba Prasad (20 All. 55), which came up on appeal before a Full Bench of the High Court on the 14th December of that year. The report of the case unfortunately contains no statement of the facts, no arguments of Counsel, and no indication of the nature of the matter charged as seditious. The only facts available are such as can be gathered from the judgment of the Full Bench, which was delivered by Sir John Edge, C. J.

It appears from this that the accused Amba Prasad, a Hindu Kayesth, was a native of Moradabad, and that he was the proprietor, editor, and publisher of a newspaper called the Jami-ul-Ulam. The paper was published in Moradabad, and, as its name would indicate, had its chief circulation among Mahomedans.
The article in question which would seem to have been of a grossly seditious character, had appeared in the issue of the 14th July. At his trial before the Sessions Judge of Moradabad the accused pleaded guilty, and was sentenced to eighteen months' rigorous imprisonment. Against this sentence he appealed to the High Court.

Their lordships dismissed the appeal in the following terms:—

"In the case before us Amba Prasad has pleaded guilty to an attempt, by the publication of the article in question, to excite feelings of disaffection to the Government established by law in British India. He was well advised to plead guilty, as on an examination of that article the only possible defence open to him was that of insanity. His counsel before us could not suggest that there was the slightest justification or excuse for the gross and libellous charges against the Government contained in the article. Amba Prasad, in publishing that article, could have had but one object in view, and that was to excite amongst Her Majesty's Indian subjects feelings of disaffection, disloyalty to the Government established by law in British India. The particular article, taken in conjunction with other articles published in his newspaper, shows that his object was to excite not merely passive disaffection, which in itself is an offence, within section 124A of the Indian Penal Code (see Ch. i), but active disloyalty and rebellion amongst his Muhammadan fellow-subjects. The criminal offence which Amba Prasad committed is an exceedingly grave one. That offence he committed regardless of the ruin, misery, and punishment which would have fallen on any of his fellow-countrymen who might have been so ignorant as to believe that the statements which he published were true, and who acting on such belief might have entered upon a course of active disloyalty to the Government. Amba Prasad is not a Muhammadan; he is a Kayesth."  "Amba Prosad alleges in his grounds of appeal that his plea of guilty, and an apology, which he tendered after he had been committed for trial, entitled him to have only a nominal punishment inflicted upon him. His conviction was inevitable. An apology, particularly made after commitment, in such a case as this, need not be considered. Having regard to the gravity of the offence which Amba Prasad committed, and to the misery, ruin, and punishment which he
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might have brought upon ignorant people, the sentence which was passed on him was entirely inadequate. We dismiss this appeal."

Such was the conclusion arrived at on the facts, but it is not this so much as the elaborate inquiry into the law that preceded it, which constitutes the special importance of this case. After an exhaustive review of the three notable trials which had taken place, and a careful examination of all the judicial views which had been expressed from time to time, their lordships proceeded to lay down their own views as to the true meaning of the section—a question which admittedly was not entirely free from difficulty.

"If there be any difficulty as to the true meaning of section 124A," their lordships said, "it is caused by the Explanation which forms part of that section" (see Ch. i). Justice Strachey had experienced a similar difficulty, and Sir C. Farran had been hardly satisfied with the phraseology of it.

"In our opinion," their lordships continued, "any one who, by any of the means referred to in section 124A of the Indian Penal Code, excites or attempts to excite feelings of hatred, dislike, ill-will, enmity or hostility towards the Government established by law in British India, excites or attempts to excite, as the case may be, feelings of 'disaffection,' as that term is used in section 124A, no matter how guardedly he may attempt to conceal his real object. It is obvious that feelings of hatred, dislike, ill-will, enmity, or hostility towards the Government, must be inconsistent with and incompatible with a disposition to render obedience to the lawful authority of the Government, and to support that lawful authority against unlawful attempts to subvert or resist it. The 'disapprobation of the measures of the Government' may or may not, in any particular case, be the text upon which the speech is made, or the article or letter is written; but if, upon a fair and impartial consideration of what was spoken or written, it is reasonably obvious that the intention of the speaker or writer was to excite feelings of disaffection to the Government established by law in British India, then a Court or a jury should find that the speaker or writer or publisher, as the case might be, had committed the offence of attempting to excite feelings of disaffec-
tion to the Government established by law in British India. To paraphrase is dangerous, but it appears to us that the disaffection of section 124A is ‘disloyalty’; that is the sense in which the word ‘disaffection’ has been generally used and understood during the century. We are further of opinion that the ordinary meaning of disaffection in section 124A, having regard to the evils at which section 124A strikes, is not varied by the explanation contained in the section.” The same view had been previously expressed by Sir C. Farran, C. J., in the case before mentioned.

“The intention of a speaker, writer or publisher” their lordships continued, “may be inferred from the particular speech, article or letter, or it may be proved from that speech, article or letter, considered in conjunction with what such speaker, writer, or publisher, has said, written, or published on another or other occasions. Where it is ascertained that the intention of the speaker, writer, or publisher was to excite feelings of disaffection to the Government established by law in British India, it is immaterial whether or not the words spoken, written, or published, could have the effect of exciting such feelings of disaffection, and it is immaterial whether the words were true or false, and, except on the question of punishment, or in a case in which the speaker, writer, or publisher is charged with having excited such feelings of disaffection, it is immaterial whether or not the words did, in fact, excite such feelings of disaffection.”

The above passage from the judgment of the Full Bench was subsequently cited in Council as containing a complete summary of the law which had been laid down in the previous cases. Before proceeding, however, to consider the changes that were now introduced into the law, by the remodelling of the section relating to sedition, it will be useful to review shortly the result of the four cases which have been briefly summarised, and to ascertain to what extent the section had been affected by the judicial utterances of the learned judges who took part in the trials.

In the first place it seems pretty clear that the term ‘disaffection’ had proved a vexata questio, for many definitions of the word had been offered, which were not all exactly alike-
Sir C. Petheram, C. J., and Justice Strachey appeared to favour a construction which implied a negative state of mind, opposed to good-will and affection; while Justice Parsons and Justice Ranade expressly favoured an interpretation which implied a positive mental condition, akin to political alienation or disloyalty.

In describing the offence of creating 'disaffection,' the English law had been freely resorted to. Sir C. Petheram, C. J., had said:—"It is sufficient for the purposes of the section that the words used are calculated to excite feelings of ill-will against the Government, and to hold it up to the hatred and contempt of the people." Sir C. Farran, C. J., who cited Sir James Stephen, described the offence as "an attempt to produce hatred of Government as established by law, to excite political discontent, and alienate the people from their allegiance." There was, moreover, a general consensus that exciting disaffection was equivalent to exciting disloyalty. The term had been first employed by Justice Strachey, who said:—"'Disloyalty' is perhaps the best general term, comprehending every possible form of bad feeling to the Government." It was finally employed by Sir John Edge, C. J., in summing up the conclusions of the Full Bench, when he said:—To paraphrase is dangerous, but it appears to us that the 'disaffection' of section 124A is 'disloyalty': that is the sense in which the word 'disaffection' has been generally used and understood during the century."

If the word 'disaffection' had presented difficulties, the 'explanation' to the section had undoubtedly proved a veritable crux. The question how far it qualified the main provision had been anxiously considered. The Chief Justices of Bombay and Allahabad were both of opinion that its meaning was not varied by the 'explanation.' Justice Strachey considered that the explanation, or at least the latter part of it, had given rise to serious misconception. It had led people to suppose that nothing short of an incitement to rebellion was an offence within the meaning of the section; and such a view of the law was certainly opposed to its commonly accepted signification. The 'explanation' was therefore clearly ambiguous, and plainer language was wanted to prevent the possibility of misconception.

Such was the situation which presented itself to the Legislature towards the end of the year 1897.
CHAPTER VII.

THE LAW AMENDED.

A Bill to amend the Penal Code in relation to Extra-territorial offences had been for some time on the legislative anvil during the year 1897, when circumstances drew the attention of the Government to the expediency of amending at the same time the law of sedition.

The raison d'etre of the contemplated amendment was stated by the Hon'ble Mr. Chalmers, the member in charge of the Bill, on the 25th December, of that year, in the following terms:—"As the Council are aware, recent events in India have called prominent attention to the law relating to seditious utterances and writings. We have had anxiously to consider the state of the law regarding these matters and to decide whether, and in what respects, it required amendment. We determined that we would do nothing hastily, and that the course we adopted should be the result of cool and deliberate consideration."

"Two different lines of action," he continued, "were open to us. The first was to re-enact a Press Law similar to the Vernacular Press Act of 1878. The second was to amend the general law relating to sedition and cognate offences, so as to make it efficient for its purpose. We have come to the conclusion that the second course is the right one for us to take."

"We welcome all fair, candid, and honest criticism," he added, "and, speaking for ourselves, we care very little as to the terms or language in which such criticism may be expressed. The essential principle of English law is this. Every man is free to speak, write and print, whatever he pleases, without asking the leave or permission of any authority. But if he speaks, writes, or prints anything which contravenes the law of the land, he is liable to be proceeded against and punished. As long as a man keeps within the law no one can interfere with him. But, if he breaks the law, he is liable to punishment by a Court of Justice in the ordinary course of law. This seems to us a sound and healthy guiding principle, and we have
determined to adhere to it. But we are also determined that
the law shall not be a dead-letter, and that offenders against the
law of the land shall be capable of being promptly brought to
book.'"

The Hon'ble Member then proceeded to point out the flaws
in the law as it existed, as well as the urgency of amending it.
"As for the section," he said, "which deals with the offence of
exciting disaffection against the Government, or, as it is called
in England, sedition, I cannot say that that section strikes me
as a model of clear drafting. That section was introduced into
the Penal Code by Sir Fitzjames Stephen in 1870. In introduc-
ing the Bill I believe he stated that his intention was to assimil-
ate the law of India to the law of England as regards the offence
of sedition. The interpretation of the section has recently been
discussed before the Calcutta, Bombay, and Allahabad High
Courts, and it has been interpreted in accordance with English
law. The result of the cases is to establish that it is a criminal
offence to stir up feelings of contempt or hatred for the Govern-
ment, and that such conduct is none the less an offence because
resort to actual violence is not advocated. But no one can read
the able arguments addressed to the Courts by Counsel for the
accused in the Bangobasi and Tilak cases without coming to the
conclusion that the law might be expressed in clearer and less
equivocal terms. When law is codified, the codes should be
as explicit as possible.'"

"Moreover," he continued, "though the Calcutta, Bombay,
and Allahabad Judges have substantially agreed in the inter-
pretation of section 124A, their decisions are not technically binding
on other High Courts. Having regard to these considerations
we think it desirable to amend and re-draft section 124A, so as
to bring it clearly into accord with English law. In England,
words spoken or written with seditious intent constitute a crimi-
nal offence, and the intent is presumed from the natural mean-
ing of the words themselves, without reference to the actual
feelings of the person who used them. In other words, the law
applies a purely objective test. A seditious intention is thus
defined in Stephen's 'Digest of the Criminal Law.' It is 'an
intention to bring into hatred or contempt, or to excite disaffec-
tion against the person of Her Majesty, Her heirs or successors,
or the Government of the United Kingdom as by law established, or either House of Parliament, or the administration of justice, or to excite Her Majesty's subjects to attempt otherwise than by lawful means the alteration of any matter in Church or State, or to raise discontent or disaffection amongst Her Majesty's subjects, or to promote feelings of hostility or ill-will between different classes of such subjects. Now adapting that definition to the language of the Indian Penal Code and the circumstances of India, we propose that section 124A shall be repealed, and that the following section shall be substituted therefor:—

'Whoever by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards Her Majesty or the Government, (or promotes or attempts to promote feelings of enmity or ill-will between different classes of Her Majesty's subjects) shall be punished with transportation for life or any shorter term, to which fine may be added, or with imprisonment which may extend to ten years, to which fine may be added, or with fine.

Explanation 1.—The expression 'disaffection' includes disloyalty and all feelings of enmity (or ill-will).

Explanation 2.—Comments on the measures of the Government with a view to obtain their alteration by lawful means, without exciting or attempting to excite hatred, contempt or disaffection do not constitute an offence.''

Such was the measure submitted to the Select Committee for consideration. The words within brackets were ultimately omitted by them, and the provision dealing with the promoting of class-hatred was placed by itself as a separate offence under section 153A. It will be referred to hereafter under the class of cognate offences.

The Hon'ble Member concluded his remarks on the new provision as follows:—'Let me say a word or two as to the scope of the new section. There is nothing in it which in any way interferes with the fair and free discussion of public matters. People are at liberty to criticise the action and conduct of the Government in all its departments. And more than that, they are at liberty to bestir themselves to procure reforms, and to obtain such alterations of the law as they may think desirable, provided
they do so by lawful and constitutional means. There is nothing in the section to prohibit this, but we have added Explanation 2 to the section in order to affirm this principle expressly. I wish further to point this out. Subject to one possible exception, our proposed new section in no wise alters the law at present in force in India. It merely affirms in, I hope, unmistakable terms, the consentient opinions of the various High Courts which have been called upon to interpret the existing section 124A."

The possible exception referred to was the provision which was ultimately removed from the section, and incorporated in the Code as section 153A.

On the 18th February, 1898, the Legislative Council assembled for the final consideration of the Bill. The Select Committee had made various concessions to the critics, some of whose suggestions had been adopted. The provision regarding class-hatred, as already mentioned, had been extracted, and assigned a more important position in the Code, and the term 'ill-will' had also been struck out, as being too wide and vague in its meaning.

In addition to these changes, the term 'Government' had been replaced by 'Government established by law in British India,' the original words of the section; the maximum term of imprisonment had been altered from ten years to three years; and a third Explanation had been added, to prevent misapprehension. This last addition was thus explained by the Hon'ble Member: -- "We have added a further explanation to clause 124A. The second explanation was intended to protect fair and honest criticism which had for its object the alteration of the policy pursued by the Government in any particular case. Some people were apprehensive that the express declaration of this principle might be held impliedly to negative the right of people to criticise Government action when that criticism could not lead to a reversal of such action; for instance criticism on past expenditure, or criticism on an appointment which the critic may think objectionable. I think this apprehension was quite unfounded, but in order to allay it we have introduced the third explanation.'"

Some of the main objections, however, to the Bill were advanced on this occasion. It was contended that the existing
law was being altered and extended, while there was no occasion for it. To this it was answered:—"No one who candidly and carefully reads the consentient decisions of the Calcutta, Bombay and Allahabad High Courts can come to any other conclusion than this—namely, that in our new section we are keeping well within the existing law, though, we are expressing that law in less ambiguous language."

"Then it is urged," the Hon’ble Member continued, "that the proposed clause goes further than English law, and again some passages in Sir Fitzjames Stephen’s speech are referred to. All I can say is this. If in 1870 he thought that an appeal to force was a necessary constituent of sedition, he afterwards changed his mind. After he had served on the Criminal Code Commission, which was composed of some of the most distinguished Judges of modern times, he published his Digest of the English Criminal Law. In Article 96 of that Digest he states the English law in the clear and precise terms which I read to the Council on the 21st December. There is nothing in that article, and there is nothing in the almost identical article framed by the Criminal Code Commission to suggest that an appeal to violence is a necessary factor in the offence. I take it that the offence is complete, both in India and England, if it be proved that the offender has attempted to excite disaffection towards the Government. It is not necessary that he should himself appeal to force. What he does is to excite or attempt to excite feelings of discontent which make people ready for mischief should the opportunity arise."

"But after all," he added, "these arguments are more or less academic. No one in his senses would contend that because a given law is good and suitable in England, it is therefore good and suitable in India. If a rule of law exists in England we may fairly consider whether it is suitable to India, but the answer to the question must always depend on the conditions which prevail in India. How much license of speech can be safely allowed is a question of time and place. If I smoke a cigar on the maidan it pleases me, and hurts no one else. If I smoke a cigar in the powder magazine of the Fort, I endanger the lives of many, and do an act well deserving punishment. Language may be tolerated in England which it is unsafe to tolerate in India,
because in India it is apt to be transformed into action instead of passing off as harmless gas. In legislating for India we must have regard to Indian conditions, and we must rely mainly on the advice of those who speak under the weight of responsibility and have the peace and good government of India under their charge."

The difference between the social conditions prevailing in England and those of India appears to have been entirely overlooked by the most vigorous opponents of the Bill, for their arguments would seem to be based on the assumption of their complete similarity. This would account for the strenuous efforts made for the introduction of the English law, or what they supposed to be the English law of sedition into India.

On this point the observations of the Lieutenant-Governor of Bengal, Sir Alexander Mackenzie, carry with them the weight of authority and experience. "Much of the outcry," he said, "against the present Bill rests upon its supposed divergence from the law of England on seditious libel, and on the assertion that the law as settled in 1870 was sufficient and ought to be final. Now I venture to assert these two propositions—first, that the law of England, built up by judicial rulings to meet the circumstances of a homogeneous people directly interested in and sharing in its own government, is not necessarily a norm to which the law of India ought strictly to conform; and second, that the conditions of the country have themselves so altered since 1870 that what was adequate then is not necessarily adequate now. As to the first point—If the section is in strict accord with the English law, all criticism of it loses weight; if it is not, there is in the very great difference in the conditions of the two countries ample justification for any deviation from the English law necessary for effectively checking the offence of sedition in India. It is clear that a sedition law which is adequate for a people ruled by a government of its own nationality and faith may be inadequate, or in some respects unsuited, for a country under foreign rule and inhabited by many races, with diverse customs and conflicting creeds. It is impossible in India to accept the test of direct incitement to violence or intention to commit rebellion, and limit the interference of the Government to such cases. It is not the apparent intention of the writers or
speakers so much as the tendency of the writings or speeches which has to be regarded, and the cumulative effect of depreciatory declamation on the minds of an ignorant and excitable population has to be taken into consideration."

"As to the second point," he continued, "the necessity for the proposed legislation is unquestionable. Ever since the repeal of the Vernacular Press Act, the Native Press has been year by year growing more reckless in its mode of writing about the Government, Government officers, and Government measures. Doubts having been always felt by the law officers as to the scope of section 124A of the Penal Code, the general policy has been to ignore these attacks. In Bengal the only Press prosecution for seditious writing has been that of the Bangobasi newspaper, instituted in 1891, in which the jury disagreed, and which terminated eventually in the acceptance of an apology by the Government from the offending editor. The absence of other prosecutions cannot, however, be urged as evidence that seditious writing is rare in Bengal, and that an alteration of the law is not therefore called for in this Province. Resistance to the Government by violence has, it is true, not been directly suggested in the Bengal Press, and a sufficient reason for this may be found in the character of the writers, who belong to, and whose readers are, a people wanting in the warlike spirit of many other races of India; but there has been incessant writing tending to bring the Government, whether in itself or through its officers, into hatred and contempt, and such writing, though not immediately leading to resistance by force to the Government, cannot fail by its cumulative effect to create disaffection and ill-will, and thus produce such a state of feeling as may eventually prove dangerous to the maintenance of order and find its culmination in active resistance. Whether, then, we look at the objections which have been taken by the people themselves to the interpretation of the present law by the Courts, or to the nature of much that has been written in the Native Press, the necessity for an amendment of the law is clear."

"To any one," he continued, "who studies, as I do from week to week, the utterances of the Press in India, nothing can be more clear than that, though we seldom have such bold sedition preached as led to the recent trials in Bombay, or
as prevailed here in 1870, we are now face to face with a far more insidious and equally dangerous style of writing and speaking. And this is an evil which is yearly growing, and with the spread of what is called education is becoming more far-reaching in its noxious effects. It is indeed, in my opinion, to our own system of education that we owe all the trouble. I have long been convinced that it is thoroughly unsound. We are turning out by scores of thousands young men who are trained only in words, look mainly for Government employment, and failing to get it become, as the Maharaja of Travancore described them, 'a host of discontented, disobedient, and sometimes troublesome young men.' This is the class that writes for the Native Press, perorates on platforms, and generally vents its spleen upon the Government which has not been able to find appointments for more than a fraction of its members. To honest, well-informed criticism no English Government would ever object. But every Government has the right to object when its critics wander off from criticism to calumny. No Government, such as ours in India can afford to allow the minds of an ignorant and credulous oriental population to be gradually poisoned and embittered by persistent calumny of the Government and all its measures. If these sections lead to a more careful, well-considered and responsible journalism, they will confer a benefit not only on the State and the public, but on the journalistic profession itself.

The wide difference between the social conditions of the two countries was freely discussed by other members of the Council as well; notably by Sir Griffith Evans, whose remarks are both weighty and interesting. He said:—"The advantages of free and intelligent criticism and discussion of the acts and measures of Government, and of pointing out abuses and failures and suggesting remedies, are apparent and undeniable, and the liberty of the Press is a household word dear to the heart of every Englishman. I am glad to think that a large number of the newspapers in India, English and Vernacular, have carried out these objects, and have discharged their duties as fearless critics to the benefit alike of governors and governed. But a free Press is an exotic in India, and indeed in Asia, and, like plants and animals transplanted into new surroundings,
is liable to strange developments. For many years a portion of the Native Press, and particularly of the Vernacular Press, has devoted itself to pouring forth a continual stream of calumny and abuse of the British Government in India and to teaching its readers that all their misfortunes, poverty and miseries arise from a foreign Government, which draws away their wealth and is callous to their miseries, and from whom they can expect neither justice nor sympathy."

It might almost be thought that the Hon'ble Member was here paraphrasing the articles in the Bangobasi, at the trial of which he was Counsel for the Crown.

"Now it needs no argument," he continued, "to prove that writing of this character, whatever the motives or ultimate objects of the writers may be, circulated daily for years amongst a credulous people, must tend to make them hate the cause of all their woes. It is a hopeless task for any Government, especially a foreign one, to endeavour to win or retain the affections of the people by just government and solicitude for their benefit, if the minds of the people are daily poisoned with matter of this kind, written in their own language and by men who know how to appeal to their sympathies, credulity, and religious feelings."

"Some of the apologists of the Native Press," he added, "minimise the evil. But to those who have watched it, as I have for thirty years, and for twenty years as a Member of this Council, it is apparent that this is the work of a small minority who have partaken of the cheap education of our schools and who distil and sell the poisonous product of the ferment in their heads of ill-assimilated and misapplied Western ideas. This opinion is not a hasty one; it is the same as I expressed in this Council in 1878, and as was then expressed in weighty language by the present Advocate-General of Bengal, whose knowledge of the country none can deny, and who has never been accused of want of sympathy with its inhabitants. He then said:—"

"Having attentively considered these extracts, I am irresistibly led to the conclusion that it is intended by these publications to disseminate disaffection, to excite evil prejudices, to stir up discontent, and to produce mischief of the gravest character: in short, to render the Government, its officers, and Europeans gene-
rally, hateful to the people. These are evil purposes which should be repressed with a strong hand and their controversy restrained from all further attempt to administer their subtle poison to the lower orders of the people, to saturate their minds with evil thoughts and to arouse their evil passions. Since then the evil has grown greatly.'

From these important statements it would appear that the measure introduced by Sir James Stephen in 1870 had not proved effective in checking the license of a certain section of the Native Press. That measure had been passed at the time of the Wahabi conspiracy, and it was probably framed, as the Lieutenant-Governor elsewhere remarks, "to meet that exigency."

At all events in 1878 the state of things must have been serious, if the description given by Sir Griffith Evans and Sir Charles Paul be a correct one. In that year Lord Lytton's Press Act (IX and XVI of 1878) was introduced to meet the evil, but it was repealed in less than four years, during the régime of his successor. As to the wisdom of this policy Sir Griffith Evans expressed no opinion. He merely said:—"The Vernacular Press Act was introduced to check license while leaving liberty. It worked well and without hardship, but was repealed in 1882. Since then the mischief has spread rapidly.'

The Lieutenant-Governor, Sir Alexander Mackenzie, was more explicit when he said:—"Ever since the repeal of the Vernacular Press Act, the Native Press has been year by year growing more reckless in its mode of writing about the Government," though he made some notable exceptions. Speaking in 1898 his opinion was:—"We are now-a-days face to face with a far more insidious and equally dangerous style of writing and speaking.'

It is clear then that the Government, as the Law Member had stated at the outset, were presented with two alternatives—the one, to restore the Press Act of 1878; the other to amend the law of sedition so as to make it more effective.

The former course was obviously repugnant. The Law Member openly avowed his reluctance to adopt it. He said:—"We have been urged both from official and private sources to re-enact
the Press law. But we are entirely opposed to that course. We do not want a Press in leading strings that can be made to dance to any tune that its censors may think fit to call. We want simply a free Press that will not transgress the law of the land. We are aiming at sedition and offences akin to it, and not at the Press.'

In adopting the other course, how was the law to be made more effective? Obviously, by expressing it in plainer language so that it could not be misunderstood. If it was to be interpreted as the defence desired in the Bangobasi and Tilak cases, it was quite clear that it would never reach a large class of seditious writing, referred to by the Lieutenant-Governor of Bengal, which fell short of counselling open resistance, but nevertheless worked an infinite amount of mischief. Three High Courts had been opposed to that view, and held it to be erroneous. But nevertheless it was thought desirable that the law as codified should be plainly in accord with judicial opinion, and free from the liability of misconstruction, and this was accordingly done.

In conclusion His Excellency Lord Elgin, the President, spoke as follows:—'All that we, the Government, can say is that we desire the powers necessary to put down sedition. We ask for nothing more, but we can be satisfied with nothing less. We do not desire to have a law which bears oppressively on one particular section of the community. Only partial justice is done to us when it is said that we have abstained from proposing an enactment aimed at the Vernacular Press, because as a matter of fact our legislation is not a Press Act at all. It lays down certain rules of conduct, by observing which any member of the community can keep within the law, rules which are applicable to all and show favour to none.'

The Bill amending section 124A of the Penal Code was then passed as Act IV of 1898.
CHAPTER VIII.
WHAT IS SEDITION.

The new provision introduced into the Indian Penal Code by Act IV of 1898, in place of the former one was as follows:—

"124A. Whoever by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards Her Majesty or the Government established by law in British India, shall be punished with transportation for life or any shorter term, to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine.

Explanation 1.—The expression 'disaffection' includes disloyalty and all feelings of enmity.

Explanation 2.—Comments expressing disapprobation of the measures of the Government with a view to obtain their alteration by lawful means, without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.

Explanation 3.—Comments expressing disapprobation of the administrative or other action of the Government without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section."

By the General Clauses Act (X of 1897) the term 'Her Majesty' means 'Her Majesty and Her Majesty's successors.'

In comparing this provision with the previous one, for which it was substituted, it has to be borne in mind that it does not alter the law of sedition in any respect, but merely restates it, as judicially interpreted in the four cases already discussed, in somewhat plainer language.

The introduction of the expression 'bring into hatred or contempt' is traceable to Sir C. Petheram's charge in the Bangobasi trial (see Ch. iv), while he himself had imported it from the English law. The introduction of the term 'disloyalty' is
traceable to Justice Strachey's charge in Tilak's case (see Ch. v), and to the Full Bench decisions in Bombay and Allahabad (see Ch. vi) which followed it. The re-casting of the Explanation is the result of the views expressed in the last three cases.

Mr. Mayne in his 'Criminal Law of India' aptly summarises these changes as follows:—"The amended section was passed with reference to all these decisions, and seems to have been framed with a view to maintain the construction which had been put on the earlier section, by introducing words in accordance with that construction, and excluding all ambiguous phrases. The changes in the wording of the principal section and explanation 1 make clear what was meant by disaffection. Explanations 2 and 3 make equally clear what is the subject matter against which political disapprobation may be aroused, and what are the limitations within which such disapprobation must be confined. The highly metaphysical description, of a disapprobation which is consistent with a disposition to support the Government in doing the things you disapprove, is wisely left out."

Sedition, briefly, is the offence of exciting, or attempting to excite, disaffection.

It will be observed that the Legislature has refrained from defining the term disaffection. This was advisedly done. It had been judicially interpreted frequently, and there was no occasion to fetter the discretion of the Courts by defining it. Sir James Stephen had in like manner refused to define it in 1870. It was difficult to define, but impossible to mistake it, he said. 'And so the Courts of Equity would not define 'fraud,' lest fraud were committed outside the definition.'

Disaffection, however, when analysed is a state of mind or psychological disposition with well-defined characteristics. It is in fact the mental condition of being disaffected. To be disaffected is to be adversely affected towards, or turned against any one, e.g., the Government.

Disaffection is clearly not the converse of affection. This is obvious, for affection is not demanded by the Sovereign of his subjects, either for himself or his government, nor is the want of it reprehensible or punishable. Loyalty, not affection, is what is looked for. It might be safer, then, to eliminate the
word 'affection' altogether from this connection, seeing that it has given rise to confusion in the past, notably in Tilak's case.

Disaffection is a more comprehensive term than disloyalty, and is expressly stated by the section to include it. Disloyalty implies disaffection towards the Sovereign, and is limited to that meaning, at least in its ordinary sense, in which it is used in this section. It could not well be applied to the case of the Government, whereas the wider term is intended to cover the cases of both.

If these conclusions be correct, it becomes at once possible to define the term 'sedition.' The offence of sedition, which consists of the act of exciting, or the attempt to excite, disaffection in others, may be said to be equivalent to making or trying to make others disaffected or adversely disposed towards the Sovereign or his government; or, in other words, turning the people against their rulers. This is an offence against the State, and what the law prohibits, under a penalty.

But, it will be observed, the section expressly mentions certain specific forms of sedition, viz., 'bringing or attempting to bring the Sovereign or his government into hatred or contempt.' These are only some of the numerous ways of exciting disaffection, which it was not absolutely essential to specify, inasmuch as they are included in the mischief contemplated. This was in fact admitted by the Law Member at the time the Bill was before the Council, when he said:—"It makes very little difference whether the words 'bring into hatred or contempt' are inserted or not, because if they were not inserted they would be there impliedly. They are comprised in the term 'disaffection' according to the decision of the Courts; as Chief Justice Petheram says:—"It is sufficient for the purposes of the section that the words are calculated to excite feelings of ill-will against the Government and to hold it 'up to the hatred or contempt of the people.' Therefore those words are already by implication in the section, but it is necessary to unfold the meaning and to explain what the section really means.'"

It is clear from this that these words have been inserted, not inadvertently, but advisedly, as a guide to the construction of the section. They tend to simplify its meaning by specifying some of the feelings which would constitute disaffection. It
would be obviously inconvenient, even if it were possible, to enumerate them all.

Feelings of disaffection have, however, been judicially considered, and examples have been given. Sir C. Petheram, C. J., thought they would include "dislike or hatred." Justice Strachey enumerated "hatred, enmity, dislike, hostility, contempt and every form of ill-will." Sir C. Farran, C. J., specified "hatred," "political discontent," and "alienation of allegiance." Justice Parsons mentioned "political alienation or discontent," and a "disposition not to obey but to resist."

Justice Ranade has included in his comprehensive list feelings of "aversion," "insubordination," "animosity," "hatred," "contempt," "discontent," "alienation." Sir John Edge, C. J., has given us "hatred, dislike, ill-will, enmity, hostility," and "disloyalty."

More recently (2 Bom. L. R., 295) Sir L. Jenkins, C. J., has named as hostile feelings, "hatred," "contempt," "disloyalty," and "enmity." Justice Batty too has expressed the view (8 Bom. L. R., 437) that though disaffection may include such feelings, or positive emotions, as enmity, hatred, hostility and contempt, it is not by any means limited to these. He adds: "The ruler must be accepted as a ruler, and disaffection which is the opposite of that feeling, is the repudiation of that spirit of acceptance of a particular Government as ruler."

It is clear from this exhaustive list that the feelings which constitute disaffection are both manifold and complex. Moreover, concrete examples may in the future give birth to fresh ideas, so that the list cannot be regarded as even complete. The study of so complex a subject, therefore, should not be limited to the four corners of the section. It is from the interpretation and application of the law as contained in the section to concrete cases that the most comprehensive knowledge of its landmarks is to be obtained. An exhaustive summary of this case-law will be found in previous and subsequent chapters.

Next as to the means by which disaffection may be excited. This may be done in a variety of ways, though the medium usually employed is either the platform or the Press.
The section specifies four methods, viz.:—"Words spoken," "words written," "signs," and "visible representation." The word "written" has been substituted for the words "intended to be read" in the old section, which before the amendment contained the four identical expressions that appear in section 499 of the Penal Code, which relates to the offence of defamation.

It may be doubted whether the word "written" is an improvement on the expression "intended to be read," because after all the essence of the offence, as in the case of libel, is publication. Writing without publication could not possibly excite disaffection in others, which is, in fact, the gist of the offence.

If a journalist wrote a seditious article and kept it in his drawer, it could never excite disaffection so long as it remained there, though if it afterwards came to be published it might be different. As to this Mr. Mayne in his "Criminal Law of India," citing Foster, has said:—"The mere writing of seditious words which are not intended for publication and are kept by the author in his own possession, would not be punishable under the section."

"What is the meaning of publication?" said Lord Esher in the case of Pullman v. Hill (1891, 1 Q. B., p. 527). "The making known the defamatory matter after it has been written." Though this was a case of common libel, the principle is the same in seditious libel. It is the same too with sedition in India. Without publication the writing of seditious matter would be no offence, for it could not cause disaffection until it was communicated to some one. In reading the section, therefore, it would seem to be necessary to understand the term 'written' to mean 'written and published,' which is a legitimate equivalent for the former expression, 'intended to be read,'—a term which is still preserved in section 499 of the Penal Code. It is moreover in accord with the law of England (see Ch. ii).

With regard to 'words spoken' publicity is implied, and probably also in the case of 'signs' or 'visible representation.' For an instance of the first, reference may be made to the cases of Chidambaram Pillai v. Emperor (32 Mad. 3), and Leakut.
Hossein v. Emperor (see Ch. xii); and also to the English case of Reg. v. Burns (16 Cox, 355: see Ch. ii).

For an example of the second reference may be made to the case of Reg. v. Sullivan (11 Cox, pp. 51-6: see Ch. ii), where "woodcuts published in the Weekly News" were charged as "seditious libels." In that case Lord Fitzgerald said:—"A seditious libel does not necessarily consist of written matter, it may be evidenced by a woodcut or engraving of any kind."

An example of the last might be a dramatic performance, such as would come within the purview of Act XIX of 1876, s. 3 (see Appx.). Reference may also be made to the case of Monson v. Tussaud (1894, Q. B. 671), which was a case of common libel by 'visible representation.' In this case the scene of the "Adlamont Tragedy" was depicted with the aid of life-size effigies in wax, in a manner altogether unfavourable to the plaintiff, who had been tried for murder in Scotland and discharged.

"Disaffection," said Justice Strachey, "may be excited in a thousand different ways. A poem, an allegory, a drama, a philosophical or historical discussion, may be used for the purpose of exciting disaffection just as much as direct attacks upon the Government. You have to look through the form, and look to the real object: you have to consider whether the form of a poem or discussion is genuine, or whether it has been adopted merely to disguise the real seditious intention of the writer."

This discloses another point of resemblance to the offence of defamation, viz.:—that the seditious imputation may be conveyed by innuendo, as was in fact the case in Tilak's newspaper the Kesari. "Upon occasions of this sort," said Justice Buller, "I have never adopted any other rule than that which has been frequently repeated by Lord Mansfield to juries, desiring them to read the paper stated to be a libel as men of common understanding, and say whether in their minds it conveys the idea imputed."

In almost similar terms were the jury charged by Justice Strachey. "Read the articles," he said, "and ask yourselves, as men of the world, whether they impress you on the whole as a mere poem and a historical discussion without disloyal purpose, or as attacks on the British Government under the
disguise of a poem and a historical discussion. If the object of a publication is really seditious, it does not matter what form it takes."

And so too in the case of *Queen-Empress v. Vinayek* (2 Bom. L. R., p. 308) Sir L. Jenkins, C. J., charged the jury:—"It will be for you to look at these articles and determine what is their true meaning, what is the innuendo they convey, what is the covert meaning, if any, they have. Having reached that point, you must decide in your minds what is the probable or natural effect of these words."

The next point to be noted in the section is that it prohibits alike the act and the attempt to excite disaffection. The reason for this may be found in the enormous difficulty of proving that disaffection has actually resulted from the effort to produce it. This is conceivable in the case of an inflammatory speech which is followed immediately by a disturbance, or other unmistakable signs of disaffection, but in the case of seditious matter disseminated through the Press it would be next to impossible to trace a connection.

In Tilak's case, it will be remembered, it was alleged by the Crown that within a week of the publication of the articles charged two murders had been committed at Poona. It was a matter of inference whether the one event was the result of the other, but it was impossible to produce evidence to connect the two.

As to this Justice Strachey said:—"You will observe that the section places on absolutely the same footing the successful exciting of feelings of disaffection and the unsuccessful attempt to excite them, so that if you find that either of the prisoners has tried to excite such feelings in others, you must convict him even if there is nothing to show that he succeeded."

This important feature of the law has also been demonstrated in the clearest terms by Sir L. Jenkins, C. J., in a later case, *Queen-Empress v. Luxman* (2 Bom. L. R., p. 296), where he said:—"It is not suggested that the publications in question have in fact resulted in the creation of these feelings of hostility; what is said is that the offending articles evince a clear attempt to create these feelings. It is no defence to urge that the accused has failed in his endeavour. If you are,
satisfied that the attempt was made, the accused cannot shelter himself behind this fact that those, to whom he may have addressed himself, have either been too discreet or too temperate to act upon the obvious meaning of his teaching."

His lordship then proceeded to define the meaning of the term "attempt." "An attempt," he said, "is an intentional preparatory action which fails in its object—which so fails through circumstances independent of the person who seeks its accomplishment."

This definition was subsequently cited by Justice Batty (8 Bom. L. R., 439), who expressed precisely the same views. "It is not necessary," he said, "in order to bring the case within this section that it should be shown that the attempt was successful. Attempt does not imply success. It is merely trying. Whoever tries to excite, attempts to excite, etc., is held to come within the section. Whether the intention has achieved the result is immaterial." His lordship then quoted the observations of Justice Cave in Reg. v. Burns (see Ch. iii). "A man cannot escape from the uttering of words with intent to excite people to violence solely because the persons whom he addressed may be too wise or temperate to be induced to act with violence."

It is obvious that fewer elements are required for the proof of an attempt than for the proof of an act. In fact the act of sedition could only be proved in exceptional cases, as has been already pointed out. It is otherwise with an attempt, for proof must largely depend on the character of the language used.

"If a person," said Sir C. Petheram, C. J., "uses either spoken or written words calculated to create in the minds of the persons to whom they are addressed a disposition not to obey the lawful authority of the Government, or to subvert or resist that authority, if and when occasion should arise, and if he does so with the intention of creating such a disposition in his hearers or readers, he will be guilty of the offence of attempting to excite disaffection within the meaning of the section, though no disturbance is brought about by his words, or any feeling of disaffection in fact produced by them. It is sufficient for the purposes of the section that the words used are calculated to excite feelings of ill-will against the Government, and to hold
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it up to the hatred and contempt of the people, and that they were used with the intention to create such feeling."

It will thus be seen that the attempt which is punishable without regard to the result, is dependent upon two conditions; the character of the language employed, and the intention with which they were used.

Now, it will be observed that the word 'intention' is nowhere employed in the section. The omission of the term was deliberate, and two reasons were given for its omission. One was that the former section had worked very well for nearly thirty years without it, and the other, that it was unnecessary, for the word 'intention' was after all only a legal fiction, and a man's intention must always be judged by his acts.

Reliance was placed on Sir James Stephen's "Digest of the Criminal Law," article 99, which is as follows:—"'In determining whether the intention with which any words were spoken, any document was published, was or was not seditious, every person must be deemed to intend the consequences which would naturally follow from his conduct at the time and under the circumstances in which he so conducted himself'" (see Chs. ii—iii). Taylor on Evidence was also referred to, where he says:—"'It is again conclusively presumed that every sane man of the age of discretion contemplates the natural and probable consequences of his own acts.'"

The object of the Legislature in so framing the section is thus apparent. It was not, as some had supposed, to punish unintentional acts and attempts, but to leave the Courts to determine, as they had hitherto done, a person's intention from his language and conduct. And so the jury were charged in the Bangobasi case. Sir C. Petheram, C. J., there said:—"'You will bear in mind that the question you have to decide has reference to the intention; and in fact, the crime consists of the intention, for a man might lawfully do the act without the intention. The evidence of the intent can only be gathered from the articles.'"

Justice Strachey, in Tilak's case, addressed the jury in similar terms. "'You will thus see that the whole question is one of the intention of the accused in publishing these articles.
Did they intend to excite in the minds of their readers feelings of disaffection or enmity to the Government? Or did they intend merely to excite disapprobation of certain Government measures? Or did they intend to excite no feeling adverse either to the Government or its measures, but only to excite interest in a poem about Shivaji and a historical discussion about his alleged killing of a Mahommedan General? These are the questions which you have to consider. But you may ask, how are we to ascertain whether the intention of the accused was this, that, or the other? There are various ways in which you must approach the question of intention. You must gather the intention as best you can from the language of the articles; and you may also take into consideration, under certain conditions, the other articles that have been put in evidence. But the first and most important index of the intention of the writer or publisher of a newspaper article is the language of the article itself."

"What is the intention," the learned Judge continued, "which the articles themselves convey to your minds? In considering this, you must first ask yourselves—what would be the natural and probable effect of reading such articles in the minds of the readers of the Kesari, to whom they were addressed? If you think that such readers would naturally and probably be excited to entertain feelings of enmity to the Government, then you will be justified in presuming that the accused intended to excite feelings of enmity or disaffection. As a matter of common sense, a man is presumed to intend the natural and ordinary consequences of his acts."

It is the same in England. In the case of Reg. v. Burdett (4 B. & A., p. 120), Justice Best said:—"With respect to whether this was a libel, I told the jury that the question whether it was published with the intention alleged in the information was peculiarly for their consideration; but I added that this intention was to be collected from the paper itself, unless the import of the paper were explained by the mode of publication, or any other circumstances. I added that if it appeared that the contents of the paper were likely to excite sedition and disaffection, the defendant must be presumed to intend that which his act was likely to produce."
"Every man," said Lord Tenterden, C. J., in *Haire v. Wilson* (9 B. & C. 643), "is presumed to intend the natural and ordinary consequences of his act. If the tendency of the publication was injurious to the plaintiff, the law will assume that the defendant, by publishing it, intended to produce the injury which it was calculated to effect" (see Ch. iii).

Lord Tenterden’s celebrated *dictum* was echoed in Sir L. Jenkins’s charge to the jury in the case of *Queen-Empress v. Luxman*, already referred to, where he said:—"It is obvious that you must determine what was the accused’s intention. Was it his intention to call into being hostile feelings? To decide this you have to be guided by the rule (perhaps a rough and ready rule, but one always accepted until it can be shown that there is no room for its application) that a man must be taken to intend the natural and reasonable consequences of his act, so that if on reading through these articles the reasonable, and natural, and probable effect of these articles on the minds of those to whom they were addressed appears to you to be that feelings of hatred, contempt or disaffection would be excited towards the Government, then you will be justified in saying that these articles were written with that intent, and that these articles therefore are an attempt to create the feeling against which the law seeks to provide."

