CHAPTER XV.

COGNATE OFFENCES.

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

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

The Bill was then referred to a Select Committee. Among the changes effected by the Select Committee one of the most important was the removal of this provision from section

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

When the Council met on the 18th February 1898, for the final consideration of the Bill, the Hon'ble Member in charge alluded to the changes which had been made as follows:—"We have removed the offence of stirring up class-hatred from the sedition clause, and have inserted it in the chapter relating to offences against the public tranquillity. This offence, no doubt, only affects the State indirectly. It affects the State through the danger it causes to the public tranquillity. It is less akin to treason than a seditious attack upon the Government by law established, and therefore we have provided a much smaller punishment. But in India the offence is a very dangerous one. When class or sectarian animosity is directed against any section of Her Majesty's subjects, the members of that section are in peril. Any accidental event may cause an explosion, and it is difficult to foresee the direction which the explosion will take. The persistent attacks made on the officers and helpers engaged in plague operations have already

resulted in sad loss of life. A squabble over an alleged mosque gave rise to a dangerous riot which at one time it was feared might turn into a general attack on the European community in Calcutta. We wish to trust to prevention rather than cure, and by taking power to punish people who foment class animosities to obviate the necessity of putting down the consequent disturbances with a high hand.''

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

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

The new section was as follows :—

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

Promoting enmity between classes.

Explanation.—It does not amount to an offence within the meaning of this section to point out, without malicious intention and with an honest view to their removal, matters which are producing, or have a tendency to produce, feelings of enmity or hatred between different classes of Her Majesty's subjects.''

It will be seen at once that section 153A, has many incidents in common with section 124A, with which it was once incorporated. The same principle underlies both provisions, and it may be doubted whether the separation of the two has been attended with advantages which are at all commensurate with the disadvantage of creating a divergence between the English and the Indian systems of law, when the object of amending the law was admittedly to bring the two systems into closer accord.

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

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

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

Prosecutions under section 153A have been less frequent than those for sedition under section 124A, and very few of these have come before a High Court. Appeals from the jurisdiction of Magistrates of the First class lie to the Sessions Judge and not to the High Court, unless specially provided for, as in the case of sedition (s. 408(*c*) Cr. P. C.). Appeals from a Presidency Magistrate ordinarily lie to the High Court, but only if the sentence imposed exceeds six months' imprisonment or two hundred rupees' fine (s. 411).

A conviction by a Magistrate under section 153A, therefore, can only come before a High Court for revision, unless an appeal be specially transferred as in the case of the *Rungpur Bartabaha* before mentioned (*Ch. xiv*). In this case separate convictions and sentences had been imposed on the printer and editor of the paper, at one and the same trial, under sections 124A and 153A, by the District Magistrate of Rungpur. Appeals in respect of the former section were preferred to the High Court, while those under the latter section were preferred to the Sessions Judge of Rungpur. The learned Judges who heard the first, transferred the other appeals (38 Cal. 214, 227) to themselves. In disposing of the four appeals their lordships affirmed the convictions under section 124A and set aside those under section 153A, holding that no distinct offence of attempting to incite one class against another had been made out.

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

The passages in the article entitled *Sipahir Katha* which appear to have been relied on were as follows:—"We thought that when we had told them news of the Parliament, of His Excellency the Governor-General of India, of great men of our country—when we told them who attacked His Excellency and who made an attempt on the life of His Honour the Lieutenant-Governor—and lastly when we told them also of the nine Bengali virtuous men who had been deported, of Madanlal Dhingra, Khudiram, Arabindo, Baren, and others too, we had told them enough, and we thought that we had strengthened their determination in favour of Swadeshi. But, alas, we stood speechless when we heard what they said in reply. 'Babu,' said the Sepoy, 'most of you are thieves. You will serve under the Government and fill your stomach. How shall you then serve your country? Whenever we approach you for employment you ask for money.

