CHAPTER XVIII.

LATER PREVENTIVE MEASURES—*contd.*

THE Vernacular Press Act of 1878 was passed on the 14th of March, and on the 5th September following a Bill was introduced to amend it. This, as was explained by the Mover, was in consequence of the doubts expressed by the Secretary of State as to the efficacy of one of its provisions.

On the 16th October the opportunity was taken by Sir A. Arbuthnot of stating to the Council how the Act had operated during the short period that had elapsed since its enactment. He said :—"When I obtained leave to introduce this Bill I explained the circumstances under which the Bill had been framed and the particular point on which the Secretary of State had desired that the Act passed in March last should be amended, and I said that I would take the opportunity to offer a few remarks with reference to the working of the Act which it is now proposed to amend, and also with reference to the discussions which have taken place regarding that measure since it was passed. Seven months have now elapsed since the Vernacular Press Act became law, and there has been no necessity for bringing the Act into operation in any single instance. The Act in this respect has so far justified—and indeed has more than justified—the hope which I ventured to express when it was passed, that the mere existence of this law would, in a great measure, suffice to repress the mischief against which it is aimed, and that the actual enforcement of its provisions would be a thing of very rare occurrence. As a matter of fact seditious and disloyal writing—writing calculated to inflame the minds of the masses and to bring the Government into contempt—has been entirely stopped."

"At the same time," he added, "there has been no interference with the legitimate expression of opinion. The liberty of the Press has not been in any way restricted. It is constantly alleged that the vernacular Press has been gagged, that the native Press has been silenced. I am bound to say that in

the case of persons at a distance—in the case of English statesmen who have no opportunity of knowing what is actually going on, on the spot—such impressions are by no means unreasonable. But to those who are acquainted with the actual state of things—to those who have the opportunity of seeing the vernacular papers, or the extracts from them which are periodically printed—it must by this time be apparent that the result which might have been apprehended has not occurred. I need only allude to the comments which have been constantly made in the vernacular newspapers on the Press Act, on the License-tax, and on the Arms Act, to show that on all these matters there is still the freest and the most unreserved criticism and comment. This, so far as we can form a judgment from the history of the past seven months, has been the result; and I cannot but think that it is a result which must be regarded as very satisfactory. The Act, which in many quarters has been so vigorously condemned, has entirely succeeded in its object of checking seditious writing, and has in no way restricted or diminished the legitimate freedom of the Press."

"The Secretary of State," he went on to add, "emphatically approved of it. In the sixth paragraph of the despatch, Lord Cranbrook writes that he is bound to say that 'a strong case appears to be established for the further control of the class of newspapers at which the Act is aimed,' and after noticing the arguments which were adduced by some of the speakers in this Council, His Lordship proceeds to add an argument of his own, which is to the effect that, 'remembering how few opportunities the experience of these writers has afforded them of understanding the limits of justifiable criticism, he is inclined to think that a system of pecuniary penalties leviable under bonds, would be more applicable to their case than criminal prosecutions for an offence which may conceivably entail a punishment so heavy as transportation for life.' It would be idle to deny that the Vernacular Press Act has been received with disapproval by many persons whose opinions are entitled to the respectful consideration of this Council. Such a result was only to be expected. The measure is one which was not resolved on by the Government without great reluctance and regret, and it was not probable that a

measure of this nature would be received with acclamation. Notwithstanding these expressions of disapproval it is not proposed to repeal the Act. The Government of India have not in any way receded from the opinion that the Act was a political necessity."

In conclusion he said:—"The Government consider the working of the Act during the few months that it has been on the Statute-book to have been even more satisfactory than the most sanguine expectations could have foreseen. So far it has effectually repressed the evil against which it was aimed, while it has in no way interfered with or restricted the legitimate freedom of the Press."