It is clear, then, that ‘intention’ is an essential element in the offence of sedition, though the section does not expressly say so. On the other hand the prosecution are relieved from the burden of proving it directly, which in most cases would be impracticable, for the law will presume the intention, whether good or bad, from the language and conduct of the accused. It will then be for him to show that his words were harmless and his motives innocent.

"Intention," says Mr. Mayne in his ‘Criminal Law of India,’ ‘for this purpose, is really no more than meaning. When a man is charged in respect of anything he has written or said, the meaning of what he said or wrote must be taken to be his meaning, and that meaning is what his language would be understood to mean by the people to whom it is addressed.’

"The intention of a speaker, writer, or publisher," said Sir John Edge, C. J. (20 All., p. 69), "may be inferred from the..."
particular speech, article, or letter, or it may be proved from that speech, article, or letter considered in conjunction with what such speaker, writer, or publisher has said, written or published on other occasions."

In singular contrast to these weighty opinions stands the solitary dictum of Justice Caspersz and Justice Chitty in the case of *Apurba Krishna Bose v. Emperor* (35 Cal. at p. 153), where it is laid down:—"The definition of sedition given in section 124A of the Indian Penal Code contemplates hatred or contempt or disaffection towards His Majesty or the Government established by law in British India, and this apart from any intention of the offender."

Such a view of the law appears to be directly opposed to the whole current of judicial authority, both in England and in India.

Another important point to be noted is the persons who are protected by the section, and against whom sedition is prohibited. These are, in the first place, the Sovereign, and secondly, the Government established by law in British India. The words, "'Her Majesty,'" are used in the section to denote the Queen, and "the word 'Queen' denotes the Sovereign for the time being of the United Kingdom of Great Britain and Ireland," as defined in the Penal Code (s. 13). "The word 'Government' denotes the person or persons authorized by law to administer executive government in any part of British India" (s. 17).

Justice Batty in citing this definition (8 Bom. L. R., p. 438) observed:—"What is contemplated under the section is the collective body of men—the Government, defined under the Penal Code. That does not mean the person or persons for the time being. It means the person or persons collectively, in succession, who are authorised to administer government for the time being. One particular set of persons may be open to objection, and to assail them and to attack them and excite hatred against them is not necessarily exciting hatred against the Government, because they are only individuals, and are not representatives of that abstract conception which is called Government. The individual is transitory and may be separately criticised, but that which is essentially and inseparably
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connected with the idea of the Government established by law cannot be attacked without coming within this section."

In other words, Government is the abstract conception of British rule in India, as represented by the collective body of persons who are entrusted with its administration. To attack any individual member of that body in his private capacity might amount to a common libel, within the meaning of section 499 of the Penal Code; but to attack the Government itself through its official representatives, with seditious intent, would be an offence within the meaning of section 124A.

Justice Strachey, in Tilak's case, stated his conception of the term as follows:—"It means, in my opinion, British rule and its representatives as such—the existing political system as distinguished from any particular set of administrators."

This distinction was also pointed out by Sir C. Petheram, C. J., in the Bangobasi case, where he said:—"British India is part of the British Empire, and is governed like other parts of the Empire by persons to whom the power is delegated for that purpose. There is a great difference between dealing with Government in that sense and dealing with any particular administration."

These views are much in accord with the older conception of government evinced in the dicta of Lord Holt and Lord Ellenborough (see Ch. iii).
CHAPTER IX.

CRIMINAL LIABILITY.

The next point to be considered is the persons who may incur liability under section 124A. In other words who can be included under the comprehensive term "Whoever." Now as regards 'words spoken,' it is clear that the speaker himself is responsible for the language which he uses. But in the case of 'words written,' or matter disseminated through the Press, or by 'signs,' or 'visible representation,' a variety of persons may incur liability. It may be said briefly that all persons who wittingly take part, whether actively or passively, in the dissemination of seditious matter are responsible, in proportion to the part taken by them.

The principles of joint criminal liability are laid down by the Indian Penal Code in sections 34—37. They may, for convenience, be paraphrased thus:—When a criminal act is done by several persons in furtherance of the common intention of all, or when an offence is composed of several acts, which are committed, either singly or jointly, by several persons, each of the persons who so co-operates, intentionally, in the commission of such criminal act or offence, is liable individually for the commission of it, as though he had done it alone. But this, again, is subject to the limitation that, when criminal knowledge or intention is an essential element in the offence committed, the persons who join in the commission of it must be shown to have such knowledge or intention before they can be held liable.

These are but the principles of the English law relating to the joint liability of persons who participate in the commission of a felony. "If two persons," said Erskine, J., in R. v. Hurse (2 M. & Rob., 360), "having jointly prepared counterfeit-coin, planned the uttering, and went on a joint expedition and uttered, in concert and by previous arrangement, the different pieces of coin, then the act of one would be the act of both, though they might not be proved to be actually together at each uttering" (Russell).
In the *Banyobasi* case, where the proprietor, the editor, the manager and the printer were together placed on their trial in respect of the seditious articles charged (see Ch. iv), Sir C. Petheram, C. J., was of opinion that, whoever the writer might be, 'the persons who used them for the purpose of exciting disaffection' were guilty under the section.

In Tilak's case (see Ch. v) Justice Strachey referring to these observations said:—"It has been held by the late Chief Justice of Calcutta, Sir Comer Petheram, that it is not only the writer of the alleged seditious article, but whoever uses in any way words or printed matter for the purpose of exciting feelings of disaffection to the Government that is liable under the section, whether he is the actual author or not; and I entirely agree with him."

In this case the two accused were respectively the proprietor, editor and publisher, and the acting manager and printer of the *Kesari*. On the question of their individual responsibility for the publication of the articles the learned Judge said:—"The prisoner Tilak is the proprietor and editor of that paper and he is also the publisher. He has not attempted to dispute that, but has admitted it. He has also in his statement before the committing Magistrate, admitted that he was cognisant of the fact that the paper was despatched to various places, including Bombay. It is further in evidence that before any matter is published in the *Kesari*, proofs are submitted to him. Upon the evidence you would be justified in holding that he is the publisher of this paper, and also the publisher of these particular articles in the paper."

This evidence in the opinion of the learned Judge was sufficient to fix the accused with responsibility *qua* publisher, but in addition to this he had signed a declaration as such under Act XXV of 1867 (see Appx.) and the declaration was in evidence. "Under that Act," the learned Judge continued, "in the absence of any evidence to the contrary, you will be justified in holding that the prisoner Tilak was the publisher of every article and every word in the *Kesari*. He published it through his servants, and it must be taken as a fact, until the contrary is proved, that he authorised them not only to print it, but to give it out to the world and to distribute it in Poona and various
other places, among them being Bombay.” Upon these facts Tilak was found guilty.

The case of the other accused was different. He was the head printer in charge of the Arya Bhushan Press at which both the Kesari and the Mahratta were printed. He was at the time the acting manager and printer of the Kesari, but not its registered printer. It was not his business to correct proofs, but merely to receive and pass them on to a proof corrector, who in turn submitted them to Tilak. “That being the state of facts,” said his lordship, “how have you to deal with the question of his responsibility? You have to deal with it in this way. As he was the manager and superintendent in bringing out the matter—which was distinct from having a control over the literary department—as he was printer of it, you may presume that he was acquainted with what he was printing and distributing. You have to find whether he authorised the insertion of these articles or their distribution. It is a pure question of fact. If you are not satisfied that the prisoner was cognisant of the particular articles, or that he directed or authorised the insertion or distribution of them, then I will advise you to find him not guilty, because you must have regard to the section which requires distinct proof by the Crown against him. You must be satisfied that for printing or using the words that were published he was responsible, and that he used those words for the purpose of exciting disaffection. If you come to the conclusion that he knew nothing about these articles, then it is a question for you to consider whether you can properly say that he used those words with that purpose in his mind. It is entirely for you to consider whether you believe his uncontradicted statement that he was absolutely ignorant of what appeared in those articles.” Upon these facts the jury found the second accused not guilty.

From so lucid an exposition of the law it is abundantly clear that where publication is unquestioned or beyond controversy, the only question left to be decided is the meaning of the language employed. On the meaning will depend the intention, and if the Court, whether judge or jury, comes to the conclusion that the words used are calculated to excite disaffection, there is an end of the matter. If, on the other hand, publication is denied, and there has been no declaration, the individual responsibility
CRIMINAL LIABILITY.

of each accused will have to be established by distinct evidence, in the usual manner.

In the Full Bench case of Ramechandra Narayan (see Ch. vi), otherwise known as the ‘Satara case,’ the two accused were respectively the editor and the proprietor of a newspaper called the Pratod. The defence set up by each is briefly summarised by Sir C. Farran, C. J., as follows:—’‘It is not denied that the first accused Ramechandra Narayan is criminally responsible for the publication of the libel, if its contents contravene the provisions of section 124A of the Penal Code; but for him it has been contended that the libel does not transgress the law enacted in that section. The same contention has been made on behalf of the accused No. 2; but in his case the defence has also been urged that although he is the registered printer and publisher of the Pratod newspaper, he had ceased to take any part in its management long before the publication of the libel, and that he is not criminally responsible for its publication, even though seditious matter is contained in it.’’

As the article was found to be seditious the conviction of the first accused was duly affirmed. ‘‘As to the second accused,’’ his lordship continued, ‘‘he is admittedly the proprietor of the Pratod. He is its declared printer and publisher. Prima facie, therefore, he is responsible for what is published in it. When the prosecution has proved these facts, the onus is thrown upon the accused to rebut the inference which arises from them. Ramasami v. Lokanada (9 Mad., 387) is, I think, an authority in favour of this view of the law. I think that its reasoning is applicable to a prosecution under section 124A. From his own statement, corroborated as it is by the evidence of some of the witnesses for the prosecution, I think it is established that the accused No. 2 now leaves the general management of the Pratod to the first accused, but I am not satisfied that he is not from day to day cognisant of the more important matters which appear in it. This being so I am not prepared to upset the conviction in his case. His offence appears, however, to me to have consisted rather in passively acquiescing in, and negligently allowing the publication of the libel in question than in actively directing it.’’
The case cited by his lordship was one which came up for revision before the Chief Justice of Madras and Justice Mutta-sami Ayyar. The Sessions Judge of Tanjore had set aside a conviction by a Magistrate for defamation on the ground of want of proof of publication. "All that is alleged," he said in his judgment, "is that the accused was technically the publisher for the purposes of Act XXV of 1867, not that he actually knew of the publication." In reversing this order, Sir A. Collins, C. J., said:—"It is no doubt true that in order to sustain a conviction for defamation, it must be shown that there was a publication by the accused in fact. But the Judge has apparently overlooked the provisions of section 7 of Act XXV of 1867 " (see Appx.).

His lordship after citing the section proceeded:—"This Act was passed, like 38 Geo. III, c. 78, s. 14, for the purpose of preventing the mischief arising from printing and publishing newspapers by persons not known, and it was intended to facilitate proceedings, civil and criminal, against the persons concerned in such publications. The intention was to constitute the declaration into prima facie evidence of publication, and thereby throw on the accused the burden of showing that the actual publisher of the libel was not the person mentioned in the declaration. The declaration was then prima facie evidence of publication by the accused, and if no contrary evidence was produced, or if the contrary evidence produced by him was not true, as held by the Magistrate in this case, it became conclusive so as to sustain the conviction."

A declaration under section 5 may of course be withdrawn under section 8, by means of a fresh declaration, and the production of a copy of the latter would be a complete answer to the former. But, unless and until it is withdrawn, it would be good evidence of publication, and sufficient to cast on the accused the burden of proving his want of complicity. It would, moreover, have to be met by reliable evidence.

As to what would be sufficient to rebut the evidence of a declaration, his lordship observed:—"It was then urged for the petitioner that it was not sufficient for the accused to show that the libel was published without his knowledge or privity, but that he must go further and prove that the publication did
not also arise from want of due care or caution on his part, and
our attention was called to the provisions of 6 and 7 Vic. c. 96, s. 7.
It was pointed out by Lush, J., in The Queen v. Holbrook (4 Q. B. D., 42) that under the Common Law of England the pro-
prietary of a newspaper was criminally responsible for the publica-
tion of a libel in its columns, whether the libel was inserted with or without his knowledge, that the intention of the
Legislature in passing the Statute 6 and 7 Vic. c. 96, was to
mitigate the rigour of the Common Law, and to give the pro-
prietary the benefit of the presumption that, when a person
employs another to do a lawful act, he is taken to authorise him
to do it in a lawful and not in an unlawful manner, and that the
Statute declared for that purpose that it was competent to the
proprietary to prove that the libel was published without his au-
thority, consent, or knowledge, and that the publication did not
arise from want of due care or caution on his part. In substance
the Statute modified the grounds on which the proprietary was
criminally liable for a libel published in his paper according to
the Common Law of England. But we cannot hold that the pro-
visions of that Statute are applicable to this country, and we must
determine, whether the accused is, or is not, guilty of defama-
tion with reference to the provisions of the Indian Penal Code.
We consider that it would be a sufficient answer to the charge in
this country if the accused showed that he entrusted in good faith
the temporary management of the newspaper to a competent
person during his absence, and that the libel was published with-
out his authority, knowledge, or consent."

This important decision was followed again by the Bombay
High Court a few years later. In the year 1899 two notable trials
(already referred to) were held before Sir L. Jenkins, C. J., prob-
ably the first to take place after the legislation of 1898, which
are very fully reported in the Bombay Law Reporter (Vol. II
pp. 286—322). Both trials arose out of certain seditious articles
which appeared in a vernacular newspaper, published in Bombay,
called the Gurakhi. In the first, Queen-Empress v. Luxman, the
accused was the sub-editor of the paper, and there was direct
evidence to show that he was also the writer of the articles in
question. Sir L. Jenkins, C. J., in his charge to the jury, thus
describes it:—"The evidence before you is to the effect that
this man composed the articles; that they were written out by him; that they were handed over by him for publication; and that they were subsequently printed." "If you believe that evidence," his lordship added, "there is sufficient to justify you in holding that there was a case within the terms of the section." The prisoner was found guilty.

In the second case, Queen-Empress v. Vinayak, the accused was the proprietor, editor, printer, and publisher of the Gurakhi. In dealing with the question of his responsibility for the publication of the articles charged as seditious, his lordship said:—"'It is not disputed that the accused is the publisher of the paper, and you have evidence before you to the effect that he is its proprietor and editor and manager. His relation, therefore, to the paper in which the articles appeared is such that he clearly comes within that rule which makes a man *primâ facie* liable for what appears in his paper. A publisher is *primâ facie* liable for that which appears in his paper, and if he seeks to get rid of that liability the *onus* lies on him. It is for him to prove such circumstances as would justify him in asking you not to fasten responsibility on him. It will be for the accused to convince you on the evidence before the Court, by the probabilities of the case, that his *primâ facie* liability is displaced. What is necessary for him to establish at least is this: that the paper was published without his knowledge, authority, or consent, and without any acquiescence or connivance on his part. The case he has asked you to believe is that at the time the last two articles were published he was not in Bombay. Mere absence itself is obviously insufficient to constitute an answer to the charge. There must be more than that. Nor is it enough that he should show merely a want of particular authority. It is not enough for him to say: 'I never authorised the publication of this particular article.' And in this connection I will read what has been said by a very eminent Judge." His lordship then cited the observations of Sir Alexander Cockburn, C. J., in *Reg. v. Holbrook* (4 Q. B. D., 42) as follows:—"'Where a general authority is given to an editor to publish libellous matter at his discretion it will avail a proprietor nothing to show that he had not authorised the publication of the libel complained of.'" The prisoner was found guilty.
In the case of Emperor v. Bhashar (8 Bom. L. R., 421), the accused was proprietor, editor, and publisher of a Marathi newspaper called the Bhala, in which there had appeared the celebrated article entitled 'A Durbar in Hell.' He had made a declaration as publisher of the paper under Act XXV of 1867, s. 5. He admitted publication, but denied the authorship of the article in question. He also admitted responsibility but pleaded ignorance of the character of the article, and the absence of any evil intention. On the question of responsibility Justice Batty charged the jury as follows:—' It is not sufficient for a person who has published matter calculated to excite hatred, contempt, or disaffection, to say: 'This is not my work,' because, the adoption of the means, the publishing thereof, was in itself his work; therefore it is that the printer or publisher of an article which is open to these objections is always to be held liable. In the Madras case which has been cited to you it was held that a declaration under s. 5 of Act XXV of 1867 (an Act requiring all printers and publishers to register their names), in the absence of proof to the contrary, is proof of publication by the person making the declaration, unless he can prove that the matter was published in his absence and without his knowledge, and that he had in good faith entrusted the temporary management of his business to a competent person. That is to say for every thing that appears in his paper the editor, printer, or publisher is as responsible as if he had written the article himself.'

"No doubt," his lordship added, "circumstances may considerably mitigate the penalty which has to be imposed. But his liability to conviction under the section is not affected by the circumstance that the publisher who used the words did not originate them." He then cited the dictum of Sir C. Petheram, C. J., quoted above: "Whoever the composer might be, whoever wrote or caused it to be written, the person who used it for purposes of exciting disaffection is guilty of an offence under section 124A." The same principles had been laid down by Sir L. Jenkins, C. J., in the case of Queen-Empress v. Vinayek, and his lordship proceeded to cite also the passage quoted above to the jury. In conclusion Justice Batty observed:—"The same rule of law obtains in England, and I think you will recognise how very necessary it is to make responsible the editor or publisher who gives forth to
the whole world articles which are of a dangerous character." The jury found the prisoner guilty, and he was sentenced to six months' imprisonment and a fine of one thousand rupees.

It is difficult to reconcile these weighty observations on the efficacy of Act XXV of 1867 with the views expressed in the case of Apurba Krishna Bose v. Emperor (35 Cal. at p. 155), as to the inefficacy of the same measure. The learned Judges who decided that case, in dismissing the petition of the printer of the Bande Mataram, said:—"Forty years ago it was never anticipated that a mere printer would be punished, with the aid of the Act, for the publication of seditious matter," without regard to the fact apparently that the mere writer of seditious matter could not be punished at all, unless and until it was published.

"It is unfortunate," the learned Judges continued, "that the person or persons really responsible for these seditious utterances remain undetected." It is difficult to see why they should remain undetected—either with or without the aid of the Act—having regard to the large number of convictions of really responsible persons which are reported to have taken place between the years 1897 and 1906. Strangely enough the only case of acquittal reported during that period was that of the unregistered acting printer of the Kesari in Tilak's case. The learned Judges conclude in the full assurance that the Act will be amended so as to reach the more guilty persons, but as no suggestion is offered as to how this can be done, the problem remains unsolved. It is by no means easy to conjecture how the benefits of registration under the Act could be extended to the casual contributor and the unknown journalist, however guilty they might be.

Act XXV of 1867, however, seems to have received more considerate treatment the following year, in the same High Court, at the hands of Justice Rampini, A. C. J. This was in the case of Emperor v. Phanendra Nath Mitter (35 Cal., 945), commonly known as the Jugantar case. The accused was the printer of the newspaper known by that name. In this case the accused had withdrawn his declaration, under section 8,
but the seditious articles had appeared in the paper a few days before the revocation. The presumption raised by section 7 was duly applied by the learned Judge, in the manner prescribed by the Madras High Court, in the case of Ramasami v. Lokanada.

His lordship is reported to have approved the ruling in that case, but to have dissented from the observations in Tilak's case. The point of difference is not stated, so that it is difficult to say what it is—the more so as the two rulings appear to be in complete harmony. With respect to Tilak's case the learned Judge is reported to have charged the jury, as follows:—"It is an old case, as it is a case under the Indian Penal Code, before it was altered by the legislation of 1897:’’ meaning, no doubt, the legislation of 1898, but apparently overlooking the fact that the law had not been really altered, not at least, so as to affect the liability of printers.

Then in the next sentence, his lordship is reported to have said:—"‘This is a case in which the provisions of section 7 of Act XXV of 1867 have not been considered.’’ With due respect to the learned Judge, it might be safe to assert that the reverse of that proposition would have been nearer the facts, for it will be found on reference that the provisions of section 7 of that Act were not only considered, but cited by Justice Strachey, who after commenting on them, explained their effect to the jury in the plainest terms (see ante).

There is, however, one point in his lordship's charge that may be referred to with advantage in this connection. It is contained in the suggestion that the knowledge of three previous convictions against former printers of the same paper for sedition, as well as a previous prosecution against himself, were sufficient to destroy the bona fides of his plea of absence, and to raise the inference that he went away for the purpose of shirking liability, and not in good faith. The jury found the prisoner guilty.

The same principles have been followed in two unreported decisions of the Calcutta High Court (see Ch. ziv). These were the appeals of Surendra Prasad Lahiri v. Emperor (No. 497 of 1910) and Joy Chandra Sirkar v. Emperor (No. 509 of 1910). The former was the declared printer and publisher, and the latter the proprietor and editor of a vernacular newspaper called the
Rungpur Bartabaha. The printer relied merely on a plea of absence, while the editor denied all knowledge or responsibility, and pleaded further that the articles charged were not seditious. Both convictions were affirmed.

The same views were adopted by the Chief Court of the Punjab in 1904 in the case of Ram Nath (6 P. L. R., 259).

It has already been seen that the mere writing of seditious matter without publication would be no offence. Just as a man might think what he liked, so long as he did not preach sedition to others, so a man might write what he liked, so long as he did not communicate what he wrote to any one. The offence clearly lies in communicating seditious thoughts to other people, by any means, for the purpose of creating disaffection.

Now this would seem to hold good even if the seditious writing came to be published inadvertently, but through no fault of the writer. The illustration lies in the somewhat extreme case put by Lord Esher in Pullman v. Hill (1891, 1 Q. B., 527) where he said:—"What is the meaning of publication? The making known the defamatory matter after it has been written. If the writer of a letter locks it up in his own desk, and a thief comes and breaks open the desk, and takes away the libel and makes its contents known I should say there would not be a publication." In such a case if mischief ensued from publication the writer could hardly be made responsible, for it would not be his act.

But, on the other hand, it is difficult to conceive a journalist writing a seditious article except for the purpose of publication, and, in the event of its taking place through inadvertence or by mistake, the onus would be on him to prove the fact. Section 114 of the Evidence Act provides that—"The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct, and public and private business, in relation to the facts of the particular case:" e.g., "that the common course of business has been followed in particular cases." There would certainly be a strong presumption in favour of a journalist intending to publish what he had written, and of authorising its publication if it were published.
"If a person," says Mr. Mayne, in his 'Criminal Law of India,' "writes seditious words, intending them to be published, and they are afterwards published, though in a different way, and to a greater extent than he had contemplated, this completes his offence. It is also to be remembered that the act of publication is complete as soon as the contents of the writing have been communicated to any person." From this it would appear that if an intention to publish can be established, it makes no difference whether the original object is attained or not, so long as it is communicated in some way, so as to be likely to excite disaffection.

It is important to consider also, in this connection, the liability of a somewhat different class of persons, who may, unwittingly or unwittingly, become the medium of publication of seditious matter. These are the booksellers and newsvendors through whose hands dissemination is usually effected.

"Every sale, or delivery of a written or printed copy of a libel is a fresh publication" (Odgers). The law as to this was very clearly laid down in the case of R. v. Almon (5 Burr., 2686). Almon, who was a bookseller, had been convicted of selling a publication known as 'Junius's Letters,' and moved for a new trial on the ground of the want of any proof against him of criminal intention or knowledge as to the sale of the books. On the motion it was alleged—"That he was not at home when they were sent to his shop. That the whole number sent to his shop was 300. That about 67 of them had been sold there, by a boy in the shop, but without Almon's own knowledge, privity, or approbation. That as soon as he discovered it, he stopped the sale." These facts, however, do not appear to have been established by Almon at the trial. One of the jurymen pronounced the following question to the Judge:—"Whether the bare proof of the sale in Almon's shop, without any proof of privity, knowledge, consent, approbation, or malus animus, in Almon himself, was sufficient in law to convict him criminally of publishing a libel?" Lord Mansfield replied "that this was conclusive evidence." At the hearing of the motion his lordship explained this in these terms:—"Mr. Mackworth's doubt seemed to be 'whether the evidence was sufficient to convict the defendant, in case he believed it to be true.' And
in this sense I answered it. *Prima facie* 'tis good, and remains so till answered. If it is believed, and remains unanswered, it becomes conclusive."

His lordship then proceeded to expound the law further, as follows:—"The buying the pamphlet in the public open shop of a known professed bookseller and publisher of pamphlets, of a person acting in the shop, *prima facie* is evidence of a publication by the master himself, but that is liable to be contradicted, when the fact will bear it, by contrary evidence tending to exculpate the master, and to show that he was not privy nor assenting to it, nor encouraging it."

In this view of the law the Judges unanimously concurred. Justice Aston, in particular, laid down the same maxim, as being fully and clearly established, in these terms: "This *prima facie* evidence (if believed), is binding till contrary evidence be produced. Being bought in a bookseller's shop, of a person acting in it as his servant, is such *prima facie* evidence of its being published by the bookseller himself: he has the profits of the shop, and is answerable for the consequences. If he had a sufficient excuse he might have shown and proved it."

These principles were formulated by Statute seventy years later. Lord Campbell's Act (6 & 7 Vic., c. 96, s. 7) provides that whenever, upon the trial of an indictment for a libel, "evidence shall have been given which shall establish a presumptive case of publication against the defendant by the act of any other person by his authority, it shall be competent to such defendant to prove that such publication was made without his authority, consent or knowledge, and that the said publication did not arise from want of due care or caution on his part."

And so, in a more recent case, where the defendants were newsvendors, and sold in the ordinary course of business copies of a newspaper which contained a libel, and there was evidence to show that they were ignorant of the character of the paper and of the existence of the libel, and that there was no negligence or want of care on their part, it was held that they "had not published the libel, but had only innocently disseminated it" (*Emmens v. Pottle* (C. A.) 16 Q. B. D., 354).

And so also where the defendants were the Trustees of the British Museum whose duty it was to receive copies of all
publications for the Library, and to supply them to readers through their librarians, it was held that they could not be made liable if such books happened to contain libels. "It would be different," said Baron Pollock, "if the books were sold across the counter, or delivered to be sold in the street. It was laid down, on the ground of social policy, that if a man chose to sell books or papers he must take the consequences of his acts, if he knew that they contained libellous matter." (Martin v. Trustees of the British Museum, 10 Times L. R., 338).

The Madras High Court, it is true, have held, in the case of Ramasami v. Lokanada (9 Mad., 387) already referred to above, that Lord Campbell's Act has no application to India, but they have themselves laid down very similar principles to be observed in cases of innocent publication, and these may be adopted instead (see ante).
CHAPTER X.

WHAT IS NOT SEDITION.

The latter part of section 124A, which is comprised in the second and third Explanations, states in express terms what is to be excluded from the purview of the first part.

The substance of these two Explanations may be conveniently formulated thus:

'Comments expressing disapprobation of—

(a) the measures of the Government, with a view to obtain their alteration by lawful means, or

(b) the administrative or other action of the Government,

without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.'

The object of the provision contained in clause (b), as has been already pointed out, was to include comments upon past action of the Government which was irrevocable. The former explanation which, as will be remembered, had given rise to misconceptions in more than one trial, was recast in 1898. In its present form its meaning is clearer, though its purpose is still the same.

In commenting on this branch of the section, in Tilak's case, Justice Strachey said:—"You will observe that the section consists of two parts: first, a general clause, and then an explanation. The object of the explanation is a negative one, to show that certain acts which might otherwise be regarded as exciting or attempting to excite disaffection are not to be so regarded."

"The object of the explanation," he continued, "is to protect honest journalism and bona fide criticisms of public measures and institutions, with a view to their improvement, and to the remedying of grievances and abuses; and to distinguish this from attempts, whether open or disguised, to make the people hate their rulers. So long as a journalist observes this distinction, he has nothing to fear.'"
"It seems to me," he added, "that this view of the law secures all the liberty which any reasonable man can desire, and that to allow more would be culpable weakness, and fatal to the interests not only of the Government but of the people."

An analysis of this branch of the section reveals the fact that it is composed of two essential elements. The first is that the matter in question must in fact consist of comments, and, secondly, that the disapprobation which they may express shall be within certain limits.

This again has been expounded by Justice Strachey in the clearest terms as follows:—"The most important point for you to bear in mind is that the thing protected by the explanation is 'the making of comments on the measures of the Government' with a certain intention. This shows that the explanation has a strictly defined and limited scope. Observe that it has no application whatever unless you can come to the conclusion that the writings in question can fairly and reasonably be construed as 'the making of comments on the measures of Government.' It does not apply to any sort of writing except that. It does not apply to any writing which consists not merely of comments upon Government measures, but of attacks upon the Government itself. It would apply to any criticisms of legislative enactments, such as the Epidemic Diseases Act, or any particular tax, or of administrative measures, such as the steps taken by the Government for the suppression of plague or famine. But if you come to the conclusion that these writings are an attack not merely upon such measures as these, but upon the Government itself, its existence, its essential characteristics, its motives or its feelings towards the people, then you must put aside the explanation altogether, and apply the first part of the section.'

It will thus be seen, in the first place, that the protection afforded by the second branch of the section is only extended to what may be legitimately called "comments" on the action of the Government. If the matter in question is really only an attack on the Government itself, under the guise of criticism, the saving clause would have no application at all.

Then, in the second place, the disapprobation expressed in the comments, if in fact they be such, is strictly circumscribed.
It is subject to the restrictions imposed by the first part of the section, and if it violates these it is seditious. It must not excite, or tend to excite, disaffection.

The distinction between exciting "disapprobation" and exciting "disaffection" has been also very clearly demonstrated by Justice Strachey, as follows:—"This distinction is the essence of the section. It shows clearly what a public speaker or writer may do, and what he may not do. A man may criticise or comment upon any measure or act of the Government, whether legislative or executive and freely express his opinion upon it. He may express the strongest condemnation of such measures and he may do so severely, and even unreasonably, perversely and unfairly. So long as he confines himself to that he will be protected by the explanation. But if he goes beyond that, and, whether in the course of comments upon measures or not, holds up the Government itself to the hatred or contempt of his readers—as, for instance by attributing to it every sort of evil misfortune suffered by the people, or dwelling adversely on its foreign origin and character, or imputing to it base motives, or accusing it of hostility or indifference to the welfare of the people—then he is guilty under the section, and the explanation will not save him."

In this connection the observations of Sir L. Jenkins, C. J., at the trial of Vinayek (2 Bom. L. R., 307) must be referred to. His Lordship's remarks have reference to the explanation after it was recast in 1898, and were as follows:—"It has always been the policy, and is the policy of the law to allow free criticism, and almost, one may say, unrestrained criticism and comment on officers of State, on Judges, on measures of Government, and on Government itself, but it is subject to this qualification that this freedom must not be abused, so as to become a source of danger to the State. It is only when a man oversteps these very wide bounds and limits that he brings himself within the reach of the law. With a view to securing this freedom and liberty the second and third explanations have been framed, from which you will see that measures of administration and other action of Government are open to an expression of disapprobation, subject only to this that if the expression of disapprobation evidences an attempt to excite feelings hostile to
Government, of the kind indicated in the section, then its author
is liable to be punished.'”

Similar views were expressed by Justice Batty, a few years
“‘Changes in policy,’” he said, “‘and changes in measures
are liable to criticism, and to criticise and urge objections to
them is the special right of a free Press in a free country. The
British nation has always specially boasted that it had a free
Press, but the freedom of that Press is conditional upon one
thing; every liberty is given to all men to express their opinions
so long as they do not misuse or abuse that power to the injury
of others, including among injuries to others, injury to the State.
It is only on that condition that it is possible to have a free
Press.’”

It is the same in England (see Chs. ii—iii).

It may be said, then, that the second branch of section 124A
which is comprised in the second and third explanations
prescribes the limits of free criticism by speech or pen, in terms
which are no longer ambiguous. The restrictions imposed have,
moreover, been so clearly explained by judicial authority, that
misapprehension is hardly possible.

In this connection, however, it is necessary to bear in mind
a fact which has been well established since the days of Lord
Mansfield. It is that on a charge of seditious libel, the plea
can never be taken either that the libel was true or for the pub-
lic benefit. In this respect it differs from a common libel, and
it is well that it should be so, in the interests of the State.

This proposition has been stated by Sir L. Jenkins, C. J.,
in Luxman’s case (2 Bom. L. R., 298) as follows:—“‘Even if
there were a grievance, and even if it could be said that the articles
are based on that which is true, still if these articles are such
as to create feelings of hatred, contempt, or disaffection the
truth would be no answer to the charge, though it might in-
fluence the measure of punishment which it would be proper
to inflict. The truth of a grievance constitutes no excuse for
sedition or criminal publications or writings which it calls into
existence.’”

And so also Sir John Edge, C. J., in delivering the opinion of
the Full Bench in the case of Amba Prasad (see Ch. vii) said:—
"When it is ascertained that the intention of the speaker, writer, or publisher, was to excite feelings of disaffection to the Government established by law in British India, it is immaterial whether or not the words spoken, written, or published could have the effect of exciting such feelings of disaffection, and it is immaterial whether the words were true or were false."

There are, moreover, certain well-established rules, prescribed by judicial authority, which are always observed, for the construction of seditious matter, and in particular that which professes to be merely critical.

The first is a rule which was laid down in Sullivan's case in 1868 by Lord Fitzgerald (see Ch. ii). It is that in forming an opinion as to the character of any matter charged as seditious, it must be looked at as a whole, freely and fairly, without giving undue weight to isolated passages.

His lordship charged the jury in these terms:—"In dealing with the articles you should not pause upon an objectionable sentence here, or a strong word there. It is not mere strong language, or tall language, or turgid language that should influence you. You should, I repeat, deal with the articles in a free, fair, and liberal spirit."

Sir C. Petheram, C. J., in the Bangobasi case, referred in his charge to these weighty observations as follows:—"It will be for you to come to a decision on the tone of these articles. You must not look to single sentences or isolated expressions, but take the articles as a whole, and give them a full, free, and generous consideration, as Lord Fitzgerald has said; and even allowing the accused the benefit of a doubt, you will have to say whether the articles are fair comments and merely expressions of disapprobation, or whether they disclose an attempt to excite enmity against the Government."

Justice Strachey, in Tilak's case, charged the jury in precisely similar terms when he said:—"In judging of the intention of the writer or publisher, you must look at the articles as a whole giving due weight to every part. It would not be fair to judge of the intention by isolated passages or casual expressions, without reference to the context. You must consider each passage in connection with the others, and with the general drift of the whole. A journalist is not expected to write with the accuracy
and precision of a lawyer or a man of science; he may do himself injustice by hasty expressions out of keeping with the general character and tendency of the articles. It is this general character and tendency that you must judge the intention by, looking at every passage so far as it throws light upon this."'

Sir L. Jenkins, C. J., in Luxman's case (2 Bom. L. R., 298) enunciated the same rule in these terms:— "These three articles, or translations of them, have been placed before you, and what I shall ask you to do is to read them through yourselves and consider them carefully in order to determine what is their true construction, what is their real tendency, and what is their natural effect upon the minds of those into whose hands they come. I must warn you that you must not fasten upon a single strong phrase or a single strong word, but you must consider the articles as a whole—each article as a whole and all three together—and, reading them in a liberal spirit, it will be for you to say whether you think there is any doubt that they were in fact an attempt to create feelings of hatred, contempt, or disaffection against the Government.''

The meaning of this rule, appears to be, that, in construing an article or a speech, due weight must be given to every part, and undue weight to none. But this does not mean that particular passages, probably couched in stronger language than the rest, are therefore to be disregarded. Experience shows that particular passages frequently give the whole article or speech its character. It often happens, in cases where the meaning is studiously veiled, that a particular passage will give the necessary clue to a proper construction of language which would be otherwise unintelligible. An illustration of this may be found in numerous articles which have appeared in the reported cases, and notably in an unreported case recently decided in the Calcutta High Court (see Chs. xiv—xv), and known as the Rungpur Bartabaha case (App. No. 509 of 1910).

On the other hand, it is obvious that the accused must not be prejudiced by the improper use of such passages. "It would not be fair," as Justice Strachey says, "to judge of the intention by isolated passages or casual expressions without reference to the context." But that is quite another thing.
Another important rule, and one which is invariably put in practice in trials for sedition, authorises the use of collateral matter, which is not within the charge, for the purpose of showing the *animus* of the accused, and of throwing light on the meaning of the language employed by him.

Section 14 of the Evidence Act provides that "Facts showing the existence of any state of mind—such as intention, knowledge, good faith, negligence, rashness, ill-will or good-will towards any particular person"—are relevant and may be proved; while illustration (e) of the same says that when "A is accused of defaming B by publishing an imputation intending to harm the reputation of B, the fact of previous publications by A respecting B, showing ill-will on the part of A towards B, is relevant, as proving A's intention to harm B's reputation by the particular publication in question." And so also it is open to the defence to prove the contrary for the purpose of showing the absence of any such intention.

In the *Bangobasi* trial articles were put in on both sides for these purposes. In drawing the attention of the jury to this Sir C. Petheram, C. J., said:—"The charges are based on the five articles which are the subject of the indictment. Other articles have been quite properly put in during the trial, but no charges are laid in connection with the latter. They were put in, some by the prosecution, and some by the defence, to prove that their view of the intent of the articles charged was indicated in the others."

In like manner, at the trial of Tilak, extracts were used on both sides, not only from the *Kesari*, but also from the *Mahratta* of which he was likewise the proprietor. Not merely articles, but correspondence was thus admitted in evidence. Justice Strachey as to this observed:—"I do not think that I can exclude the evidence. As in cases of defamation, the proprietor and publisher would be liable for articles or letters published by him, though purporting to be signed by outsiders, and therefore I think that such contributions are admissible to show his intention and *animus*, as well as articles purporting to represent the views of the paper. It is, of course, open to the accused to put in any contributions of a different tendency
which he may have published, and so to show that those put in by the Crown do not express his intention.'

In the Allahabad case of Amba Prasad (see Ch. vi) Sir John Edge, C. J., in delivering the opinion of the Full Bench said:—

"The intention of a speaker, writer, or publisher, may be inferred from the particular speech, article, or letter, or it may be proved from that speech, article, or letter considered in conjunction with what such speaker, writer, or publisher has said, written, or published on another or other occasions.'

The same rule applies when the collateral matter sought to be used is contained in speeches, or consists of 'words spoken' and not 'written.'

In the case of Chidambaram Pillai v. Emperor (32 Mad., p. 14, see Ch. xii) where the objection was taken by the defence that such matter was irrelevant, Sir A. White, C. J., and Justice Miller said:—"We are of opinion that where there is a series of speeches or lectures on one topic, all delivered within a short period of time, one may be considered for the purpose of throwing light on the real meaning and intent of another, and on the state of mind of the speaker with reference to the object matter of the other speeches. This principle is recognised in illustration (e) to section 14 of the Indian Evidence Act, and has been acted on in cases of prosecutions for sedition in all the other High Courts in India." Their lordships cited the cases of the Bangobasi, Tilak, and the Jugantar, already referred to.

It may be noted that the method adopted of proving such speeches by means of the notes of Police Officers who were examined as witnesses in the case was also approved by the Court. It was the same in the case of Leakut Hossein Khan v. Emperor (App. No. 214 of 1908), which however is unreported (see Ch. xii). In this case the Calcutta High Court made use of similar evidence for the purpose of throwing light on the meaning of a printed leaflet or circular. The appellant who was "a well-known speech maker on Swadeshi and similar topics in Calcutta," visited Barisal in Eastern Bengal, with the avowed object of circulating a printed leaflet among the Mahomedans of that province, and of expounding to them the doctrines set forth therein. One of the doctrines
which the leaflet purported to teach was that according to
the sacred Koran Mahomedans owed no allegiance to non-
Moslem rulers. At the appeal it was contended for the prisoner
that the "allegiance" referred to was intended to mean
merely a spiritual or religious allegiance, and nothing more.

The answer to that, in the opinion of the Court, was con-
tained in the evidence of his speeches "which were certainly
not concerned only with religious matters, in Calcutta, both
before and after his visit to Barisal," and in which "he refer-
red to that visit apparently as part of the work he was then
engaged on."

In a more recent case, Emperor v. Ganesh Damodar
Savarkar (34 Bom., 394) the same principle has been applied to
a book of poems, only four of which formed the subject-matter
of a charge of sedition. On appeal the contention was raised,
on behalf of the prisoner that none of the four poems charged
contained anything seditious. Justice Chandavarkar said:—
"On examining the series of poems in the book, exhibit 6,
containing the four poems, it appeared to us that there were
other poems in it besides those four which throw light on the
intent of the writer; and that, as the whole book had been
allowed in the lower Court to go in as evidence, without any
objection, all the poems in the book could be referred to for
the purpose of determining the intention, character, and object
of the poems selected as the basis of the charges. We
adjourned the hearing for an official translation of the
whole series of poems in the book into English, and also to
enable the appellant's legal advisers to argue the appeal with
reference to the bearing of the whole series on the poems form-
ing the subject-matter of the charges."

This principle was also applied in two other cases in the
Calcutta High Court, viz.:—The cases of the Jugantar (35 Cal.,
945), and the Runypur Bartabaha (App. No. 509 of 1910, see
Ch. xiv). In the latter case three articles were made the
subject of the charge, whi'e six others, taken from the same
paper, were referred to for the purpose of throwing light on
the meaning of the first, and of showing the character of the
paper and the intention of the writer.
WHAT IS NOT SEDITION.

In cases when the meaning of the writer is veiled, as it frequently is, under the cloak of religious rhapsody, it is important to ascertain the general tone of the paper, and to see whether it is really religious or not. These appear to be the rules for the admission of collateral matter and the purposes for which it may be used.

On the other hand the case of Monmohan Ghose (App. No. 744 of 1910), otherwise known as the "Karmajogin case," affords an instance of the exclusion of such matter from consideration. In this case the appellant who was the printer and publisher of a newspaper, called the Karmajogin, had been convicted by the Chief Presidency Magistrate of Calcutta under section 124A. The article which formed the subject of the charge, the publication of which was not disputed, purported to be "an open letter addressed by one Arabindo Ghose to his countrymen." For the purpose of elucidating the meaning of certain expressions employed in the letter it was sought, on behalf of the Crown, to refer to other letters or articles which had previously appeared in the same paper, and were alleged to form part of a series of contributions on similar topics. These were excluded by the Court from consideration, on the ground, apparently, that the identity of the writer of them had not been established. The reasons are set forth in the judgment of Justice Holmwood as follows:—"Now in this case although the prosecution alleged that a series of articles had been written by one individual, and had those articles produced by a Police-officer who said that it was his duty to read them, and if objectionable to forward them to his superiors, no evidence was offered who that individual was, nor whether all the articles were by the same author.''

If, however, the rule laid down by Sir C. Petheram and Justice Strachey (see ante) is to be observed, it would appear that, where publication is established or not denied, the only question left to be determined is, whether the matter published is in the opinion of the Court, whether judge or jury, seditious, i.e., calculated to excite disaffection, or not, and this without regard to its authorship. On this principle evidence was admitted in Tilak's case of collateral matter in the shape of correspondence. The learned Judge there observed:—"The
publisher would be liable for articles or letters published by him, though purporting to be signed by outsiders, and therefore I think that such contributions are admissible to show his intention and animus as well as articles purporting to represent the views of the paper." And so in the Bangobasi case (see Ch. ix), where both printer and publisher were on trial, Sir C. Petheram, C. J., observed that if the articles were seditious the persons who used them for the purpose of exciting disaffection were guilty under the section—whoever the writer might be (see Ch. iv).

