

CHAPTER XIII.

THE LATER CASES.

THE two cases of *Queen-Empress v. Luxman* and *Queen-Empress v. Vinayek* (2 Bom. L. R., 286-322), which have been frequently referred to, were probably the first trials held after the legislation of 1898. They took place in the following year. 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 *Rāja* and *Rājya*?" (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 contrast 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."

With reference to the latter portion of the article, his Lordship said:—"In it there is said to be a simile drawn of Government as a snake, which is the one of all reptiles regarded with most abhorrence, and Government, it is suggested, is compared to a snake and is suggested to be deserving of the treatment which, according to the article, is accorded to the snake. There again it will be your duty to consider carefully what construction you will put on this part of the article, and you must determine what was really the intention of the writer

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 treasonable conspiracies among them, and that the Brahmins 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 Silohar 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 *dds*. 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 *dao*. 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 *fat* 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., 945), 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 *Mlechchhu*. 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 '*Trample 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 he 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 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.

In the same year (1908) the second trial of Tilak took place at the Bombay High Court Sessions. The accused was charged with having published in his weekly newspaper the *Kesari* a series of articles, commencing on the 12th May, (*i.e.*, twelve days after the Mozafferpur bomb outrage) advocating the cult of the bomb as a legitimate instrument of political agitation. The principles enunciated by Justice Strachey at the former trial (*Ch. v*) were again expounded. The cases of the *Bangobasi* (*Ch. iv*) *Amba Prasad* (*Ch. vi*), *Laxman* and *Vinayek* (*Ch. viii*) were also cited. The trial occupied eight days and is fully reported (10 Bom. L. R., pp. 848-903). Tilak was found guilty and sentenced to transportation for six years and a fine of Rs. 1,000.