His Excellency Lord Lytton, the President, addressed the Council as follows:—"If I do not give a silent vote on this occasion, it is only because I am anxious that my silence shall not be misinterpreted. Although the thoughtful speech of my hon'ble colleague naturally and properly turned chiefly upon the Vernacular Press Act, yet the Council is aware that neither the Vernacular Press Act, nor the principle, nor the expediency of that Act are here under discussion. My hon'ble colleague has reminded us that the Vernacular Press Act has now for some time been in force, with the approval of the Secretary of State and the ratification of the British Parliament, and no action can be taken in any part of India without the carefully considered sanction of the Supreme Government. Up to the present time no action has been necessary under the Act, and I trust that no such action will be necessary. But I do not hesitate to say that the existence of the law has been eminently beneficial in its effects, and productive of a marked improvement in the general tone and character of Vernacular journalism. Many evidences of this might, doubtless, be added to those which have been cited by my hon'ble colleague; but I think the Council will have been satisfied by the statement we have just heard from him that the effects of the Vernacular Press Law are vigilantly watched and considered by the Department over which he presides; and that this law, whilst effectually restraining seditious and profligate publications, has in no wise hindered the freest and fullest expression of antagonistic opinion on the policy and conduct of the

Executive or the Legislature in the fair field of public criticism."

"The Council is aware," His Excellency continued, "that the object of the present Press Law is preventive, not punitive; and speaking for myself I can truly affirm that my own object, both in connection with that law and generally as regards all the relations between the Government and the Press, has been, not to check, but to promote the growth, not to injure, but to improve the position, of the Vernacular Press. I say no more. The Vernacular Press has received from the Government which passed the existing Press Law not merely toleration, but sympathy, not merely good wishes, but good offices. I have always felt that our duty toward that portion of the Press was of a two-fold character. We were bound, indeed, to protect the community from the abuse of freedom on the part of certain Vernacular journals; but we were also bound in the interests of the community, as well as of the Press itself, simultaneously to do all in our power to encourage and assist the Vernacular Press in the cultivation of that freedom which the present law denies to no honest journalist."

"Now I think there is no use," he added, "in ignoring the plain fact that the existence of a free Press in a country whose Government is not based on free institutions, or carried on upon representative principles, is a great political anomaly, and that the relations between such a Government and such a Press must necessarily be somewhat peculiar. A Press exists for the circulation of facts, as well as of opinions about them. If the facts are untrue, the opinions must be unsound. Adequate political information is as necessary for the sustenance of a healthy Press as adequate food for that of a healthy human being. But in this country the only source of authentic political information is the Government itself, whose political acts are the legitimate subject of that public criticism which it is the function of the Press to supply. If you put aside the Government; beyond, and apart, and independently of the Government, where is such information to be found? In the rumours of the streets, in the gossip of the bázárs and the mess-rooms, in the interior consciousness of amateur political

prophets, or the occasional indiscretion of some official clerk. And therefore I think that in presence of a Press which is, so to speak, constrained to forage for its sustenance on such a barren moor, it is the duty of the Government, so far as it is possible to do so, to keep the Press fully and impartially furnished with accurate current information in reference to such measures, or intentions on the part of Government, as are susceptible of immediate publication, without injury to the interests for which the Government is responsible."

In conclusion he said :—"The object of the present Bill is to remove from the Vernacular Press Act a clause which was inserted into that Act, not without certain hesitation at the time, purely as a mitigating, not as an intensifying clause. The Secretary of State, whilst sanctioning the whole Bill inclusive of this clause, expressed an opinion that the option thus given to impecunious editors to place their journals under temporary supervision as an alternative to penalties which might otherwise in such cases put an end altogether to the precarious existence of the offending journal, was a provision liable to misuse, and which might in practice introduce a principle nowhere else recognised in the Act, and indeed generally inconsistent with the spirit of it. The Secretary of State, therefore, requested the Government of India not to act upon this clause. This amending Act, however, leaves of course wholly unaltered the character and principle of the original Act."