In the Karmajogin case, however, the learned Judge went on to add:—"It was urged by the learned Advocate-General that these articles were admissible under sec. 15 of the Evidence Act for the purpose of showing that the publication of the article before us in this case was not accidental, but that has obviously nothing to do with their admissibility for the purpose of showing the intention of the writer. In order to use them for this purpose it was necessary to show who the writer was, and that all the articles produced were by the same hand. This not having been done we are compelled to take the article before us as it stands, without any of the informing commentaries which were sought to be drawn from one previous article in particular by the learned Advocate-General."

In view of the authorities referred to above, which have been hitherto relied on, it is difficult to see why proof of the identity and intention of the writer should be necessary to establish the liability of the publisher. It is clear that, if the writer himself be on trial, his intention is directly in issue, and if collateral matter is then sought to be used for any purpose, its authorship must be established, but in this case the publisher alone was before the Court.

It will be observed that most of the matter which has hitherto formed the subject of prosecutions for sedition has been in the vernacular, which has necessitated the use of translations. It is therefore desirable to note what has been said by the Courts on this subject.

Here again, as in so many other instances, Justice Strachey's memorable charge to the jury in Tilak's case, furnishes
most valuable directions. "You have heard," his lordship said, "much discussion as to the exact meaning of various expressions in these articles, and the best way of rendering certain passages into English. You must remember that there has been a dispute about the correctness of some of the translations which have been put before you. For most of you the documents that you have to deal with are, in their original form, in a foreign language. I do not intend to trouble you with any criticism of the various renderings which are in evidence. The discussions which have taken place on the subject are, I assume, within your recollection. They, no doubt, were necessary and it is important that we should, as far as possible, exactly understand the true meaning of every word. But it would be a great mistake to let the decision of this case turn upon mere verbal niceties of translation, or discussions as to the best English equivalents of particular Marathi terms. We must look at these articles, not as grammarians or philologists might do, but as the ordinary readers of the Kesari would look at them—readers who are impressed, not by verbal refinements, but by the broad general drift of an article."

"Two translations," his lordship continued, "have been put before you, one of which has been called a free, and the other a literal translation. Both are equally official translations. What I would advise you is that whenever there is no dispute about the accuracy of the free translation, where its rendering has not been challenged, you should be guided by the free translation. It is altogether a mistake to suppose that because a translation is literal it is more correct than the translation which is called free. It does not follow that the most literal translation of a passage is that which best conveys its meaning in English. What we want to get at is the way in which an ordinary reader would understand the whole article, and hence to gather the intention with which the article was written and published. An absolutely literal translation from one language to another may give in the second language an extremely imperfect and really inaccurate idea of the meaning and spirit of the original. These documents have been translated by a translator of the Court; a Hindu gentleman, whose capacity to translate cannot for one moment be doubted.
The accuracy of his literal rendering of the articles has not been challenged by the defence; but the defence have found fault with the free translation as regards certain expressions occurring in the articles. The free translation does not profess to give the absolutely literal meaning of the words, but their genuine equivalents in English. As I have said, where the accuracy of the free translation is not disputed, I advise you to be guided by that: where there is any dispute I advise you to compare the literal with the free translation, to look at the context of the disputed passage, and to judge, by reference to that, which conveys the true meaning and intention. Again, where there is a conflict of evidence as to the meaning of a particular expression, I would advise you to give, under the usual rule, the benefit of any reasonable doubt to the accused.

From these observations two conclusions are clearly deducible. One is that a translation should accurately convey the general sense of the original, which is really all that is wanted; and the other, that a free or idiomatic translation is better calculated to do this than a literal one, and is therefore to be preferred.
CHAPTER XI.

INCIDENTS AND RULES OF PRACTICE.

It is a well-established rule that seditious matter may not be reproduced from other publications. This is as much an offence as the publication of original matter, presumably because in effect it is equally mischievous. The offence lies in the publication. This rule was laid down by Lord Fitzgerald in Sullivan's case in clear and emphatic language as follows:—"As to the articles extracted from other papers, it was recently contended that even if these articles were of a seditious or treasonable character, yet that the defendant was justified in publishing them as foreign news. I am bound to warn you against this very unsound contention, and I may now tell you, with the concurrence of my learned colleague, that the law gives no such sanction, and does not, in the abstract, justify or excuse the republication of a treasonable or seditious article, no matter from what source it may be taken."

His lordship then proceeded to state that there might be circumstances sufficient to rebut the inference of criminal intention, but in the absence of such circumstances it would be reasonable to infer from the fact of republication some seditious object.

"If the law," he added, "be powerless in the case of such publications, then we may as well blot out from the Statute book the chapter on seditious libel, which would take away from society the great protection which the law affords to their institutions. You see, therefore, how necessary it is to assert this part of the law, and therefore I again emphatically tell you that it is no justification or excuse for a publication, treasonable or seditious, that it appeared first in another paper, whether local or foreign" (see Ch. ii).

The same principle was applied by the Calcutta High Court in the case of Apurba Krishna Bose v. Emperor (35 Cal., 141), already referred to, though apparently on different grounds. In that case one of the charges against the accused, who was
the printer of the Bande Mataram, was that he had repub-
lished in his paper certain official translations of seditious
matter which had appeared in the Jugantar, another local paper,
the printer of which was also tried for sedition.

The articles in question, or one of them, had been the sub-
ject of the charge against the Jugantar, and the republication
professed to be a report of the proceedings in that case. The
rule laid down by Lord Fitzgerald would have been applicable
here no doubt. The learned Judges, however, who decided the
case appear to have based their conclusions on the fourth Ex-
ception to section 499 of the Penal Code which relates to de-
famation, an offence which was apparently not charged against
the accused. They held that the articles in question did not
"form part of the proceedings of a Court of Justice," because
"the conviction for sedition in the Jugantar case was based on
one article only." "There was therefore no excuse for the
wholesale publication in the Bande Mataram of these transla-
tions."

This leaves it doubtful whether the accused would have
been guilty if he had limited himself to the reproduction of
the single article which formed the subject of the charge in
the other case, instead of resorting to wholesale publication.
Nor is it clear whether it may be taken as a rule that exceptions
to section 499 of the Penal Code can be applied to cases under
section 124A, when sedition is the only charge against the
accused.

The learned Judges conclude their observations in the
following terms:—"The dissemination of temptation is not
excusable on any principle with which we are conversant." The
dissemination of "temptation" is not expressly provided
for in section 124A, and it is therefore to be regretted that no
opinion is expressed as to whether it is within the mischief
contemplated or not.

Finally, there are a few points of general importance which
are usually impressed upon juries in trials for sedition. These
may be gathered passim from the celebrated charge of Lord
Fitzgerald in Sullivan's case (see Ch. ii), but they have also
been summarised by Justice Strachey in Tilak's case in clear
and precise terms. The learned Judge there said:—"In
considering what sort of effect these articles would be likely to produce, you must have regard to the particular class of persons among whom they were circulated, and to the time and other circumstances in which they were circulated. In judging what would be the natural and ordinary consequences of a publication like this, and what therefore was the probable intention of the writer or publisher, I must impress on you, as perhaps the most important point in my summing up, that you must bear in mind the time, the place, the circumstances, and the occasion of the publication."

"An article," his lordship continued, "which if published in England, or among highly educated people, would produce no effect at all—such as an article on cow-killing—might, if published among Hindus in India, produce the utmost possible excitement. An article which, if published at a time of profound peace, prosperity, and contentment would excite no bad feeling, might at a time of agitation and unrest excite intense hatred to the Government. When you are considering the probable effect of a publication upon people's minds, it is essential to consider who the people are. In my opinion it would be idle and absurd to ask yourselves what would be the effect of these articles upon the minds of persons reading them in a London drawing-room or in the Yacht Club in Bombay; but what you have to consider is their effect, not upon Englishmen or Parsis, or even many cultivated and philosophic Hindus, but upon the readers of the Kesari among whom they were circulated and read—Hindus, Marathas, inhabitants of the Deccan and the Konkan. And you have to consider not only how such articles would ordinarily affect the class of persons who subscribed to the Kesari, but the state of things existing at the time, when these articles were disseminated among them. Then you have to look at the standing and position of the prisoner Tilak. He is a man of influence and importance among the people. He would be in a position to know what effect such articles would probably produce in their minds."

The gist of these salutary directions appears to be that in order to decide whether any publication is likely to excite disaffection or not, it is necessary to consider all the circumstances under which it was published. It is therefore important
to note the time, the place, and the occasion of its issue; the character of the people who are addressed, and even the position of the writer or speaker, because the effect must inevitably vary with the circumstances.

Moreover, the principle is the same whether sedition is preached from the platform or disseminated through the Press. "In estimating the natural consequences which will flow from particular language," says Mr. Mayne, "all the surrounding circumstances of the case are material, the excited state of public feeling, the ignorant or hostile character of the persons addressed, the critical condition of affairs, and the influence of the speaker." These remarks have been approved by the Madras High Court in the case of Chidambaram Pillai v. Emperor (32 Mad., at p. 30).

The last point to be noticed in the section is the provision regarding punishment. No alteration was made as to this by Act IV of 1898. It will be observed that three kinds of punishment are provided for the offence—transportation, imprisonment, and fine.

Transportation may be for life or any shorter term, but not less than seven years (8 W. R., Cr. 2). Imprisonment may be of either description, as the Court shall direct (s. 60, P. C.), but must not exceed three years. It had been proposed to extend the term to ten years, but, as has been already pointed out, the Select Committee decided to maintain the law as it stood.

Fine may be imposed either alone, or in addition to a sentence of transportation or imprisonment, and without limit.

The question of the amount and character of the punishment, which it is proper to award in any given case, is one of no small difficulty. The Code affords no assistance in this respect, beyond fixing the maximum penalties. Under these circumstances recourse must be had to judicial authority. The observations of Sir C. Farran, C. J., in the case of Ramchandra Narayan (22 Bom., 152) will afford a valuable guide to the solution of the difficulty. The facts of this case have been set out in Chapter VI, and his lordship's remarks on the criminal liability of the accused in Chapter IX. The two accused had
been sentenced, respectively, to transportation for life and for seven years, by the Sessions Judge.

His lordship there said:—"As to punishment, it should in each case be commensurate with the offence. As to the article itself, there is nothing practical about it. It sets nothing tangible before its readers. It is calculated, I think, rather to excite unrealisable dreams—abstract feelings of discontent than to spur to immediate action, and I do not think that the other articles, put in to show the intent of the writer, carry the case any further. This should be taken into consideration. The article also does not vituperate the Government at present existing. This is, I think, a feature to be borne in mind. It appears, after all, in but an obscure paper published in a small town, by an obscure person. The circulation of the Pratod is very small. The libel is written at a period when profound peace dwells in the land. At the same time the article certainly is calculated, and I think intended, to widen the slight breach or misunderstanding which in some parts of the country exists between the Government and its subjects, when the aim of all good writers should be to lessen and to close it. We alter the sentence on the first accused to one year's rigorous imprisonment. This will, I think, be commensurate with the offence, and will be amply sufficient to deter other newspaper managers from publishing similar articles. The accused No. 2 is an old man. His offence is rather one of negligence in permitting the publication of the article than of taking an active part in it. Three months' simple imprisonment will, I think, be an adequate punishment in his case—and we alter it accordingly. The more severe punishment, which the section admits of, ought, in my opinion, to be reserved for a more dangerous class of writing published in times of public disturbance."

To this may be added the remarks of Justice Ranade, in the same case, which were as follows:—"The Sessions Judge was right in convicting both the accused. At the same time he greatly overrated the influence and mischief of the publication. The proprietor's responsibility is of a very technical character, and even the writer, must be leniently judged because of the insignificance of his paper, its small circulation, and his poor education."
In direct contrast to this is the case of *Amba Prasad* (20 All., 55), already referred to (see Ch. vi), where the Sessions Judge had imposed a sentence of eighteen months' rigorous imprisonment, which the High Court found to be entirely inadequate. There the accused had tendered a belated apology, but their lordships found "that his object was to excite not merely passive disaffection," but "active disloyalty and rebellion."

"An apology," their lordships added, "particularly made after commitment, in such a case as this, need not be considered. Having regard to the gravity of the offence which Amba Prasad committed, and to the misery, ruin, and punishment which he might have brought upon ignorant people, the sentence which was passed upon him was entirely inadequate."

These may be taken as typical cases, and from the principles laid down in each, it would appear that the real test to be applied, in questions of punishment, is the amount of mischief which is calculated to result from the commission of the offence. This after all is the fairest test that could be employed.

Some objection was raised in Council to the maximum sentence of transportation for life, but it was pointed out by the Law Member that a safeguard was provided by an appeal to the High Court, and that, in the only case then on record, where such a sentence had been imposed by a Sessions Judge, the High Court had reduced it. This was the case of Ramchandra Narayan.

It is to be observed, further, that sentences are regulated, by Chapter III of the Criminal Procedure Code, according to the jurisdiction of the Courts. An Assistant Sessions Judge is not empowered to pass a sentence of transportation exceeding seven years. Neither a Chief Presidency Magistrate, a District Magistrate, nor a Magistrate of the First Class specially empowered to try the case, can pass any sentence of transportation at all, and their jurisdiction is otherwise limited to two years' imprisonment and a fine of one thousand rupees.

Section 408, cl. (c), provides that an appeal from the conviction of a Magistrate under Section 124A, shall lie to the High Court, but from clause (b) it would seem that an appeal from a conviction by an Assistant Sessions Judge would only
lie to the High Court if the sentence passed by him was one of transportation or of imprisonment for a term exceeding four years. It would otherwise lie to the Court of Session, which seems anomalous.

Section 410 provides that an appeal from a conviction by a Session Judge, or an Additional Sessions Judge shall lie to the High Court. No other Courts are empowered to try sedition cases. So that an appeal would seem to lie to the High Court in every case but the one mentioned in section 408. It may be, however, that if an Assistant Sessions Judge tried a sedition case, he would try it as a Court of Session, in which case section 410 would apply, and give a right of appeal to the High Court.

Sedition being an offence against the State no prosecution can be instituted except under the authority of the Government. This provision was made in 1870, by section 13 of the Act which first introduced the offence into the Penal Code, as has been already shown in Chapter II. It was re-enacted in 1882, and again, at the time of the amendment of the section by Act IV of 1898, as section 196 of the present Criminal Procedure Code (Act V of 1898).

"Under Section 196 of the Code," said Justice Strachey in Tilak's case, "no Court is to take cognisance of any offence punishable under Chapter VI of the Penal Code, in which section 124A occurs, unless upon complaint made by order of, or under authority from, the Governor-General in Council or the Local Government."

As to how this may be proved at the trial the learned Judge continued:—"In this case a complaint was made by the Oriental Translator to Government, an order by the Local Government to the complainant for the prosecution of the prisoner under section 124A is produced, and the complainant in the witness-box has shown that he instituted the prosecution in respect of these articles by order of the Government." This his lordship held was sufficient to prove the fact.

Two objections were taken, by the defence, to the form of the order: one, that by the use of the word "articles" it did not sufficiently describe the matter which was charged as seditious, and the other, that it did not specify, by dates or otherwise, the extracts in respect of which action was to be taken.
His lordship's answer to this was:—"It is only necessary to see whether the complaint relates to matters falling within the words 'certain articles appearing in the said newspaper,' and it is obvious that it does, and the order is therefore complied with."

"It may be desirable," he added, "and I think it is, that orders under section 196 should be expressed with greater particularity, but I cannot read into the section restrictions which are not there. The section does not prescribe any particular form of order, and does not even require the order to be in writing. I am therefore of opinion that the order is sufficient."

His lordship held further that even if it were otherwise, and the Magistrate had in fact no jurisdiction to commit the accused for trial, section 532 of the Criminal Procedure Code creates an exception, "and provides that in such a case the High Court may accept the commitment if it considers that the accused has not been injured thereby, unless during the proceedings before the Magistrate he objected to the Magistrate's jurisdiction." After citing the Full Bench decision in Queen-Empress v. Morton (9 Bom., 288) he continued:—"In this case no objection was taken in the Magistrate's Court, and I cannot hold that the accused has been in any way prejudiced. The object of section 196 is to prevent unauthorised persons from intruding in matters of State by instituting State prosecutions, and to secure that such prosecutions shall only be instituted under the authority of the Government. I have no doubt that these proceedings have been authorised by the Government, and I disallow the objection."

These views were endorsed by the Full Bench that sat to hear the application for leave to appeal to the Privy Council. Sir C. Farran, C. J., on that occasion, said:—"As to the question of jurisdiction, we are all of opinion, without doubt, that this prosecution was instituted under the authority of Government, and that, to use the words of the present Code, this complaint was made 'by order of or under the authority of Government.' There is no special mode laid down in the Code whereby the order or sanction of Government is to be conveyed to the officer who puts the law in motion.
case the prosecution was conducted by the Government Solicitor, it was instituted by the Oriental Translator to Government, and he produced the written order of Government to institute the complaint. Now though the complaint must undoubtedly contain the article complained of, to give information to the accused of the charge against him, there is nothing in the Code to show that the written order to make the complaint—if written order is required—must specify the exact article in respect of which the complaint is to be made."

The views of Justice Strachey were also endorsed by the Calcutta High Court in the case of Apurba Krishna Bose v. Emperor (35 Cal., p. 149), already referred to. The learned Judges, however, who decided that case, while expressing their 'entire agreement with Strachey, J.,' observed that, "the section does not use the word sanction," and that "orders under section 196 should be expressed with sufficient particularity, and with strict adherence to the language of the section." This would seem to suggest that the word sanction ought not to be used, as, in fact, it had been in the Government orders which authorised the prosecution in that case. But in the very same passage, their lordships were constrained to use it themselves, as being a "convenient word." The Full Bench also used it, as an equivalent for authority. Indeed, it is difficult to avoid using it, as the learned Judges would seem to have found, for to authorise is to sanction.

The section, then, appears to contemplate that no prosecution for sedition can be entertained by any Court, unless the complaint has been either ordered or authorised by the Government, and, further, that the order, or authority, or sanction, need not be—though it usually is—in writing.

More recently the Madras High Court have followed the ruling of Justice Strachey, in the case of Chidambaram Pillai v. Emperor (32 Mad., p. 9). In that case the order of Government directing the prosecution (under s.196) purported to authorise the institution of criminal proceedings against Chidambaram Pillai and two others, under section 124A, and other sections of the Penal Code, in respect of speeches delivered by them at Tuticorin and Tinnevelly in the months of February and March 1908. The prosecuting Inspector of Tinnevelly
was further directed to prefer complaints of offences under the sections named without delay against the three persons named in the order. The substance of this order was telegraphed by the Government to the District Magistrate, who orally communicated it to the prosecuting Inspector and instructed him to file a complaint, which was done the same day.

In commenting on these facts Sir A. White, C. J., said:—

"The order states the sections under which the institution of the criminal proceedings is authorised, and, in general terms, the times when the speeches in respect of which the proceedings were authorised, were delivered. In our opinion there is nothing in the section to warrant the construction that the actual complaint must be expressly authorised by the local Government. The only question which the Court has to consider with reference to section 196, Criminal Procedure Code, is—'Is the complaint which I am asked to entertain a complaint made by order or under authority of Government?'"

Their lordships, however, dissented from the view expressed by the Full Bench that "the complaint should contain the article complained of to give information to the accused of the charge against him." Their lordships considered this to be unnecessary. It may be, however, that the learned Judges who constituted the Full Bench only meant that the complaint should specify the article complained of, which certainly seems reasonable.

It is clear, then, that section 196 of the Criminal Procedure Code renders the sanction of Government imperative, and there is no remedy for the want of it, except as provided by section 532. If, therefore, section 532 be for any reason excluded, there is an end of the question of jurisdiction.

The sanction of the Government, which has been made a condition precedent to every prosecution for sedition, was stated in Council to have been provided as a safeguard against the possible abuse of the section.

Another safeguard was provided in section 95 of the Code, which is one of the "General Exceptions." By the Act of 1870 (s. 13) the provisions contained in Chapter IV of the Penal Code, relating to "General Exceptions," were made applicable
to section 124A. This, it would appear, was hardly necessary in view of section 6 of the Code, which provides:

"Throughout this Code every definition of an offence, every penal provision, and every illustration of every such definition or penal provision, shall be understood subject to the exceptions contained in the Chapter entitled 'General Exceptions,' though those exceptions are not repeated in such definition, penal provision or illustration." In any case, the only one of them which would seem applicable to section 124A, is the one referred by the Law Member as contained in section 95.

At the time of the legislation of 1898, a note of dissent was formulated by one of the opponents of the Bill in these terms:

"It is quite possible to punish a journalist or public speaker who is only guilty of using indiscreet language calculated at most to give rise to trifling feelings of irritation." The answer to this, it was pointed out, was to be found in section 95 of the Penal Code, which provides that "Nothing is an offence by reason that it causes, or is intended to cause, any harm, if that harm is so slight that no person of ordinary sense and temper would complain of such harm." In such a case therefore a journalist would have nothing to fear.

A further safeguard against abuse is provided by the Criminal Procedure Code in the restrictions imposed on the Police, who are not empowered to arrest without a warrant. Again the jurisdiction to try offences under section 124A is restricted to Courts of Session, Chief Presidency Magistrates, District Magistrates, and Magistrates of the First Class specially empowered by the Local Government in that behalf.

The offence is stated to be not compoundable. This would seem to mean not compoundable by the complainant or prosecutor; but the Government are obviously entitled to withdraw a prosecution, as they did in the Bangobasi case, and in other cases subsequently.

Sedition is a non-bailable offence, but even so relief may be obtained under the provisions of ss. 497—8 of the Criminal Procedure Code.
CHAPTER XII.

ABETMENT OF SEDITION.

The offence of abetting sedition is not specially provided for in section 124A. For abetment of sedition, therefore, recourse must be had to the general provisions of the Penal Code, which are contained in Chapter V (ss. 107—120).

The Act of 1870 which introduced section 124A into the Code in its original form, provided also, as already stated (see Ch. i), for the application of Chapter V to the offence of sedition. This would seem to have been barely necessary, for by the same Act was provided section 40, defining the term "offence," as "a thing made punishable by this Code." Now inasmuch as sedition is a thing made punishable by the Code, i.e., an 'offence,' it is clear that the general provisions relating to the abetment of all offences would become applicable per se.

But even if section 124A had provided specially for abetment, as section 121 does, this, upon the authority of Emperor v. Ganesh Damodar Savarkar (34 Bom., 394), would still be so, and the general provisions of the Code could be referred to for the purpose of explaining the special one.

Abetment is defined by section 107 of the Code in the following terms:—"A person abets the doing of a thing, who—
(1) instigates any person to do that thing; or,
(2) engages with one or more other person, or persons in any conspiracy for the doing of that thing if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or,
(3) intentionally aids, by any act or illegal omission, the doing of that thing."

It will thus be seen that there are three ways in which an act may be abetted, viz.:—by instigation, by conspiracy, or by aid and assistance.

But it will also be observed that in each case abetment must precede or accompany the act abetted. There is no provision
for an accessory after the fact, as there is in the English law. An abettor may be said to be an accessory before the fact.

These provisions are, however, subject to further qualifications.

First, where an offence is abetted by instigation, it is explained that "To constitute the offence of abetment, it is not necessary that the act abetted should be committed, or that the effect requisite to constitute the offence should be caused."

This would not apply of course to either of the other forms of abetment—by conspiracy or by aid—for both of them contemplate the commission of the act abetted.

It is further explained that "It is not necessary that the person abetted should be capable by law of committing an offence, or that he should have the same guilty intention or knowledge as that of the abettor, or any guilty intention or knowledge."

Such a case might arise where seditious matter was disseminated through the medium of innocent newsvendors or placard-men, or even through a series of such agents. It is immaterial whether instigation be, direct or indirect.

Secondly, the Code explains that "It is not necessary to the commission of the offence of abetment by conspiracy, that the abettor should concert the offence with the person who commits it. It is sufficient if he engage in the conspiracy in pursuance of which the offence is committed."

Thirdly, it is stated that "whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act."

These provisions may be said to define the law of abetment, but the penalties have still to be considered.

In the absence of any express provision, as in the case of sedition, it is provided by section 109 that, "if the act abetted is committed in consequence of the abetment," the punishment shall be the same as that "provided for the offence."

It is explained that "An act or offence is said to be committed in consequence of abetment, when it is committed in
consequence of instigation, or in pursuance of the conspiracy, or with the aid which constitutes the abetment.'"

If, on the other hand, the offence abetted "be not committed in consequence of the abetment," and that offence is punishable with transportation for life, it is provided by section 115 that the abetment shall be punishable "with imprisonment of either description for a term which may extend to seven years, and shall also be liable to a fine."

It has to be borne in mind in this connection that, although section 124A provides a maximum punishment for sedition of transportation for life, it limits the term of imprisonment to three years. There may, of course, be cases in which the abettor is more guilty than the person abetted, or equally so, and this was in fact the case in the Madras appeals (32 Mad., 3). Chidambaram Pillai, who was the abettor, had received from the Sessions Judge a sentence of transportation for life, while the preacher of sedition himself received ten years. These sentences were reduced by the High Court to equal terms of six years' transportation.

It has also to be remembered that in cases of sedition there can be abetment of the attempt to cause disaffection, as well as of the act of sedition. In the Madras case the attempt was successful, whereas in the Calcutta case of Leakut Hossein Khan (App. No. 214 of 1908) it was a failure; but in both cases the abettor was convicted.

Then it is provided by section 114 that, "Whenever any person, who, if absent, would be liable to be punished as an abettor, is present when the act or offence for which he would be punishable in consequence of the abetment is committed, he shall be deemed to have committed such act or offence."

This provision merely defines the position of what, in the English law, is known as a principal in the second degree, as distinguished from an ordinary abettor, or accessory before the fact.

The definition given in the Code of instigation is not exhaustive. It is in fact limited to incitements by wilful misrepresentation or concealment.

Instigation is defined by Mr. Mayne in his 'Criminal Law of India' in these terms:—"A person instigates a crime who
incites or suggests to another to do it, or who impresses upon his mind certain statements, whether true or false, with the intention of inducing him to commit a crime.'

In 'Russell on Crimes' a person is stated to instigate another, "when he actively suggests or stimulates him to an act, by any means or language, direct or indirect, whether it takes the form of express solicitation, or of hints, insinuation, or encouragement."

"The offence of abetment by instigation," says Mr. Mayne, "is complete as soon as the abettor has incited another to commit a crime, whether the latter consents or not, or whether, having consented, he commits the crime, nor does it make any difference in the guilt of the abettor that the agent is one who, from infancy or mental incapacity, would not be punishable; or that he carries out the desired object under a mistaken belief that the act he is employed to do is an innocent one. The offence consists in the abetment. The consequences are only material as aggravating the punishment."

There has, so far, been no reported case of abetment of sedition by instigation, though the case of Chidambaram Pillai came very near it. The position there was described by the Sessions Judge in these terms: "According to the prosecution case, the second accused, recognising the powers of the first as an orator, quickly got hold of him, invited him to his house, and commenced with him a campaign of seditious speeches, which so inflamed the minds of the populace against the Government authorities and the European community, that they caused the mill hands of the Coral Mills Company to go on strike, and ultimately caused the riots at Tuticorin and Tinnevelly."

If the case had rested on instigation alone, it would have been unnecessary, of course, to prove its consequences, but having regard to the plain facts, the case was regarded by the High Court as one of conspiracy.

Criminal conspiracy, as defined in 'Russell on Crimes,' consists in "an unlawful combination of two or more persons to do that which is contrary to law." "But the best established definition," it is added, "of the offence is that given by Willes, J., on behalf of all the judges in Mulcahy v. R. (3 H. L.,
p. 317), and accepted by the House of Lords in that and subsequent cases—"A conspiracy consists not merely in the intention of two or more, but in the agreement of two or more to do an unlawful act, or to do a lawful act by unlawful means. So long as a design rests in intention only it is not indictable."

"And so far as proof goes, conspiracy, as Grose, J., said in R. v. Brisac (4 East, 171), is generally 'a matter of inference deduced from certain criminal acts of the parties accused, done in pursuance of an apparent criminal purpose in common between them."

Seditious conspiracy has also been aptly defined by Sir James Stephen in his "Digest of the Criminal Law" (see Ch. ii).

The offence of abetment by conspiracy, according to the Penal Code, is not complete unless some 'act or illegal omission takes place in pursuance of that conspiracy,' but the acts themselves may afford the best evidence of its existence. And so the Indian Evidence Act (s. 10) provides that, "when there is reasonable ground to believe that two or more persons have conspired together to commit an offence, anything said, done, or written by any one of such persons in reference to their common intention, after the time when such intention was first entertained by any one of them, is a relevant fact as against each of the persons believed to be so conspiring, as well for the purpose of proving the existence of the conspiracy, as for the purpose of showing that any such person was a party to it."

These principles were amply illustrated in the case of Chidambaram Pillai v. Emperor (32 Mad., 3). In this case two persons were convicted by the Additional Sessions Judge of Tinnevelly, Subramania Siva and Chidambaram Pillai; the one for sedition and the other for abetment of that offence.

The charges against the two accused were in respect of three speeches delivered by the former on the 23rd and 25th of February and the 5th of March 1908. The second accused was present on the first two occasions, but not at the last. The speeches selected for the charge were part of a series of orations delivered by both in pursuance of a political programme devised by the second accused.

"Each entered," their lordships observed, "from time to time on the other's ground, and the goal to which both
pointed was the departure of all foreigners and all things foreign from the land, and the resulting Swaraj and prosperity."

At the hearing of the appeal the points for determination were the character of the speeches, the fact of their actual delivery, the nature of the abetment, the factum of a conspiracy, and the consequences which resulted. In addition, several questions of procedure were decided.

"The burden of the speech of the 23rd February," their lordships said, "was 'the way to obtain Swaraj.'"

"There has been considerable discussion," they continued, "as to the meaning of this word. We have been referred to the case of Beni Bhushan Roy v. Emperor (34 Cal., 991). There the learned Judges express the opinion that the term does not necessarily mean government of the country to the exclusion of the present Government, but its ordinary acceptance is 'home rule' under the Government. The Judges point out that the vernacular word used, if literally translated, would mean 'self-government.'"

There can be little doubt that the literal meaning of the word Swaraj (or Swarajya) is what the Oriental Translator to the Government stated it to be in Tilak's case (22 Bom., 112), viz.:—"One's own government," (i.e., native rule). The word occurs in the article on "Shivaji's Utterances," in the passage, "I delivered the country by establishing 'Swarajya,'" i.e., my own kingdom.

This interpretation has, moreover, been endorsed by high authority. In the case of Emperor v. Ganesha Damodar Savarkar (34 Bom., at p. 402), Justice Chandavarkar said:—"The 9th poem, which is headed 'Who obtained independence without war?' winds up with this remark 'He who desires Swarajya (one's own rule) must make war.'"

Probably the best equivalent for the term 'Swaraj' is the one which their lordships adopted, viz.:—'independence.' Their lordships held that there could be no doubt at least as to what the accused meant by it, for in 'his own statement he defined the gospel which he preached as a gospel of 'absolute Swaraj.' The people of India,' he said "were now trying to establish, in place of the foreign government,
their Swaraj.'" An important witness for the defence had, moreover, confirmed this by stating—"... the Swaraj which the first accused inculcated was a free and independent Swaraj, independent of British Government."

"The sense in which a speaker employs it," their lordships added, "must be judged mainly by the context of the speech in which the word is used. We have the passage 'without bloodshed nothing could be accomplished.' We cannot read the passages with reference to the sacrifices made by Japan in the war with Russia in any other sense than as an incitement to revolt. The phrase 'If all Indians whether strong or weak come forward as strong men, foreign Government will collapse and Swaraj will be theirs' is an appeal to his audience to replace the foreign Government by Swaraj."

The general tenor of the other two speeches their lordships found to be much the same. "...We find a passage," they said, "'When once Swaraj is restored, the country should belong to Indians without any connection between the Indians and Englishmen. We ought not to allow them even to have their flags, which can be easily rolled and thrown into the sea.'"

Their lordships were of opinion that these speeches were seditious within the meaning of section 124A.

As to the evidence that the speeches were delivered, and the seditious language actually uttered, this consisted of the notes taken by Police-officers who were deputed to attend the meetings for this purpose, and who gave their evidence at the trial and testified to their accuracy. This, it was held, was the method adopted in some of the State trials in England, and was approved. Their lordships said:—"...With regard to the speeches which were proved by the oral evidence of the witnesses, we are of opinion that, in the circumstances stated, the learned Judge was right in allowing the notes of the Police-officers to become part of the record in the case."

"We accept," they added, "the prosecution evidence as giving a substantially correct summary of the speeches delivered by both the accused."
The next question to be considered was the question of abetment by the second accused, and the evidence adduced in support of it. This again involved the further question of conspiracy. As to this the evidence was chiefly circumstantial. The facts relied on by the Crown were—that the second accused was an influential person in Tuticorin where the other was a stranger, that he accommodated him in his house, that together they attended the meetings at which the second accused usually presided, that the tenor of their speeches was the same—they both preached the gospel of boycott and Swaraj—and that they mutually supported one another in carrying out a definite political programme. In addition to these significant facts, there was a statement by the first accused in which he admitted the existence of a mutual arrangement for the delivery of these speeches.

Upon this their lordships observed:—"The evidence then proves, beyond any reasonable doubt, the existence of a common design, in pursuance of which speeches were made by Subramania Siva, and it remains to be seen whether that design included the commission of offences under section 124A of the Indian Penal Code."

"If Chidambaram Pillai," they added, "engaged with Subramania Siva in a conspiracy to excite disaffection towards the Government, and if, in pursuance of that conspiracy, and in order to the exciting of disaffection an act 'took place,' then Chidambaram Pillai is guilty of abetment of the excitement of disaffection."

In reviewing a mass of evidence bearing on the immediate consequences which resulted from the stream of seditious oratory delivered by the two accused, their lordships observed:—"There was evidence, which we see no reason for not accepting, of a marked change in the demeanour of the people after the speeches made by the first and second accused."

One witness said:—"Before the speeches the town was quiet and law abiding, after the speeches commenced I noticed a difference. The people of the town became more and more lawless." Another said:—"After the speeches I heard one evening as I was returning from my office to my house a crowd of about 100 rowdies crying aloud 'Bande Mataram, let..."
Swadeshi prosper, let the thalis of the Englishmen's wives be torn off, hack to pieces the white men, the sons of harlots.' This I heard in the first week of March. No acts had been done by Europeans to provoke such utterances. When I first took charge people were friendly and respectful to the authorities. After the speeches they became contemptuous of the authorities." This was the evidence of the Sub-Magistrate of Tinnevelly.

Another witness, the Agent of the B. I. Co., at Tuticorin, said:—"It became so bad that I could not allow my wife and children to drive through the native town. We had to restrict ourselves to the beach road. The hostility of the people became most marked after the 1st March 1908."

A native pleader testified thus:—"Before February and March people were well disposed and friendly towards Europeans and authorities of Government. After the speeches people showed signs of dislike, hatred and disloyalty. I move freely among the people. I gathered my impressions from conversations with different people. Crowds going to hear the preaching shouted "Bande Mataram, let Swadeshi prosper, and foreigners be damned (or perish)."

The arrest of the two accused on the 12th March was followed by a serious riot at Tinnevelly. "Every public building," said the Sessions Judge, (except one), "was attacked and fired, and the riot was only quelled by calling out the Reserve Police and using firearms." The same evening at Tuticorin a mob of 5,000 men, who had assembled to attend a prohibited meeting, committed a serious riot, and pelted a Magistrate with stones, who came to disperse them. The crowd was finally dispersed by a Police force and the use of firearms.

In commenting on these events, their lordships said:—"It seems to us to be not unlikely that the arrest was the immediate cause of the outbreak. At the same time we think there can be little doubt that the fact of the arrest would not have occasioned a riot had it not been for the excited state of public feeling in Tuticorin and Tinnevelly—a state of things which had been brought about by the inflammatory and seditious speeches which had been delivered by the first accused and others."
In conclusion their lordships said:—"The evidence leaves no room for any real doubt that the political speeches of Subramania Siva were a part of the programme, and the delivery of those speeches involved, as we have found, the excitement of disaffection against the Government. This was one of the things to be done in pursuance of the conspiracy, and as soon as it was done, the appellant was guilty. The appellant Chidambaram Pillai was therefore rightly convicted."

It has been already pointed out that it is only in exceptional cases, such as this, that it is possible to prove that disaffection has actually resulted from the effort to produce it. In the case of Reg. v. Burns (see Ch. iii) the prosecution failed to establish any connection between the speeches and the disturbances which followed.

But this again raises the question whether, in the absence of such evidence, it would be possible to establish a case of abetment of sedition by conspiracy, having regard to the terms of the second clause of section 107, which have been set forth above. It has to be remembered, in the first place, that the offence of sedition consists in the attempt as much as in the act. Abetment of sedition may, therefore, be committed by abetting the attempt to excite disaffection, without regard to the result. But to abet by conspiracy it is necessary, in view of the provision referred to, that an act should take place "in pursuance of that conspiracy, and in order to the doing of that thing."

The question then is, can the act which is contemplated to take place in pursuance of the conspiracy be an act which is comprised in the attempt? If an attempt is made in pursuance of a conspiracy, surely the act or acts which constitute the attempt are within the purview of the provision. If this be so, cadit questio.

Two other points are to be noted in this important judgment. One is involved in the question whether section 196 of the Criminal Procedure Code, which requires the sanction of Government for a prosecution for sedition, also requires it for a case of abetment of that offence, seeing that abetment is not specially mentioned in the section.

It was held that, inasmuch as abetment of sedition is punishable under section 124A, it is one of the offences com-
prised in Chapter VI of the Penal Code, and is therefore included within the purview of section 196. This was clear from the sections relating to abetment, none of which provide punishments independently, and in particular from section 114.

The accused had been charged under section 109, in respect of one speech at which he was not present, and under section 114 in respect of two speeches at which he was present. Section 114 provides that if an abettor is present at the commission of the offence, "he shall be deemed to have committed such offence." "He is," their lordships said, "constructively a principal and is to be punished as such. The offence is punishable under section 124A; section 114 does not provide any punishment. The offence of abetment plus presence on the occasion of the crime abetted is constructively the offence abetted, and is punishable as such and not as abetment.

The question was also raised whether an order of Government, authorising in general terms a prosecution for sedition under section 124A, would include abetment as well. It was held that the order in question, in that case, which had authorised the prosecution of certain persons under section 124A, "in respect of speeches delivered by them," might be taken to indicate not merely their own, but one another's speeches as well as their own, and so to intend the inclusion of abetment of sedition.

The second point was with reference to the admissibility of speeches against the abettor which were not included in the charge. It was contended for the defence that although such speeches might be used against the first accused to prove his 'animus,' intention, or meaning, the speeches of the second accused could not be used to prove abetment. It was held that they could be used to prove the object of the conspiracy, as part of the sayings and doings of the parties to the agreement, which had been found to exist.

The case of Reg. v. Burns (see Ch. iii) may also be referred in this connection.

Abetment by intentional aid is perhaps the simplest form of the offence, and the best definition of it is to be found in the Code itself. It is provided in section 107—"Whoever either prior to or at the time of the commission of an act, does any-
thing in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act.'"

A good illustration of this form of abetment is afforded in a case decided by the Calcutta High Court on the 28th May 1908, which is unreported. It is the appeal of Leakut Hossein Khan and Abdul Gaffur v. Emperor (No. 214 of 1908).

In this case the two appellants had been convicted by the Sessions Judge of Backergunge of sedition and abetment of that offence, and sentenced respectively to three and one year's rigorous imprisonment.

The facts disclosed on the evidence were that the first accused, who "was a well-known speech-maker on Swadeshi and similar topics in Calcutta," went forth on a mission to the Mahomedans of Eastern Bengal, to enlighten them in certain doctrines which he founded on sundry texts of the Korān. He proceeded first to Barisal, which was at that time, as the Sessions Judge described it, "the storm centre of Eastern Bengal politics." The district of Backergunge had been, moreover, declared to be a "proclaimed area," under Act VI of 1907 (see Appx.), an Act for the prevention of seditious meetings. The text of the doctrines intended to be expounded to the Mahomedans was contained in a leaflet, of which 1,000 copies had been printed, in the Urdu language. The leaflet purported to be an answer to a letter which had appeared in a Bombay newspaper, and it had, in fact, been sent, in the first instance, to the editor of that paper for publication. The editor of the paper, however, declined to publish it, as he considered it inflammatory and seditious. The official translation of the leaflet was as follows:—

"Musalmans! Do not be apostates and infidels for the sake of this world!"

"On the 6th page of the daily 'Sultan-ul-Akhbar' of Bombay, dated the 24th May, 1907 A. D., a letter has been published. The writer of it sends that letter from Dinapur without disclosing his name—only 'Writer H. M.' is written in it. There is no knowing whether he is a Moslem or a Christian. In the aforesaid letter from a verse in the Korān—'Ati-ullah wa atiūr rasūla wa ulil amr mīnkūn' obey God and obey
the Prophet and obey men in authority among you—he has proved himself a heretic and a renegade and an utterly ignorant person by stating that allegiance to the Christian ruler for the time being is binding upon Musalmans, and a means of pleasing God. In this verse, primarily obedience to God is enjoined, after that obedience to the Prophet is enjoined, after that in the third degree obedience to a Musalman ruler is enjoined. From the word ‘Minkâm’—among you—it is quite clear that if the ruler be not a Musalman, allegiance to him is not binding upon Musalmans. Besides this, if obedience to God and the Prophet be maintained, then (only) is allegiance to a Moslem ruler, as enjoined in the command, obligatory. To obey the commands of the ruler for the time being which conflict with (the commandments of) God and the Prophet would be going astray, because obedience to God and the Prophet is the foremost (duty).

"Moreover, in the Chapter 'Maida' there is a verse of the Korân—'Yâ aiyohal lazïna âmâna la-tattaa Khezu wau Yâhuda wau-nasara anliya'—Oh true believers do not make friends of the Jews and the Christians—that is, Oh true believers (Oh Musalmans) do not make friends with Jews and Christians. By Christians is meant the Christian race. How then can allegiance be due to one with whom friendship is forbidden by the sacred Korân?

"Alas! the writer of that letter seems to be an utterly ignorant person—he does not even know the meaning of the word 'Itaat' (allegiance). 'Itaat' (allegiance) and 'Dosti' (friendship) are things entirely different from submitting to the laws of the ruler for the sake of worldly advantage.

"Unhappy be the heart of the baseborn who commits his faith to the winds for the sake of this world."

Such was the text of the preacher, and the doctrine which he wished to expound. A reception at Barisal had been arranged for him by the leaders of the Swadeshi movement, and he at once commenced sounding the influential Mahomedans on their views, and judiciously circulating his leaflet. In this work of distribution he was assisted by the second accused, Abdul Gaffur, who was well versed in Bengali as well as Urdu. Leakut Hossein, moreover, made strenuous efforts "to
convene a meeting to which he could address a wizards, or a religious sermon, but his efforts were unsuccessful, probably owing to the prohibitory orders already referred to. His mission, in fact, was a complete failure, for the leaders of Mahomedan society in Barisal would have nothing to do with him, or his leaflet. Some of the copies presented were politely returned, and others made over to the authorities.

