CHAPTER XIV.

THE LATER CASES—*contd.*

THE year 1908 appears to have been unusually prolific in sedition cases throughout India, a few of which came before the High Courts. Besides the second trial of Tilak, already mentioned, two important cases came up on appeal, the one in Madras and the other in Calcutta. These were the cases of *Chidambaram Pillai* v. *Emperor*, and *Leakut Hossein Khan* v. *Emperor*. They have been fully discussed in a previous chapter (*Ch. xii*).

In the year 1909 the appeal of *Ganesh Damodar Savarkar* v. *Emperor* (34 Bom., 394), came up 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 oourse 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 failings of their own countrymen to the scrutiny of others,' but, the writer says, 'You have laid such a trap that we must disregard 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 Government 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 Government is not doing its duty, and is not therefore a good Government. 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, therefore, that under the circumstances of the case the conviction of the prisoner under section 124A is right. The articles are, however, 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 '*parapadadalita*' (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,' 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:" *Joy Chandra Sirkar* v. *Emperor* (38 Cal., 214).

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 section 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 : " *Surendra Prasad Lahiri* v. *Emperor* (38 Cal., 227).

In a more recent appeal before the High Court of Calcutta, (38 Cal., 253), 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 (*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.

After citing the observations of Justice Strachey in Tilak's case on the limits of fair comment in journalism (*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 *primâ 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 toll 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."

"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 :" *Mon Mohan Ghose* v. *Emperor* (38 Cal., 253).

In the case of *Emperor* v. *Shankar Shri Krishna Dev* (35 Bom., 55), which came up on appeal before the Bombay High Court, the accused, who was a pleader, was the declared owner of a printing press, the management of which he did not personally conduct. At this press a book was published entitled "*Ek Shloki Gita*," which purported to be a semi-religious commentary on a text from the '*Bhagvad Gita*,' but which was interspersed with highly seditious passages. There was no evidence that the accused had ever read the book or was aware of its contents, or that he was in any way interested in its publication beyond the receipt of the printing charges. Under these circumstances it was held that there was a reasonable doubt as to his guilt, and his conviction was accordingly set aside.

In the following year (1911) two cases of dissemination of seditious matter through the post came up on appeal before the Calcutta High Court. In the first of these, *Surendra Narayan Adhicary* v. *Emperor* (39 Cal., 522), the appellant, who was a private tutor, was convicted of sending by post a manuscript copy of certain seditious articles to a school boy with a request for further circulation. In this case the posting and the handwriting were clearly proved, and, although the packet was intercepted by the master, the accused was held to be guilty of an attempt under section 124A.

In the later case, *Suresh Chandra Sanyal* v. *Emperor* (39 Cal., 606), the appellant was convicted of sending by post a manuscript copy of a seditious pamphlet, entitled '*Matripuja*,' to the 'Captain' or headmaster of the Rungpur Zilla School. In this case the conviction depended chiefly on the evidence of handwriting, which was found to be unreliable, and it was accordingly set aside.