The Bill was then passed as Act XVI of 1878. Act IX of 1878, thus amended, had been in force for a little over three years when, on the 7th December, 1881, a Bill was introduced to repeal it. The reasons for this measure were briefly stated by the Mover of the Bill to be that ; "in the opinion of the present Government," circumstances no longer justified the existence of the Act.

On a subsequent occasion, the 19th of January 1882, the reasons were more fully explained by the Hon'ble Member in charge, and by Sir W. Hunter who warmly supported the repeal. In referring to the circumstances which led to the passing of Act IX of 1878, Sir W. Hunter said :—"In that

year the Government of India deemed it needful in the public interest, to obtain from the Legislature special powers for repressing seditious and threatening writings in the Vernacular Press. He confessed that after perusing the published evidence, he was one of those who deplored that such powers should have been deemed necessary. But for this very reason he thought that he, and others who like himself regretted that repressive powers were then found needful, should now acknowledge the forbearance with which those powers had been used. There were no returns before the Council to show how far the Vernacular Press Act of 1878 had been resorted to in the several Presidencies and Provinces. But after inquiry in the proper quarter he believed he was correct in saying that in only one instance had the repressive clauses of that Act been made use of against any newspaper. Now the Council must remember that not fewer than 230 journals were regularly published in the native languages, and that any one of these newspapers might, by the exercise of the powers granted to the Executive in 1878, have been brought under the operation of the Act. The fact that in only one case had even a warning been issued to a native newspaper under the Act sufficed to show the extreme reluctance with which the Executive had availed itself of the powers vested in it during the past four years."

"As regards seditious or threatening writings in the Vernacular Press published within India," he continued, "the repealing Bill pursued a different course. It made no special provision for such writings, and so left them to be dealt with by the ordinary law. He did not think it could be alleged that the Bill made undue concessions, or that it tampered with the legal safeguards for private reputations or for the public safety. At the same time he believed that it would substantially improve the position of the Vernacular Press. It practically intimated that the profession of the native journalist was no longer regarded with suspicion by the Government. It set free his implements of trade from the menace of confiscation under a special law. It told him that he was henceforth trusted to carry on his industry, subject only to the same judicial procedure and to the same laws as those under which his fellow-citizens followed their respective callings."

"There was, however," he added, "another aspect of the case. For the wider liberty now secured to the native journalist carried with it a heavier responsibility to use that liberty aright. He believed that the great proportion of native journalists throughout India would prove themselves worthy of unrestricted freedom. But he was compelled to add that certain members of their profession had still much to learn in regard to what was due, alike to the just susceptibilities of those on whom they commented, and to the dignity of their own calling. He would be a false friend to the native Press if he pretended that it had yet attained to that sobriety of judgment and temperance in tone, or to those high standards of public responsibility which its well-wishers hoped to see it reach."

"The native Press," he said in conclusion, "had an opportunity now which it never had before. For after all it was the chief organ of representation in India, and never before was so serious a desire evinced by the Government to give representative institutions a fair trial. The Indian Press was a Parliament always in session, and to which every native was eligible who had anything to say that was worthy of being heard. The Vernacular journalists should realise two things. If they now used their liberty aright they would strengthen the hands of those who wished to foster the popular element in the administration. But if they abused their liberty, they would furnish a most powerful argument for postponing the further development of representative institutions in India."

The Bill was received with unanimous assent. One incident alone occurred which could have impaired the generous optimism of the Hon'ble Member. The '*amari aliquid*' was contained in the concluding remark of the Mover of the Bill that "should the Government hereafter find it necessary to take stronger measures than were contained in the provisions of the Penal Code, he might safely say that this Government, and he hoped any future Government, would follow the example of Lord Canning on an emergency, and take effective measures to put a stop to any writings which were likely to endanger the public safety."