Upon these facts the learned Judges who decided the appeal had no doubt that Leakut Hossein intended by his leaflet to promote feelings of disaffection, as defined by Sir C. Petheram, C. J., in the Bangobasi case (see Ch. iv), meaning thereby "a disposition not to obey the lawful authority of the Government, or to subvert that authority if and when occasion should arise." Their lordships, moreover, found it "impossible to suppose that he published the leaflet meaning it to have only a religious tendency." Such a contention was clearly untenable, "since no one could suppose it to be the duty of a Mahomedan to yield spiritual obedience to one who was not a Moslem." Their lordships were considerably strengthened in their views as to the meaning of the leaflet by the opinions expressed by "persons into whose hands it came, and for whose perusal it seemed to have been intended," such as the sub-editor who refused to publish it, and the Mahomedan gentlemen at Barisal who were presented with copies. This being the intention, the efforts which were made to circulate the leaflet were held to be clear evidence of "an attempt under section 124A."

Their lordships also had no doubt as to the part played by Abdul Gaffur. "We cannot doubt," they said, "that he was acting in concert with Leakut, with a knowledge of the contents and the meaning of the pamphlet he was distributing." He was therefore guilty of abetment of sedition under section 124A, read with section 109 of the Penal Code. The convictions and sentences were affirmed in both cases.
CHAPTER XIII.

THE LATER CASES.

The two cases of Queen-Empress v. Luxman and Queen-Empress v. Vinayek, which have been frequently referred to, were probably the first trials held after the legislation of 1898. They took place in the following year, and are fully reported in the Bombay Law Reporter (vol. ii, pp. 286-322). The prosecutions were in respect of a newspaper called the Gurakhi, published in Bombay, of which the accused in the first case was the sub-editor, while the accused in the second was the proprietor, editor, printer and publisher.

The articles charged as seditious, which were common to both cases were entitled (1) "What is the meaning of Ráj and Rájya?" (2) "The Chafekars, the Dravids and Mr. Bruin No. 1." The first accused was charged independently in respect of a third article entitled "The Chafekars, the Dravids, and Mr. Brewin No. 2," while the second accused was likewise charged in respect of one entitled "A white man's gun and the death of a 'native.'" All the articles had appeared in the Gurakhi in the month of March 1899.

The first of the four articles commences with a definition of the word 'Raja,' as being one who shines, and proceeds:— "That man alone deserves the name of a 'raja' who, having acquired a kingdom by his valour, administers it well and preserves it in peace, or who, in a kingdom acquired by his ancestors, keeps himself in touch with his subjects, maintains prosperity everywhere, is capable of protecting his subjects and drives his car of sovereignty with true justice and impartiality."

After drawing this picture of the ideal ruler, the writer proceeds to describe the real régime. "If such is the case," he continues, "then will any sensible and educated person find it difficult to determine how far our present rulers, the English, are conducting themselves in conformity with this principle? We have before us direct, palpable evidence showing how far a selfish ruler is liked by his subjects. If a snake hissing furiously
makes its appearance before us or before any other individual, will anybody hesitate to smash its skull by striking an axe on its head? But if he is not armed with an axe or even its handle, then only the case becomes different. Even if such an emergency should arise, the man if he possesses physical strength will, though the snake may coil itself round his body and attempt to bite him, seize it by the neck tightly even in that crisis, and calling for help, be able to cut its body into pieces; but if he be devoid of any strength at all then he can do nothing."

The writer then counsels the acquisition of physical strength by his countrymen, and concludes thus:—"Of all kinds of riches nothing is as precious as physical strength, and there is not a shadow of doubt that any human being whatever, if he possesses it, will by any desperate acts and by following the example of even the beasts and birds, which fight furiously for their liberty, be able to defend his divine and natural rights."

In commenting on this article Sir L. Jenkins, C. J., observed:—"Of the first article, it is said, it starts with a discourse on what is the true meaning of 'king and kingdom,' and indicates that, for the happiness of his subjects the ruler should be in touch with his people. The comment attributed to the first part of the article is that such a state of things cannot be said to exist between the rulers and ruled of the present day—the Government and its subjects. It will be for you to consider how far that article bears that meaning, and if there is any particular stress laid upon the expression—'We have before us direct, palpable evidence showing how far a selfish ruler is liked by his subjects.' What is said is this, that it describes the Government as a selfish ruler, and that this can only be regarded as an attempt to rouse feelings of hatred, contempt, and disaffection.'"
of this article at the time when he penned it in the way he did. Then I draw your attention to the doctrine laid down in the latter part of that article—that it is the duty of those to whom this article is addressed to strengthen themselves.' His lordship then quoted the concluding passage cited above, and added, "That in itself is urged upon you to be an incentive to a spirit of disaffection against the Government as established by law in this country."

His lordship then dealt with the other two articles charged, which were much in the same strain, citing characteristic passages. It is unnecessary here to do more than refer to one of these passages, which was contained in the second article. It was as follows:—"If Mr. Rand, who according to public opinion had become inflated and disdainful by the secret instigation of Government, had been living now, could it even be imagined what dreadful deeds he might have committed? Would it not, therefore, be desirable to bless the killer of Rand, just as Ramchandra earned a blessing from the oppressed people after killing Ravana?" In conclusion, his lordship said:—"It is for you to say whether these articles bear the one construction or the other; whether they are an attempt to arouse feelings of hatred, contempt or disaffection towards the Government, or whether they can be treated as comments expressing disapprobation of the measures of Government or of the administrative action of Government."

The jury, without leaving the Court, unanimously found the accused Luxman guilty, and he was sentenced to six months' simple imprisonment.

In the case against Vinayek the charge was based on the first two articles referred to above, as well as on the fourth, which was entitled A white man's gun and the death of a 'native.' The last was as follows:—"The frolics of the white boys of the West have hitherto caused and are now causing the death of some 'natives,' like that of fishes in a tank. Three days ago a native was mistaken for a bear and killed. The day before yesterday another was killed in consequence of a misdirected aim. Yesterday another was killed because he did not pull the pankah properly. And to-day one more was killed while going about the country for a change of 'venue.' Bravo!
you wise soldiers! Government therefore ought to direct their attention to the fact that 'natives' meet with death without any cause at the hands of the white people. When a question of this kind is asked in 'Parliament' the 'State Secretary' says that from the reply received from the Commander-in-Chief of India it is clear that such cases occur very seldom indeed, and that the existing law on the subject is sufficient. Blessed are the Commander-in-Chief and those who rely on his statements. A case in which a white man of this very type, named Mr. Ross, shot with his gun a 'native' dead at Silchar, has quite recently come before the Silchar Court. Let us see what takes place. The conjecture is that the accused will probably be let off with a fine only. When a white man kills a 'native' he escapes with a fine, while if a man like Chafekar, moved by solicitude for the welfare of the world, kills a white man or two he is hanged, and the natives have to receive an unsolicited certificate from Government to the effect that there exist reasonable conspiracies among them, and that the Brahmans have become confirmed malefactors. Is it to be inferred from this that the scale of justice is heavier, of that of injustice? How then was the method of administering justice during the rule of the Moghals, or that adopted a century or a century and a half ago by the Sidhi of Janjira, who declared their will to be the law, worse than the sort of system of administering justice described above?"

In commenting on this article Sir L. Jenkins, C. J., said that it was alleged to be "a distinct attack on the administration, made in order to create feelings of hostility against the established Government, feelings which the law says must not be created; that the article is a covert attack on the Government." His lordship then quoted the concluding lines of the article, and added:—"That according to the evidence placed before you would convey to the mind of a Maratha reader a period of misrule on the part of the governing authority. There is a reference again to the administration of justice adopted a century or a century and a half ago by the Sidhi of Janjira. That you have been told by the Oriental Translator to Government, would convey to the mind of the Maratha readers the suggestion that the system of British rule was misrule."
It should be mentioned here that the reference to Mr. Ross’s case is misleading and inaccurate. Mr. Ross who was a tea planter in Cachar was committed to the High Court Sessions at Calcutta by the Deputy Commissioner of Silchar on a charge of murder. He admitted the act, but his defence, which was borne out by the established facts, was that he was suddenly attacked in a dense and solitary jungle by an infuriated mob of villagers armed with bamboo lathis and dāos. He was felled to the ground by the blows on his head, and his sun hat or topee, which was exhibited in Court, was cut through the brim by a dāo. To save his life he fired his revolver. The jury unanimously acquitted him, as the plea of self-defence was obvious.

His lordship then dealt with the other articles charged, which have been already referred to. The jury found the accused Vinayek guilty, and he was sentenced to twelve months’ simple imprisonment.

Another important case, which has been frequently referred to, took place a few years later in Bombay, and is also to be found in the Bombay Law Reporter. It is the case of Emperor v. Bhaskar (8 Bom. L. R., 421). The accused was the editor and publisher of a Marathi newspaper called the Bhala, published at Poona.

The charge was based on a single article which had appeared in the Bhala on the 11th October 1905, entitled "A Durbar in Hell." This was a long allegorical effusion published as a contribution from Shri Krishna. It opens thus:—"Once upon a time a great Durbar was to be held in the Empire of Hell. A grand and extensive Mandap was erected for that purpose. Skins peeled from the corpses of human beings and sewn together formed the ceiling of the Mandap. At various places were posted trunks of human beings, with their heads cut off like stems of plantain trees, and many decapitated heads of men were strung together as garlands in various places in the Mandap. Just as hands, opened out, are now-a-days painted on wooden boards for showing the way, so hands actually cut off were nailed on to the entrance to each of the prominent parts of the Mandap. In front of the Mandap a pond containing the blood of those dead
human beings was built for the purpose of satisfying the vision of the members with its beautiful colour, and of appeasing their thirst by a drink of it; and some of the red water in the pond was sprinkled on the road leading to the Mandap to lay the dust. In the interior of the Sabhamandap nude bodies of several beautiful women were placed, in an erect posture, for purposes of decoration."

In the midst of this picturesque scene "the Emperor of Hell occupied an exalted throne." When all were assembled "the Chobdars announced in a loud voice the object of holding the Durbar." They said:—"The present Emperor having become infirm on account of old age and having no auras heir commands that a fit person be appointed to rule over his kingdom after him. To-day's Durbar has been convened to make the selection."

After this the Emperor of Hell himself addressed the assembly, and announced the qualifications which he considered indispensable for succession to his throne. "Cruelty," he said, "and mercilessness are the principal and necessary qualifications to qualify one for this throne; he alone will adorn this throne who possesses these qualifications in a pre-eminent degree, and on him alone shall I confer it with pleasure. Therefore each should now describe in detail his own qualifications, so that the most deserving of you may be selected and crowned."

Thereupon the candidates one by one proceeded to unfold the record of his atrocities, each in the hope of excelling the other. It is unnecessary to recount them here. "At last only one member was left to speak. But none imagined from his attire that he would prove to be pre-eminent in deeds of cruelty, for his complexion was most attractive, that is reddish white. His attire too was very simple. He wore trousers, boots, a coat, and he had as a head-dress a turban shaped like a mason's hod. He carried in his hand a cane curved at one end, and he had in his mouth a wooden pipe from which smoke was issuing. The member attired as above, got up and began to harangue as follows:—'Your Majesty, many persons have till now sung the praises of their own accomplishments, but all these must pale before a narration of my qualifications. Your Majesty, therefore, may be pleased to hear an account of my cruelties.
In the first place I entered, under the pretext of trade, a country in which I possessed no rights and with which I had no connection, and by gradually fomenting dissensions among the people there commenced to deprive them of their kingdom. Then I began to assume the authority of a king by acting on the principle of 'might is right.' I made many forged documents. I plucked out the teeth of the queens there and robbed them of their wealth by starving them. I ruined the money-lenders of that country by confusing documents and sent them to Hell. Then I became a king and usurped the kingdoms of many. I robbed all of their independence. I removed their wealth from there to my distant country, so that there could be no fear of its coming back. I then saddled them with different taxes. I taxed their incomes and also levied an impost upon a commodity which is vital to their existence, that is salt. I gave them bribes of money and made them hate their own country. Then I deprived them of their arms, and thus arranged that they should not be able to defend themselves, even if torn and devoured by wild beasts. I hanged many of them and ill-treated their women and children. I consumed kine which are held sacred by them. I held many Durbars like this, without any reason, and made a parade of my own greatness thereat, and destroyed their means of subsistence. I changed the direction of their educational system, and banished the sentiments of patriotism from their minds, and turned them into donkeys for bearing loads. By telling them that I would come to their assistance, I gave the beggar's bowl and wallet into their hands. I incessantly trod them under my heels, and made their hunger vanish by systematically pinching their bellies. I made a bonfire of their lives, their wealth, their homes, their religion, their reputation, their honour, their independence and everything else belonging to them. Can there be any more civilised mode of oppression than this? I alone therefore, deserve the throne.' The Emperor of Hell was highly gratified to hear this speech, and getting up he cordially embraced that member. He gave three cheers in his name and said:—'You alone are fit to conduct this government after me. You have perpetrated many acts of cruelty up to this time, and it is only in consequence of this that you have
obtained this kingdom by right; we will, therefore, very shortly crown you."

The accused in his statement to the Court denied the authorship of this article, but admitted responsibility for its publication. This he explained by saying: — "I considered it as only an allegorical and imaginary description of a Durbar held in Purgatory, referring to no person and to no Government in particular. I had no intention at the time of its publication of bringing into contempt the British Government or of exciting feelings of disaffection towards it." As a proof of his loyalty five other extracts from his newspaper were put in evidence on his behalf, and on these he appears to have mainly relied for his defence. It was contended, in fact, that the loyalty displayed in these was inconsistent with any evil intention in publishing the other.

For the Crown it was contended that the article in question spoke for itself. By the last speaker was meant the British Government, which was so bad that it was only fit to rule in hell. The allusions were to incidents in the history of India after the coming of the English. If this were so then the British Government was sought to be brought into hatred.

Justice Batty, in commenting on this article, in his charge to the jury, said: — "It is entitled 'A Durbar in Hell.' It has been suggested that the vernacular word used may mean purgatory, but the surroundings and accessories of the Durbar and the whole atmosphere of the scene described are diabolical. You will notice its barbaric cruelty — heads cut off, hands cut off, blood on all sides, and the whole scene one of carnage and fiendish inhumanity. Then the Emperor of Hell is represented as about to choose a successor, and the qualifications are said to be cruelty and mercilessness in a pre-eminent degree. Then three persons come forward having these characteristics. They are all described as rulers. Now the accused has told you in his statement that he took the document as allegorical. Of course, feelings may be excited as much by allegory and parable as by direct statement. What we have to find is the key to the allegory, and that is a question exclusively for you. There is the fact that the three persons brought before you are rulers, and that the third person is a civilised ruler, and that his dress is admittedly that of a European. He wears the sun topee or
head covering which Europeans wear. You will bear in mind that it is suggested that this description is apparently intended to identify the third person with British rule, and if you accept that suggestion, you will next consider whether the representation is likely to cause feelings of contempt or disaffection in the minds of those who read papers of this description. You will observe that the paper is not one that circulates only among the most educated classes in Bombay, so that you must consider whether the persons among whom these articles circulated, are for the most part persons of reasoning power, and sufficient calmness of judgment and understanding to avoid the effect which such writing might have on the credulous and ignorant. Because you may be able to withstand the writing, it does not necessarily follow that everybody will be in the same fortunate condition."

"Then you will consider," his lordship continued, "whether it is compatible with the retention of due authority, whether it be in a home, or as between master and servants or employees, that the person in authority should be described as diabolical or as a fit successor to the Kingdom of Hell. And, if such sentiments would be subversive of authority in ordinary households, can you regard them as more innocuous if entertained towards the Government of a State? The prosecution has attempted to identify the details described with certain public events, with the Delhi Durbar, the University Act, the Arms Act, the undisputed removal of certain sums of money to a distant country, and lamentable circumstances directly connected with Clive and Warren Hastings to which Macaulay refers in his essays. If you think that these references point to a distinct attack, not merely at individual measures or persons, but upon the Government of India, then the article comes within the section. You must remember that the accused edited and published the paper, inserted the article, and that it was scattered broadcast, and we learn the paper acquired through this article a considerably increased circulation."

The jury found the accused guilty, and he was sentenced to six months' simple imprisonment and a fine of one thousand rupees.
Another case of some importance which has also been frequently referred to, is that of *Apurba Krishna Bose v. Emperor* (35 Cal., 141). The accused, who was the printer of the *Bande Mataram*, a daily newspaper published in Calcutta, had been convicted by the Chief Presidency Magistrate of sedition, and moved the High Court for revision of the order. The editor and the manager of the paper, who were tried along with him for the same offence, had been acquitted.

The principal article on which the conviction was based was entitled 'Politics for the Indians,' and was as follows:—

"Methinks the time is approaching when the world will refuse to believe that the same race of Englishmen were instrumental in the abolition of the slave trade. Mr. Morley has said that we cannot work the machinery of our government for a week if England generously walks out of our country. While this supposition is not conceivable, did it not strike Mr. Morley that, if instead of walking out, the English were by force driven out of India, the government will go on perhaps better than before, for the simple reason that the exercise of power and organisation necessary to drive out so organised an enemy will, in the struggle that would ensue, teach us to manage our own affairs sufficiently well? The Government is fast becoming a Government of the evil genii, 'oppressive as the most oppressive form of barbarian despotism,' yet strong with all the strength of organisation and the sinews of war, if not with all the strength of civilisation. It was the same evil genii who destroyed Hindu images and ravished Hindu women at Jamalpur and Mymensingh, to strike terror into the hearts of those who advocated the use of country made goods. It was the same evil genii who are now terrorising the advocates engaged in defending the accused at Rawal Pindi. It is high time for the Government to calmly look on the heavy exports of grain from the country, exposing the children of the soil to an eternal state of chronic starvation. We have heard of the Mahomedan mandate of the sword or the Koran. Perhaps some day the *fiat* will go out that British goods or the sword are the only two alternatives between which we have got to choose."

The rule was heard by Justice Caspersz and Justice Chitty, who in commenting on this article said:—"The article is in the
form of an unsigned letter, but it does not appear in the correspondence columns. There is no heading or foot-note that the editor does not accept responsibility for the opinions expressed in the letter." The learned Judges would appear to have overlooked the fact that the editor was not before them. The editor, as already mentioned, had been acquitted. It was the printer who moved the Court, but it is difficult to see how the presence or absence of such a "heading or foot-note" could affect his position.

The observation, further raises the question, which unfortunately remains undecided, whether an editor can get rid of his responsibility for the publication of seditious matter by the insertion of a "heading or foot-note" of this description. It would certainly be strange if he could.

"The comments in the letter," their lordships continued, "are incompatible with the continuance of the Government established by law. Reading the article, as we have read it, for the first time, we think the comments on the slave trade, the evil genii, and the alternatives of British goods or the sword, and the reference to His Majesty, the King-Emperor, and the tone, generally, of the production, are not within the explanations to section 124A." The learned Judges doubtless refer to the second and third explanations.

"Such writings," they added, "are calculated to bring the Government into hatred and contempt. It may be said that these are words of emotional exaggeration. It may be said that 'Politics for Indians' was based on imperfect telegraphic intelligence. But the duty of every citizen is to support the Government established by law, and to express with moderation any disapprobation he may feel of the acts and measures of that Government." The Rule was discharged and the conviction and sentence affirmed.

An important trial for sedition took place in 1908 at the High Court Sessions in Calcutta. The case, which has been already referred to in a previous chapter, is entitled Emperor v. Phanendra Nath Mitter (35 Cal., 915), otherwise known as the 'Jugantar case.' The accused was the printer of a vernacular newspaper, published in Calcutta, called the Jugantar. It was in evidence that he had signed a declaration as such under Act
XXV of 1867 (see Appx.), which he had withdrawn on a subsequent date, but not before the publication of the articles in question. The articles are not set out in the report of the case, but their purport can be gathered from the learned Judge's charge to the jury, which contains a selection of the characteristic passages.

Justice Rampini, A. C. J., in commenting on the three articles charged as seditious, said:—'In the first article, 'Death wished for,' it is written,—'The extensive undertaking which we have begun for making our country independent. The hand of him who shrinks from uselessly shedding blood will tremble at the time of usefully shedding blood.' Finally, the article goes on,—'So long as we shall not be fit for entering into this field of devotion, so long shall we have to practise useless shedding of blood, so long the'play of this sort of fruitless death will have to be played.' Then on the next page there is a passage at the end of the first paragraph which is very significant. It is as follows:—'But the restless youth, who has for many days wandered about restless, aiming at the life of the enemy of his country with the object of removing him altogether, the hopeless fellow, who has run into the jaws of death as the result of failure, why do not the tears of sympathy of the people of the country keep his memory alive? Why does his conduct get soiled by the stigma of rebellion? If self-destroyer and self-offerer be the epithets applied to rebels and heroes, respectively, where then lies the difference between them?' Then in the second paragraph it is said,—'Whom have we placed in the van of the preparations for an expedition against the ruling power, which we have recently made?' Then the article says,—'Those sons devoted to the mother, who in going to proclaim the truth of their hearts, have in a clear voice denied the existence of the King, who is a foreigner, who have gone the way to death enchained by,' etc. Finally, at the top of page 3 is the following,—'A call to death is now being sounded. Let nobody remain indifferent any longer, let those who know how to die, lead the van in this party of pilgrims. So long as the preparations for the work of war are not complete, so long will you have to die in vain. There is no help for it, even if the shaft levelled at the foe hurts the breast of the innocent.'
"The next article," his lordship continued, "which is the subject of the charge, in paragraph 2, says,—' These untold self-sacrificing, firmly resolute, heroic, self-restrained young men afraid of dharma, who in the opening days of the year 1315, having staked their lives in an attempt to remove the sorrows and the unhappy lot of the country, have to-day fallen into the grasp of the Firingee, through the efforts of the traitor, have been born again and again in order to establish the kingdom of righteousness in India.' In the third paragraph is the passage beginning with,—' The rod of Providence has been uplifted in order to destroy the Mlechchha kingdom.' I forgot to ask the translator the meaning of the word Mlechchha. But it means an outcast. It is often applied to foreigners. Anybody who is outside the pale of the Hindu religion is a Mlechchha.'"

"'The last article,' his lordship went on to add, "'which is the subject of the charge, is entitled 'Conspiracy or desire for freedom.' It is probably the worst article of the three. It says—' The word conspiracy is very ugly, and implies meanness. It is only a secret plot against the King which is called conspiracy. Did the prisoners in Calcutta get up a plot against the King in secret? surely not. A secret effort or endeavour for gaining independence cannot be called a conspiracy. And the English, again, are not the rulers of this country. Nobody can take as a conspiracy the attempt or expedition against one who is not the king, but a robber, a thief, a barbarian, an uncivilised person, and an enemy of India.' Then it winds up by saying the English are demons, and hence they are thwarting these intelligent persons in the performance of that meritorious act. We really want independence. India is not the Englishman's paternal property. The Englishman is nobody to this country. The thirty crores of the people of India ought, for the good of the entire mankind, to destroy them immediately, like Rávan's dynasty.'"

"Then the other] articles," his lordship added, "'which are not the subject of the charge but only put in and printed to show the intention of the person who printed and published the articles which are charged. 'A call' contains the passage,—' Arise people of this country. You are not weak, we welcome you in a loud voice. Let us fulfil the long cherished desire of
the earth with the warm blood of this unruly race, who are given
to dancing violently like demons. Do not remain asleep any
more. India shall be independent. Rise people of India,
arise.’ The next article ‘What is barbarity’ is not of very much
importance. But the last paragraph of the next article ‘Tram-
ple down the enemy’ is very significant,—‘If in the attempt to
destroy the enemy a woman is accidentally killed, then God
can have no cause for displeasure, like the English. Many a
Putana must be killed in the course of time in order to extirpate
the race of Asuras from the breast of the earth. There is no sin
in this, no mercy, no affection.’ The next article entitled ‘Who
is the rebel?’ says,—‘Inhuman oppression is being committed
on Aurobinda Ghosh and others. Are they rebels? None of
them are rebels. They are entitled according to the very
canons of justice to rise against the English. The English are
strong and they are weak. This is why they are entitled to
collect arms in secrecy. It is with secrecy that arms have to
be collected in order to kill an enemy.’”

In conclusion his lordship said:—‘These are the articles,
the first three of which are the subject of the charge. It is for
you to say whether you consider that they were meant to excite
hatred, contempt, or disaffection towards the Government of
this country. You have only to look to these articles and to
say whether they are seditious or not, or whether they preach
war and invite the people to rise against the Government of the
country and to take steps for entering into revolution.”

The jury found the prisoner guilty, but it does not appear
from the report what sentence was imposed.
The year 1908 appears to have been unusually prolific in sedition cases throughout India, only a few of which came before the High Courts. Two important cases in that year came up on appeal, the one in Madras and the other in Calcutta. These were the cases of Chidambaram Pillai v. Emperor, and Leekut Hossein Khan v. Emperor. They have been fully discussed in a previous chapter (see Ch. xii).

In the year 1909 the case of Emperor v. Ganesh Damodar Savarkar (34 Bom., 394), came before the Bombay High Court. The accused had been convicted by the Sessions Judge of Nasik, of sedition under section 124A, and also of abetting the waging of war under section 121 of the Penal Code. He was sentenced to two years' rigorous imprisonment for the first offence, and to transportation for life for the second.

The charges were based on four poems, selected out of a series of eighteen and published in a book entitled Laghu Abhinava Bharata Mala or a 'Short Series for new India.' At the hearing of the appeal it was contended for the appellant that none of the four poems which were the subject of the charges bore the character assigned to them. On this Justice Chandavarkar said:—"On examining the series of poems in the book, exhibit 6, containing the four poems, it appeared to us that there were other poems in it besides those four, which threw light on the intent of the writer, and that as the whole book had been allowed in the lower court to go in as evidence without any objection, all the poems in the book could be referred to for the purpose of determining the intention, character, and object of the poems selected as the basis of the charges against the appellant in the lower court. We adjourned the hearing for an official translation of the whole series of poems in the book into English, and also to enable the appellant's legal advisers to argue the appeal with reference to the bearing of the whole series on the poems forming the subject-matter of the charges."
In commenting on the character of the poems, the learned Judge said:—"It is true that the writer has chosen either mythological or historical events and personages, but that is for the purpose of illustrating and emphasising his main thesis that the country should be rid of the present rule by means of the sword. The innuendoes cannot be mistaken or misunderstood. For instance, the 5th poem purports to refer to the destruction of 'foreign demons' by Rama, Krishna, and Shivaji. But that it is not a mere description of the past but is meant to be a covert allusion to the British is apparent from the frequent use of the term 'black,' referring to the people of this country. Any one can see that the frequent play upon the word 'black' is intended as a contrast to the word 'white,' and the implication is that the 'black' are ruled by the 'white,' and that the latter will and must be killed by 'a black leader of the black.' So also as to the next poem, No. 7. Under the guise of an invocation or prayer to Ganesh, the god who, according to Hindu belief, destroys evil, the writer calls upon him to take up the sword and be ready for war, because 'the demons of subjection have spread lamentation all over the world.' The 'demons' are characterised as 'dissembling, notorious, treacherous, cut-throat.'

"The 9th poem," the learned Judge continued, "which is headed 'Who obtained independence without war?' winds up with this remark: 'He who desires Swarajya (one's own rule) must make war.' The 17th poem professes to be a 'prayer of the Mavlas to the god Shiva,' but one can plainly see that the sting of the verses lies in the covert allusion to the present rulers of British India. The translation of the poems into English brings out the sting clearly enough, but to those who know Marathi, who can either sing or understand the poems sung, the venom is too transparent to be mistaken for anything else than a call to the people to wage war against the British Government."

In conclusion, the learned Judge said:—"A spirit of blood-thirstiness and murderous eagerness directed against the Government and 'white' rulers runs through the poems: the urgency of taking up the sword is conveyed in unambiguous language, and an appeal of blood-thirsty incitement is made to the people to take up the sword, form secret societies, and adopt
guerilla warfare for the purpose of rooting out 'the demon' of foreign rule.'"

In commenting on the same poems, Justice Heaton, after an exhaustive analysis of the whole series, concludes with the following description of the book. "Briefly summarised, the teaching of this book is that India must have independence; that otherwise she will be unworthy of herself; that independence cannot be obtained without armed rebellion, and that therefore the Indians ought to take arms and rebel. This is quite plain, though the teaching is thinly veiled by allusions to mythology and history. It is sedition of a gross kind, and very little attempt was made to show that the conviction under section 124A of the Indian Penal Code was not correct."

The conviction and sentences were affirmed and the appeal dismissed.

In the year 1910 a group of four cases connected with a local vernacular newspaper called the Rungpur Bartabaha came up on appeal before the High Court of Calcutta. In the first of these (No. 509 of 1910) the appellant, Joy Chundra Sirkar, was the proprietor and editor of the paper in question. He had been convicted for sedition under section 124A of the Penal Code by the District Magistrate of Rungpur, and sentenced to two years' rigorous imprisonment. He had also been convicted at the same trial for promoting class hatred under section 153A, and sentenced for this to one year's rigorous imprisonment. A separate appeal had been filed against this conviction to the Sessions Judge of Rungpur. The High Court, however, to dispose of the whole case, transferred this appeal to themselves and the two appeals were heard concurrently. The three articles charged as seditious were named Pratikar (redress of grievances); Bijoya (a hymn to Durga); and Sipahir Katha (the talk of Sepoys). Six other articles which had appeared in the same paper about the same time, were also relied on by the Crown to prove animus, and to throw light on the meaning of the others. One of the learned Judges who heard the appeal had the advantage, as in the Bombay case last mentioned, of being able to test the accuracy of the translations, on which the prosecution relied, and found them in many places incorrect, overcoloured, and misleading.
After an analysis of these inaccuracies, some of which were found to be 'absurd' and others 'perverse,' Justice Chatterjee proceeded to deal with the articles in question, as follows:—"Going into details upon the three articles, I find there is absolutely nothing objectionable in the article 'Bijoya.' It is the rhapsody of a devout heart on the termination of the religious festivities of the Durga Puja. The goddess is invoked not to inflict calamities like the cyclone of October last on the country, but to come next time in her world fascinating Durga form, i.e., with the goddess of wealth and learning, with the gods of protection and success surrounding her. It deplores the degeneration of faith, and calls upon her to give them the power of writing in her worship without any malice or malevolence. The key to the seditious trend is found in the word para-pada-dahita as a description of the sons of Bengal. Literally the words mean 'trampled under feet of others; it really signifies a conquered nation and the figure of speech used is immaterial. Reading the article now with the light of the comment of the learned Magistrate and the learned Counsel for the Crown I am unable to consider that this article was an incitation to the people to unite for overturning the British Government, and the article 'Anandamoyir Agamone' does not throw much adverse light.'"

"The same thing cannot, however, be said of the other two articles. Although the sense is considerably disfigured by the mistranslations, there is one idea clear as running through the two articles, that the Government does not care for ascertaining the real truth about grievances which exist, especially about the administration of justice. The first article, the Pratikar, says that, bribery in some form or other is rampant in Courts of Justice, barring of course the Judiciary who are beyond suspicion and therefore poor. The writer, therefore, prays that a secret commission might be appointed by Government for investigating the truth of the allegations, and asks the society to excommunicate such ignoble bribe-takers. The sting of the article however, lies, according to the prosecution, in the concluding statement that 'Englishmen will laugh at such a request (for a commission to inquire into the bribery prevalent in courts, etc.).}
and say 'these people are so worthless that they expose the fail-
ings of their own countrymen to the scrutiny of others,' but, the writer says, 'You have laid such a trap that we must dis-
regard all questions of dignity and honor and fall into them, you are the teachers we are the disciples.' Literally read the word 'trap' as applied to a judicial system is objectionable, but stripped of the figure of speech it means a complicated system, and the writer means that people cannot help giving bribes, because otherwise they would not have their work done at all or done promptly.'

"The next article," the learned Judge continued, "is the 'Sipahir Katha.' This article contains a severe diatribe against Swadeshi agitators of lawyer class." "To my mind the article is intended to expose the so-called Swadeshi agitators, and condemn not only their methods of boycott and terrorism, but also the insincerity of their professions of brotherhood to those whose blood in the shape of hard earned money they are said to be sucking and feeding themselves fat upon." "The sin, however, of these two articles is that they impute wholesale bribery to the ministerial officers of courts and to the lower officers of the Police force, and express grave doubts as to whether Government ever enquire into the truth of the grievances, so much is it occupied with investigation of boycott, dacoity, and seditious matters. If these aspersions have the effect of bringing into hatred or contempt the established Government of the country, or serve to create feelings contrary to affection to the Govern-
ment we need not stop to enquire whether any part of them is true. To my mind these aspersions against the Government may have the effect of making the people think that the Govern-
ment is not doing its duty, and is not therefore a good Govern-
ment. I think, they go beyond fair comment, and written at a time when seeds of sedition are being sown broadcast, and the minds of people are under excitement, they cannot be taken to have been actuated by honest and loyal motives. I think, there-
fore, that under the circumstances of the case the conviction of the prisoner under section 124A is right. The articles are, how-
ever, more or less crazy and the sedition is only indirect, and I think a sentence of six months' rigorous imprisonment will serve the ends of justice.'"
In regard to the same articles Justice Richardson concurring pronounced the following opinion:—"In regard to the article 'Bijoya' the only word to which objection can fairly be made is 'parapadadakita' (trodden under the feet of strangers), which if intended to be so applied is not a just description of the condition of the people under the Crown. But in the context in which it occurs, I agree that this one word is not sufficient to make the article seditious. No doubt references to demons, whether they be the allegorical demons of passion, or the embodied demons of mythology, sometimes cover attacks of a political character. But if a particular article is charged as being seditious on the ground that it says more than appears on the face of it, it is, of course, the duty of the prosecution to show that it has in fact the guilty meaning or intention attributed to it. In the present case the proof of any such intention appears to fall short."

"As to the articles 'Pratikar' and 'Sipahir Katha,'" he added, "I agree that the sweeping and unqualified character of the imputations which they make against the administration of affairs in this country leaves no doubt that they were intended to stir up feelings of disaffection towards the Government established by law, and that in respect of these two articles the conviction of the appellant under section 124A of the Penal Code should be affirmed."

In the next appeal (No. 497 of 1910) the appellant Surendra Prosad Lahiri was the printer of the same paper, and had been convicted under the same sections of the Penal Code and sentenced to six months' rigorous imprisonment for each offence. The learned Judges in disposing of this appeal said:—"The prisoner was the declared printer of the Rungpur Bartabaha, and he has been convicted of offences under sections 124A and 153A of the Indian Penal Code in respect of the same articles Pratikar, Bijoya, and Sipahir Katha in respect of which the editor Joy Chandra has been convicted. We have held in the appeal of Joy Chandra that the article Bijoya is harmless, or at all events not seditious, but that the articles Pratikar and Sipahir Katha are seditious, in the sense of containing wholesale denunciations of the administration of justice in India. The prisoner, being the declared printer, would be responsible for the said
articles, unless he can make out on sufficient evidence that he had in fact nothing to do with them. The Pratikar appeared on the 10th of September 1909, and the Sipahir Katha on the 20th of November 1909. The learned Magistrate finds on the evidence that he was absent from Rungpur on these days, and it is argued that the knowledge of these articles must therefore be brought home to him before he can be convicted. It appears that he did not take any interest in the paper, and was occupied in his own business as a photographer and general dealer. But he allowed his name to remain on the record as the printer, and we think, he has not made out the bona fides of his absence from Rungpur. He is, therefore, legally guilty under section 124A, and we confirm the conviction. In consideration, however, of his expressed intention to sever his connection with the paper we reduce his sentence to what he has already suffered."

In a more recent appeal before the High Court of Calcutta (No. 744 of 1910), the appellant Mon Mohan Ghose, who was the printer and publisher of a newspaper called the Karmajogin, had been convicted under section 124A of the Penal Code and sentenced to six months' rigorous imprisonment by the Chief Presidency Magistrate. The charge was based on an article entitled "To my Countrymen," which purported to be "an open letter addressed by one Arabindo Ghose to his countrymen," and which had appeared in the issue of the 25th December 1909.

At the hearing of the appeal it was sought to interpret this article by reference to two other articles which had previously appeared in the same paper on the 24th and 31st July. This was disallowed, for reasons which have already been discussed in a previous chapter (see Ch. x), and the decision was accordingly based on the article itself. The main features of the case appear in the judgment of Justice Fletcher, one of the learned Judges who heard the appeal, which was delivered on the 7th November 1910.

After citing the observations of Justice Strachey in Tilak's case on the limits of fair comment in journalism (see Ch. x), the learned Judge proceeded to analyse the article in question in the following terms: — "'Now the first words that the learned Advocate-General has laid stress upon is the call to
the Nationalist party to 'once more assume their legitimate place in the struggle for Indian liberties.' This, it is said, is a clear invitation by the writer to his countrymen to join in a movement having for its attainment the liberation of India from foreign rule. But, in my opinion, the words standing alone are capable of a much more innocent meaning. The use of the word 'liberties,' in the plural, would not prima facie point to the liberation of the country from foreign rule, but to certain specific liberties; and this view appears to be supported by the subsequent portion of the article, where the writer sets out what the demand of the Nationalist party must be, viz., an effective voice in legislation and finance, and some control over the Executive.

"The next portion of the article on which the learned Advocate-General laid stress is the portion, 'The survival of moderate politics in India depended on two factors, the genuineness of the promised reforms, and the use made of them by the conventionists of the opportunity given them by the practical suppression of Nationalist public activity. Had the reforms been a genuine initiation of constitutional progress the moderate tactics might have received some justification from events. The reforms have shown that nothing can be expected from persistence in moderate politics, except retrogression, disappointment and humiliation.' The argument put forward on this part of the article is that the statement that the reforms are not 'genuine,' or a 'genuine initiation of constitutional progress' holds the Government up to hatred and contempt as implying that they have given the people something that is not 'genuine.' To my mind this is a far-fetched argument. The writer was obviously entitled to express his opinion on the Reform Scheme, and the mere fact that he states that the scheme is not a genuine reform or not a genuine measure of constitutional progress cannot be seditious. But then it is said that the statement 'that nothing can be expected from persistence in moderate politics, except retrogression, disappointment, and humiliation,' followed subsequently by the words 'discomfited and humiliated by the Government'—are obviously seditious, as the words mean that the Government has humiliated a large portion of the people, viz., the moderate party, and therefore the statement brings
the Government into hatred or contempt. It is obvious that this is not the natural or ordinary meaning of the words. The natural meaning is that the moderate party has been humiliated by accepting the Reform Scheme, which is not a measure of 'constitutional progress.' Then a portion of the article was relied upon as showing that the writer was advocating that violent methods should be used if necessary. The words are 'If the Nationalists stand back any longer either the National movement will disappear, or the void created will be filled by a sinister and violent activity.' But that the intention is not such is shown by the sentence that immediately follows:—'Neither result can be tolerated by men desirous of their country's development and freedom.'

"The learned Advocate-General next referred us to the following part of the article:—'The fear of the law is for those who break the law. Our aims are great and honorable, free from stain or reproach. Our methods are peaceful, though resolute and strenuous. We shall not break the law, and therefore we need not fear the law. But if a corrupt police, unscrupulous officials, or a partial judiciary make use of the honorable publicity of our political methods to harass the men who stand in front by illegal, suborned, and perjured evidence, or unjust decision shall we shrink from the toil that we have to pay on our march to freedom. We must have our associations, our organisations, our means of propaganda, and if they are suppressed by arbitrary proclamations, we shall have done our duty by our motherland, and not on us will rest any responsibility for the madness which crushes down open and lawful political activity, in order to give a desperate and sullen nation into the hands of those fiercely enthusiastic and unscrupulous forces that have arisen among us, inside and outside India.' The argument on the first part of this paragraph is that, as the Government appoint the police officials and judiciary, to describe them as corrupt, unscrupulous and partial, reflects upon the Government and brings it into hatred and contempt. But though the words used are such that we may strongly disapprove of, I am unable to see that the words taken in their context necessarily bear this meaning. The first portion of the paragraph states that the movement is to be a movement within the law, and then follows the sentence
commencing 'But if'—which words clearly govern the sentence which follows.

"It seems to me reasonably clear that the writer does not intend to designate all the police, officials, and judiciary as corrupt, unscrupulous and partial. It is also to be remembered that the article is not one written on the police, officials, or judiciary. Although one may regret the use of such words, I cannot bring myself to believe that the use of these words, in the context in which they are used, falls within section 124A of the Indian Penal Code.

'The other three expressions in the paragraph which have been dealt with are the expressions 'arbitrary proclamations,' 'madness,' and a 'desperate and sullen nation.' It is very obvious that the expression 'arbitrary proclamations' coupled with the word 'associations' points to proclamations under the Criminal Law Amendment Act suppressing associations. I take it, however, that there is no particular harm in a writer stating that if his association, which he believes to be a lawful one, is suppressed, the proclamation will be arbitrary. It is difficult to deal seriously with the other two expressions 'madness' and a 'desperate and sullen nation.' That the first of these two expressions charges the Government with insanity cannot be argued. It is said, however, that the meaning of the word as used is that of recklessness, and therefore falls within section 124A. The word, however, is clearly used to indicate an act of folly which, in the context, is clearly innocuous. Similarly with regard to the expression a 'desperate and sullen nation.' The learned Advocate argued that these words are seditious, as implying that the Government had made the nation desperate and sullen, and therefore brought the Government into hatred and contempt. But if arguments of this nature are assented to the right of comment on the action of Government given by law would be wholly taken away.

'Then we come to what the writer states is to be the demand of the Nationalist party. 'We demand, therefore, not the monstrous and misbegotten scheme which has just been brought into being, but a measure of reform based upon democratic principles—an effective voice in legislation and finance, some check upon an arbitrary executive. We demand also the gra-
dual devolution of executive Government out of the hands of the bureaucracy into those of the people. Until these demands are granted we shall use the pressure of that refusal of co-operation which is termed passive resistance. We shall exercise that pressure within the limits allowed us by the law, but apart from that limitation the extent to which we shall use it depends on expediency, and the amount of resistance we have to overcome.'

"The argument for the Crown is that the use of the words 'monstrous and misbegotten scheme' as applied to the Reform Scheme, hold the Government up to 'ridicule and vituperation.' But that does not appear to me to be the natural consequence of these words. Doubtless the words are a strong condemnation of the Reform Scheme framed by the Government. The law, however, permits comments on action of the Government provided, they do not bring the Government into hatred or contempt or promote disloyalty. A statement that the Reform Scheme is monstrous and misbegotten, because it is not founded upon democratic principles is not by itself one that exceeds fair and reasonable comment. The next words that the learned Advocate-General much relied on were the words 'Arbitrary Executive,' which he stated were 'sufficient of themselves to contravene the law.' He argued that any constitutional lawyer would know that the Executive Government of India was not an arbitrary Executive, as no person is liable to be deprived of his liberty, or to have his property forfeited without recourse to the courts of law. In the first place, however, it is to be noticed that we must look at the words used by the writer not as if he were a constitutional lawyer, but as a writer in a journal. I quote from the very pertinent remarks made by Strachey, J., in charging the Jury in Tilak's case:—'A Journalist is not expected to write with the accuracy and precision of a lawyer or a man of science; he may do himself injustice by hasty expressions out of keeping with the general character and tendency of the articles.' Moreover, there is a more general and popular meaning to the words 'arbitrary executive' than that given by the learned Advocate-General. Further, if the definition given by the learned Advocate is correct, it may be a matter of opinion how far the Government does or does not fall within that definition.
"The next expression to which exception was taken was 'passive resistance.' The writer has, however, defined it himself as being 'refusal of co-operation within the limits allowed us by the law.' It seems difficult to deduce a seditious meaning from this phrase. But then it is said that although the writer states that the pressure is to be used within the limits allowed by the law, yet there is a covert threat to use pressure outside those limits if necessary. All I can say on this argument is that I have not been able to discover this covert threat from the words used.

