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 :—

Sedition.

"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," or " words written," or " signs," or " 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 defines the offence of defamation.

It may be doubted whether the term " 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 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.

With regard to ' words spoken ' publicity is implied, and so also in the case of ' signs ' or ' visible representation.' For an instance of the first of these, 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. iii*).

For an example of the next, 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 "Ardlamont 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 affinity with the offence of defamation, *viz.*:—that the seditious imputation may be conveyed by *innuendo*, as it was in Tilak's newspaper.

"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

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

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*).