His Excellency Lord Ripon, the President of the Council, in bringing the proceeding to a close made no allusion of any

sort to the circumstances which led to the passing of the Act of 1878, or to the reasons which induced its repeal. He merely said that "he did not wish to detain the Council by any observations of his own, nor did he think that he was in any way called upon to review the reasons or motives for which the Act was originally introduced. All he desired to say was that it would always be a great satisfaction to him that it should have been during the time that he held the office of Viceroy that the Act had been removed from the Indian Statute-book."

The Bill was then passed, and the Vernacular Press Act ceased to exist.

How far the sanguine prognostications of Sir W. Hunter were realised may be ascertained from the speeches delivered in Council by the Lieutenant-Governor of Bengal, Sir A. Mackenzie, and by Sir G. Evans in 1898, at the time when the law of sedition was amended. These have been fully discussed in a previous chapter which deals with the subject (see *Ch. viii*), and it is unnecessary to cite them again. The gist of their views, however, is summed up in two short and significant passages. The Lieutenant-Governor in the course of his speech on that occasion said:—"The necessity for the proposed legislation is unquestionable. Ever since the repeal of the Vernacular Press Act, the native Press has been year by year growing more reckless in its mode of writing about the Government, Government officers, and Government measures." The unofficial Member, who had had the unique experience of witnessing the passing of both enactments and of giving his assent to both measures, said, in the course of a long and elaborate argument:—"The Vernacular Press Act was introduced to check license while leaving liberty. It worked well and without hardship, but was repealed in 1882. Since then the mischief has spread rapidly."

However this may be, there is no disguising the fact that in 1898 the Government of India were confronted with precisely the same situation as they had been in 1878. The necessity for legislation, with its two alternative courses, again presented itself. The one was to enact a Press Act; the other to amend the law of sedition. In 1878 the Legislature selected the former course, while in 1898 they preferred to adopt the latter.

The gravity of the position was frankly admitted by the Law Member when introducing his Bill to amend the Penal Code. "Recent events in India," he said, "have called prominent attention to the law relating to seditious utterances and writings. We have had anxiously to consider the state of the law regarding these matters, and to decide whether, and in what respects, it required amendment. Two different lines of action were open to us. The first was to re-enact a Press Law similar to the Vernacular Press Act of 1878. The second was to amend the general law relating to sedition and cognate offences, so as to make it efficient for its purpose. We have come to the conclusion that the second course is the right one for us to take."

The circumstances attending the passing of Act IV of 1898 have already been fully discussed in dealing with penal measures (see *Ch. vii*). There was, however, another measure, enacted simultaneously by Act V of 1898, of a preventive character, which it is necessary to mention here. This was section 108 of the Criminal Procedure Code (Act V of 1898). The new provision inserted in the Code was designed to prevent the dissemination of seditious matter, either orally or in writing, by means of a system of personal security.

In explaining the purport and object of the section the Law Member said:—"Section 109 of that Code provides that in certain cases people who misbehave themselves may be bound over and required to find sureties to be of good behaviour for a term not exceeding twelve months. We propose to apply a similar procedure to the case of people who either orally or in writing disseminate or attempt to disseminate obscene, seditious, or defamatory matter. A man who disseminates, that is to say, who sows broadcast or scatters abroad such matter, is obviously a dangerous public nuisance. It is immaterial whether he chooses as his means of dissemination an oral address, or a book, or a pamphlet, or a newspaper. We are bound to check such obnoxious conduct. But as a rule, the persons who are guilty of it are small and insignificant individuals. They may do enormous mischief among uneducated, foolish, and ignorant people, but in themselves they are deserving of very little notice. It is absurd to deal with

them by an elaborate State prosecution. We think that in most cases no prosecution at all will be required. It will be sufficient to give them an effective warning to discontinue their evil practices, and we think that the machinery we have devised will operate as an effective warning. The general power of revision possessed by the High Courts will secure that that machinery will not be used in any way oppressively; and we further propose that this new power should only be exercised by Presidency or District Magistrates, or specially empowered Magistrates of the first class."