"The next and last part of the article which the learned Advocate-General has called our attention to is—'The movement of arbitration successful in its inception has been dropped as a result of repression. The Swadeshi Boycott movement still moves by its own impetus. We must free our social and economic development from the incubus of the litigious resort to the ruinously expensive British Courts.' The learned Advocate-General stated that the expression 'Swadeshi Boycott' referred to a boycott of the Government. But it is a matter of public knowledge that it refers to a boycott of foreign goods; and again he laid stress upon the expression 'ruinously expensive British Courts.' The question as to the expense involved in litigation before the Courts is surely a matter on which a writer is entitled to comment. This is not the first time, nor will it, I imagine, be the last when the Courts will be described as ruinously expensive, and I cannot see how such a statement can come within section 124A.'"

In conclusion, the learned Judge said:—'I have now dealt with the arguments that have been made before us, in detail, on the article, and I have given the best consideration I can to the article as a whole, and I have come to the conclusion that it does not appear from the article that it is such as is likely to cause disaffection or produce hatred or contempt of the Government, nor can I find from the article that such was the intention of the writer. Doubtless to many, if not to most people, the writer's view of the great Reform Scheme would appear to be unreasonable, and one that does not recognise the great advance that has been made. But with that we are not concerned.
All that we have to decide is whether the law, as it is, has or has not been broken by the appellant, by the publication of this article, and I have come to the conclusion that it has not. The learned Advocate-General has pressed upon us strongly to take into consideration the state of the country at the time this article was published. The authorities show that that is a matter to be taken into consideration, but that obviously does not entitle the Court to convert an article not falling within the mischief aimed at by section 124A into one that does. In my opinion the appeal ought to be allowed, and the conviction and sentence set aside.'
CHAPTER XV.
Cognate Offences.

Promoting class-hatred, though treated in the Indian Penal Code as a distinct offence, is, and has always been, a part of the English law of sedition (see Ch. ii). When the law of sedition was first formulated in 1870 and introduced into the Penal Code as section 124A, no such provision was in contemplation, but in 1897 when the law was about to be amended, the want of such a measure was recognised. It was then decided to embody the provision, in accordance with the English law, in the amended section, and the Bill when first drafted included it as a part of the law of sedition. This has been already pointed out in a previous chapter (see Ch. vii).

The Hon’ble Mr. Chalmers, when introducing the Bill on the 25th December, said:—"Subject to one possible exception, our proposed new section in no wise alters the law at present in force in India. The possible exception consists in the provision that it amounts to sedition to promote or attempt to promote feelings of enmity or ill-will between different classes of Her Majesty’s subjects. The question has not been raised or decided whether such conduct amounts to an offence under the present section 124A. But the proposed addition is law in England, and if such a rule be required in England with its practically homogeneous population, it is still more requisite in India where different races and religions are in continual contact. For the most part under British rule our Muhammadan and Hindu fellow-subjects live together in peace and amity, but recent agitations in various parts of India have shown how dangerous to the public tranquillity is any agitation which seeks to fan into flame those feelings of racial and religious antagonism which still smoulder beneath the surface."

The Bill was then referred to a Select Committee. Among the changes effected by the Select Committee one of the most important was the removal of this provision from section
124A to another part of the Code, where it now occupies an independent position as a distinct offence. The reasons for this change are stated in their Report of the 4th February 1898, as follows:—"We have omitted the words 'or promotes or attempts to promote feelings of enmity or ill-will between different classes of Her Majesty's subjects,' and have framed a new clause to deal with the offence thereby indicated. It appears to us that the offence of stirring up class-hatred differs in many important respects from the offence of sedition against the State. It comes more appropriately in the chapter relating to offences against the public tranquillity. The offence only affects the Government or the State indirectly, and the essence of the offence is that it predisposes classes of the people to action which may disturb the public tranquillity. The fact that this offence is punishable in England as seditious libel is probably due to historical causes, and has nothing to do with logical arrangement." "But," they added, "in framing the clause we have altered the words 'enmity or ill-will' into 'enmity or hatred,' and we have fixed the maximum punishment at two years' imprisonment." The word 'ill-will' was thought to be "too wide and vague" in its meaning, and therefore unsuitable for either section.

When the Council met on the 18th February 1898, for the final consideration of the Bill, the Hon'ble Member in charge alluded to the changes which had been made as follows:—"We have removed the offence of stirring up class-hatred from the sedition clause, and have inserted it in the chapter relating to offences against the public tranquillity. This offence, no doubt, only affects the State indirectly. It affects the State through the danger it causes to the public tranquillity. It is less akin to treason than a seditious attack upon the Government by law established, and therefore we have provided a much smaller punishment. But in India the offence is a very dangerous one. When class or sectarian animosity is directed against any section of Her Majesty's subjects, the members of that section are in peril. Any accidental event may cause an explosion, and it is difficult to foresee the direction which the explosion will take. The persistent attacks made on the officers and helpers engaged in plague operations have already
resulted in sad loss of life. A squabble over an alleged mosque gave rise to a dangerous riot which at one time it was feared might turn into a general attack on the European community in Calcutta. We wish to trust to prevention rather than cure, and by taking power to punish people who foment class animosities to obviate the necessity of putting down the consequent disturbances with a high hand."

"But," he added, "though we think and believe that the measures we have proposed are necessary, we have provided safeguards against any possible abuse of them—safeguards which, I may observe, are unknown to English law. As the law now stands, no prosecution under section 124A can be commenced without the authority of the Local Government or the Government of India. We intend to maintain that rule, and further to apply it to offences under sections 153A and 505. There remain the rights of appeal and revision. Every sentence passed under the provisions I have referred to can be brought in one form or the other under the cognizance of the High Court."

On this occasion also a further amendment was introduced. The 'Explanation' to the section, the principle of which is borrowed from the English law of sedition, was added at the instance of Sir Griffith Evans. The Bill was then passed as Act IV of 1898, and the new provision took its place in the Penal Code as section 153A.

The new section was as follows:—

"153A. Whoever by words, either spoken or written, or by signs, or by visible representations, or otherwise, promotes or attempts to promote feelings of enmity or hatred between different classes of Her Majesty's subjects shall be punished with imprisonment which may extend to two years, or with fine, or with both.

Explanation.—It does not amount to an offence within the meaning of this section to point out, without malicious intention and with an honest view to their removal, matters which are producing, or have a tendency to produce, feelings of enmity or hatred between different classes of Her Majesty's subjects."
It will be seen at once that section 153A, has many incidents in common with section 124A, with which it was once incorporated. The same principle underlies both provisions, and it may be doubted whether the separation of the two has been attended with advantages which are at all commensurate with the disadvantage of creating a divergence between the English and the Indian systems of law, when the object of amending the law was admittedly to bring the two systems into closer accord.

It has to be borne in mind that in England the offence of promoting class-hatred is, as it has always been, treated as sedition, and therefore the general principles of the law of sedition (see Chs. ii-iii) would be applicable. But even in India, where a distinction has been created, the resemblance between the two provisions is so strong, that the same principles (see Chs. viii-xii), mutatis mutandis, may be presumed to apply equally to both.

They are after all only branches of the same law. As already mentioned, the sanction of Government is essential to a prosecution under this section, and all the other incidents of procedure which are applicable to trials for sedition (see Ch. xi), are also applicable to it, except as regards jurisdiction. Offences falling under section 153A are triable by Presidency or First-class Magistrates, whose powers are regulated by section 32 of the Criminal Procedure Code. This section imposes a limit of two years' imprisonment and a fine of one thousand rupees.

The principles of the law of Abetment are likewise applicable to this offence. These have been fully discussed in a previous chapter (see Ch. xii).

Prosecutions under section 153A have been less frequent than those for sedition under section 124A, and very few of these have come before a High Court. Appeals from the jurisdiction of Magistrates of the First class lie to the Sessions Judge and not to the High Court, unless specially provided for, as in the case of sedition (s. 408(c) Cr. P. C.). Appeals from a Presidency Magistrate ordinarily lie to the High Court, but only if the sentence imposed exceeds six months' imprisonment or two hundred rupees' fine (s. 411).
A conviction by a Magistrate under section 153A, therefore, can only come before a High Court for revision, unless an appeal be specially transferred as in the case of the Rungpur Bartabaha before mentioned (see Ch. ix). In this case separate convictions and sentences had been imposed on the printer and editor of the paper, at one and the same trial, under sections 124A and 153A, by the District Magistrate of Rungpur. Appeals in respect of the former section were preferred to the High Court, while those under the latter section were preferred to the Sessions Judge of Rungpur. The learned Judges who heard the first, transferred the other appeals (Nos. 746A and 746B of 1910) for hearing to themselves. In disposing of the four appeals concurrently their lordships affirmed the convictions under section 124A and set aside those under section 153A, holding that no distinct offence of attempting to incite one class against another had been made out.

The article upon which the convictions under section 153A were based has been already referred to in a previous chapter. It was, in fact, one of the three articles which formed the subject of the charge under section 124A, while certain passages in it indicated, in the opinion of the Magistrate, an intention "to stir up feelings of hatred between different classes of His Majesty's subjects." The classes referred to were in the first place Hindus and Mahomedans, and in the second Europeans and natives.

The passages in the article entitled Sipahir Katha which appear to have been relied on were as follows:—"‘We thought that when we had told them news of the Parliament, of His Excellency the Governor-General of India, of great men of our country—when we told them who attacked His Excellency and who made an attempt on the life of His Honour the Lieutenant-Governor—and lastly when we told them also of the nine Bengali virtuous men who had been deported, of Madanlal Dhingra, Khudiram, Arabindo, Baren, and others too, we had told them satisfactorily, and we thought that we had strengthened their determination in favour of Swadeshi. But, alas, we stood speechless when we heard what they said in reply. ‘Babu,’ said the Sepoy, ‘most of you are
thieves. You will serve under the Government and fill your stomach. How shall you then serve your country? Whenever we approach you for employment you ask for money. It is your habit to earn money by disreputable and unfair means.' You agitate and exult only in words, and say that a Mahomedan is your brother. It is you that cause litigation in the country and absorb the money of the Mahomedans. It is you that are pleaders and muktears. It is you again that in going to rescue the poor Mahomedans from litigation throw them into the danger of Khumbhipaka (hell). It is you that are appropriating everything, from the wife's ornaments to the bullocks of the plough.' ‘But your aspiration is only to plume yourselves on being Government servants, and to suck the blood of the poor people like ourselves. How can we expect ever to be able to act in concert with you? ’"

The second passage was as follows:—"'You will play the rôle of the clergymen who say 'You were created by God, you are my brothers.' As soon as a Bengali is converted to Christianity, the sahib employs him in the kitchen or the garden on a monthly pay of five rupees, and soon after, the old long-cherished feeling of contempt for the dark-skinned fellows is roused for ever.'"

The comment of the learned Judges upon this matter was as follows:—"The offence under section 153A is not so clear, as there does not seem to be any deliberate attempt to incite one class against another. The Sepoys inveigh both against Baboos and Miyahs, as robbing the poor Mahomedan raiyats, and the reference to the missionaries is a foolish illustration not intended to create enmity between the missionaries and any other subjects of the King. The conviction under this section must therefore be set aside. This disposes of both the appeals by the prisoner.'" A similar order was made in the appeal of the printer (No. 746B of 1910).

In the case of *Leakut Hossein Khan* and *Abdul Gaffur v. Emperor* (App. No. 214 of 1908), which has been already referred to (see *Ch. xii*), the appellants had also been convicted under both sections, by the Sessions Judge of Backergunge. On appeal it was held by the High Court that no distinct offence
had been established under section 153A, and the convictions under that section were accordingly set aside, while those under section 124A were affirmed.

The passage in the seditious leaflet (see Ch. xii) on which the former conviction was based was as follows:—"Oh true believers (Oh Musulmans), do not make friends with Jews and Christians! By Christians is meant the Christian race."

"We do not consider," their lordships said, "that the offence charged under section 153A has been made out. The passage in the leaflet relating to Jews and Christians, on which alone it can be based, is used only to enforce previous suggestions; and otherwise there seems to be no attempt to promote feelings of enmity between different classes which is not covered by our findings as to the attempt to promote disaffection."

No better proof could be wanted of the close affinity between these two offences.

Another offence which also belongs to this class is that comprised in section 505 of the Penal Code. It consists in circulating mischievous reports for certain evil purposes. The provision had existed from the first, but in 1898 it was found necessary to recast it in its present form.

In proposing the amendment the Law Member said:—"Section 505 of the Penal Code deals with a cognate class of offences. Itpunishes the dissemination of certain false statements and rumours which are conducive to public mischief."
The Hon'ble Member then quoted the section as it stood originally, with the words 'whoever circulates or publishes any statement, rumour or report which he knows to be false', and continued—"In its present form this provision is unworkable. It is impossible for the prosecution to show that the person who circulated the false statement knew it to be false. We propose therefore to repeal and re-enact this section in more precise terms, making the publication of these obnoxious statements punishable, but allowing the accused to show that the mischievous statement or rumour was true in fact, and was not published or circulated with a criminal intent. It may be said, and indeed it has been urged upon us, that this is not going far enough. If a man chooses to publish statements which are
likely to incite our soldiers to mutiny, or to cause people to commit offences against the law, he ought to be punished whether his statements are true or false, and without regard to his private intentions. There is much force in this argument, but we should be unwilling to punish a man under this section for making a statement which is true, when he publishes or circulates that statement without any criminal intent. The universal presumption of law is that a man is deemed to intend a result which is the ordinary and natural consequence of his act. When, then, a man chooses to publish a statement, or circulate a rumour, which on the face of it is directly conducive to grave public mischief, he cannot complain if he is called upon to show that his intentions were not criminal.

The proposal to shift the burden of proving the truth of a statement on to the accused excited apprehension in certain quarters. Some supposed that it was intended thereby to restrict the assertion of veritable facts, though the language they employed in expressing their objections might have been less ambiguous. Sir Griffith Evans in alluding to this in Council said:—"Some of the objections have been met, and some it will be more convenient to consider when we come to the proposed amendments. I will notice one. It is said 'The time has not come to prohibit the telling of the truth in India.'" On this he quaintly observed:—"There is no denying the humour of this comment."

The Select Committee, however, made an alteration in the new provision, which certainly seems to remove all possible objection. This they explained as follows:—"We have inserted the clause proposed by the Government, but we have altered and enlarged the scope of the exception to the clause. No doubt the statements, rumours, and reports referred to are of a highly mischievous character, but having regard to the conditions under which modern journalism and the discussion of public questions are necessarily carried on, we think that, when the statement, rumour, or report is published without any criminal intent, it is going too far to require the person who published it to prove its actual truth. To require such proof might be throwing an impossible burden upon him, and it should be sufficient for him to show that he had reasonable
grounds for believing it, as, for instance, by showing that he made due inquiry before he published it.

In referring to these liberal concessions the Hon'ble Member in charge said:—'In section 505 the Select Committee have made a considerable modification. As the clause now stands I think it need cause no apprehension to any speaker or journalist who acts in good faith. It must be borne in mind that the clause does not strike at mischievous and mendacious reports generally. It is aimed only at reports calculated to produce mutiny, or to induce one section of the population to commit offences against another. If a man takes upon himself to circulate such a report, he surely cannot complain if he is asked to show that his intentions were innocent; and that he had reasonable grounds for believing the report.'

The provision thus modified was passed by Act IV of 1898, and took its place in the Penal Code in lieu of the former section. The new section is as follows:—

"505. Whoever makes, publishes or circulates any statement, rumour or report,—

(a) with intent to cause, or which is likely to cause, any officer, soldier or sailor in the army or navy of Her Majesty or in the Royal Indian Marine or in the Imperial Service Troops to mutiny or otherwise disregard or fail in his duty as such; or

(b) with intent to cause, or which is likely to cause, fear or alarm to the public, whereby any person may be induced to commit an offence against the State or against the public tranquillity; or

(c) with intent to incite, or which is likely to incite, any class or community of persons to commit any offence against any other class or community;

shall be punished with imprisonment which may extend to two years, or with fine, or with both.

Exception.—It does not amount to an offence, within the meaning of this section, when the person making, publishing or circulating any such statement, rumour or report has reasonable grounds for believing that such statement, rumour or
report is true, and makes, publishes or circulates it without any such intent as aforesaid.'"

It will be seen that to constitute an offence under this section it is not by any means essential that the statement circulated should be false; nor would it be a complete defence to show that it was true. The gist of the offence seems to lie in the mischievous intent, which is specified in the three clauses to the section. The proper answer then, to a charge, would seem to be, first, the absence of any such criminal intent, and, secondly, reasonable grounds for believing that the statement was true, although in fact it might be false.

The first mischief contemplated is tampering with the troops, and requires no explanation.

The second clause has led to misapprehension. In the case of *Manbir* (3 C. W. N., 1), the accused had been convicted under section 505(b) for having circulated a false report among the coolies of a tea estate in the district of Darjeeling, which so alarmed them that about 150 of them ran away. It was held by the High Court that, though the act of the accused was no doubt mischievous and malicious, he was not punishable under the section.

"The mere causing of fear or alarm to the public," they said, "or to a section of the public, does not constitute an offence under section 505—otherwise the accused would certainly have been guilty—but it is necessary that the fear or alarm should be caused in such circumstances as to render it likely that a person may be induced to commit an offence against the State or against the public tranquillity." The hypothesis of the lower Court that the coolies might have done so, instead of running away, was too far-fetched to be taken into consideration. "The accused," they added, "cannot be taken to have intended more than what seems to us the probable result of the report which he circulated, the result which in fact did take place." The conviction was set aside.

The third clause seems to bear a strong affinity with section 153A. In fact, the offence therein described is only a particular form of setting, or attempting to set, class against class, and might almost be held to be comprised in it.
It should be mentioned that offences under sections 153A and 505 of the Penal Code are precisely on the same footing as regards procedure and jurisdiction.

Sanction is necessary for a prosecution under section 505. The offence moreover is not cognisable by the Police, and is triable only by a Magistrate of the First class or a Presidency Magistrate.

These are the Cognate offences.
PART II.
PREVENTIVE LAW.

CHAPTER XVI.

ORIGIN AND HISTORY OF PREVENTIVE MEASURES.

Preventive legislation may be said to have had its origin in India in the year 1823. Whatever may have been the causes which contributed to produce the first measure, there can be no doubt that Sir Thomas Munro’s celebrated minute on the Indian Press had a good deal to do with it.

On the 12th April, 1822, that distinguished statesman, then Governor of Madras, had occasion to put on record his views on this important subject, and the opinions which he then expressed, as the result of a unique experience, both military and civil, are still regarded as authoritative. But apart from this, its historical value can hardly be over-estimated, for it affords a striking picture of the conditions which prevailed in the country at the time it was written, and of the circumstances which preceded the legislation of the following year.

This important record, which is entitled "Danger of a Free Press in India," has been published in the memoir of the distinguished governor by Sir A. Arbuthnot, himself a prominent figure in the Legislative Councils of India, and may be there referred to. It will suffice to cite here only the more important passages.

"A great deal has of late been said," he wrote, "both in this country and in England, regarding the liberty of the Indian press; and although nothing has occurred to bring the question regularly before the Board, yet as I think it one on which, according to the decision which may be given, the preservation of our dominion in India may depend, and as it appears to me desirable that the Honourable Court of Directors should be in possession of the sentiments of this Government..."
at as early a period as possible, I deem it my duty to call the
attention of the Board to the subject.

"I cannot view the question of a free press in this country
without feeling that the tenure with which we hold our power
never has been and never can be the liberties of the people.
I therefore consider it as essential to the tranquillity of the
country and the maintenance of our government that all the
present restrictions should be continued. Were the people all
our own countrymen, I would prefer the utmost freedom of the
press, but as they are, nothing could be more dangerous than
such freedom. In place of spreading useful knowledge among
the people, and tending to their better government, it would
generate insubordination, insurrection, and anarchy.

"Those who speak of the press being free in this country
have looked at only one part of the subject. They have
looked no further than to Englishmen, and to the press as a
monopoly in their hands for the amusement or benefit of their
countrymen. They have not looked to its freedom among the
natives to be by them employed for whatever they also may
consider to be for their own benefit and that of their country-
men. A free press and the dominion of strangers are things
which are quite incompatible, and which cannot long exist
together. For what is the first duty of a free press? It is
to deliver the country from a foreign yoke, and to sacrifice to
this one great object every meaner consideration; and if
we make the press really free to the natives as well as to
Europeans, it must inevitably lead to this result. We might
wish that the press should be used to convey moral and
religious instruction to the natives, and that its efforts should
go no further. They might be satisfied with this for a time,
but would soon learn to apply it to political purposes, to
compare their own situation and ours, and to overthrow our
power.

"The restraint on the press is very limited. It extends
only to attacks on the character of Government and its officers,
and on the religion of the natives. On all other points it is
free. The removal of these restrictions could be of advan-
tage to none but the proprietors of newspapers. It is their
business to sell their papers, and they must fill them with such
articles as are most likely to answer this purpose. Nothing in a newspaper excites so much interest as strictures on the conduct of Government or its officers; but this is more peculiarly the case in India, where, from the smallness of the European society, almost all the individuals composing it are known to each other, and almost every European may be said to be a public officer. The newspaper which censures most freely public men and measures, and which is most personal in its attacks, will have the greatest sale.

"The law, it may be supposed, would be able to correct any violent abuse of the liberty of the press; but this would not be the case. The petty jury are shop-keepers and mechanics, a class not holding in this country the same station as in England—a class by themselves, not mixing with the merchants or the civil and military servants, insignificant in number, and having no weight in the community. They will never, however differently the judge may think, find a libel in a newspaper against a public officer. Even if the jury could act without bias, the agitation arising from such trials in a small society would far outweigh any advantage they could produce.

"Were we sure that the press would act only through the masses of the people, after the great body of them should have imbibed the spirit of freedom, the danger would be seen at a distance and there would be ample time to guard against it; but from our peculiar situation in this country this is not what would take place, for the danger would come upon us from our native army, not from the people. In countries not under a foreign government the spirit of freedom usually grows up with the gradual progress of early education and knowledge among the body of the people: this is its natural origin, and were it to arise in this way in this country, while under our rule, its course would be quiet and uniform, unattended by any sudden commotion, and the change in the character and opinions of the people might be met by suitable changes in the form of our government. But we cannot with any reason expect this silent and tranquil revolution; for, owing to the unnatural state in which India will be placed under a foreign government with a free press and a native army, the spirit of independence will spring up in this army, long before it is ever thought of among the people.
The high opinion entertained of us by the natives, and the deference and respect for authority which have hitherto prevailed among ourselves, have been the main cause of our success in this country, but when these principles shall be shaken or swept away by a free press, encouraged by our juries to become a licentious one, the change will soon reach and pervade the whole native army. I do not apprehend any immediate danger from the press. It would require many years before it could produce much effect on our native army. But though the danger be distant, it is not the less certain, and will inevitably overtake us if the press become free. The liberty of the press and a foreign yoke are already stated to be quite incompatible: we cannot leave it free with any regard to our own safety. We cannot restrain it by trial by jury, because, from the nature of juries in this country, public officers can never be tried by their peers. No jury will ever give a verdict against the publisher of any libel upon them, however gross it may be. The press must be restrained either by a censor, or by the power of sending home at once the publisher of any libellous or inflammatory paper at the responsibility of Government, without the Supreme Court having authority, on any plea whatever, to detain him for a single day.

Such restrictions as those proposed will not hinder the progress of knowledge among the natives, but rather insure it, by leaving it to follow its natural course, and protecting it against military violence and anarchy. Its natural course is not the circulation of newspapers and pamphlets among the natives immediately connected with Europeans, but education gradually spreading among the body of the people, and diffusing moral and religious instruction through every class of the community.

If we take a contrary course—if we, for the sole benefit of a few European editors of newspapers, permit a licentious press to undermine among the natives all respect for the European character and authority, we shall scatter the seeds of discontent among our native troops, and never be secure from insurrection. We are trying an experiment never yet tried in the world,—maintaining a foreign dominion by means of a native army, and teaching that army, through a free press,
that they ought to expel us and deliver their country. As far as Europeans only, whether in or out of the service, are concerned, the freedom or restriction of the press could do little good or harm, and would hardly deserve any serious attention. It is only as regards the natives that the press can be viewed with apprehension, and it is only when it comes to agitate our native army that its terrible effects will be felt. Many people, both in this country and in England, will probably go on admiring the efforts of the Indian press, and fondly anticipating the rapid extension of knowledge among the natives, while a tremendous revolution, originating in this very press, is preparing, which will, by the premature and violent overthrow of our power, disappoint all those hopes, and throw India back into a state more hopeless of improvement than when we first found her.

"Though I consider the danger as still very distant, I think that we cannot be too early in taking measures to avert it: and I trust that the Honourable the Court of Directors will view the question of the press in India as one of the most important that ever came before them, and the establishment of such an engine—unless under the most absolute control of their Governments—as dangerous in the highest degree to the existence of the British power in this country."

On the 14th of March, 1823, a "Rule, Ordinance, and Regulation for the good order and civil government of the Settlement of Fort William in Bengal" was passed in Council, and registered in the Supreme Court of Judicature on the 4th of April following.

On the 5th of April, 1823, a "Regulation for preventing the establishment of Printing-presses, without license, and for restraining under certain circumstances, the circulation of printed books and papers," was passed by the Governor-General in Council. This was Regulation III of 1823, and its sphere of operation was "the territories immediately subordinate to the presidency of Fort William."

Its immediate effect was to place the entire Press—in the words of Sir Thomas Munro—'under the absolute control of the Government.' The new measure prohibited, under a penalty of one thousand rupees, the printing of any book or
paper, or the possession or use of any printing-press or materials for printing, without a license from Government. Applications for such licenses, containing a true and complete description of the applicant and "verified on oath or solemn obligation," could be made through the local magistrate. The Governor-General in Council might grant or withhold the license, at his discretion. In any case the grant was conditional, and might at any time be withdrawn.

The use of a printing-press or materials for printing, after notice of withdrawal of a license, involved a fine of one thousand rupees, as well as forfeiture of the press and all printed matter found on the premises. All books and papers printed under license were required to bear the name and residence of the printer, and to be submitted for inspection. The circulation of any newspaper or book might be prohibited by notice in the Government Gazette. The wilful circulation of such paper or book after notice, was visited with fine, or in default to imprisonment.

In Bombay, two years later, a "Rule, Ordinance, and Regulation for preventing the mischief arising from the printing and publishing Newspapers, and Periodical and other books and papers by persons unknown," was passed by the Governor in Council on the 2nd March, 1825. This, in like manner, was followed by a "Regulation for restricting the establishment of Printing-presses and the circulation of printed books and papers," which was passed by the Governor of Bombay in Council on the 1st January, 1827.

These Regulations, which are now only of historical interest, continued in force until the 15th of September, 1835, when they were repealed and replaced by Act XI of that year. The reasons for the repeal of these Regulations, Rules and Ordinances, and the substitution of a less exacting system of control over the Press are to be found in the minutes of the Governor-General of India Sir Charles Metcalfe, and his Law Member Mr. Macaulay. These minutes, though frequently referred to in subsequent discussions on Press legislation, have never been officially published. They may, however, be referred to in the original manuscript, with the permission of the Government.
It is unnecessary to allude to them here, further than to mention that the reasons stated by Sir Charles Metcalfe, in his minute of the 17th April 1835, were—first, that in his opinion, 'the Press ought to be free, if consistently with the safety of the State it could be;' and secondly, that 'it was practically free,' for the existing restrictions were never put in force, and 'the Government had no intention of enforcing them.'

But he went on to add that a simple repeal of these restrictions would not be enough, and that they were compelled to substitute for them 'an enactment for the purpose of making printers and publishers accessible to the laws of the land.'

The measure proposed, which had been drawn by the Hon'ble Mr. Macaulay, was explained by him as an 'Act to establish a perfect uniformity in the laws regarding the Press throughout the Indian Empire.' 'Every person,' he said, 'who chose would be at liberty to set up a newspaper without applying for previous permission, but no person would be able to print or publish sedition or calumny without imminent risk of punishment.' The Hon'ble Mr. Prinsep, while giving his assent to the Bill, observed that 'the late Governor-General, Lord William Bentinck, had regarded the existing Press Laws as good materials to have available in case the necessity should arise for State interference.' 'It would be very wrong,' he thought, 'to take any step calculated to tie the hands of the Government hereafter, or to deprive it of any of its authority in such a matter. But, as Mr. Macaulay had said, the Council had but to decide, and a law suitable to any emergency could be produced in a day.' He regarded the existing provisions 'as inefficient as they were inoperative,' and therefore assented to their repeal, 'leaving future measures, so far as concerned the security and protection of the Government against the Press, to be determined in the future as circumstances might arise to call for legislation or other interference.'

Another Member, with apparently more pronounced misgivings, proposed the addition of a saving clause which should have the effect of safeguarding the Government in any emergency. Sir Charles Metcalfe, however, removed all apprehensions by stating that 'the power of providing for the safety of the State was inherent in the Legislature and the Govern-
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ment of every country, and that it was not probable that the safety of the State would be endangered so suddenly, by any operations of the Press, as not to afford time to the Legislative Council to apply a remedy. ‘But,’ he added, ‘if such an extreme case of sudden and imminent danger could be conceived, what Government would hesitate to protect itself until the Legislature of India could provide for the case?’

The new measure, which was the first Press Act introduced for the whole of India, was obviously drawn by the Law Member on the lines of the Statute 38 Geo. III, c. 78, which was ‘‘An Act for preventing the mischiefs arising from the printing and publishing Newspapers and Papers of a like nature by persons not known, and for regulating the printing and publication of such Papers in other respects.’’

Act XI of 1835, which was intended to substitute a system of Registration for the system of Licenses then in vogue, was a short Act of nine sections. The first section purported to repeal the four Regulations mentioned above, while the remaining eight sections provided the new rules which were to operate in place of them.

It was enacted in section 2, that after the 15th September, 1835, ‘‘no printed Periodical work whatever, containing public news or comments on public news, shall be published within the Territories of the East India Company, except in conformity with the rules hereinafter laid down.’’ By these rules every printer and publisher of any periodical work was obliged, under a penalty, to sign and file before a magistrate a declaration in a particular form, setting forth ‘‘a true and precise account of the premises’’ wherein his printing or publishing was carried on, and to renew the same as often as the premises were changed. Printing or publishing any such periodical without conforming to these rules involved, on conviction, a fine of five thousand rupees as well as imprisonment extending to two years.

Section 5 provided that the production of a duly attested copy of such declaration in any proceeding, civil or criminal, was prīmī fācie evidence of the responsibility of the declarant for the publication of ‘‘every portion of every Periodical work whereof the title shall correspond with the title of the
Periodical work mentioned in the said declaration. A declaration might, however, be revoked by a fresh declaration to that effect under section 6.

A similar declaration was required by section 8 from the owner of a printing-press, and the breach of this rule likewise involved the liability to a fine of five thousand rupees and imprisonment extending to two years.

Every book or paper was moreover required to bear the name and place of the printer and publisher. The neglect of this rule was visited with a like penalty. A false declaration was similarly punished.

These provisions were re-enacted in 1867, almost without modification, and incorporated with a new Press Act which is still in force. They will be found reproduced in sections 3 to 8 and 12 to 15 of Act XXV of 1867 (see Appx.). It may therefore be said that the provisions enacted in 1835 have continued in force, practically undisturbed by any intermediate legislation, down to the present day.

A period of twenty-two years elapsed before the Press was affected by any fresh legislation, but the events of the year 1857 rendered further legislation of some kind imperatively necessary. On the 13th of June of that year the Legislative Council met to consider matters of "pressing and paramount importance."

His Excellency Lord Canning, the President, addressed the Council as follows:—"Those whom I have the honor to address are well acquainted with the present aspect of public affairs. The general disaffection of the Bengal Army in the North-Western Provinces; the lawlessness and violence of the evil-minded part of the population to which this disaffection has given opportunity and encouragement; the pillage, the heart-rending loss of life, and the uprooting of all order in that part of the country, are painfully notorious. I will not dwell upon them. Neither will I trace the causes which have led to these calamitous results, or describe the means by which the Government is meeting and repressing them. But there is one quarter to which I desire to direct the attention of the Council—a quarter from which the evil influences which now pervade so many minds have been industriously put in motion, and to
which a large portion of the discontent instilled into our troops and our ordinarily harmless and peaceable community is attributable. I doubt whether it is fully understood or known to what an audacious extent sedition has been poured into the hearts of the native population of India within the last few weeks, under the guise of intelligence supplied to them by the native newspapers.''

"It has been done," his Excellency continued, "sedulously, cleverly, artfully. Facts have been grossly misrepresented—so grossly, that with educated and informed minds the very extravagance of the misrepresentations must compel discredit. But to native readers of all classes, scattered through the country, imperfectly acquainted with the proceedings of the Government, and not well instructed as to what is passing even immediately around them, these misrepresentations come uncontradicted, and are readily credited. In addition to perversion of facts, there are constant vilifications of the Government, false assertions of its purposes, and unceasing attempts to sow discontent and hatred between it and its subjects."

"Against such poisoned weapons," his Excellency went on to add, "I now ask the Legislative Council to give to the Executive Government the means of protecting itself, its army, and its subjects; and I know no means by which this can be effectually accomplished other than a law which shall give to the Executive Government a more absolute and summary control over the Press than it now has in its hands. With this view I propose to introduce a Bill this day. The measure is framed upon the principle that no press shall exist without a license from the Government; that the license shall be granted by the Governor-General in Council under such conditions as he may think fit; that on the infraction of any of these conditions, it shall be in the power of the Governor-General in Council, and, in distant parts of the Empire, of local governments to whom he may delegate the authority, to withhold such license, or, if one has been already granted, to recall it. One of the sections provides that the Bill shall have effect for one year only. At the end of that period, the subject will again be before the Legislative Council, and the Legislative Council will know how to deal with it according to the circumstances of the
moment. It is also provided that the Bill shall be applicable, not only to Bengal, but to all India. I also propose that the Act shall extend to all periodical and other publications, European as well as Native, whatever their condition or character. I do not see any reason, nor do I consider it possible in justice to draw a line of demarcation between European and native publications. The Bill accordingly applies to every kind of publication, whatever the language in which it may be printed, or the nation of the persons who are responsible for what is put forth in it.''

His Excellency concluded in the following terms:—"I cannot conceal from the Council that I have proposed this measure with extreme reluctance. It is one which no man bred in the atmosphere of English public life can propose to those who are vested with the high authority of legislating for English dominions, without some feelings of compunction and hesitation. But there are times in the existence of every State in which something of the liberties and rights which it jealously cherishes and scrupulously guards in ordinary seasons, must be sacrificed for the public welfare."

The Chief Justice, Sir James Colvile, in supporting the Bill said that "the gravity of the step which the Council was about to take could not be denied. It was called upon suddenly to suspend a privilege which had now been enjoyed for nearly a quarter of a century by the population of this country—a privilege to which all Englishmen were naturally and strongly attached. Having heard the statement of his Lordship to-day, he thought it right emphatically to declare that he was ready to take his share of the responsibility involved in the adoption of the measure. The freedom of the Press, like any other privilege, was to be prized only in so far as it conduced to the public good."

The Hon'ble Mr. Peacock in referring to the penalties provided in the Bill, explained that "by Act XI of 1835 a much higher penalty was provided for a much smaller offence."

The Bill was passed the same day, and remained in operation for a year, as Act XV of 1857.

This Act, so frequently referred to in subsequent discussions as a temporary suspension of the liberty of the Press,
merely re-enacted, with slight modifications, the provisions of Regulation III of 1823, for the whole of India. At the same time the provisions of Act XI of 1835 were expressly maintained. It therefore restored the system of licenses, already referred to, without disturbing the later system of registration then in force, and this for the space of a single year.

The next step in Press legislation was Act XXV of 1867. This Act had originally been intended to provide rules for the preservation and registration of books only, but at a later stage the Bill was altered so as to include the provisions of Act XI of 1835, as already mentioned, although as a fact they could hardly be considered in pari materia. The Hon’ble Mr. Hobhouse who was in charge of the Bill thus explained it:—"It was considered advisable," he said, "when the Bill was being considered in Committee, to repeal and re-enact in the Bill a cognate law on the subject of printing-presses and the registration of periodicals. It would therefore be observed that sections 3 to 8 of the amended Bill were simply re-enactments of Act No. XI of 1835 relating to printing-presses and periodicals, and that sections 12 to 15 were also repetitions of the same law, but in these latter sections there had been an amendment of some value. Under Act No. XI of 1835 a person guilty of infringement of the Act was liable to fine and imprisonment, but that was considered a very severe penalty, and, in accordance with the provisions of the Penal Code, it had been altered to fine or imprisonment, or both."

The provisions of the Press Act of 1867, so far as they relate to the Press, are contained in Part II, ss. 3—9, and in Part IV, ss. 12—15, the portions in fact which were taken from the Press Act of 1835. Although the Act was amended subsequently (by Act X of 1890), these portions remained undisturbed.

Part II of the Act contains the salutary rules, so frequently referred to in previous chapters, for obtaining declarations from printers and publishers and the owners of printing-presses, and for the registration of their names. Section 7 makes such declarations primi facie evidence of the liability of the declarant, whether printer or publisher, for the publication
of every portion of the matter appearing in the periodical mentioned therein.

Part IV provides the penalties for breach of the rules contained in Part II. Offences against the Press law are, shortly,—keeping or using a printing-press without having made a declaration; making any false declaration; and printing or publishing any book or paper without disclosing the name of the printer or publisher, and the place of publication (see Appx.).

In the year 1870, it will be remembered, the offence of sedition was added to the Penal Code (see Ch. i). In 1876, however, another preventive measure was introduced, and this time with a view to establish a better control over the Stage. This was the 'Dramatic Performances Act' (XIX of 1876), intended to prevent performances of a seditious or scandalous nature.

The necessity for legislation of this character was explained by the Hon'ble Mr. Hobhouse, when introducing the Bill on the 14th March, as follows:—"The subject of stage plays," he said, "is one on which our law stands in need of amendment. If, indeed, a play is of a defamatory, an obscene, or a seditious character, those who exhibit it may be punished for the offence of defamation, obscenity, or sedition. But the Government have been advised that they have no power to prevent the performance of any such play, unless, indeed, in the very rare instances in which it could be said that it was so certain to lead to a breach of the peace as to constitute the actors and audience an unlawful assembly.'"

"This imperfection of our law," he added, "has been brought pointedly under our attention by some cases which have recently happened. In the course of last year there was composed a work in a dramatic form, called the 'Chá-ka-Darpan,' which I am told means the Mirror of Tea. I do not know who was the author, or what his motives were, but the work itself was as gross a calumny as it is possible to conceive. The object was to exhibit as monsters of iniquity the tea planters and those who are engaged in promoting emigration to the tea districts,—bodies of men as well conducted as any in the empire. These gentlemen, who are carrying on their business to the benefit of everybody concerned, and perhaps
with a greater proportion of benefit to the labourers they employ
than to any body else, have what is called a mirror held up

to them in which the gratification of vile passions, cruelty,

avarice, and lust is represented as their ordinary occupation.
I do not know that this play was ever acted, but it is written,

and in all respects adapted for the stage, and it might, for any

power of prevention the Government have, be acted at any

moment.''

"It was," he continued, "on account of the defect in

the law that His Excellency the Viceroy thought it right to
issue an Ordinance giving power to the Government of Bengal
to prohibit objectionable performances of this kind. And it

is a Bill on the model of that Ordinance which I am now asking

leave to introduce."

"Now in all times and countries," he went on to add, "the
drama has been found to be one of the strongest stimulants
that can be applied to the passions of men. And in times of

excitement no surer mode has been found of directing public

feeling against an individual, a class, or a Government than to
bring them on the stage in an odious light. It is doubtless for
these reasons that the laws of civilised countries give to their

Governments great controlling power over the stage. I will

state briefly what is the law of England. By that law it is not
lawful for any person to have or to keep any house or other
place of public resort for the public performance of stage
plays without the authority either of Royal Letters Patent or
of the Lord Chamberlain's license, or of a license given by
Justices of the Peace. Then there are rules requiring licensees
to give bonds for good conduct, and there are powers given to
the Lord Chamberlain and to the Justices to suspend licenses
and to shut up theatres. The most stringent rule of all is the
one which gives to the Lord Chamberlain complete control
over the stage. First, it is required that a copy of every new
play or alteration in a play shall, seven days before it is acted,
be sent to the Lord Chamberlain, who has absolute discretion
to allow or disallow its performance. Secondly, the Lord
Chamberlain is empowered to forbid the acting of any play,
even though already put upon the stage, 'whenever he shall
be of opinion that it is fitting for the preservation of good
manner, decorum, or the peace, public so to do.' We shall not propose to take such large powers as those which are vested in the Lord Chamberlain, but shall propose to take what will probably be quite effective in this country.'"

On a subsequent occasion the Hon'ble Member further explained the terms of the Bill as follows:—"What was proposed was that whenever the Government was of opinion that any dramatic performance was scandalous or defamatory, or likely to excite feelings of disaffection to the Government, or likely to deprave and corrupt the persons present at the performance, or to be in other ways prejudicial to the interests of the public, the Government might prohibit the performance. The Bill provided that a copy of the order might be served on the persons about to take part in the performance, or on the owner or occupier of the house or place in which it was to take place, and then penalties were imposed for disobedience to the order, and power was given to the Magistrate to seize the scenery, dresses and other articles which were used in the play which was prohibited. The powers conferred by section 10 were nearly the same as those which the Lord Chamberlain had in England. It was proposed that after notification in the particular place no dramatic performance should take place except in some licensed house; that those about to perform should be bound to give prior notice to the Government, who might then prohibit the performance if they thought fit.'"

When the Bill was finally considered, on the 6th December, 1876, the Hon'ble Member, in answer to some of the objections raised, said:—"There were many cases in which prevention was worth all the punishment in the world. That was particularly true in times of excitement, and in cases where the play was of a seditious character. If the performance took place a few times, the mischief was done, and it was a poor satisfaction to punish the offenders afterwards.'"

The Bill was passed as Act XIX of 1876, and is now in force (see Appx.).
CHAPTER XVII.

LATER PREVENTIVE MEASURES.

In the year 1878 the Indian Press again engaged the attention of the Government, and this time in a somewhat more prominent manner. The circumstances which led to the passing of what is known as the Vernacular Press Act are very fully set forth in the speech of the Hon'ble Member who introduced the Bill.