It is your habit to earn money by disreputable and unfair means.' 'You agitate and exult only in words, and say that a Mahomedan is your brother. It is you that cause litigation in the country and absorb the money of the Mahomedans. It is you that are pleaders and muktears, it is you again that in going to rescue the poor Mahomedans from litigation throw them into the danger of Khumbhipaka (hell). It is you that are appropriating everything, from the wife's ornaments to the bullocks of the plough.' 'But your aspiration is only to plume yourselves on being Government servants and to suck the blood of the poor people like ourselves. How can we expect ever to be able to act in concert with you ?' "

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

The comment of the learned Judges on this was as follows :— " The offence under section 153A is not so clear, as there does not seem to be any deliberate attempt to incite one class against another. The Sepoys inveigh both against Baboos and Miyahs, as robbing the poor Mahomedan raiyats, and the reference to the missionaries is a foolish illustration not intended to create enmity between the missionaries and any other subjects of the King. The conviction under this section must therefore be set aside. This disposes of both the appeals by the prisoner." A similar order was made in the appeal of the printer.

In the case of *Emperor* v. *B. G. Tilak* (10 Bom. L. R., 848), a conviction was obtained under section 153A, but it is not clear from the charge to the jury on what it was based (*Ch. xiii*).

In the case of *Leakut Hossein Khan* and *Abdul Gaffur* v. *Emperor* (App. No. 214 of 1908), which has been already referred to (*Ch. xii*), the appellants had also been convicted under both sections, by the Sessions Judge of Backergunge. On appeal it was held by the High Court that no distinct offence

had been established under section 153A, and the convictions under that section were accordingly set aside, while those under section 124A were affirmed.

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

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

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

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

In proposing the amendment the Law Member said:—"Section 505 of the Penal Code deals with a cognate class of offences. It punishes the dissemination of certain false statements and rumours which are conducive to public mischief." The Hon'ble Member then quoted the section as it stood originally, with the words 'whoever circulates or publishes any statement, rumour or report which he knows to be false', and continued—"In its present form this provision is unworkable. It is impossible for the prosecution to show that the person who circulated the false statement knew it to be false. We propose therefore to repeal and re-enact this section in more precise terms, making the publication of these obnoxious statements punishable, but allowing the accused to show that the mischievous statement or rumour was true in fact, and was not published or circulated with a criminal intent. It may be said, and indeed it has been urged upon us, that this is not going far enough. If a man chooses to publish statements which are

likely to incite our soldiers to mutiny, or to cause people to commit offences against the law, he ought to be punished whether his statements are true or false, and without regard to his private intentions. There is much force in this argument, but we should be unwilling to punish a man under this section for making a statement which is true, when he publishes or circulates that statement without any criminal intent. The universal presumption of law is that a man is deemed to intend a result which is the ordinary and natural consequence of his act. When, then, a man chooses to publish a statement, or circulate a rumour, which on the face of it is directly conducive to grave public mischief, he cannot complain if he is called upon to show that his intentions were not criminal."

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

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

grounds for believing it, as, for instance, by showing that he made due inquiry before he published it."

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

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

Statements conducing to public mischief.

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

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

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

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

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

Exception.—It does not amount to an offence, within the meaning of this section, when the person making, publishing or circulating any such statement, rumour or report has reasonable grounds for believing that such statement, rumour or

report is true, and makes, publishes or circulates it without any such intent as aforesaid."

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

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

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

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

The third clause seems to bear a strong affinity with section 153A. In fact, the offence therein described is only a particular form of setting, or attempting to set, class against class, and might almost be held to be comprised in it.

It should be mentioned that offences under sections 153A and 505 of the Penal Code are precisely on the same footing as regards procedure and jurisdiction.

Sanction is necessary for a prosecution under section 505.

The offence moreover is not cognisable by the Police, and is triable only by a Magistrate of the First class or a Presidency Magistrate.

These are the Cognate offences.