The section underwent some modifications at the hands of the Select Committee. These are set out in their Report of the 16th February 1898. "We have provided," they said, "that the bond may be with or without sureties. We have cut out the reference to 'obscene matter,' as we think that it is sufficiently provided for by the ordinary law. We have explained the reference to 'seditious matter' by reference to the provisions of the proposed new section 124A of the Indian Penal Code, and we have included matter punishable under the proposed new section 153A of that Code. We have cut out the reference to 'defamatory matter' as that term is much too wide, and after consideration we have substituted the words 'any matter concerning a Judge which amounts to criminal intimidation or defamation under the Indian Penal Code.'"

When the Bill came before the Council on a subsequent date (11th March), a further amendment was introduced at the instance of Sir Griffith Evans. The last clause to the section was added, requiring the sanction of Government for proceedings in certain cases (see *Appx.*).

He explained its purport as follows:—"The effect roughly speaking is to require the same sanction of Government when proceedings are instituted under section 108 against the Press as is required in all cases of a prosecution under section 124A. The result will be that Magistrates will be able to take proceedings without Government sanction in all other cases. It may be asked why this distinction should be made between oral and written sedition. One reason is that oral incitements to a mob of ignorant people are apt to lead to immediate disturbances, and may require immediate action without waiting

for sanction. Another is that many seditious preachers are migratory, and must be caught at once if they are to be stopped, whereas newspaper editors and publishers have a fixed address and a fixed occupation, and can be found at any time. But the main reason is a different one. A portion of the Vernacular Press has been allowed to drift into a very lamentable condition for many years, and the curb which it is proposed to put upon them by this section will have to be applied with great discretion and judgment. It is, I think, essential that this power should be exercised by persons of the ripest judgment, living in a serener atmosphere, away from local feeling and excitement. In fact, I do not think that any one but the Government ought to use this power, with any prospect of the good results which are intended."

"As however," he added, "the statement has been reiterated to-day that there is no sedition, or no 'appreciable sedition,' in India, I desire to make it clear that it is from no sympathy with the view that I move this amendment. I will not waste time in the barren discussion of whether sedition is the right word to describe what does exist. But I have since the last meeting of the Council waded through a large mass of authorised translations of extracts from the Vernacular Press for the year 1897, and this is what I find." The Hon'ble Member then cited a copious selection of examples by way of illustration, and continued :—"This is the kind of thing which every body can read for himself and call by any name he pleases, except honest criticism. This is the kind of thing they have been teaching the people while the famine officials have been spending their lives and health in endeavouring to cope with it, while the plague officials have been braving the plague, and making unparallelled exertions in order to save the lives of the people. The evil is great and is so deep-rooted that it will require wisdom as well as firmness to deal with it. Any indiscreet action would recoil on the Government. When it is found that the manufacture and sale of this kind of poison is prohibited, and no longer yields a safe livelihood, I hope the tone of malignant perversity may be abandoned, and something more like honest criticism may take its place. But it will take time."

It will be observed that the fundamental principle of this provision, like the Press Act of 1878, is personal security. This point of similarity between the two measures was not lost sight of by the opponents of the Bill. It was suggested, in fact, that the Law Member, while disavowing all intentions of resorting to Press legislation, was virtually reviving in the proposed clause the obnoxious Press Act of 1878. In answer to this two essential differences in the new section were pointed out. One was that it was "not aimed specifically at writers or editors," but at seditious people generally. The other was that it only applied to those who had actually offended against the law, in which respect it differed "wholly and absolutely from the old Press law."

Two cases under section 108 of the Criminal Procedure Code are reported to have come before the High Courts, the one in Calcutta, and the other in Bombay.