Sir Alexander Arbuthnot in moving its introduction explained the "considerations which influenced the Government in bringing forward this measure" as follows:—"The object of the Bill," he said, "is to place the native newspapers, or, to speak more correctly, the newspapers which are published in the vernacular languages of India, under better control, and to furnish the Government with more effective means than are provided by the existing law, of repressing seditious writings which are calculated to produce disaffection towards the Government in the minds of the ignorant and unenlightened masses. Another object is to check a system of extortion to which some of our native feudatories, and many of our native employés are exposed by the rapacity of unscrupulous native editors."

"This measure," he added, "has not been resolved on without much reluctance, for, directed as it is against a particular class, it involves a description of legislation which is opposed to the traditions and repugnant to the principles upon which the administration of British India has been conducted during a long series of years, and which would not have been resorted to except for very cogent reasons. It is only because, in the opinion of the Government of India, the evil against which this measure is directed is one of great and increasing magnitude; because it is calculated to lower the prestige of the Government, and to weaken its hold on the esteem and affections of its subjects; and because the existing law does not furnish any adequate means of dealing with it, that the Govern-
ment have decided to have recourse to special measures for its repression.''

"When the Press of India," he continued, "was liberated by the Government of Sir Charles Metcalfe from the restrictions which had previously been imposed upon it, and when it was placed in a position of freedom from State interference, which, with the exception of one brief interval of a single year, it has occupied since 1835, the native Press was a thing of comparatively little importance. In one of the minutes written at that time Mr. Macaulay states that the papers printed in the languages of India were few, and exercised very little influence over the native mind. The entire circulation of native newspapers throughout the country did not then exceed three hundred copies. Since those days a great change has taken place. Newspapers printed in the vernacular languages are published in most of the large towns in Bengal, Bombay, the North-Western Provinces and the Punjab, are read and studied by considerable numbers of people, and exert an influence over the popular mind which it is difficult to exaggerate. It is not my wish to include the whole of the native press in the charge which I am about to prefer against individual members of it. I know that that Press includes many respectable papers which are doing useful work, and which are entitled to every encouragement that the State can afford to them. It is not against this class of newspapers that the present measure is directed. But there is a large and increasing class of native newspapers which would seem to exist only for the sake of spreading seditious principles, of bringing the Government and its European officers into contempt, and of exciting antagonism between the governing race and the people of the country. This description of writing is not of very recent growth, but there has been a marked increase in it of late, and especially during the last three or four years. During the past twelve months it has been worse than ever, the writers gaining in boldness as they find that their writings are allowed to pass unpunished. Their principal topics are the injustice and tyranny of the British Government, its utter want of consideration towards its native subjects, and the insolence and pride of Englishmen in India, both official and non-official. There is
no crime, however heinous, and no meanness however vile, which according to these writers is not habitually practised by their English rulers."

The Hon'ble Member then proceeded to illustrate his argument with examples, and continued:—"The extracts which I have read, are specimens, extracted haphazard from a great number, of the manner in which the British Government and the English race are habitually aspersed and held up to the contempt and hatred of the people of India. Of late, however, a further step has been taken, and a beginning has been made in the direction of inciting the people to upset the British Ráj by denunciations, sometimes open and sometimes covert, of the alleged weakness and timidity of the English, and their inability to maintain their present position in India."

"It cannot be said," he went on to add, "that the state of things which has arisen has taken the Government altogether by surprise. That such a state of things would be one of the results of granting complete freedom to the Press in this country was predicted many years ago by men whose honoured names have long been household words in Anglo-Indian history. I doubt not that many of the members of this Council are acquainted with the remarkable minute which Sir Thomas Munro, one of the ablest of the many able statesmen who have aided in consolidating British rule in India, recorded on this subject in 1822. I well remember the interest with which this minute was reperused at the time of the Mutiny, and how impossible it was not to be struck by the almost prophetic character of the utterances which it contained. I do not rest my argument on the policy of restriction advocated by Sir Thomas Munro; I rest it upon the opinions of men who were parties to the policy of liberation which was carried out in 1835, and who, it is evident from their writings, did not overlook the possibility that such a state of things might arise as that with which the Government of India are now called upon to deal. Both Sir Charles Metcalfe and Mr. Macaulay, the one the originator and the other the draughtsman and eloquent defender of the Act of 1835, while arguing strongly in favour of a free Press, advert to the possibility of circumstances
arising which might compel the Government of the day to resort again to legislation of a restrictive character.'"

"The existing law," he added, "is inadequate for the suppression of the evil which this Bill is intended to remedy. The existing law is contained in an Act of 1867, which provides for the registration of printing presses and newspapers, and in a section of the Indian Penal Code which makes seditious words or writings punishable. Now this section of the Penal Code really furnishes a very inadequate means of dealing with such writings as those with which this Bill is intended to deal. In the first place, the explanation which has been added to the section renders the penalties inapplicable to any case in which there is not an obvious intention on the part of the writer to counsel resistance to, or subversion of the lawful authority of the Government. Therefore to much of the writing to which I have drawn the attention of the Council this law would not apply, for there is a great deal of it, which, though very mischievous in its effects, cannot be said to come under the category of counselling resistance to lawful authority or subversion of that authority. It will perhaps be said that if so, the proper course is to amend the Penal Code, and to provide therein suitable penalties for those who, without advising rebellion, inflame the minds of the people against their rulers. I am sure that the Council will not for a moment suppose that this very natural question has not been deliberately considered by the Government, but after the most careful reflection, and consultation with our Law Officers and with the Local Governments, the conclusion which we have arrived at is that no such amendment as could be made in a Penal Code, which is necessarily of general application, would adequately and properly meet the peculiar requirements of the present case."

It will be remembered that previous to the legislation of 1898 the Government were confronted with the same difficulty (see Ch. vii). On that occasion the alternative of amending the Penal Code was adopted in preference to a reversion to preventive legislation.

"It would of course be possible," the Hon'ble Member continued, "to introduce into the Penal Code a provision rendering penal all writings calculated to inflame the minds of
the people against their rulers, irrespective of the intention of the writers, but such a provision must be of general application, and, like the rest of the Penal Code, it must be essentially punitive. The principle of the Bill which I desire to lay before the Council is a different principle. The provisions of the Bill will apply only to one class of writers, namely, the writers in the vernacular Press, and the measure is not so much a measure of penal, as it is a measure of preventive legislation. The machinery by which it will work is a machinery of checks, rather than of penalties. Its object is to check mischievous writings of the nature of those to which I have alluded, not by penal sentences, but by requiring the offenders, or those in regard to whom it may be apprehended that they are likely to offend, to engage and deposit security for their good behaviour, or by merely warning them; and it is only in the event of the engagements being broken, or the warnings being disregarded, that the penalties which the Bill provides will be put in force. What is needed is a procedure more summary, and framed rather with a view to prevention than with a view to punishment."

In conclusion he said:—"In restricting the operation of this measure to the vernacular Press, and in exempting the English Press from its operation, the Government of India are taking a course which involves a departure from the policy by which it is usually guided, and indeed from the policy which has been followed in all previous legislation regarding the Press in India. I will not pretend to say that this part of the question is perfectly plain and simple, or that in advising the course which we have determined on after very careful consideration, we are not laying ourselves open, in some degree at all events, to the charge of class legislation, and of making what by many will be regarded as an invidious distinction. It would have been very easy, but I do not think that it would have been just, to make the application of the Bill general, and for the sake of not laying ourselves open to the charge of creating invidious distinctions to include the English Press in its operation. My answer is that nearly forty-three years have elapsed since the passing of Sir Charles Metcalfe's Act, and nearly twenty-one years since the passing of the Press Council Act, and I think it would have been a difficult task to determine what persons should be regarded as being within the class of the writers who should be subject to the operation of the Bill. It is a question, therefore, which involves a number of circumstances which it is not easy to settle, and which involves the danger of invidious distinctions, and it would have been easier and more certain to make the whole Press the subject of a measure, but I think it would have been a mistake to have done so. In all these circumstances, I think that the course which we have determined is the best course to adopt, and I hope that it will be found to be a successful course."

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law of 1857; that throughout that period the English Press has been, on the whole, a loyal and, notwithstanding many imperfections, a valuable instrument and aid to the Government; while for many years past, and especially in recent years, a section of the vernacular Press has been chiefly remarkable for its disloyalty. Such publications as those to which I have alluded appeal to the ignorant and the unenlightened. They influence and pervert the minds of the young, and go far to counteract the benefits of the education which we are endeavouring to impart to them. They constitute, in fact, a mischievous and poisonous literature, embarrassing to the administration, subversive of authority, and in every way injurious to those to whom it is addressed. In framing this measure in its present form the Government of India has been influenced by a consideration of the facts with which it has to deal, and after carefully weighing those facts it has come to the conclusion that it would not be right to inflict upon the most important and the most valuable section of the Press a liability to checks and penalties which it has in no way merited."

"As Englishmen brought up in a free country and accustomed to the advantages of a free Press the members of the Government of India have no desire to place undue restrictions on the Press of India. In resolving on this measure, they are entirely influenced by their sense of the necessities of the case, and of the responsibility which devolves upon them for the maintenance of authority and order."

These are the main passages of a memorable speech which was delivered on a memorable occasion.

The Advocate-General of Bengal also supported the Bill in forcible terms, as follows:—"The privilege of writing and publishing with freedom is doubtless inestimable. So long as that privilege is exercised honestly and fairly, with a view to benefit society, and with reference to subjects of common and public interest, it will be cherished and maintained wherever free institutions exist and flourish. But the privilege itself is subject to this limitation, that it must not invade the undoubted rights of others. In the case of private individuals and classes, their character and reputation must be respected; and in the case of a Government, its constitution must not
be wantonly attacked for purposes of injury and mischief, nor its good name maliciously aspersed. I have in my hand translations of upwards of one hundred and fifty extracts from papers published in the vernacular languages which I have read carefully, and that reading has satisfied me that these publications contain matter under the following heads,—(1) Seditious libels, malicious and calumnious attacks on the Government, accusing it of robbery, oppression, and dishonesty, and imputing to it bad faith, injustice and partiality; (2) libels on Government officers; (3) contemptuous observations on the administration of justice, pointing to its alleged impurity and worthlessness; (4) libels on the character of Europeans, attributing to them falsehood, deceit, cruelty, and heartlessness; (5) libels on Christians and Christian Governments, and mischievous tendencies to excite race and religious antipathies; (6) suggestions and insinuations which their authors believe fall short of seditious libels by reason of the absence of positive declarations."

"In addition to these general characteristics," he continued, "I find that mis-statements, exaggerations, and allegorical tales intended to sketch real incidents but based purely on imagination, have been introduced to support or give colour to the varied, and I might almost add inexhaustible, calumnies to be met with. Having attentively considered these extracts, I am irresistibly led to the conclusion that it is intended by these publications to disseminate disaffection, to excite evil prejudices, to stir up discontent, and to produce mischief of the gravest order, in short, to render the Government, its officers, and Europeans generally, hateful to the people. These are evil purposes which should be repressed with a strong hand, and their contrivers restrained from all further attempts to administer their subtle poison to the lower orders of the people, to saturate their minds with evil thoughts, and to arouse their evil passions." This, it will be remembered, was the passage cited by Sir Griffith Evans in support of the Bill to amend the law of sedition in 1898 (see Ch. vii).

"The evils to which I have adverted," the Hon'ble Member continued, "are I fear too widespread to be checked or suppressed by prosecutions under the existing law, and,
even if it be assumed that prosecutions would be effective in repressing them, it must be admitted that much time would be lost in applying such remedy and realising its salutary results. As time is of the very essence of every remedy by prevention and restraint, I am entitled to assert that prosecutions for all practical purposes will be found unavailing. The Bill before us contains provisions which I think are well calculated to supply the desired remedy, and I maintain that the time has fairly arrived for action—further forbearance may be fraught with danger. It may be alleged that the provisions of the Bill are stringent, but I consider that the means to be used for the suppression and extinction of the evil courses to which the newspapers under notice have resorted should be as powerful and effective as if the Government were called upon to deal with a plague, a pestilence, or other grievous calamity. In the course of my professional career I have been a zealous and unflinching advocate of the freedom of the Press, and I have the satisfaction of believing that, in according my support to the present Bill, I am in no way departing from a firm adherence to the true principles which regulate that freedom. To protect and encourage journalism conducted with ordinary care and for honest purposes might be deemed a privilege. To curb by reasonable and necessary means the unbridled license of obnoxious and degraded publications, which seek to spread disaffection and dissatisfaction,—and which may be used by wicked and designing men to produce discontent amongst the poor and ignorant to their own detriment, and to denounce them fearlessly, should be considered by every right-thinking man and by every true citizen an imperative public duty.'

The Bill was likewise supported by the Hon'ble Mr. Evans who said:—"I should always view with great jealousy any restraint upon personal liberty and freedom of speech which did not appear to be necessary for the safety or well-being of the community, but I give my unqualified assent to this Bill, stringent as its provisions are, for I think it necessary under the existing state of things. No person can claim to have any right to follow the trade or calling of spreading disaffection, or extorting money. An unceasing stream of false and malicious-
charges is being daily poured out by the vernacular Press against the English Government and the English race. The poor and ignorant millions are told that all their misfortunes are due to England and the English, who cruelly and heartlessly oppress them, and the prospect of better days is held out to them if they could only be quit of their oppressors. Thus their minds are poisoned and their contentment destroyed, and they are left ready tools for plotters and conspirators. Believing that the evil is great and the necessity for its immediate abatement urgent, and that the remedy proposed is the right one, I have no hesitation in voting for the Bill."

Sir Ashley Eden, the Lieutenant-Governor of Bengal, in like manner bore testimony to the gravity of the evil complained of. "The evil," he said, "has long been felt by the Government of Bengal, and I believe by nearly all the other Local Governments. My predecessor, Sir G. Campbell, very strongly stated on several occasions his conviction that measures for controlling the vernacular Press were called for. What Government does object to is the sedition and gross disloyalty of some of the vernacular papers, and their attempts to sow the seeds of disaffection to the British rule in the minds of ignorant people. There have been laid before the Government extracts from the vernacular papers which establish the constant use of language of this description, and show that they habitually attack and misrepresent the Government under which they live in peace and prosperity, in terms intended to weaken the authority of Government, and with a reckless disregard of truth and fact which would not have been tolerated in any country in the world."

Sir John Strachey testified to the condition of two other provinces in similar terms. "Not long ago," he said, "I was Lieutenant-Governor of one of the great Provinces of India, and some years previously the Government of another Province was entrusted to me. The questions which are dealt with in this Bill have consequently been frequently brought home to me in a very practical shape. I have had to look on powerless at the mischief that has been going on, and have deplored the neglect with which it has been treated by the Government. I have known that this neglect has not been caused by
indifference, but by the natural disinclination, which happily all Englishmen feel, to do anything which shall have even the appearance of interfering with the liberty of the Press, and if I myself now thought that this Bill was really open to such a charge I should have been unable to give it my support. I deny that this measure will infringe that liberty. Liberty of the Press means liberty of discussion, liberty for the free expression of thought and opinion. But liberty does not mean unbridled license. It does not mean unlimited permission to let loose on the land a never-ending stream of abuse of all the institutions by aid of which society is held together; abuse of those things respect for which is indispensable for the preservation of the lives and property of every one; abuse of the Government, of the administration of justice, of the whole English race, and of all it does or desires to do."

"The honest journalist," he went on to add, "has nothing to fear from the present measure. He will be as free as he has ever been to give expression to his opinions, to discuss the action of the Government and its officers, to advocate those measures and doctrines of which he approves, and to censure those that he condemns. The limitations under which he may do this will in no respect differ from those that apply in England." The Hon'ble Member then cited the observations of Lord Fitzgerald on public journalism in Sullivan's case (see Ch. ii), and added:—"These are the principles by which the British Government desires to be guided in this country also."

His Excellency Lord Lytton, the President, summed up the case with consummate skill and judgment. He said:—

"I cannot but regret the necessity which, by some irony of fate, has imposed upon me the duty of undertaking legislation for the purpose of putting restrictions on a portion of the Press in India. By association, by temperament, by conviction, I should naturally find my place on the side of those to whom the free utterance of thought and opinion is an inherited instinct and a national birthright. I should have rejoiced had it fallen to my lot to be able to enlarge, rather than restrict, the liberty of the Press in India, for neither the existence, nor the freedom of the Press in this country is of native origin
or growth. It is an exotic which especially claims and needs from the hands that planted it in a foreign soil and clime, protecting shelter and fostering care. It is one of the many peculiarly British institutions which British rule has bestowed upon a population to whom it was previously unknown, in the belief that it will eventually prove beneficial to the people of India, by gradually developing in their character those qualities which have rendered it beneficial to our own countrymen. For this reason the British rulers of India have always, and rightly, regarded with exceptional tolerance the occasional misuse of an instrument confided to unpractised hands. But all the more is it incumbent on the Government of India to take due care that the gift for which it is responsible shall not become a curse, instead of a blessing, a stone instead of bread, to its recipients. Under a deep sense of this great responsibility I say distinctly, and without hesitation, that, in my deliberate and sincere conviction, the present measure is imperatively called for by that supreme law—the safety of the State."

"We have endeavoured," His Excellency continued, "to base our rule in India on justice, uprightness, progressive enlightenment, and good government, as these are understood in England; and it is at least a plausible postulate, which at first sight appears to be a sound one, that so long as these are the characteristics of our rule we need fear no disaffection on the part of the masses. It must, however, be remembered that the problem undertaken by the British rulers of India is the application of the most refined principles of European government, and some of the most artificial institutions of European society to a vast oriental population, in whose history, habits, and traditions they have had no previous existence. Such phrases as 'Liberty of the Press' and others, which in England have long been the mere catchwords of ideas common to the whole race, and deeply impressed upon its character by all the events of its history and all the most cherished recollections of its earlier life, are here in India, to the vast mass of our native subjects, the mysterious formulas of a foreign, and more or less uncongenial system of administration, which is scarcely, if at all, intelligible to the greater number of those for whose benefit it is maintained. It is a fact which, when I first came to India,
was strongly impressed on my attention by one of India's wisest and most thoughtful administrators,—it is a fact which there is no disguising, and it is also one which cannot be too constantly or too anxiously recognised, that, by enforcing these principles and establishing these institutions, we have placed and must permanently maintain ourselves at the head of a gradual but gigantic revolution; the greatest and most momentous, social, moral and religious, as well as political revolution which perhaps the world has ever witnessed."

"Now if the public interpreters and critics of our action were only European journalists capable of understanding and criticising it from a European point of view, in reference to the known principles of European policy, and in accordance with the commonly accepted rules of European reasoning, then I think we might rationally anticipate nothing but ultimate advantage to the country as well as to its Government, from the unrestricted expression of their opinion, however severely they might criticise, from time to time, this or that particular detail in the action of this or that particular administration. But this is not the case as regards those journals which are published in the vernacular languages. Written for the most part by persons very imperfectly educated, and altogether inexperienced; written, moreover, down to the level of the lowest intelligence, and with an undisguised appeal to the most disloyal sentiments and mischievous passions; these journals are read only or chiefly by persons still more ignorant, still more uneducated, still more inexperienced than the writers of them; persons wholly unable to judge for themselves, and entirely dependent for their interpretation of our action upon those self-constituted and incompetent teachers. Not content with misrepresenting the Government and maligning the character of the ruling race in every possible way and on every possible occasion, those mischievous scribblers have of late been preaching open sedition; and, as shown by some of the passages which have to-day been quoted from their publications, they have begun to inculcate combination on the part of the native subjects of the Empress of India for the avowed purpose of putting an end to the British Ráj. This is no exaggeration. I have here under my hand a mass of such
poisonous matter, extracted from the various organs of the vernacular Press.''

After citing a variety of examples His Excellency continued:—"I think the Council must have been satisfied by the specimens which have now been submitted to its notice that the vernacular Press is at present adept in the treasonable art of instigating mischievous action, both by the expression of opinion and the statement of fact. I am confident that there is no Government in the world which would tolerate, no Government which could afford to tolerate, none which would be justified in tolerating the unrestricted utterance of such language as is now addressed by the vernacular journals of this country to the ignorance, the prejudices and the passions of a subject race. I maintain that to prohibit the mischievous utterances of such journals as those from which I have quoted is no more an interference with the liberty of the Press, than to prohibit the promiscuous sale of deadly poisons is an interference with the freedom of trade.''

"If," he went on to add, "even in the most advanced self-governing societies, it be still the acknowledged duty of the State to provide by law for the repression of publications calculated or designed to pervert the mind and poison the sentiments of those whose characters are yet unformed and whose judgment is still immature, then I assert with confidence that there is no Government in the world on which that duty is more incumbent than the Government of India, and that the measure which in our discharge of that duty we have laid before this Council is an eminently just as well as an urgently necessary measure. For I maintain without fear of contradiction that the young people in England for whose mental and moral protection Lord Campbell's Act was passed are infinitely less ignorant, less easily influenced, infinitely better able to govern their own passions and guide their own conduct, than the helpless masses of our native population, on whose behalf you are now asked to pass this Bill. It may, and by some persons it probably will be regarded as an objection to this measure that it draws a distinction, and apparently an invidious distinction, between the native and the English Press. The distinction is not between Englishmen and natives
or between the English Press and the native Press. It is not against native papers as such that our legislation is directed. We confine our measures of restriction purely to the papers written in vernacular languages, and we do so because, as I have said before, they are addressed solely to an ignorant, excitable, helpless class—a class whose members have no other means of information, no other guide as to the action and motives of their rulers."

In conclusion, His Excellency said:—"We must, of course, expect that by those people whose minds are governed by phrases, and who look upon the liberty of the Press as a fetish to be worshipped rather than as a privilege to be worthily earned and rationally enjoyed, this measure will be received with dislike, and the authors of it assailed with obloquy. It is my hope, however, that the gradual spread of education and enlightenment in India may insure and expedite the arrival of a time when the restrictions we are now imposing can with safety be removed. I am unwilling to hamper the free influence of honest thought, but I recognise in the present circumstances of this country and the present condition of the populations committed to our charge a clear and obvious duty to check the propagation of sedition and prevent ignorant, foolish, and irresponsible persons from recklessly destroying the noble edifice which still generously shelters even its vilest detractors. That edifice has been slowly reared by the genius of British statesmanship out of the achievements of British valour. It was founded by English enterprise; it has been cemented by English blood; it is adorned with the brightest memorials of English character. The safe preservation of this great Imperial heirloom is the first and highest duty of those to whose charge it is entrusted—a duty owed to the memory of our fathers as well as to the interests of our children, to the honour of our Sovereign, no less than to the welfare of all her subjects in India."

The Bill was passed, and became Act IX of 1878. This Act, which is now chiefly of historical interest, may be described as a measure designed for the prevention of sedition and extortion by the publishers of periodical literature in the vernacular languages, by means of a system of personal security.
CHAPTER XVIII.

LATER PREVENTIVE MEASURES—contd.

The Vernacular Press Act of 1878 was passed on the 14th of March, and on the 5th September following a Bill was introduced to amend it. This, as was explained by the Mover, was in consequence of the doubts expressed by the Secretary of State as to the efficacy of one of its provisions.

On the 16th October the opportunity was taken by Sir A. Arbuthnot of stating to the Council how the Act had operated during the short period that had elapsed since its enactment. He said:—"When I obtained leave to introduce this Bill I explained the circumstances under which the Bill had been framed and the particular point on which the Secretary of State had desired that the Act passed in March last should be amended, and I said that I would take the opportunity to offer a few remarks with reference to the working of the Act which it is now proposed to amend, and also with reference to the discussions which have taken place regarding that measure since it was passed. Seven months have now elapsed since the Vernacular Press Act became law, and there has been no necessity for bringing the Act into operation in any single instance. The Act in this respect has so far justified—and indeed has more than justified—the hope which I ventured to express when it was passed, that the mere existence of this law would, in a great measure, suffice to repress the mischief against which it is aimed, and that the actual enforcement of its provisions would be a thing of very rare occurrence. As a matter of fact seditious and disloyal writing—writing calculated to inflame the minds of the masses and to bring the Government into contempt—has been entirely stopped."

"At the same time," he added, "there has been no interference with the legitimate expression of opinion. The liberty of the Press has not been in any way restricted. It is constantly alleged that the vernacular Press has been gagged, that the native Press has been silenced. I am bound to say that in
the case of persons at a distance—in the case of English statesmen who have no opportunity of knowing what is actually going on, on the spot—such impressions are by no means unreasonable. But to those who are acquainted with the actual state of things—to those who have the opportunity of seeing the vernacular papers, or the extracts from them which are periodically printed—it must by this time be apparent that the result which might have been apprehended has not occurred. I need only allude to the comments which have been constantly made in the vernacular newspapers on the Press Act, on the License-tax, and on the Arms Act, to show that on all these matters there is still the freest and the most unreserved criticism and comment. This, so far as we can form a judgment from the history of the past seven months, has been the result: and I cannot but think that it is a result which must be regarded as very satisfactory. The Act, which in many quarters has been so vigorously condemned, has entirely succeeded in its object of checking seditious writing, and has in no way restricted or diminished the legitimate freedom of the Press.'

"The Secretary of State," he went on to add, "emphatically approved of it. In the sixth paragraph of the despatch, Lord Cranbrook writes that he is bound to say that 'a strong case appears to be established for the further control of the class of newspapers at which the Act is aimed,' and after noticing the arguments which were adduced by some of the speakers in this Council, His Lordship proceeds to add an argument of his own, which is to the effect that, 'remembering how few opportunities the experience of these writers has afforded them of understanding the limits of justifiable criticism, he is inclined to think that a system of pecuniary penalties leviable under bonds, would be more applicable to their case than criminal prosecutions for an offence which may conceivably entail a punishment so heavy as transportation for life.' It would be idle to deny that the Vernacular Press Act has been received with disapproval by many persons whose opinions are entitled to the respectful consideration of this Council. Such a result was only to be expected. The measure is one which was not resolved on by the Government without great reluctance and regret, and it was not probable that a
measure of this nature would be received with acclamation. Notwithstanding these expressions of disapproval it is not proposed to repeal the Act. The Government of India have not in any way receded from the opinion that the Act was a political necessity.

In conclusion he said:—"The Government consider the working of the Act during the few months that it has been on the Statute-book to have been even more satisfactory than the most sanguine expectations could have foreseen. So far it has effectually repressed the evil against which it was aimed, while it has in no way interfered with or restricted the legitimate freedom of the Press."

His Excellency Lord Lytton, the President, addressed the Council as follows:—"If I do not give a silent vote on this occasion, it is only because I am anxious that my silence shall not be misinterpreted. Although the thoughtful speech of my hon'ble colleague naturally and properly turned chiefly upon the Vernacular Press Act, yet the Council is aware that neither the Vernacular Press Act, nor the principle, nor the expediency of that Act are here under discussion. My hon'ble colleague has reminded us that the Vernacular Press Act has now for some time been in force, with the approval of the Secretary of State and the ratification of the British Parliament, and no action can be taken in any part of India without the carefully considered sanction of the Supreme Government. Up to the present time no action has been necessary under the Act, and I trust that no such action will be necessary. But I do not hesitate to say that the existence of the law has been eminently beneficial in its effects, and productive of a marked improvement in the general tone and character of Vernacular journalism. Many evidences of this might, doubtless, be added to those which have been cited by my hon'ble colleague; but I think the Council will have been satisfied by the statement we have just heard from him that the effects of the Vernacular Press Law are vigilantly watched and considered by the Department over which he presides; and that this law, whilst effectually restraining seditious and profligate publications, has in no wise hindered the freest and fullest expression of antagonistic opinion on the policy and conduct of the
Executive or the Legislature in the fair field of public criticism."

"The Council is aware," His Excellency continued, "that the object of the present Press Law is preventive, not punitive; and speaking for myself I can truly affirm that my own object, both in connection with that law and generally as regards all the relations between the Government and the Press, has been, not to check, but to promote the growth, not to injure, but to improve the position, of the Vernacular Press. I say no more. The Vernacular Press has received from the Government which passed the existing Press Law not merely toleration, but sympathy, not merely good wishes, but good offices. I have always felt that our duty toward that portion of the Press was of a two-fold character. We were bound, indeed, to protect the community from the abuse of freedom on the part of certain Vernacular journals; but we were also bound in the interests of the community, as well as of the Press itself, simultaneously to do all in our power to encourage and assist the Vernacular Press in the cultivation of that freedom which the present law denies to no honest journalist."

"Now I think there is no use," he added, "in ignoring the plain fact that the existence of a free Press in a country whose Government is not based on free institutions, or carried on upon representative principles, is a great political anomaly, and that the relations between such a Government and such a Press must necessarily be somewhat peculiar. A Press exists for the circulation of facts, as well as of opinions about them. If the facts are untrue, the opinions must be unsound. Adequate political information is as necessary for the sustenance of a healthy Press as adequate food for that of a healthy human being. But in this country the only source of authentic political information is the Government itself, whose political acts are the legitimate subject of that public criticism which it is the function of the Press to supply. If you put aside the Government; beyond, and apart, and independently of the Government, where is such information to be found? In the rumours of the streets, in the gossip of the bâzârs and the mess-rooms, in the interior consciousness of amateur political
prophets, or the occasional indiscretion of some official clerk. And therefore I think that in presence of a Press which is, so to speak, constrained to forage for its sustenance on such a barren moor, it is the duty of the Government, so far as it is possible to do so, to keep the Press fully and impartially furnished with accurate current information in reference to such measures, or intentions on the part of Government, as are susceptible of immediate publication, without injury to the interests for which the Government is responsible."

In conclusion he said:—"The object of the present Bill is to remove from the Vernacular Press Act a clause which was inserted into that Act, not without certain hesitation at the time, purely as a mitigating, not as an intensifying clause. The Secretary of State, whilst sanctioning the whole Bill inclusive of this clause, expressed an opinion that the option thus given to impecunious editors to place their journals under temporary supervision as an alternative to penalties which might otherwise in such cases put an end altogether to the precarious existence of the offending journal, was a provision liable to misuse, and which might in practice introduce a principle nowhere else recognised in the Act, and indeed generally inconsistent with the spirit of it. The Secretary of State, therefore, requested the Government of India not to act upon this clause. This amending Act, however, leaves of course wholly unaltered the character and principle of the original Act."

The Bill was then passed as Act XVI of 1878. Act IX of 1878, thus amended, had been in force for a little over three years when, on the 7th December, 1881, a Bill was introduced to repeal it. The reasons for this measure were briefly stated by the Mover of the Bill to be that; "in the opinion of the present Government," circumstances no longer justified the existence of the Act.

On a subsequent occasion, the 19th of January 1882, the reasons were more fully explained by the Hon'ble Member in charge, and by Sir W. Hunter who warmly supported the repeal. In referring to the circumstances which led to the passing of Act IX of 1878, Sir W. Hunter said:—"In that
year the Government of India deemed it needful in the public interest, to obtain from the Legislature special powers for repressing seditious and threatening writings in the Vernacular Press. He confessed that after perusing the published evidence, he was one of those who deplored that such powers should have been deemed necessary. But for this very reason he thought that he, and others who like himself regretted that repressive powers were then found needful, should now acknowledge the forbearance with which those powers had been used. There were no returns before the Council to show how far the Vernacular Press Act of 1878 had been resorted to in the several Presidencies and Provinces. But after inquiry in the proper quarter he believed he was correct in saying that in only one instance had the repressive clauses of that Act been made use of against any newspaper. Now the Council must remember that not fewer than 230 journals were regularly published in the native languages, and that any one of these newspapers might, by the exercise of the powers granted to the Executive in 1878, have been brought under the operation of the Act. The fact that in only one case had even a warning been issued to a native newspaper under the Act sufficed to show the extreme reluctance with which the Executive had availed itself of the powers vested in it during the past four years."

"As regards seditious or threatening writings in the Vernacular Press published within India," he continued, "the repealing Bill pursued a different course. It made no special provision for such writings, and so left them to be dealt with by the ordinary law. He did not think it could be alleged that the Bill made undue concessions, or that it tampered with the legal safeguards for private reputations or for the public safety. At the same time he believed that it would substantially improve the position of the Vernacular Press. It practically intimated that the profession of the native journalist was no longer regarded with suspicion by the Government. It set free his implements of trade from the menace of confiscation under a special law. It told him that he was henceforth trusted to carry on his industry, subject only to the same judicial procedure and to the same laws as those under which his fellow-citizens followed their respective callings."
"There was, however," he added, "another aspect of the case. For the wider liberty now secured to the native journalist carried with it a heavier responsibility to use that liberty aright. He believed that the great proportion of native journalists throughout India would prove themselves worthy of unrestricted freedom. But he was compelled to add that certain members of their profession had still much to learn in regard to what was due, alike to the just susceptibilities of those on whom they commented, and to the dignity of their own calling. He would be a false friend to the native Press if he pretended that it had yet attained to that sobriety of judgment and temperance in tone, or to those high standards of public responsibility which its well-wishers hoped to see it reach."

"The native Press," he said in conclusion, "had an opportunity now which it never had before. For after all it was the chief organ of representation in India, and never before was so serious a desire evinced by the Government to give representative institutions a fair trial. The Indian Press was a Parliament always in session, and to which every native was eligible who had anything to say that was worthy of being heard. The Vernacular journalists should realise two things. If they now used their liberty aright they would strengthen the hands of those who wished to foster the popular element in the administration. But if they abused their liberty, they would furnish a most powerful argument for postponing the further development of representative institutions in India."

The Bill was received with unanimous assent. One incident alone occurred which could have impaired the generous optimism of the Hon'ble Member. The 'amari aliquid' was contained in the concluding remark of the Mover of the Bill that "should the Government hereafter find it necessary to take stronger measures than were contained in the provisions of the Penal Code, he might safely say that this Government, and he hoped any future Government, would follow the example of Lord Canning on an emergency, and take effective measures to put a stop to any writings which were likely to endanger the public safety."

His Excellency Lord Ripon, the President of the Council, in bringing the proceeding to a close made no allusion of any
sort to the circumstances which led to the passing of the Act of 1878, or to the reasons which induced its repeal. He merely said that "he did not wish to detain the Council by any observations of his own, nor did he think that he was in any way called upon to review the reasons or motives for which the Act was originally introduced. All he desired to say was that it would always be a great satisfaction to him that it should have been during the time that he held the office of Viceroy that the Act had been removed from the Indian Statute-book."

The Bill was then passed, and the Vernacular Press Act ceased to exist.

How far the sanguine prognostications of Sir W. Hunter were realised may be ascertained from the speeches delivered in Council by the Lieutenant-Governor of Bengal, Sir A. MacKenzie, and by Sir G. Evans in 1898, at the time when the law of sedition was amended. These have been fully discussed in a previous chapter which deals with the subject (see Ch. vii), and it is unnecessary to cite them again. The gist of their views, however, is summed up in two short and significant passages. The Lieutenant-Governor in the course of his speech on that occasion said:—"The necessity for the proposed legislation is unquestionable. Ever since the repeal of the Vernacular Press Act, the native Press has been year by year growing more reckless in its mode of writing about the Government, Government officers, and Government measures."
The unofficial Member, who had had the unique experience of witnessing the passing of both enactments and of giving his assent to both measures, said, in the course of a long and elaborate argument:—"The Vernacular Press Act was introduced to check license while leaving liberty. It worked well and without hardship, but was repealed in 1882. Since then the mischief has spread rapidly."

However this may be, there is no disguising the fact that in 1898 the Government of India were confronted with precisely the same situation as they had been in 1878. The necessity for legislation, with its two alternative courses, again presented itself. The one was to enact a Press Act; the other to amend the law of sedition. In 1878 the Legislature selected the former course, while in 1898 they preferred to adopt the latter.
The gravity of the position was frankly admitted by the Law Member when introducing his Bill to amend the Penal Code. "Recent events in India," he said, "have called prominent attention to the law relating to seditious utterances and writings. We have had anxiously to consider the state of the law regarding these matters, and to decide whether, and in what respects, it required amendment. Two different lines of action were open to us. The first was to re-enact a Press Law similar to the Vernacular Press Act of 1878. The second was to amend the general law relating to sedition and cognate offences, so as to make it efficient for its purpose. We have come to the conclusion that the second course is the right one for us to take."

The circumstances attending the passing of Act IV of 1898 have already been fully discussed in dealing with penal measures (see Ch. vii). There was, however, another measure, enacted simultaneously by Act V of 1898, of a preventive character, which it is necessary to mention here. This was section 108 of the Criminal Procedure Code (Act V of 1898). The new provision inserted in the Code was designed to prevent the dissemination of seditious matter, either orally or in writing, by means of a system of personal security.

In explaining the purport and object of the section the Law Member said:—"Section 109 of that Code provides that in certain cases people who misbehave themselves may be bound over and required to find sureties to be of good behaviour for a term not exceeding twelve months. We propose to apply a similar procedure to the case of people who either orally or in writing disseminate or attempt to disseminate obscene, seditious, or defamatory matter. A man who disseminates, that is to say, who sows broadcast or scatters abroad such matter, is obviously a dangerous public nuisance. It is immaterial whether he chooses as his means of dissemination an oral address, or a book, or a pamphlet, or a newspaper. We are bound to check such obnoxious conduct. But as a rule, the persons who are guilty of it are small and insignificant individuals. They may do enormous mischief among uneducated, foolish, and ignorant people, but in themselves they are deserving of very little notice. It is absurd to deal with
them by an elaborate State prosecution. We think that in most cases no prosecution at all will be required. It will be sufficient to give them an effective warning to discontinue their evil practices, and we think that the machinery we have devised will operate as an effective warning. The general power of revision possessed by the High Courts will secure that that machinery will not be used in any way oppressively; and we further propose that this new power should only be exercised by Presidency or District Magistrates, or specially empowered Magistrates of the first class.

The section underwent some modifications at the hands of the Select Committee. These are set out in their Report of the 16th February 1898. "We have provided," they said, "that the bond may be with or without sureties. We have cut out the reference to 'obscene matter,' as we think that it is sufficiently provided for by the ordinary law. We have explained the reference to 'seditious matter' by reference to the provisions of the proposed new section 124A of the Indian Penal Code, and we have included matter punishable under the proposed new section 153A of that Code. We have cut out the reference to 'defamatory matter' as that term is much too wide, and after consideration we have substituted the words 'any matter concerning a Judge which amounts to criminal intimidation or defamation under the Indian Penal Code.'"

When the Bill came before the Council on a subsequent date (11th March), a further amendment was introduced at the instance of Sir Griffith Evans. The last clause to the section was added, requiring the sanction of Government for proceedings in certain cases (see Appx.).

He explained its purport as follows:—"The effect roughly speaking is to require the same sanction of Government when proceedings are instituted under section 108 against the Press as is required in all cases of a prosecution under section 124A. The result will be that Magistrates will be able to take proceedings without Government sanction in all other cases. It may be asked why this distinction should be made between oral and written seditious. One reason is that oral incitements to a mob of ignorant people are apt to lead to immediate disturbances, and may require immediate action without waiting
LATER PREVENTIVE MEASURES.

for sanction. Another is that many seditious preachers are migratory, and must be caught at once if they are to be stopped, whereas newspaper editors and publishers have a fixed address and a fixed occupation, and can be found at any time. But the main reason is a different one. A portion of the Vernacular Press has been allowed to drift into a very lamentable condition for many years, and the curb which it is proposed to put upon them by this section will have to be applied with great discretion and judgment. It is, I think, essential that this power should be exercised by persons of the ripest judgment, living in a serener atmosphere, away from local feeling and excitement. In fact, I do not think that any one but the Government ought to use this power, with any prospect of the good results which are intended.'"

"As however," he added, "the statement has been reiterated to-day that there is no sedition, or no 'appreciable sedition,' in India, I desire to make it clear that it is from no sympathy with the view that I move this amendment. I will not waste time in the barren discussion of whether sedition is the right word to describe what does exist. But I have since the last meeting of the Council waded through a large mass of authorised translations of extracts from the Vernacular Press for the year 1897, and this is what I find." The Hon'ble Member then cited a copious selection of examples by way of illustration, and continued :—"This is the kind of thing which everybody can read for himself and call by any name he pleases, except honest criticism. This is the kind of thing they have been teaching the people while the famine officials have been spending their lives and health in endeavouring to cope with it, while the plague officials have been braving the plague, and making unparalleled exertions in order to save the lives of the people. The evil is great and is so deep-rooted that it will require wisdom as well as firmness to deal with it. Any indiscreet action would recoil on the Government. When it is found that the manufacture and sale of this kind of poison is prohibited, and no longer yields a safe livelihood, I hope the tone of malignant perversity may be abandoned, and something more like honest criticism may take its place. But it will take time."

It will be observed that the fundamental principle of this provision, like the Press Act of 1878, is personal security. This point of similarity between the two measures was not lost sight of by the opponents of the Bill. It was suggested, in fact, that the Law Member, while disavowing all intentions of resorting to Press legislation, was virtually reviving in the proposed clause the obnoxious Press Act of 1878. In answer to this two essential differences in the new section were pointed out. One was that it was "not aimed specifically at writers or editors," but at seditious people generally. The other was that it only applied to those who had actually offended against the law, in which respect it differed "wholly and absolutely from the old Press law."

Two cases under section 108 of the Criminal Procedure Code are reported to have come before the High Courts, the one in Calcutta, and the other in Bombay.

In the former case, Beni Bhushan Roy v. Emperor (34 Cal. 991), the petitioner was a local pleader, practising at Khulna. On the 15th July 1907 he had been directed by the District Magistrate, under section 108, to execute a bond for Rs. 5,000, with two sureties, to be of good behaviour for one year. The proceeding was in respect of a speech which he delivered at a public meeting in the town of Khulna. The language used by him on that occasion is indicated in the notice served on him in terms of the section. In it he "referred to the present year as being very auspicious for the inauguration of the meeting, as it was the fiftieth anniversary of the Indian Mutiny, when there was an attempt of the natives of India to regain their country, which was almost successful, and incited the members of the meeting to exert themselves to secure an independent Government." This was proved by a Police officer who had attended the meeting and taken notes of the speech.

The learned Judges held that there was "nothing in the charges, as stated in the notice, which would bring the case within section 108," and accordingly set aside "the order of the Magistrate.

The reasons stated were as follows:—"The exact words used by the petitioner cannot be ascertained, but the District Magistrate of Khulna has found that the words used are sub-
stantially the same as given in the notice. Looking, however, to the substance only, and not to the exact words, there is nothing which would bring the case within section 124A of the Indian Penal Code. and therefore section 108 of the Criminal Procedure Code.' 'The word which it is said was actually used is 'Swaraj.' The words 'independent government' were not used.' 'The word 'Swaraj,' if it was used, does not necessarily mean government of the country to the exclusion of the present Government but its ordinary acceptance is 'home rule' under the Government. The vernacular word used, if literally translated, would mean self-government, but self-government would not necessarily mean the exclusion of the present Government or independence.'

Justice Mitra's interpretation of the term 'Swaraj' must be compared with the more recent renderings of the same word by Sir A. White and Justice Miller (32 Mad., 3), and by Justice Chandavarkar (34 Bom., 394). These have been already discussed in a previous chapter (see Ch. xii).

