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. *Ganesh 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 quæstio*.

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 Korán. 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 Korán—'*Atiullah wa atiur rasúla wa ulil amr minkúm*' 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 '*Minkúm*'—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 Korán—'*Yá aiyohal lazina ámana la-tattaa Khezu wal Yahuda wan-nasara auliya*',—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 Korán?

"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 *wáz*, 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 (*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." They were 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." As for Abdul Gaffur they said, " We cannot doubt, 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 guilty of abetment of sedition under section 124A, read with section 109.

Since the decision of these cases the offence of ' Criminal Conspiracy ' has been added to the Penal Code by Act VIII of 1913 (see *Appx.*). The new offence dispenses with the necessity of proving some overt act, committed in pursuance of the agreement to perpetrate an offence, by some member of the conspiracy, and, to this extent, it may be said to modify the law of abetment of sedition by conspiracy, to which it is essential.