In the former case, *Beni Bhushan Roy* v. *Emperor* (34 Cal. 991), the petitioner was a local pleader, practising at Khulna. On the 15th July 1907 he had been directed by the District Magistrate, under section 108, to execute a bond for Rs. 5,000, with two sureties, to be of good behaviour for one year. The proceeding was in respect of a speech which he delivered at a public meeting in the town of Khulna. The language used by him on that occasion is indicated in the notice served on him in terms of the section. In it he "referred to the present year as being very auspicious for the inauguration of the meeting, as it was the fiftieth anniversary of the Indian Mutiny, when there was an attempt of the natives of India to regain their country, which was almost successful, and incited the members of the meeting to exert themselves to secure an independent Government." This was proved by a Police officer who had attended the meeting and taken notes of the speech.

The learned Judges held that there was "nothing in the charges, as stated in the notice, which would bring the case within section 108," and accordingly set aside the order of the Magistrate.

The reasons stated were as follows:—"The exact words used by the petitioner cannot be ascertained, but the District Magistrate of Khulna has found that the words used are sub-

stantially the same as given in the notice. Looking, however, to the substance only, and not to the exact words, there is nothing which would bring the case within section 124A of the Indian Penal Code, and therefore section 108 of the Criminal Procedure Code.'' '' The word which it is said was actually used is '*Swaraj*.' The words 'independent government' were not used.'' '' The word '*Swaraj*,' if it was used, 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 vernacular word used, if literally translated, would mean *self-government*, but self-government would not necessarily mean the exclusion of the present Government or independence.''

Justice Mitra's interpretation of the term '*Swaraj*' must be compared with the more recent renderings of the same word by Sir A. White and Justice Miller (32 Mad., 3), and by Justice Chandavarkar (34 Bom., 394). These have been already discussed in a previous chapter (see *Ch. xii*).

In the latter case, *Emperor* v. *Vaman* (11 Bom. L. R., 743), the petitioner was a pleader of the District Court at Nasik. He moved the High Court to set aside an order of the District Magistrate of Nasik, made under section 108, directing him to execute a personal recognisance for Rs. 2,000, with two sureties of Rs. 1,000 each, to be of good behaviour for one year. The speeches in respect of which the proceeding was taken, had been delivered at public meetings on six different occasions, between the 5th February 1907 and the 5th September 1908. The information by the Police was filed before the District Magistrate on the 10th December following. The evidence of the speeches, as in the former case, was furnished by Police witnesses. The matter came on for hearing before Justice Chandavarkar, A. C. J., and Justice Heaton, on the 9th July 1909.

In commenting on the scope of this provision, the learned Judges said :—'' The provisions of Chapter VIII of the Code are no doubt preventive in their scope and object, and are obviously aimed at persons who are a danger to the public by reason of the commission by them of certain offences. The test under section 108 is whether the person proceeded against

has been disseminating seditious matter, and whether there is any fear of a repetition of the offence. In each case that is a question of fact, which must be determined with reference to the antecedents of the person, and other surrounding circumstances."

As to the method of proving the speeches, their lordships said:—"It is complained that the sole evidence against the petitioner is that of Police reports, and these were not admissible. This objection was but faintly pressed, and is clearly untenable. The Police officers who wrote those reports have been examined as witnesses for the Crown. The reports, to the correctness of which they have sworn, were written soon after they had heard the speeches, with the help of notes taken down at the meetings where those speeches had been delivered. The reports were admissible for the purpose of refreshing the memory of the witnesses who had made them, and they have been admitted and used for that purpose only. But it was said that these reports should not be relied on because they are not verbatim, and the whole speeches are not before the Court. The witnesses, however, have given on oath the words or expressions charged as seditious, and the context in which they were uttered."

In conclusion their lordships said:—"If the words reported were uttered, it is impossible to make out in what innocent context they could have been used; and the petitioner has not ventured to say they were not uttered. His denial before the Magistrate has been that the reports are not full, and are inaccurate—a vague plea. We agree with the District Magistrate in the conclusions at which he has arrived, and uphold his order as one fully justified by the facts of the case. The rule is discharged."