In the latter case, Emperor v. Vaman (11 Bom. L. R., 743), the petitioner was a pleader of the District Court at Nasik. He moved the High Court to set aside an order of the District Magistrate of Nasik, made under section 108, directing him to execute a personal recognisance for Rs. 2,000, with two sureties of Rs. 1,000 each, to be of good behaviour for one year. The speeches in respect of which the proceeding was taken, had been delivered at public meetings on six different occasions, between the 5th February 1907 and the 5th September 1908. The information by the Police was filed before the District Magistrate on the 10th December following. The evidence of the speeches, as in the former case, was furnished by Police witnesses. The matter came on for hearing before Justice Chandavarkar, A. C. J., and Justice Heaton, on the 9th July 1909.

In commenting on the scope of this provision, the learned Judges said:—"The provisions of Chapter VIII of the Code are no doubt preventive in their scope and object, and are obviously aimed at persons who are a danger to the public by reason of the commission by them of certain offences. The test under section 108 is whether the person proceeded against
has been disseminating seditious matter, and whether there is any fear of a repetition of the offence. In each case that is a question of fact, which must be determined with reference to the antecedents of the person, and other surrounding circumstances."

As to the method of proving the speeches, their lordships said:—"It is complained that the sole evidence against the petitioner is that of Police reports, and these were not admissible. This objection was but faintly pressed, and is clearly untenable. The Police officers who wrote those reports have been examined as witnesses for the Crown. The reports, to the correctness of which they have sworn, were written soon after they had heard the speeches, with the help of notes taken down at the meetings where those speeches had been delivered. The reports were admissible for the purpose of refreshing the memory of the witnesses who had made them, and they have been admitted and used for that purpose only. But it was said that these reports should not be relied on because they are not verbatim. and the whole speeches are not before the Court. The witnesses, however, have given on oath the words or expressions charged as seditious, and the context in which they were uttered."

In conclusion their lordships said:—"If the words reported were uttered, it is impossible to make out in what innocent context they could have been used; and the petitioner has not ventured to say they were not uttered. His denial before the Magistrate has been that the reports are not full, and are inaccurate—a vague plea. We agree with the District Magistrate in the conclusions at which he has arrived, and uphold his order as one fully justified by the facts of the case. The rule is discharged."
CHAPTER XIX.

RECENT PREVENTIVE LEGISLATION.

It has been seen that the year 1898 was memorable for the introduction of two legislative measures directed against seditious action, the one of a penal, and the other of a preventive character. Act IV of 1898 was passed to amend the general law of sedition and cognate offences, while Act V introduced concurrently a special procedure founded on the principle of personal security. These remedies would seem to have been unavailing, for in 1907 the Government were compelled to resort to fresh legislation.

The next measure was directed against seditious oratory. On the 18th October, 1907, a Bill was introduced by Sir Harvey Adamson "to make better provision for the prevention of meetings likely to promote sedition, or to cause a disturbance of public tranquillity."

In explaining the measure he said:—"This Bill is founded on, and is a sequel to, the 'Regulation of Meetings Ordinance, 1907.' The Ordinance was enacted in May last on account of the acute disorder that prevailed in the Punjab and in Eastern Bengal. The limit of the life of an Ordinance is six months, and it will in natural course expire on the 10th November. We had hoped that the need for an enactment of this kind would cease before the Ordinance expired, but in this hope we have been disappointed. It has become painfully apparent that persistent attempts continue to be made to promote sedition, and to cause such ill-feeling as is calculated to disturb the public tranquillity, and that these attempts are not confined to the two provinces which came under the scope of the Ordinance. The Bill which I have introduced extends to the whole of British India, but its operation is restricted to such provinces as the Governor-General in Council may from time to time notify, and even within these provinces the operation is restricted to such areas as the Local Government may declare to be proclaimed areas. It is not necessary for me to reiterate the provisions of the Ordinance, which has already been before the public for
some months. Suffice it to say that the Ordinance gave power
to prohibit only such meetings as, on a scrutiny of the circum-
stances, a responsible officer believed to be likely to promote
sedition or disaffection, or to cause a disturbance of the public
tranquillity. And a chief object of the Ordinance was not to
prohibit public meetings, but to insure that our officers should
have admission to all public meetings, so that evidence might be
available if the proceedings were unlawful. These also are the
principles of the Bill."

"The Government of India," the Hon'ble Member added,
"have all along recognised that unrest is not solely the outcome
of seditious agitation, but has its basis on the natural aspirations
of educated Indians. To meet these aspirations and to associate
Indians more closely in the administration of the country we
formulated a large and generous scheme of reform which is now
before the public for criticism. With this earnest of our desire
to meet grievances we had hoped that the necessity for repres-
sion would cease. But as time rolled on it became more and
more apparent that such hopes were doomed to disappoint-
ment, that we had to deal with a section of irreconcilables, and
that it would be necessary to continue the principles of the
Ordinance as substantive law. The recognition of a necessity
for legislation involved also a recognition of the necessity that
there should be no hiatus, and that the substantive law should be
ready to come into operation when the Ordinance expired."

When the Bill was before the Council on the 1st November,
for final consideration, the Hon'ble Member, in answer to the
objection raised by the opponents of the measure that it was
wholly unnecessary, said:—"As regards the necessity, I almost
feel that I should apologise for wasting the time of the Council,
for the course of events during the past few months has surely
been sufficient, without words of mine, to prove to reasonable
men that a preventive measure is necessary. The party of ex-
treme agitation, at least so far as they consist of men of matured
understanding, may be comparatively few, but they exercise a
baneful influence. They are teaching the schoolboys and stu-
dents of the country that the Government as established in India
is a government of despots, whose only desire is to enrich them-
selves and to impoverish and depopulate the country. They are
teaching the younger generation, who in a few years will, in the natural course of affairs, take a large share in the administration of India, that that administration is one of chicanery and deceit. It is no light thing that by the action and avowed policy of this disloyal party, the masses of the common people, who are contented and law-abiding when left to their own devices, but whose natures contain elements that are easily stirred to violence, have been excited by plausible lies to plunge the country into disorder. Nor is it a light thing that determined attempts have been made to seduce the police and even the native army from its allegiance. The whole aim of the seditious party is to subvert the government of the country. But I will not content myself with general statements. I will take up the challenge, and will show that in every part of India where seditious oratory has been poured on the people during the past eight months, the immediate result has been grave lawlessness and disorder."

The Hon'ble Member then referred to a large number of instances of serious disturbances in various parts of India. "In Calcutta," he said, "there had been meetings almost daily since the beginning of August, and a stream of seditious oratory was poured forth on the town. The police were urged to forsake their duty, the people were incited to attack the police, especially the European police, and students were advised to arm themselves with lathis—advice which they accepted. The result was that disturbances took place on August 7th and 26th, September 9th, and October 2nd to 5th, which became so serious that the authorities were compelled to take extraordinary action under section 144 of the Criminal Procedure Code in restraint of public meetings." "In Western countries," he continued, "public sentiment is against the breakers of the law. If in a European country treason were preached at a public meeting many of those present would, from patriotic motives, come forward and denounce, and testify against the traitors. But what happens in India? It may be a moral certainty that sedition was preached, but no witnesses of respectability are to be found. That is the reason why in India we cannot rely on prosecutions, and are obliged to resort to preventive measures which entail inconvenience. The truth is that India under British government has enjoyed a
liberty—whether in the press or on the platform—that has been given to no other country in the world except England. That liberty has degenerated into a license which would not for a moment be tolerated in any country in the world—even in England. This abuse of freedom not only retards progress, but it threatens to engulf India in anarchy and riotousness, and no government on earth—unless it abnegated its functions—could dare to leave such an evil unchecked.”

So much for the necessity for preventive measures. The Hon’ble Member next dealt with the various clauses of the Bill in detail, pointing out the numerous safeguards against abuse of its provisions, and observed:—“Any contention, therefore that the Bill allows any dubious or questionable interference by the police falls completely to the ground. The effect of the operative clauses of the Bill may be summed up in three sentences,—(1) they require notice to be given of the intention to hold public meetings for the discussion of political topics in order that accurate reports of the proceedings may be obtained; (2) they enable officers only of the highest standing to prohibit seditious public meetings; (3) they completely exclude dubious action on the part of the police.”

“The Hon’ble Members who oppose the Bill,” he said in conclusion, “do not deny that there has been a considerable amount of seditious platform oratory. They cannot but admit that inflammatory oratory working on the minds of an ignorant and excitable people must be a grave source of danger. Their criticism is rather destructive than constructive, but I gather that rather than risk any interference with liberty they would let matters drift, and let sedition run its course, in the hope that things will eventually right themselves. I may point out that this was the policy followed for many years in respect of the native Press. In Bengal for over thirty years sedition in the Press was neither punished nor prevented. During the whole of this time the dissemination of sedition in the Press never ceased. Did the forbearance of Government lead to any good result? On the contrary the native Press went from bad to worse, until now, when the evil that it does can be ignored no longer, it seems that it is almost impossible by the strictest enforcement of the criminal law to stem a tide of sedi-
tion, which by inaction has been allowed to increase to enormous proportions. Can it be doubted that the same result will follow in the case of seditious platform oratory, if we do not take timely measures to check it?'

Sir Edward Baker, in supporting the Bill, said:—'We have been told to-day with characteristic force and eloquence that there is little or no sedition in India, and that those persons whose acts have led to the present legislation are a class insignificant both in numbers and influence. A similar argument has I think been used in a part of the Press, but, so far as I have observed, it only acquired prominence after it became known that legislation was in contemplation. It is a matter of common knowledge that there is a section of the Press, published largely but not exclusively in Bengal, which has openly endeavoured to excite hatred of the Government, and advocated its subversion,—which has sought to make the administration impossible, and has denounced all Indian servants of the State as traitors to their country. During the last two or three years, perhaps even during the last few months, these organs have increased in numbers, in circulation, and in the virulence and audacity of their attacks on the established order. If those by whom these journals are supported are really so insignificant and negligible as is represented, how is it that the latter are able to appeal to so large and expanding a circle of readers? Sedition in the Press can be reached by the ordinary law of the land. But that is only one weapon in the armoury of disorder. Not less dangerous, but more difficult to touch, is the seditious harangue, delivered often by men who are skilled in the arts of the demagogue, not for the legitimate ventilation of any real or fancied grievance, but to work upon the immature, ill-informed minds of their hearers, to instil into them feelings of hatred and hostility towards the State, and to incite them to the open use of force and violence for its disruption. Are we to believe that these addresses always fall on deaf, unwilling ears? I wish that I could think so. But I fear that a sufficient answer is to be found in the rioting and disorder which have only too often followed in their train, in the grotesque yet mischievous organisations known as the national volunteers, in the forcible interference with the freedom of purchase and sale-
of foreign goods, and in the constant resort to social ostracism of those who adhere to a different way of thinking."

His Excellency Lord Minto, the President, in closing the proceeding said:—"I am afraid my Hon'ble colleagues have allowed their enthusiasm for the cause of political reform to blind them to the necessities of the moment, and that they have failed to recognise that the first duty of any government is the maintenance of law and order, and the protection of the people, entrusted to its charge. They would have us believe that we have been frightened by a phantom, that we have accepted the vapourings of a few agitators as evidence of dangerous sedition, and that by the Act which we have passed we are imputing disloyalty to the masses of the people of India—that I emphatically deny—but at the same time I refuse altogether to minimise the meaning of the warnings and anxieties of the last few months. We cannot afford to forget the events of the early spring—the riots at Lahore and gratuitous insults to Europeans, the Pindi riots, the promulgation of the Ordinance, and, contemporaneously with all this, a daily story from Eastern Bengal of assault, of looting, of boycotting, and general lawlessness encouraged by agitators, who, with an utter disregard of consequences, no matter how terrible, have by public addresses, by seditious newspapers, by seditious leaflets, and itinerant secret agents, lest no opportunity of inflaming the worst passions of racial feeling, and have not hesitated to attempt to tamper with the loyalty of our magnificent Indian army. The seeds of sedition have been unscrupulously scattered throughout India, even amongst the hills of the frontier tribes. We are grateful that it has fallen on much barren ground, but can no longer allow the dissemination of unlimited poison. That is the position the Government of India have had to face. That is why we have felt compelled to provide ourselves with a weapon against insidious attacks. The Bill is aimed at the inaugurators of dangerous sedition, not at political reform, not at the freedom of speech of the people of India."

The Bill was passed the same day, to operate for a period of three years from the 1st November 1907. It has since however been extended by notification for a further period of six months and is now in force (see Appendix.).
In the following year another preventive measure of an urgent character was enacted concurrently with the 'Explosive Substances Act.' This was a "Bill for the prevention of incitements to murder and other offences in newspapers." When introducing the Bill on the 8th June, 1908, Sir Harvey Adamson said:—"The Bill is a sequel to the Explosive Substances Bill, and is intended to meet the same emergency. There are two factors in this emergency, neither of which it is possible to ignore, if the evil is to be adequately dealt with. The first is the actual making and using of bombs, which has been met by the Bill which has just been passed into law. The second is the public incitement to murder and acts of violence carried on through the medium of an infamous section of the Press. These two factors are as inseparable as cause and effect. If you legislate for the effect without legislating for the cause, you do nothing. The present Bill is therefore as urgent as the one with which we have just been dealing. In the opinion of the Government of India it is absolutely necessary for the public safety that it should be passed into law with the utmost possible dispatch. The circumstances which have led to this legislation are fresh in the minds of all of us. It is therefore not necessary for me to give a history of the events, of the bomb outrages, and I am the more disinclined to do so because certain persons accused in connection with these transactions are still under trial. There is one point, and only one, in connection with the proceedings that I am compelled to mention, in order to support and justify the legislation in which we are engaged. It is the close connection between the Manicktollah conspirators and a certain section of the Press. Some have confessed that they drew their inspiration from newspaper writings. Among others the young man who threw the bomb at Mozufferpur has admitted that he was incited by writings in the Yugantar. I will make no further comments on events which are now sub judice. What I have stated is taken from proceedings in Courts of Justice, and is already public property.

"Now turning," the Hon'ble Member continued, "to the class of newspaper against which this Bill is directed, I find that the Yugantar has been on five occasions during the past year the subject of prosecution for the offence of sedition.
On four occasions the printer and publisher has been convicted, and one case is still pending. The authors of the offending articles have never come forth into the light. So far from being deterred by prosecution, a fresh printer and publisher has been registered on each occasion of conviction and the tone of the newspaper has continued unimproved. In spite of five prosecutions the Yugantar still exists and is as violent as ever. The type of sedition has been incitement to subversion of British rule by deeds of violence. The policy of the newspaper has been to court prosecution in order to create pseudo-martyrs, and thus to enlist sympathy on the side of anarchy, and it may be presumed that a further inducement was to increase the circulation of the newspaper by pandering to the tastes of the depraved. I quote the following extract from the official translation of an article in the Yugantar which appeared a few days after the attempt on an officer's life in Mozufferpur which resulted in the terrible death of two ladies."

The Hon'ble Member then quoted a passage which was afterwards the subject of the Yugantar trial already referred to, and portions of which were put to the jury by the learned Judge (see Ch. xiii).

"Two days ago," he continued, "I saw a telegram from Calcutta stating that the Yugantar, which usually appears on Saturday, had unexpectedly appeared on Friday, that thousands of copies had been struck, and that they were selling at a rupee a copy. The telegram gave some description of the contents, which in violence outvied any previous issue. I have not yet received the full translations. I have up to this point confined myself to the Yugantar, because it has already obtained so great a notoriety that nothing that I can say can make it more notorious. But writings of a similar type abound in other newspapers, not only in Calcutta but throughout India. I will not give any of these disreputable papers an advertisement by mentioning their names. I will content myself with stating the substance of articles which I have culled from them. One article referring to the partition of Bengal states that the ruthless knife of the butcher has severed in twain the throbbing body of the mother-land, and makes frantic appeals to all sons of the soil to combine and avenge the atrocity. Another makes
insidious attempts to propagate the cult of Ramdas who instigated Shivaji to revolt against Moslem rule. Another instigates Indians to sacrifice their lives and to teach the rulers a bitter lesson. Another urges the Bengalis and the Gurkhas to join hands and rebel against the oppression of the bureaucracy. Another advises the Bengalis to resort to red, as the colour of revenge, and to sing the hymn of retaliation: 'A hundred heads for one head, to avenge the murder of the mother-land.' Another states that a huge sacrificial fire should be lit up and fed, not with ghee, but with blood. Another advocates that Indians should make use of blacksmith's tools, lathis, and slings and stones, to overmatch the enemies of their country. Another says that if by resorting to boycott we can gain our desires, we can only be said to postpone for the present our resolve to shed blood. Another says that if we desire independence we should be ready to be massacred by our rulers, so that their sword may become blunt. Another exhorts to die after killing, as therein the glory of dying will be enhanced. Another urges the sacrifice of life for liberty, for is it not a fact that Kali will not be propitiated without blood. Another advocates the methods of Nihilists and the use of bombs. I might go on for hours quoting such types as these. To an Englishman who knows not India, they would appear to be little more than ridiculous bombast. But to impressionable and immature minds in the East, they present an entirely different significance. We have already seen the terrible effect that they produce on the youthful student, and they must be judged by Eastern and not by Western standards. We have striking examples of how they have converted the timid Bengali into the fanatical Ghazi, and they are not to be ignored. The difference between the East and the West in this respect is the difference between dropping a lighted match on a stone floor, and dropping it in a powder magazine.'

"I have quoted," he went on to add, "some of the dangerous incitements that are published by unscrupulous newspapers. I have given facts showing the effect which such writings have produced on misguided young men, and I have shown that prosecution has been tried, and tried again, and has completely failed to put a stop to this incitement to outrage."
Under these circumstances what is the duty of a responsible
government? Its bounden duty surely is not only to make
adequate provision to punish the perpetrators of outrages that
actually occur, but also to close the fountain head, and to insure
that colleges of anarchy, assassination, rebellion, and violence
are not openly maintained under the guise of newspapers cir-
culated among the public."

The Hon'ble Member then proceeded to explain the pro-
posed provisions. "The present Bill," he said. "is confined
entirely to the emergency which is now facing us. It is intended
to provide a more effective way than prosecution for attempts
through newspapers to incite to murder and acts of violence.
It is not meant as a substitute for, but as a supplement to
prosecution. It is directed against newspapers which persistently
defy the law, which court prosecution, which set up dummies for
punishment while the real authors lie concealed, and which
establish themselves as schools of anarchy and outrage, with the
object of debauching young and immature minds, and inciting
men to murder, armed revolt, and secret and diabolical schemes
of general assassination. The only way to deal with such news-
papers is to put an end to their existence, and this we propose
to do in the Bill, by giving power to confiscate the printing-press
and to extinguish the newspaper. This is the object of the
present Bill, and these two powers are all the powers that it
contains. Next as regards the means for effecting these ends.
There are two ways in which they can be effected, by exe-
cutive action or by judicial action. The former would be more
prompt, and there are many who have urged us to adopt it. The
latter, however, is more in accordance with the principles of
modern administration, and at the sacrifice it may be, of some
efficiency, we have chosen it. The Bill empowers the Magis-
trate, on application made on behalf of the Local Government,
to take action in respect of the printing-press concerned, when
he is of opinion that a newspaper contains any incitement to
murder, or to an offence under the Explosive Substances Act, or
to an act of violence. The first step is a notice to all concerned
affixed on the place where the printing-press is. The next is the
hearing of the case, which will be in the nature of a criminal
miscellaneous proceeding. Evidence will be given on behalf of
the Local Government, and evidence may be tendered by any one who opposes the action. The Magistrate will then record a finding, and if the finding is that the newspaper contained the incitement alleged, he will proceed to order forfeiture of the printing-press. He will have the discretion of keeping the printing-press under attachment during the hearing of the case. Against an order of forfeiture an appeal will lie to the High Court, the period of limitation being fifteen days. A further power is given to the Local Government. When an order of forfeiture has been passed, the Local Government may annul the declaration made by the printer and publisher under the Press and Registration of Books Act, the effect of which annulment is that the newspaper will cease to lawfully exist."

His Excellency Lord Minto, the President, summed up the situation as follows:—"The lamentable incidents at Muzaffarpur have sent a thrill of horror throughout India, and have too clearly warned us that we must be prepared to deal immediately with an iniquitous conspiracy, and with murderous methods hitherto unknown to India." "To the best of my belief it has largely emanated from sources beyond the confines of India. Its anarchical aims and the outrageous doctrines it inculcates are entirely new to this country. But unfortunately the seeds of its wickedness have been sown amongst a strangely impressionable and imitative people—seeds that have been daily nurtured by a system of seditious writing and seditious speaking of unparalleled virulence, vociferating to beguiled youth that outrage is the evidence of patriotism and its reward a martyr's crown."

"It has been," His Excellency added, "with a heavy sense of responsibility that the Government of India has recognised that the law of the land has not been strong enough to enable us to cope with the present emergency. We have felt that we must have further powers. We have had two main points before us—How best to deal with bomb outrages and the conspiracies connected with them; and how to annihilate the evil influence which has done so much to inspire them. The machinery we have decided to adopt is before you in two Bills. In them, we have, after careful consideration, empowered judicial rather than executive procedure."
"I look upon to-day's legislation as exceptional, as framed to meet dangerous emergencies, and as regards the Newspaper Bill to give powers to deal with a particular class of criminal printed matter. It is quite possible our Bills may not be strong enough, and in that case we shall not fail to amend them. But the Newspaper Bill in no way takes the place of a General Press Act, and it in no way ties our hands as to the future introduction of such an Act. In my opinion a further general control of the Press in India is imperatively necessary. I believe it would be welcomed by the best Indian newspapers. They have recognised the evil of unbridled journalistic freedom under Indian conditions—conditions entirely different from those existing at home, where public opinion, based on the teachings of centuries of constitutional government, would be ever ready to refuse or to ridicule such unwholesome vapourings as are daily furnished to the people of India. India is not ripe for complete freedom of the Press. It is unfair upon her people that for daily information, such as it is, they should be dependent upon unscrupulous caterers of literary poison. We are called upon to regulate its sale. No exaggerated respect for principles of English freedom, totally unadapted to Indian surroundings, can justify us in allowing the poison to work its will."

The Bill was then passed as Act VII of 1908 and is now in force (see Appx.).
CHAPTER XX.

THE LATEST PRESS LAW.

The views expressed by His Excellency Lord Minto at the Council Meeting of the 8th of June 1908, as to the 'imperative necessity' for a General Press Act for India, took effect in a new measure, which, without interfering with the operation of existing laws, either penal or preventive, was designed to check the evil complained of. On the 4th February, 1910, a Bill was introduced "to provide for the better control of the Indian Press."

The scope and character of this important measure, as well as the circumstances which contributed to induce special legislation may be ascertained from the exhaustive speech of the Hon'ble Member in charge of the Bill.

Sir Herbert Risley in introducing the measure said:—

"In the first place let me state as simply as possible what the Bill proposes to do. It will be convenient if I first describe the kind of matter which may not be published. This is set out in clause 4 of the Bill, under six separate heads. The first of these relates to incitements to murder, or to any offence under the Explosive Substances Act, or to any actual violence. Incitements of this nature are already covered by the Newspapers (Incitations to Offences) Act of 1908, but we think it advisable to include them in this Bill, in order that we may, if necessary, take action of a less severe kind than that prescribed by the Act of 1908. The next kind of writing which is forbidden is that which is likely to seduce any officer, soldier or sailor from his allegiance or his duty. That calls for no comment: it is obvious that such writings must be dangerous to the public welfare.

"Then under head (c) we come to writings which are likely to bring into hatred or contempt His Majesty, or the Government, or any lawful authority, or any Native Prince or Chief under the suzerainty of His Majesty, or which are likely to excite disaffection against His Majesty, or the Government, or such Princes or Chiefs, or to excite antipathy between members of different races, castes, classes, religions or sects. The greater
part of this head is covered by the terms of sections 124A and 153A of the Indian Penal Code. But we have made two additions of some importance. In the first place we have included what I may describe as the preaching of sedition against the Princes or Chiefs of our Native States. We have had not a few instances of newspapers published in British India containing seditious matter of that kind. The Government of India cannot tolerate this. They cannot allow their territories to be used as a safe asylum from which attacks can be launched upon Indian Princes. The other direction in which this heading goes beyond the terms of the two sections I have quoted, is that it includes the bringing of any lawful authority into hatred or contempt. There have been many venomous attacks upon Magistrates and Judges, even upon Judges of the High Courts, and this must be prevented.

"The fourth heading relates to intimidation and blackmailing. It will cover the case of the blackmailing of Indian Princes against which the corresponding clause of Lord Lytton's Act of 1878 was directed. The fifth heading prohibits matter which is likely to encourage or incite any person to interfere with the administration of the law, or with the maintenance of law and order. Under the Indian Criminal Law Amendment Act of 1908, the Government have power to declare that an association which has these objects is an unlawful association, and a newspaper should not be allowed to do what an association may not do. The last sub-clause deals with the intimidation of public servants, and is taken verbatim from the Act of 1878. The protection which this sub-clause will give is certainly more necessary now than it was thirty years ago."

"I will now show," the Hon'ble Member continued, "how we propose to prevent the publication of matter of the kind I have described. Under the Press and Registration of Books Act of 1867 every person who wishes to keep a press for the printing of books or papers must make a declaration to that effect before a Magistrate. Another provision of that Act requires that every printer and publisher of a newspaper must make a similar declaration. These declarations are registered, and are available for the information of any one who wishes to take proceedings against the press or the newspaper. Clause 3 of
our Bill provides that every person, who makes a declaration hereafter as the keeper of a press, must deposit security for an amount to be fixed in each case by the Magistrate, but not being less than Rs. 500 or more than Rs. 5,000. Clause 8 contains a similar provision in respect of the publisher of a newspaper. The printer of a newspaper is not required to deposit security, as his case is already covered by the provision requiring security from the person who keeps the press. These provisions, as I have said, apply only to future registrations. In the case of existing presses and existing newspapers no security can be demanded until the press or paper offends by printing or publishing matter of the prohibited kind. But when a press or newspaper has printed or published such matter, the Local Government may at once call upon the person registered as the keeper of the press, or the publisher of the newspaper, to deposit security to an amount to be fixed by the Local Government, subject to the same limits as are prescribed for fresh registration."

"The next stage in the procedure provided by the Bill," he continued, "is that the Local Government can order the forfeiture of the security deposited, if it appears that the press has printed, or the newspaper has published, any matter of the prohibited kind. If the keeper of the press, or the publisher of the newspaper wishes to continue his business after such an order has been passed, he is at liberty to do so, but he must make a fresh declaration under the Press and Registration of Books Act, and the Magistrate may then demand enhanced security up to a maximum of Rs. 10,000. Should the keeper of a press, or the publisher of a newspaper, again publish prohibited matter after enhanced security has been taken, the Local Government may order the forfeiture of the enhanced security in the case of the newspaper, and of both security and press in the case of the printing-press. No keeper of a press who is registered at the time of the passing of this Bill will be affected by its provisions, unless and until he offends by printing prohibited matter; but if he does that, he may be called upon to deposit security. If he again offends, his security may be forfeited, while for a third offence both security and press may be forfeited. For persons who are now registered as publishers
of newspapers the procedure is the same. That is to say, no interference at all until one offence is committed; then a demand for security, which may be forfeited for the second offence; next the taking of enhanced security, and the forfeiture of this enhanced security for the third offence. In the case of new registration security is demanded from the beginning. This is necessary to provide against an evasion of the law by new registrations which are new only in name."

"It will be readily admitted," he added, "that if we take security at all, we must take it from the keepers of printing-presses; for the law, to be effective, must cover not only newspapers, but also books, pamphlets, leaflets, and every other kind of document by which seditious matter can be disseminated. But it may be asked, why take from the publisher of a newspaper, in addition to taking it from the keepers of presses? The answer is that we cannot always be certain of getting at the newspaper through its press, for difficulties have arisen in ascertaining at what press a newspaper is printed. Many of the small newspapers, which are notorious offenders, have no press of their own, but are printed at a job press, which may be changed from month to month, and it is by no means easy to learn with certainty at which particular press an offending issue of the newspaper was published. Moreover, if security were not demanded from the publisher of a newspaper, he might continue to offend with no greater penalty than the demanding of security from each of the different presses at which successive issues of his journal were printed. We have fixed a minimum as well as a maximum for the security to be demanded, in order to give an indication which will guide officers in all ordinary cases. But to meet the exceptional cases of the petty press, which publishes only trade circulars, bill headings and the like, and the case of the school or college magazine, and other similar publications which are not newspapers in the ordinary sense of the term, though they cannot be excluded from the definition—in order to meet these cases, we have given the Magistrate power to take reduced security, or to dispense with security altogether."

"The provisions which I have described," he continued, "so far relate to the cases of newspapers and of matter which
is printed at presses that are known. But we have also to deal with books and pamphlets, especially the latter, which are printed out of India, or secretly in India. To meet these cases power is taken for the Local Government to declare by notification that such publications are forfeited, and to issue search-warrants for their discovery. In aid of this provision power is also given to customs officials to detain suspected packages pending examination of their contents by the Local Government, and to post-office officials to open and detain, with a like object, any suspected packet which has been transmitted by post. We have also prohibited the transmission by post of any newspaper in respect of which the necessary declaration and deposit of security, when required, have not been made. Finally, we have laid an obligation on the printer of a newspaper to deliver to Government, at the time of publication, two copies of every issue. This has been rendered necessary by the failure of certain newspaper proprietors to send punctually the copies for which the Government subscribe, while in one case a subscription equal to ten times the ordinary subscription was demanded from the Government."

The Hon’ble Member then proceeded to describe the safeguards provided in the proposed measure against any improper use of its provisions. "So far," he said, "I have dealt only with the powers which are given by the Act. I will now turn to the check which we have provided. This consists of an appeal to a special tribunal of three Judges of the High Court against any order of forfeiture passed by the Government. If it appears to the High Court that the matter, in respect of which the order was passed, does not come within the terms of section 4 of this Bill, then the High Court will set aside the order of forfeiture. I think it will be admitted that, that is a very complete check upon any hasty or improper action by a Local Government. We have, therefore, barred all other legal remedies. There are two other clauses that I must mention. One provides that the penalty for keeping a press, or publishing a newspaper, without making the deposit of security, shall be the same as that imposed upon a person who keeps a press or publishes a newspaper, without making the declaration
required by the Press and Registration of Books Act. The other is a provision which saves the operation of other laws."

"I have explained," he added, "the scope of the Bill, what it proposes to do. I will now mention its limitations, what it does not propose to do. In the first place it does not create a censorship. It imposes no antecedent restraint on the Press: a man may publish what he pleases. He has the widest range for every form of intellectual activity within the limits laid down by the law. Secondly, it is not, like the Press Act of 1878, a purely executive measure. The initiative, indeed, rests with the Executive Government, but ample security against hasty or arbitrary action is provided, in the form of what is virtually an appeal to a highly competent judicial authority. Thirdly, it is not a measure of universal licensing, with power to the Government to withdraw or refuse a license at discretion. The liberty of unlicensed printing, for which Milton pleaded three centuries and a half ago, and at the time pleaded in vain, is untouched by this Bill. Security is demanded only from papers established after the passing of the Act. That is necessary to guard against the Protean changes of identity, of which we have had illustrations in Bengal. But security is one thing, and a system of licensing is another. Security may rightly be required in the interests of the community in order to guarantee that those, who undertake for the first time the important task of instructing the people regarding public affairs, shall at any rate be fully aware of the responsibility they incur. I do not set much store by precedents and parallels drawn from foreign sources. As Lord Morley has pointed out, no political principle whatever is capable of application in every sort of circumstances without reference to conditions in every place and at every time. Each country has its own problems, and must solve them in its own way. India has hers, of which this is one of the gravest. We too must travel on our own road with such guidance as our necessities give us; we cannot walk by borrowed light."

The Hon'ble Member proceeded in the next place to explain the considerations which operated to produce such a measure, and the reasons for special legislation. "The Press in
India," he said, "has been free, except during two periods, for the last seventy-five years. The two periods which I have referred to were, first the period of the Mutiny, when the entire Press was under absolute control for one year and no more; and the second was from 1878 to 1881, when a portion of the Press was subject to the virtually nominal control imposed by the Vernacular Press Act of 1878. I will not touch upon the earlier years, but I will begin about the middle of the period which I have marked off, and I will endeavour to show what use the Press has made in comparatively recent times of Sir Charles Metcalfe's famous concession. Thirty-three years ago I was present, as Under-Secretary to the Government of Bengal, at a notable Durbar held by Sir Ashley Eden at Belvedere on the 12th August 1877. In addressing that Durbar the Lieutenant-Governor denounced in strong terms the disloyalty and sedition which were frequently published in the native press of Bengal. Even then rank treason was preached, and a war of independence was talked of, and Sir Ashley Eden thought it necessary to warn those whom he addressed that the character of the vernacular Press was creating an unfavourable impression, in many quarters, of the loyalty of the Bengalis. The warning was not heed-ed, and in the following year the tone and tendencies of the Press led to the passing of the Act of 1878, the object of which, like the object of the present Bill, was to prevent, not to punish sedition. As every one knows, the Act was in force for only three years, during which time recourse was only once had to its provisions. Its defects from our present point of view are palpable. It applied only to the vernacular Press and left untouched journals published in English, whether owned by Indians or by Europeans. Its machinery was purely executive, judicial intervention being expressly excluded; and it contained an impracticable provision for censorship which was soon repealed. The whole Act was repealed in 1881, and from that time till now the Press has been left to the operation of the ordinary law. Up to the year 1907 the policy of the Government was one of extreme forbearance, and prosecutions were of rare occurrence. Indeed, during the 37 years from 1870 to 1907 the law was put in motion only sixteen times. Among these cases, there is not a single case of acquittal. On two occasions the jury disagreed.
but the offenders would have been tried again, if Government had not thought fit to accept their apologies. I have described our forbearance as extreme; many people may think it excessive. But the ingrained instincts of all Englishmen are averse to interference with the Press, even by way of prosecution, and we continued to hope that time and education would bring wisdom. Our hope was vain; the Press did not mend its ways. It went from bad to worse, and at length it produced its inevitable results in the cruel and oppressive methods of the boycott. It was clear, moreover, that matters were not going to stop there, and that worse things were in store for us. As every one knows, we had not long to wait. Accordingly on the 3rd June, 1907, after careful and anxious consideration, the Government of India issued the following resolution:

'Certain circumstances attending the recent outbreaks of lawlessness in the Punjab and Eastern Bengal have forced upon the attention of the Government of India the deliberate efforts made by a number of newspapers, both English and vernacular, to inflame the minds of the people, to encourage ill-will between classes, to promote active hostility to the Government, and to disturb the public tranquillity in many different ways. The Governor-General has no desire whatever to restrict the legitimate liberty of the Press to criticise the action of the Government, and he would be most reluctant to curtail the freedom of the many well-conducted papers because of the misbehaviour of a few disloyal journals. But he is responsible for the maintenance of law and order among a vast and heterogeneous population, and he is unable to tolerate the publication of writings which tend to arouse the disorderly elements of society, and to incite them to concerted action against the Government. On these grounds he has determined that the dissemination of sedition, and the promotion of ill-will between classes must be repressed by firm and sustained action under the penal law. Accordingly, in supersession of previous orders on the subject, His Excellency in Council empowers Local Governments to institute prosecutions in consultation with their legal advisers, in all cases where the law has been wilfully infringed. He hopes that the warning now given may, in great measure, avert the necessity for numerous prosecutions, but if this hope should
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unhappily not be realised, he relies upon the local authorities to deal with the evil effectively.'

"Up to the end of last year," he continued, "forty-seven prosecutions had been undertaken under these orders. Not one of these cases has failed, although in some instances the editor, manager, or proprietor has escaped, and only the registered printer or publisher has been convicted, while in others the Government have accepted an apology and withdrawn the prosecutions. Nevertheless we have to acknowledge defeat. We have succeeded in the minor object of punishing a certain number of offenders; we have failed in the major, the vital, the all-important object of curing a grave evil. We have proved that the law as it stands is sufficient to enable convictions for sedition to be obtained; but we have also proved that it was not sufficient to restrain the Press within the limits of legitimate discussion. In spite of our successful prosecutions, we see the most influential and most widely read portion of the Indian Press incessantly occupied in rendering the Government by law established odious in the sight of the Indian people. 'The Government is foreign, and therefore selfish and tyrannical. It drains the country of its wealth; it has impoverished the people, and brought about famine on a scale and with a frequency unknown before. Its public works, roads, railways, and canals have generated malaria. It has produced plague by poisoning wells in order to reduce the population that has to be held in subjection. It has deprived the Indian peasant of his land, the Indian artisan of his industry, and the Indian merchant of his trade. It has destroyed religion by its godless system of education. It seeks to destroy caste, by polluting maliciously and of set purpose the salt and sugar that men eat, and the cloth that they wear. It allows Indians to be ill-treated in British colonies. It levies heavy taxes and spends them on the army. It pays high salaries to Englishmen, and employs Indians only in the worst paid posts. In short, it has enslaved a whole people, who are now struggling to be free.'

"My enumeration," he added, "may not be exhaustive, but these are some of the statements that are now being implanted as axioms in the minds of the rising generation of educated youths, the source from which we recruit the great body of
civil officials who administer India. Every day the Press pro-
claims, openly, or by suggestion, or allusion, that the only cure
for the ills of India is independence from foreign rule, independ-
ence to be won by heroic deeds, self-sacrifice, martyrdom on the
part of the young, in any case by some form of violence.
Hindu mythology, ancient and modern history, and more
especially the European literature of revolution, are ransacked
to furnish examples that justify revolt and proclaim its inevitable
success. The methods of guerrilla warfare as practised in Cir-
cassia, Spain, and South Africa; Mazzini’s gospel of political
assassination; Kossuth’s most violent doctrines; the doings of
Russian Nihilists; the murder of the Marquis Ito; the dialogue
between Arjuna and Krishna in the Gita, a book that is to Hin-
dus what the Imitation of Christ is to emotional Christians—
all these are pressed into the service of inflaming impressionable
minds. The last instance is perhaps the worst. I can imagine
no more wicked desecration than that the sacrilegious hand of
the anarchist should be laid upon the Indian Song of Songs, and
that a masterpiece of transcendental philosophy and religious
ecstasy should be perverted to the base uses of preaching poli-
tical murder.”

“Sedition,” he continued, “has the monopoly of its au-
dience, and that audience is large, and is increasing daily. No
means are left untried to swell its numbers, and to infect the
masses of the people. The peaceful life of the village has been
invaded by youthful enthusiasts, who read out to an illiterate
audience, attracted by natural curiosity, articles preaching the
doctrines which I have described. Emissaries disguised as
religious devotees travel about the country, and spread the
gospel of anarchy among simple folk who believe that whatever
is printed must be true. Worst of all, attempts are being made
to enlist the women of India on the side of rebellion, by dissem-
inating in the zenana, libels upon the Government—among them
that infamous story about the introduction of plague. The
consequences of this ever-flowing stream of slander and in-
citement to outrage are now upon us. What was dimly foreseen
a few years ago has actually come to pass. We are at the present
moment confronted with a murderous conspiracy, whose aim
is to subvert the Government of the country, and to make
British rule impossible by establishing general terrorism. Their organisation is effective and far-reaching; their numbers are believed to be considerable; the leaders work in secret and are blindly obeyed by their youthful followers. The method they favour, at present, is political assassination; the method of Mazzini in his worst moods. Already they have a long score of murders, or attempted murders to their account. These things are the natural and necessary consequence of the teachings of certain journals. They have prepared the soil in which anarchy flourishes: they have sown the seed, and they are answerable for the crop. This is no mere general statement, the chain of causation is clear. Not only does the campaign of violence date from the change in tone of the Press, but specific outbursts of incitement have been followed by specific outrages.'

In conclusion, the Hon'ble Member said:—"I appeal to the Council to give their cordial approval to this Bill. It is called for in the interests of the State, of our officers, both Indian and European, and most of all in the interests of the rising generation of young men. In this matter, indeed, the interests of the State and the interests of the people are one and the same. If it is good for India that British rule should continue, it is equally essential that the relations between the Government and the educated community should be cordial and intimate, and that cannot long be the case if the organs of that community lay themselves out to embitter those relations in every sort of way, and to create a permanent atmosphere of latent and often open hostility. There is plenty of work in India waiting to be done, but it never will be done if the energies of the educated classes are wasted in incessant abuse and suspicion of Government.'"

These are the chief passages of a memorable and important speech. Its value lies not merely in its lucid exposition of the provisions of the Press Act, but mainly perhaps in the vivid picture it affords of the extraordinary conditions which called it forth, and of the recent political situation in India, of which it is destined to remain a faithful and permanent record.

The Bill, which strangely enough was the first measure of the new and enlarged Legislative Council, was passed on the 8th February, and takes its place in the Indian Statute-book as Act I of 1910 (see Appx.).
After so lucid an exposition of its provisions further comment on the Act is unnecessary. It is worth while, however, to consider how far the new measure affects the operation of existing laws. Section 26 of this Act, like section 10 of the Newspapers Act (VII of 1908), expressly provides that it shall in no way interfere with the prosecution of offenders under the provisions of other laws. As regards the Penal Code, therefore, it may be said that its penal provisions against sedition and its cognate offences remain unaffected. As the initiative rests with the Government in any case, it is optional with them either to prosecute under the Penal Code, or to resort to the machinery of the Press Act, as they may think fit. But even so, there seems to be no actual bar to the application of both remedies, either concurrently or consecutively. Then again, there are cases, e.g., where a press is unregistered and therefore unknown, where prosecution alone could be resorted to and the Press Act would be of little avail.

It is to be observed, moreover, that the Act, being a Press Act, is limited in its operation to the Press, and can only be applied to cases where sedition is disseminated through that medium. In other words, it applies only to written sedition or 'seditious libel.' It does not touch any of the other methods of dissemination specified in sections 124A and 153A. The platform and the stage are beyond its influence.

On the other hand, as regards Preventive measures it may be said that the Press Act cannot affect the operation of such measures as the 'Dramatic Performances Act of 1876' or the 'Prevention of Seditious Meetings Act of 1907,' for they are not in pari materia.

As regards the 'Newspapers (Incitements to Offences) Act of 1908,' it may be said to have concurrent operation, for it provides an alternative procedure.

As to section 108 of the Criminal Procedure Code (Act V of 1898), it has concurrent operation also, but only so far as the Press is concerned. That section, it will be seen, has a much wider scope, for it is framed to cover oral as well as written sedition.

As regards the 'Press and Registration of Books Act of 1867,' it may be said to work conjointly.
APPENDIX.

PRESS AND REGISTRATION OF BOOKS ACT.

ACT XXV OF 1867.

AS AMENDED BY ACT X OF 1890.

An Act for the regulation of Printing-presses and Newspapers, for the preservation of copies of books printed in British India, and for the registration of such books.

WHEREAS it is expedient to provide for the regulation of printing-presses and of periodicals containing news, for the preservation of copies of every book printed or lithographed in British India, and for the registration of such books; It is hereby enacted as follows:—

PART I.

PRELIMINARY.

1. In this Act, unless there shall be something repugnant in the subject or context,—

"book" includes every volume, part or division of a volume, and pamphlet, in any language, and every sheet of music, map, chart or plan separately printed or lithographed:

"British India" means the territories which are or shall be vested in Her Majesty or Her Successors by the Statute 21 & 22 Vict., cap. 106 (An Act for the better government of India):

"Magistrate" means any person exercising the full powers of a Magistrate, and includes a Magistrate of Police:

words in the singular include the plural, and vice versa:

words denoting the masculine gender include females:
And in every part of British India to which this Act shall extend, "Local Government" shall mean the person authorised by law to administer executive government in such part, and includes a Chief Commissioner.


PART II.

OF PRINTING-PRESSES AND NEWSPAPERS.

3. Every book or paper printed within British India shall have printed legibly on it the name of the printer and the place of printing, and (if the book or paper be published) [the name] of the publisher and the place of publication.

4. No person shall, within British India, keep in his possession any press for the printing of books or papers, who shall not have made and subscribed the following declaration before the Magistrate within whose local jurisdiction such press may be:

"I, A. B., declare that I have a press for printing at———."

And this last blank shall be filled up with a true and precise description of the place where such press may be situate.

5. No printed periodical work, containing public news or comments on public news, shall be published in British India, except in conformity with the rules hereinafter laid down:

(1) The printer and the publisher of every such periodical work shall appear before the Magistrate within whose local jurisdiction such work shall be published, and shall make and subscribe, in duplicate, the following declaration:

"I, A. B., declare that I am the printer [or publisher, or printer and publisher] of the periodical work entitled——and printed [or published, or printed and published, as the case may be] at———."
And the last blank in this form of declaration shall be filled up with a true and precise account of the premises where the printing or publication is conducted:

(2) As often as the place of printing or publication is changed, a new declaration shall be necessary:

(3) As often as the printer or the publisher who shall have made such declaration as is aforesaid shall leave British India, a new declaration from a printer or publisher resident within the said territories shall be necessary.

6. Each of the two originals of every declaration so made and subscribed as is aforesaid, shall be authenticated by the signature and official seal of the Magistrate before whom the said declaration shall have been made.

One of the said originals shall be deposited among the records of the office of the Magistrate, and the other shall be deposited among the records of the High Court of Judicature, or [other principal Civil Court of original jurisdiction for the place where] the said declaration shall have been made.

The officer in charge of each original shall allow any person to inspect that original on payment of a fee of one rupee, and shall give to any person applying, a copy of the said declaration, attested by the seal of the Court which has the custody of the original, on payment of a fee of two rupees.

7. In any legal proceeding whatever, as well civil as criminal, the production of a copy of such declaration as is aforesaid, attested by the seal of some Court empowered by this Act to have the custody of such declarations, shall be held (unless the contrary be proved) to be sufficient evidence, as against the person whose name shall be subscribed to such declaration, that the said person was printer or publisher, or printer and publisher (according as the words of the said declaration may be) of every portion of every periodical work whereof the title shall correspond with the title of the periodical work mentioned in the declaration.
8. Provided always that any person who may have subscribed any such declaration as is aforesaid, and who may subsequently cease to be the printer or publisher of the periodical work mentioned in such declaration, may appear before any Magistrate, and make and subscribe in duplicate the following declaration:

"I, A. B., declare that I have ceased to be the printer [or publisher, or printer and publisher] of the periodical work entitled——.

Each original of the latter declaration shall be authenticated by signature and seal of the Magistrate before whom the said latter declaration shall have been made, and one original of the said latter declaration shall be filed along with each original of the former declaration.

The officer in charge of each original of the latter declaration shall allow any person applying to inspect that original on payment of a fee of one rupee, and shall give to any person applying, a copy of the said latter declaration, attested by the seal of the Court having custody of the original, on payment of a fee of two rupees.

In all trials in which a copy, attested as is aforesaid, of the former declaration shall have been put in evidence, it shall be lawful to put in evidence a copy, attested as is aforesaid, of the latter declaration, and the former declaration shall not be taken to be evidence that the declarant was, at any period subsequent to the date of the latter declaration, printer or publisher of the periodical work therein mentioned.

P ART III.

D E L I V E R Y O F B O O K S.

9. Printed or lithographed copies of the whole of every book which shall be printed or lithographed in British India after this Act shall come into force, together with all maps, prints or
other engravings belonging thereto, finished and coloured in the same manner as the best copies of the same, shall, notwithstanding any agreement (if the book be published) between the printer and publisher thereof, be delivered by the printer at such place and to such officer as the Local Government shall, by notification in the official Gazette, from time to time direct, and free of expense to the Government; as follows, that is to say:

(a) in any case, within one calendar month after the day on which any such book shall first be delivered out of the press, one such copy, and.

(b) if within one calendar year from such day the Local Government shall require the printer to deliver other such copies not exceeding two in number, then within one calendar month after the day on which any such requisition shall be made by the Local Government on the printer, another such copy, or two other such copies, as the Local Government may direct, the copies so delivered being bound, sewed or stitched together and upon the best paper on which any copies of the book shall be printed or lithographed.

The publisher or other person employing the printer shall, at a reasonable time before the expiration of the said month, supply him with all maps, prints and engravings finished and coloured as aforesaid, which may be necessary to enable him to comply with the requirements aforesaid.

Nothing in the former part of this section shall apply to—

(i) any second or subsequent edition of a book in which edition no additions or alterations either in the letter-press or in the maps, book prints or other engravings belonging to the book have been made, and a copy of the first or some preceding edition of which book has been delivered under this Act, or

(ii) any periodical work published in conformity with the rules laid down in section 5 of this Act.

10. The officer to whom a copy of a book is delivered under the last foregoing section shall give to the printer a receipt in writing therefor.
11. The copy delivered pursuant to clause (a) of the first paragraph of section 9 of this Act shall be disposed of as the Local Government shall from time to time determine. Any copy or copies delivered pursuant to clause (b) of the said paragraph shall be transmitted to the British Museum or the Secretary of State for India, or to the British Museum and the said Secretary of State, as the case may be.

PART IV.

PENALTIES.

12. Whoever shall print or publish any book or paper otherwise than in conformity with the rule contained in section 3 of this Act shall, on conviction before a Magistrate, be punished by fine not exceeding five thousand rupees, or by simple imprisonment for a term not exceeding two years, or by both.

13. Whoever shall keep in his possession any such press as aforesaid, without making such a declaration as is required by section 4 of this Act, shall, on conviction before a Magistrate, be punished by fine not exceeding five thousand rupees, or by simple imprisonment for a term not exceeding two years, or by both.

14. Any person who shall, in making any declaration under the authority of this Act, make a statement which is false, and which he either knows or believes to be false or does not believe to be true, shall on conviction before a Magistrate, be punished by fine not exceeding five thousand rupees, and imprisonment for a term not exceeding two years.

15. Whoever shall print or publish any such periodical work as is hereinbefore described without conforming to the rules hereinbefore laid down, or whoever shall print or publish, or shall cause to be printed or published, any
such periodical work, knowing that the said rules have not been observed with respect to that work, shall, on conviction before a Magistrate, be punished with fine not exceeding five thousand rupees, or imprisonment for a term not exceeding two years, or both.

16. If any printer of any such book as is referred to in section 9 of this Act shall neglect to deliver copies of the same pursuant to that section, he shall for every such default forfeit to the Government such sum not exceeding fifty rupees as a Magistrate having jurisdiction in the place where the book was printed may, on the application of the officer to whom the copies should have been delivered or of any person authorised by that officer in this behalf, determine to be in the circumstances a reasonable penalty for the default, and, in addition to such sum, such further sum as the Magistrate may determine to be the value of the copies which the printer ought to have delivered.

If any publisher or other person employing any such printer shall neglect to supply him, in the manner prescribed in the second paragraph of section 9 of this Act, with the maps, prints or engravings which may be necessary to enable him to comply with the provisions of that section, such publisher or other person shall for every such default forfeit to the Government such sum not exceeding fifty rupees as such a Magistrate as aforesaid may, on such an application as aforesaid, determine to be in the circumstances a reasonable penalty for the default, and, in addition to such sum, such further sum as the Magistrate may determine to be the value of the maps, prints or engravings which such publisher or other person ought to have supplied.

17. Any sum forfeited to the Government under the last foregoing section may be recovered, under the warrant of the Magistrate determining the sum, or of his successor in office, in the manner authorised by the Code of Criminal Procedure for the time being in force, and within the period prescribed by the Indian Penal Code, for the levy of a fine.
All fines or forfeitures under this Part of this Act shall, when recovered, be disposed of as the Local Government shall from time to time direct.

PART V.

REGISTRATION OF BOOKS.

18. There shall be kept at such office, and by such officer as the Local Government shall appoint in this behalf, a book to be called a Catalogue of Books printed in British India, wherein shall be registered a memorandum of every book which shall have been delivered [pursuant to clause (a) of the first paragraph of section 9] of this Act. Such memorandum shall (so far as may be practicable) contain the following particulars (that is to say):

(1) the title of the book and the contents of the title-page, with a translation into English of such title and contents, when the same are not in the English language:

(2) the language in which the book is written:

(3) the name of the author, translator or editor of the book or any part thereof:

(4) the subject:

(5) the place of printing and the place of publication:

(6) the name or firm of the printer and the name or firm of the publisher:

(7) the date of issue from the press or of the publication:

(8) the number of sheets, leaves or pages:

(9) the size:

(10) the first, second or other number of the edition:

(11) the number of copies of which the edition consists:

(12) whether the book is printed or lithographed:

(13) the price at which the book is sold to the public:

(14) the name and residence of the proprietor of the copyright or of any portion of such copyright.

Such memorandum shall be made and registered in the case of each book as soon as practicable after the delivery of the [copy thereof pursuant to clause (a) of the first paragraph of section 9].
APPENDIX.

Every registration under this section shall, upon payment of the sum of two rupees to the officer keeping the said Catalogue, be deemed to be an entry in the Book of Registry kept under Act No. XX of 1847 (for the encouragement of learning in the territories subject to the Government of the East India Company, by the defining and providing for the enforcement of the right called copyright therein); and the provisions contained in that Act as to the said Book of Registry shall apply, mutatis mutandis, to the said Catalogue.

19. The memoranda registered during each quarter in the said Catalogue shall be published in the local Gazette as soon as may be after the end of such quarter, and a copy of the memoranda so published shall be sent to the said Secretary of State, and to the Secretary to the Government of India in the Home Department, respectively.

PART VI.

MISCELLANEOUS.

20. The Local Government shall have power to make such rules as may be necessary or desirable for carrying out the objects of this Act, and from time to time to repeal, alter and add to such rules.

All such rules, and all repeals and alterations thereof, and additions thereto, shall be published in the local Gazette.

21. The Governor-General of India in Council may, by notification in the Gazette of India, exclude any class of books from the operation of the whole or any part or parts of this Act.

22. [Continuance of parts of Act.] Rep. Act X of 1890, s. 7.

DRAMATIC PERFORMANCES ACT.
ACT XIX OF 1876.

PASSED BY THE GOVERNOR-GENERAL OF INDIA IN COUNCIL.
(Received the assent of the Governor-General on the 16th December 1876).

An Act for the better control of public dramatic performances.

WHEREAS it is expedient to empower the Government to prohibit public dramatic performances which are scandalous, defamatory, seditious or obscene; It is hereby enacted as follows:—

1. This Act may be called "The Dramatic Performances Act, 1876": It extends to the whole of British India; And it shall come into force at once.

2. In this Act "Magistrate" means, in the Presidency Towns a Magistrate of Police, and elsewhere the Magistrate of the District.

3. Whenever the Local Government is of opinion that any play, pantomime, or other drama performed or about to be performed in a public place is—

(a) of a scandalous or defamatory nature, or

(b) likely to excite feelings of disaffection to the Government established by law in British India, or

(c) likely to deprave and corrupt persons present at the performance,

the Local Government, or outside the Presidency Towns and Rangoon the Local Government or such Magistrate as it may empower in this behalf, may by order prohibit the performance.
Explanation.—Any building or enclosure to which the public are admitted to witness a performance on payment of money, shall be deemed a "public place" within the meaning of this section.

4. A copy of any such order may be served on any person about to take part in the performance so prohibited or on the owner or occupier of any house, room or place in which such performance is intended to take place; and any person on whom such copy is served, and who does, or willingly permits, any act in disobedience to such order, shall be punished on conviction before a Magistrate with imprisonment for a term which may extend to three months, or with fine, or with both.

5. Any such order may be notified by proclamation, and a written or printed notice thereof may be stuck up at any place or places adapted for giving information of the order to the persons intending to take part in or to witness the performance so prohibited.

6. Whoever, after the notification of any such order—

   (a) takes part in the performance prohibited thereby, or in any performance substantially the same as the performance so prohibited, or

   (b) in any manner assists in conducting any such performance, or

   (c) is in wilful disobedience to such order present as a spectator during the whole or any part of any such performance, or

   (d) being the owner or occupier, or having the use of, any house, room or place, opens, keeps or uses the same for any such performance, or permits the same to be opened, kept or used for any such performance,

   shall be punishable on conviction before a Magistrate with imprisonment for a term which may extend to three months, or with fine, or with both.
7. For the purpose of ascertaining the character of any intended public dramatic performance, the Local Government or such officer as it may specially empower in this behalf, may apply to the author, proprietor or printer of the drama about to be performed, or to the owner or occupier of the place in which it is intended to be performed, for such information as the Local Government or such officer thinks necessary.

Every person so applied to shall be bound to furnish the same to the best of his ability, and whoever contravenes this section shall be deemed to have committed an offence under section 176 of the Indian Penal Code.

8. If any Magistrate has reason to believe that any house, room or place is used, or is about to be used, for any performance prohibited under this Act, he may, by his warrant, authorize any officer of police to enter with such assistance as may be requisite, by night or by day, and by force if necessary, any such house, room or place, and to take into custody all persons whom he finds therein, and to seize all scenery, dresses and other articles found therein and reasonably suspected to have been used, or to be intended to be used, for the purpose of such performance.

9. No conviction under this Act shall bar a prosecution under section 124A or section 294 of the Indian Penal Code.

10. Whenever it appears to the Local Government that the provisions of this section are required in any local area, it may, with the sanction of the Governor-General in Council, declare, by notification in the local official Gazette, that such provisions are applied to such area from a day to be fixed in the notification.

On and after that day, the Local Government may order that no dramatic performance shall take place in any place of public entertainment within such area, except under a license.
to be granted by such Local Government, or such officer as it may especially empower in this behalf.

The Local Government may also order that no dramatic performance shall take place in any place of public entertainment within such area, unless a copy of the piece, if and so far as it is written, or some sufficient account of its purport, if and so far as it is in pantomime, has been furnished, not less than three days before the performance, to the Local Government, or to such officer as it may appoint in this behalf.

A copy of any order under this section may be served on any keeper of a place of public entertainment, and if thereafter he does, or willingly permits, any act in disobedience to such order, he shall be punishable on conviction before a Magistrate with imprisonment for a term which may extend to three months, or with fine, or with both.

11. The powers conferred by this Act on the Local Government may be exercised also by the Governor-General in Council.

12. Nothing in this Act applies to any jatrás or performances of a like kind at religious festivals.
SECURITY FOR GOOD BEHAVIOUR.

CRIMINAL PROCEDURE CODE, s. 108.

ACT V OF 1898.

"Whenever a Chief Presidency or District Magistrate, or a Presidency Magistrate or a Magistrate of the first class specially empowered by the Local Government in this behalf, has information that there is within the limits of his jurisdiction any person who, within or without such limits, either orally or in writing, disseminates or attempts to disseminate, or in any wise abets the dissemination of,—

(a) any seditious matter, that is to say, any matter the publication of which is punishable under section 124A of the Indian Penal Code, or

(b) any matter the publication of which is punishable under section 153A of the Indian Penal Code, or

(c) any matter concerning a Judge which amounts to criminal intimidation or defamation under the Indian Penal Code,

such Magistrate may (in manner hereinafter provided) require such person to show cause why he should not be ordered to execute a bond, with or without sureties, for his good behaviour for such period, not exceeding one year, as the Magistrate thinks fit to fix.

No proceedings shall be taken under this section against the editor, proprietor, printer or publisher of any publication registered under, or printed, or published in conformity with the rules laid down in the Press and Registration of Books Act, 1867, except by the order or under the authority of the Governor-General in Council, or the Local Government, or some officer empowered by the Governor-General in Council in this behalf."

PREVENTION OF Seditious MEETINGS ACT.
ACT VI OF 1907.

PASSED BY THE GOVERNOR-GENERAL OF INDIA IN COUNCIL.
(Received the assent of the Governor-General on the 1st November 1907).

An Act to make better provision for the prevention of public meetings likely to promote sedition or to cause a disturbance of public tranquillity.

WHEREAS it is expedient to make better provision for the prevention of public meetings likely to promote sedition or to cause a disturbance of public tranquillity; It is hereby enacted as follows:

1. (1) This Act may be called the Prevention of Seditious Meetings Act, 1907.

(2) It extends to the whole of British India, but shall have operation only in such Provinces as the Governor-General in Council may from time to time notify in the Gazette of India.

2. (1) The Local Government may, by notification in the local official Gazette, declare the whole or any part of a Province, in which this Act is for the time being in operation, to be a proclaimed area.

(2) A notification made under sub-section (1) shall not remain in force for more than six months, but nothing in this sub-section shall be deemed to prevent the Local Government from making any further notifications in respect of the same area from time to time as it may think fit.

3. (1) In this Act, the expression “public meeting” means a meeting which is open to the public or any class or portion of the public.

(2) A meeting may be a public meeting notwithstanding that it is held in a private place and notwithstanding that admission thereto may have been restricted by ticket or otherwise.
A meeting of more than twenty persons shall be presumed to be a public meeting within the meaning of this Act until the contrary is proved.

4. (1) No public meeting for the furtherance or discussion of any subject likely to cause disturbance or public excitement or of any political subject or for the exhibition or distribution of any writing or printed matter relating to any such subject shall be held in any proclaimed area—

(a) unless written notice of the intention to hold such meeting and of the time and place of such meeting has been given to the District Superintendent of Police or the Commissioner of Police, as the case may be, at least three days previously; or

(b) unless permission to hold such meeting has been obtained in writing from the District Superintendent of Police or the Commissioner of Police, as the case may be.

(2) Any officer of Police, not below the rank of an Inspector, may, by order in writing, depute one or more Police-officers or other persons to attend any such meeting for the purpose of causing a report to be taken of the proceedings.

(3) Nothing in this section shall apply to any public meeting held under any statutory or other express legal authority or to public meetings convened by a Sheriff or to any public meetings or class of public meetings exempted for that purpose by the Local Government by general or special order.

5. The District Magistrate or the Commissioner of Police, as the case may be, may at any time by order in writing, of which public notice shall forthwith be given, prohibit any public meeting in a proclaimed area if, in his opinion, such meeting is likely to promote sedition or disaffection or to cause a disturbance of the public tranquillity.

6. (1) Any person concerned in the promotion or conduct of a public meeting held in a proclaimed area contrary to the provisions of
section 4 shall be punished with imprisonment for a term which may extend to six months, or with fine or with both.

(2) Any public meeting which has been prohibited under section 5 shall be deemed to be an unlawful assembly within the meaning of Chapter VIII of the Indian Penal Code and of Chapter IX of the Code of Criminal Procedure, 1898.

7. Whoever, in a proclaimed area, in a public place or a place of public resort, otherwise than at a public meeting held in accordance with, or exempted from, the provisions of section 4, without the permission in writing of the Magistrate of the District or of the Commissioner of Police, as the case may be, previously obtained, delivers any lecture, address or speech on any subject likely to cause disturbance or public excitement or on any political subject, to persons then present, may be arrested without warrant and shall be punished with imprisonment for a term which may extend to six months, or with fine, or with both.

8. (1) The Regulation of Meetings Ordinance, 1907, is hereby superseded.

(2) Nothing contained in this Act shall affect—
the previous operation of the said Ordinance or anything duly done or suffered thereunder; or
any obligation or liability incurred under the said Ordinance; or
any punishment incurred in respect of any offence committed against the said Ordinance; or
any investigation or legal proceeding in respect of any such obligation, liability or punishment as aforesaid;
and any such investigation or legal proceeding may be instituted or continued and any such punishment may be imposed as if the said Ordinance had not been superseded or had not expired.

9. This Act shall continue in force until the expiration of three years next after the passing thereof.

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NEWSPAPERS (INCITEMENTS TO OFFENCES) ACT.

ACT VII OF 1908.

PASSED BY THE GOVERNOR-GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor-General on the 8th June, 1908.)

An Act for the prevention of incitements to murder and to other offences in newspapers.

WHEREAS it is expedient to make better provision for the prevention of incitements to murder and to other offences in newspapers; It is hereby enacted as follows:—

1. (1) This Act may be called the Newspapers (Incitements to Offences) Act, 1908.

(2) It extends to the whole of British India.

2. (1) In this Act, unless there is anything repugnant in the subject or context,—

(a) "Magistrate" means a District Magistrate or Chief Presidency Magistrate:

(b) "newspaper" means any periodical work containing public news or comments on public news:

(c) "printing-press" includes all engines, machinery, types, lithographic stones, implements, utensils and other plant or materials used for the purpose of printing.

(2) Save as herein otherwise provided all words and expressions in this Act shall have the same meanings as those respectively assigned to them in the Code of Criminal Procedure, 1898.

3. (1) In cases where, upon application made by order of or under authority from the Local Government, a Magistrate is of opinion that a newspaper printed and published within
the Province contains any incitement to murder or to any offence under the Explosive Substances Act, 1908, or to any act of violence, such Magistrate may make a conditional order declaring the printing press used, or intended to be used, for the purpose of printing or publishing such newspaper, or found in or upon the premises where such newspaper is, or at the time of the printing of the matter complained of was, printed and all copies of such newspaper, wherever found, to be forfeited to His Majesty, and shall in such order state the material facts and call on all persons concerned to appear before him, at a time and place to be fixed by the order, to show cause why the order should not be made absolute.

(2) A copy of such order shall be fixed on some conspicuous part of the premises specified in the declaration made in respect of such newspaper under section 5 of the Press and Registration of Books Act, 1867, or of any other premises in which such newspaper is printed, and the affixing of such copy shall be deemed to be due service of the said order on all persons concerned.

(3) In cases of emergency or in cases where the purposes of the application might be defeated by delay the Magistrate may, on or after the making of a conditional order under subsection (1), make a further order ex parte for the attachment of the printing press or other property referred to in the conditional order.

(4) If any person concerned appears and shows cause against the conditional order, the Magistrate shall take evidence, whether in support of or in opposition to such order, in manner provided in section 356 of the Code of Criminal Procedure, 1898.

(5) If the Magistrate is satisfied that the newspaper contains matter of the nature specified in sub-section (1), he shall make the conditional order of forfeiture absolute in respect of such property as he may find to be within the terms of the said sub-section.

(6) If the Magistrate is not so satisfied, he shall set aside the conditional order of forfeiture and the order of attachment, if any.
4. (1) The Magistrate may by warrant empower any Police-officer not below the rank of a Sub-Inspector to seize and detain any property ordered to be attached under section 3, sub-section (i), or to seize and carry away any property ordered to be forfeited under section 3, sub-section (i), wherever found and to enter upon and search for such property in any premises—

(a) where the newspaper specified in such warrant is printed or published, or
(b) where any such property may be or may be reasonably suspected to be, or
(c) where any copy of such newspaper is kept for sale, distribution, publication or public exhibition or reasonably suspected to be so kept.

(2) Every warrant issued under sub-section (1) so far as it relates to a search shall be executed in manner provided for the execution of search-warrants by the Code of Criminal Procedure, 1898.

5. Any person concerned who has appeared and shown cause against a conditional order of forfeiture may appeal to the High Court within fifteen days from the date when such order is made absolute.

6. Save as provided in section 5, no order duly made by a Magistrate under section 3 shall be called in question in any Court.

7. Where an order of forfeiture has been made absolute in relation to any newspaper the Local Government may, by notification in the local official Gazette, annul any declaration made by the printer or publisher of such newspaper under the Press and Registration of Books Act, 1867, and may by such notification prohibit any further declaration being made or subscribed under the said Act in respect of the said newspaper, or of any newspaper which is the same in substance as the said newspaper, until such prohibition be withdrawn.
8. Any person who prints or publishes any newspaper specified in any prohibition notified under section 7 during the continuance of that prohibition shall be liable, on conviction, to the penalties prescribed by section 15 of the Press and Registration of Books Act, 1867.

9. All proceedings under this Act shall be conducted so far as may be in accordance with the provisions of the Code of Criminal Procedure, 1898.

10. No proceedings taken under this Act shall operate to prevent any person from being prosecuted for any act which constitutes an offence under any other law.
THE INDIAN PRESS ACT.

ACT I OF 1910.

PASSED BY THE GOVERNOR-GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor-General on the 9th February 1910.)

An Act to provide for the better control of the Press.

WHEREAS it is necessary to provide for the better control of the Press; It is hereby enacted as follows:—

1. (1) This Act may be called the Indian Press Act, 1910.

(2) It extends to the whole of British India, inclusive of British Baluchistan, the Santhal Parganas and the Pargana of Spiti.

2. In this Act, unless there is anything repugnant in the subject or context,—

(a) "book" includes every volume, part or division of a volume, and pamphlet, in any language, and every sheet of music, map, chart or plan separately printed or lithographed:

(b) "document" includes also any painting, drawing or photograph or other visible representation:

(c) "High Court" means the highest Civil Court of Appeal for any local area except in the case of the Provinces of Ajmer-Merwara and Coorg where it means the High Court of Judicature for the North-Western Provinces and the High Court of Judicature at Madras respectively:

(d) "Magistrate" means a District Magistrate or Chief Presidency Magistrate:

(e) "newspaper" means any periodical work containing public news or comments on public news: and

(f) "printing-press" includes all engines, machinery, types, lithographic stones, implements, utensils and
other plant or materials used for the purpose of printing.

3. (1) Every person keeping a printing-press who is required to make a declaration under section 4 of the Press and Registration of Books Act, 1867, shall, at the time of making the same, deposit with the Magistrate before whom the declaration is made security to such an amount, not being less than five hundred or more than two thousand rupees, as the Magistrate may in each case think fit to require, in money or the equivalent thereof in securities of the Government of India:

Provided that the Magistrate may, if he thinks fit, for special reasons to be recorded by him, dispense with the deposit of any security or may from time to time cancel or vary any order under this sub-section.

(2) Whenever it appears to the Local Government that any printing-press kept in any place in the territories under its administration, in respect of which a declaration was made prior to the commencement of this Act under section 4 of the Press and Registration of Books Act, 1867, is used for any of the purposes described in section 4, sub-section (1), the Local Government may, by notice in writing, require the keeper of such press to deposit with the Magistrate within whose jurisdiction the press is situated security to such an amount, not being less than five hundred or more than five thousand rupees, as the Local Government may think fit to require, in money or the equivalent thereof in securities of the Government of India.

4. (1) Whenever it appears to the Local Government that any printing-press in respect of which any security has been deposited as required by section 3 is used for the purpose of printing or publishing any newspaper, book or other document containing any words, signs or visible representations which are likely or may have a tendency, directly or indirectly, whether by inference, suggestion, allusion, metaphor, implication or otherwise—
(a) to incite to murder or to any offence under the Explosive Substances Act, 1908, or to any act of violence, or
(b) to seduce any officer, soldier or sailor in the Army or Navy of His Majesty from his allegiance or his duty, or
(c) to bring into hatred or contempt His Majesty or the Government established by law in British India or the administration of justice in British India or any Native Prince or Chief under the suzerainty of His Majesty, or any class or section of His Majesty's subjects in British India, or to excite disaffection towards His Majesty or the said Government or any such Prince or Chief, or
(d) to put any person in fear or to cause annoyance to him and thereby induce him to deliver to any person any property or valuable security, or to do any act which he is not legally bound to do, or to omit to do any act which he is legally entitled to do, or
(e) to encourage or incite any person to interfere with the administration of the law or with the maintenance of law and order, or
(f) to convey any threat of injury to a public servant, or to any person in whom that public servant is believed to be interested, with a view to inducing that public servant to do any act or to forbear or delay to do any act connected with the exercise of his public functions,
the Local Government may, by notice in writing to the keeper of such printing-press, stating or describing the words, signs or visible representations which in its opinion are of the nature described above, declare the security deposited in respect of such press and all copies of such newspaper, book or other document wherever found to be forfeited to His Majesty.

Explanation I.—In clause (c) the expression "disaffection" includes disloyalty and all feelings of enmity.

Explanation II.—Comments expressing disapproval of the measures of the Government or of any such Native Prince or Chief as aforesaid with a view to obtain their alteration by
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lawful means, or of the administrative or other action of the Government or of any such Native Prince or Chief or of the administration of justice in British India without exciting or attempting to excite hatred, contempt or disaffection do not come within the scope of clause (c).

(2) After the expiry of ten days from the date of the issue of a notice under sub-section (1), the declaration made in respect of such press under section 4 of the Press and Registration of Books Act, 1867, shall be deemed to be annulled.

5. Where the security given in respect of any press has been declared forfeited under section 4, every person making a fresh declaration in respect of such press under section 4 of the Press and Registration of Books Act, 1867, shall deposit with the Magistrate before whom such declaration is made security to such amount, not being less than one thousand or more than ten thousand rupees, as the Magistrate may think fit to require, in money or the equivalent thereof in securities of the Government of India.

6. If after such further security has been deposited the printing-press is again used for the purpose of printing or publishing any newspaper, book or other document containing any words, signs or visible representations which in the opinion of the Local Government are of the nature described in section 4, sub-section (1), the Local Government may, by notice in writing to the keeper of such printing-press, stating or describing such words, signs or visible representations, declare—

(a) the further security so deposited,
(b) the printing-press used for the purpose of printing or publishing such newspaper, book or other document, or found in or upon the premises where such newspaper, book or other document is, or at the time of printing the matter complained of was, printed, and
(c) all copies of such newspaper, book or other document wherever found,

to be forfeited to His Majesty.
7. (4) Where any printing-press is or any copies of any newspaper, book or other document are declared forfeited to His Majesty under this Act, the Local Government may direct any Magistrate to issue a warrant empowering any police-officer, not below the rank of Sub-Inspector, to seize and detain any property ordered to be forfeited and to enter upon and search for such property in any premises—

(i) where any such property may be or may be reasonably suspected to be, or

(ii) where any copy of such newspaper, book or other document is kept for sale, distribution, publication or public exhibition or reasonably suspected to be so kept.

(2) Every warrant issued under this section shall, so far as relates to a search, be executed in manner provided for the execution of search-warrants under the Code of Criminal Procedure, 1898.

8. (1) Every publisher of a newspaper who is required to make a declaration under section 5 of the Press and Registration of Books Act, 1867, shall, at the time of making the same, deposit with the Magistrate before whom the declaration is made security to such an amount not being less than five hundred or more than two thousand rupees, as the Magistrate may in each case think fit to require, in money or the equivalent thereof in securities of the Government of India:

Provided that if the person registered under the said Act as printer of the newspaper is also registered as the keeper of the press where the newspaper is printed, the publisher shall not be required to deposit security so long as such registration is in force:

Provided further that the Magistrate may, if he thinks fit, for special reasons, to be recorded by him, dispense with the deposit of any security or may from time to time cancel or vary any order under this sub-section.

(2) Whenever it appears to the Local Government that a newspaper published within its territories, in respect of which a declaration was made by the publisher thereof prior to the commencement of this Act, under section 5 of the Press and
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Registration of Books Act, 1867, contains any words, signs or visible representations of the nature described in section 4, sub-section (1), the Local Government may, by notice in writing, require the publisher to deposit with the Magistrate within whose jurisdiction the newspaper is published security to such an amount, not being less than five hundred or more than five thousand rupees, as the Local Government may think fit to require, in money or the equivalent thereof in securities of the Government of India.

9. (1) If any newspaper in respect of which any security has been deposited as required by section 8 contains any words, signs or visible representations which in the opinion of the Local Government are of the nature described in section 4, sub-section (1), the Local Government may, by notice in writing to the publisher of such newspaper, stating or describing such words, signs or visible representations, declare such security and all copies of such newspaper, wherever found, to be forfeited to His Majesty.

(2) After the expiry of ten days from the date of the issue of a notice under sub-section (1), the declaration made by the publisher of such newspaper under section 5 of the Press and Registration of Books Act, 1867, shall be deemed to be annulled.

10. Where the security given in respect of any newspaper is declared forfeited, any person making a fresh declaration under section 5 of the Press and Registration of Books Act, 1867, as publisher of such newspaper, or any other newspaper which is the same in substance as the said newspaper, shall deposit with the Magistrate before whom the declaration is made security to such amount, not being less than one thousand or more than ten thousand rupees, as the Magistrate may think fit to require, in money or the equivalent thereof in securities of the Government of India.

11. If after such further security has been deposited the newspaper again contains any words, signs or visible representations which in the opinion of the Local Government are of the nature described in section 4, sub-section (1),
the Local Government may, by notice in writing to the publisher of such newspaper, stating or describing such words, signs or visible representations, declare—

(a) the further security so deposited, and
(b) all copies of such newspaper wherever found, to be forfeited to His Majesty.

12. (1) Where any newspaper, book or other document wherever printed appears to the Local Government to contain any words, signs or visible representations of the nature described in section 4, sub-section (1), the Local Government may, by notification in the local official Gazette, stating the grounds of its opinion, declare such newspaper, book or other document to be forfeited to His Majesty, and thereupon any police-officer may seize the same wherever found, and any Magistrate may by warrant authorize any police-officer not below the rank of Sub-Inspector to enter upon and search for the same in any premises where the newspaper, book or other document may be or may be reasonably suspected to be.

(2) Every warrant issued under this section shall, so far as relates to a search, be executed in manner provided for the execution of search-warrants under the Code of Criminal Procedure, 1898.

13. The Chief Customs-officer or other officer authorized by the Local Government in this behalf may detain any package brought, whether by land or sea, into British India which he suspects to contain any newspapers, books or other documents of the nature described in section 4, sub-section (1), and shall forthwith forward copies of any newspapers, books or other documents found therein to such officer as the Local Government may appoint in this behalf to be disposed of in such manner as the Local Government may direct.

14. No newspaper printed and published in British India shall be transmitted by post unless the printer and publisher have made a declaration under section 5 of the Press and
Registration of Books Act, 1867, and the publisher has deposited security when so required under this Act.

15. Any officer in charge of a post-office or authorised by the Post-Master General in this behalf may detain any article other than a letter or parcel in course of transmission by post, which he suspects to contain—

(a) any newspaper, book or other document containing words, signs or visible representations of the nature described in section 4, sub-section (1), or

(b) any newspaper in respect of which the declaration required by section 5 of the Press and Registration of Books Act, 1867, has not been made, or the security required by this Act has not been deposited by the publisher thereof, and shall deliver all such articles to such officer as the Local Government may appoint in this behalf to be disposed of in such manner as the Local Government may direct.

16. (I) The printer of every newspaper in British India shall deliver at such place and to such officer as the Local Government may, by notification in the local official Gazette, direct, and free of expense to the Government, two copies of each issue of such newspaper as soon as it is published.

(ii) If any printer of any such newspaper neglects to deliver copies of the same in compliance with sub-section (I), he shall, on the complaint of the officer to whom the copies should have been delivered or of any person authorised by that officer in this behalf, be punishable on conviction by a Magistrate having jurisdiction in the place where the newspaper was printed with fine which may extend to fifty rupees for every default.

17. Any person having an interest in any property in respect of which an order of forfeiture has been made under section 4, 6, 9, 11 or 12 may, within two months from the date of such order, apply to the High Court to set aside such order on the ground that the newspaper, book or other document in respect of which the order was made did not
contain any words, signs or visible representations of the nature described in section 4, sub-section (1).

18. Every such application shall be heard and determined by a Special Bench of the High Court composed of three Judges, or, where the High Court consists of less than three Judges, of all the Judges.

19. (1) If it appears to the Special Bench that the words, signs or visible representations contained in the newspaper, book or other document in respect of which the order in question was made were not of the nature described in section 4, sub-section (1), the Special Bench shall set aside the order of forfeiture.

(2) Where there is a difference of opinion among the Judges forming the Special Bench, the decision shall be in accordance with the opinion of the majority (if any) of those Judges.

(3) Where there is no such majority which concurs in setting aside the order in question, such order shall stand.

20. On the hearing of any such application with reference to any newspaper, any copy of such newspaper published after the commencement of this Act may be given in evidence in aid of the proof of the nature or tendency of the words, signs or visible representations contained in such newspaper which are alleged to be of the nature described in section 4, sub-section (1).

21. Every High Court shall, as soon as conveniently may be, frame rules to regulate the procedure in the case of such applications, the amount of the costs thereof and the execution of orders passed thereon, and until such rules are framed the practice of such Court in proceedings other than suits and appeals shall apply, so far as may be practicable, to such applications.

22. Every declaration of forfeiture purporting to be made under this Act shall, as against all persons, be conclusive evidence that the forfeiture
therein referred to has taken place, and no proceeding purporting to be taken under this Act shall be called in question by any Court, except the High Court on such application as aforesaid, and no civil or criminal proceeding except as provided by this Act, shall be instituted against any person for anything done or in good faith intended to be done under this Act.

23. (1) Whoever keeps in his possession a press for the printing of books or papers without making a deposit under section 3 or section 5, when required so to do, shall on conviction by a Magistrate be liable to the penalty to which he would be liable if he had failed to make the declaration prescribed by section 4 of the Press and Registration of Books Act, 1867.

(2) Whoever publishes any newspaper without making a deposit under section 8 or section 10, when required so to do, or publishes such newspaper knowing that such security has not been deposited, shall, on conviction by a Magistrate, be liable to the penalty to which he would be liable if he had failed to make the declaration prescribed by section 5 of the Press and Registration of Books Act, 1867.

24. Where any person has deposited any security under this Act and ceases to keep the press in respect of which such security was deposited, or, being a publisher, makes a declaration under section 8 of the Press and Registration of Books Act, 1867, he may apply to the Magistrate within whose jurisdiction such press is situate for the return of the said security; and thereupon such security shall, upon proof to the satisfaction of the Magistrate and subject to the provisions hereinbefore contained, be returned to such person.

25. Every notice under this Act shall be sent to a Magistrate, who shall cause it to be served in the manner provided for the service of summonses under the Code of Criminal Procedure, 1898.
26. Nothing herein contained shall be deemed to prevent any person from being prosecuted under any other law for any act or omission which constitutes an offence against this Act.
PREVENTION OF SEDITIOUS MEETINGS ACT, 1911.  
ACT X OF 1911.  

PASSED BY THE GOVERNOR-GENERAL IN COUNCIL.  

(Received the assent of the Governor-General on the 22nd March 1911.)  

An Act to consolidate and amend the law relating to the prevention of public meetings likely to promote sedition or to cause a disturbance of public tranquillity.  

WHEREAS it is expedient to consolidate and amend the law relating to the prevention of public meetings likely to promote sedition or to cause a disturbance of public tranquillity; It is hereby enacted as follows:—  

1. (1) This Act may be called the Prevention of Seditious Meetings Act, 1911.  

(2) It extends to the whole of British India, but shall have operation only in such Provinces or parts of Provinces as the Governor-General in Council may from time to time notify in the Gazette of India.  

2. (1) The Local Government may, with the previous sanction of the Governor-General in Council, by notification in the local official Gazette, declare the whole or any part of a Province, in which this Act is for the time being in operation, to be a proclaimed area.  

(2) A notification made under sub-section (1) shall not remain in force for more than six months, but nothing in this sub-section shall be deemed to prevent the Local Government, with the previous sanction of the Governor-General in Council, from making any further notifications in respect of the same area from time to time as it may think fit.  

3. (1) In this Act, the expression "public meeting" means a meeting which is open to the public or any class or portion of the public.
THE LAW OF SEDITION.

(2) A meeting may be a public meeting notwithstanding that it is held in a private place and notwithstanding that admission thereto may have been restricted by ticket or otherwise.

4. (1) No public meeting for the furtherance or discussion of any subject likely to cause disturbance or public excitement or for the exhibition or distribution of any writing or printed matter relating to any such subject shall be held in any proclaimed area—

(a) unless written notice of the intention to hold such meeting and of the time and place of such meeting has been given to the District Magistrate or the Commissioner of Police, as the case may be, at least three days previously; or

(b) unless permission to hold such meeting has been obtained in writing from the District Magistrate or the Commissioner of Police, as the case may be.

(2) The District Magistrate or any Magistrate of the first class authorized by the District Magistrate in this behalf may, by order in writing, depute one or more Police-officers, not being below the rank of Head Constable, or other persons to attend any such meeting for the purpose of causing a report to be taken of the proceedings.

(2) Nothing in this section shall apply to any public meeting held under any statutory or other express legal authority or to public meetings convened by a Sheriff or to any public meetings or class of public meetings exempted for that purpose by the Local Government by general or special order.

5. The District Magistrate or the Commissioner of Police, as the case may be, may at any time, by order in writing of which public notice shall forthwith be given, prohibit any public meeting in a proclaimed area if, in his opinion, such meeting is likely to promote sedition or disaffection or to cause a disturbance of the public tranquillity.
APPENDIX.

6. (1) Any person concerned in the promotion or conduct of a public meeting held in a proclaimed area contrary to the provisions of section 4 shall be punished with imprisonment for a term which may extend to six months, or with fine, or with both.

(2) Any public meeting which has been prohibited under section 5 shall be deemed to be an unlawful assembly within the meaning of Chapter VIII of the Indian Penal Code and of Chapter IX of the Code of Criminal Procedure, 1898.

7. Whoever, in a proclaimed area, in a public place or a place of public resort, otherwise than at a public meeting held in accordance with, or exempted from, the provisions of section 4, without the permission in writing of the Magistrate of the District or of the Commissioner of Police, as the case may be, previously obtained delivers any lecture, address or speech on any subject likely to cause disturbance or public excitement to persons there present, may be arrested without warrant and shall be punished with imprisonment for a term which may extend to six months, or with fine, or with both.

8. No Court inferior to that of a Presidency Magistrate or of a Magistrate of the first class or Sub-divisional Magistrate shall try any offence against this Act.

9. The Prevention of Seditious Meetings Act, 1907, and the Continuing Act, 1910, are hereby repealed.

STATEMENT OF OBJECTS AND REASONS.

1. The Prevention of Seditious Meetings Act, 1907, which was continued by the Continuing Act, 1910, until the thirty-first day of March 1911, will expire on the last-named date unless further continued. It is now deemed advisable, instead of merely continuing or making permanent the existing Act, to introduce a Bill to consolidate and amend the law relating to the prevention of public meetings likely to promote sedition or to cause disturbance of public tranquillity.
2. The following are the main points in respect of which the provisions of the Bill differ from those of the existing Act.—

Section 2.—Notifications of proclaimed areas, and the making of further notifications are to be subject to the previous sanction of the Governor-General in Council.

Section 3.—Clause (3) of this section is omitted.

Section 4 (1).—The words "or of any political subject" are omitted.

Section 4 (1), (a) and (b).—The words "District Magistrate" are substituted for the words "District Superintendent of Police."

Section 4 (2).—The words "The District Magistrate or any Magistrate of the first class authorised by the District Magistrate in this behalf" are substituted for the words "Any officer of Police, not below the rank of an Inspector."

Section 7.—The words "or on any political subject" are omitted.

J. L. JENKINS.

The 14th March 1911.
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