

## CHAPTER II.

### SEDITION AT COMMON LAW.

It has been seen that Sir James Stephon, in his memorable speech in Council in support of the Bill, referred to "a very long history about seditious libel compiled from various authorities," in a well-known work entitled "Russell on Crimes," and at the same time expressed a hope "that some one might soon reduce to a few short sentences the great mass of dicta on the subject."

Strangely enough the hope thus casually expressed was fulfilled by the learned jurist himself not long after. Seven years later his "Digest of the Criminal Law" of England appeared, wherein he defined, "in a few short sentences," the offence of sedition at Common Law. His definition was as follows:—"Every one commits a misdemeanour who publishes verbally or otherwise any words or any document with a seditious intention. If the matter so published consists of words spoken, the offence is called the speaking of 'seditious words.' If the matter so published is contained in anything capable of being a libel, the offence is called the publication of a 'seditious libel.'"

It will be observed that in the offence thus defined, of uttering seditious language, whether written or spoken, there are two essential conditions—publication and a seditious intention.

"To publish a libel," it is explained, "is to deliver it, read it, or communicate its purport in any other manner, or to exhibit it to any person other than the person libelled, provided that the person making the publication knows, or has an opportunity of knowing, the contents of the libel if it is expressed in words, or its meaning if it is expressed otherwise."

"A seditious intention is an intention to bring into hatred or contempt, or to excite disaffection against the person of Her Majesty, her heirs or successors, or the Government and constitution of the United Kingdom, as by law established, or either House of Parliament, or the administration of justice, or to

excite Her Majesty's subjects to attempt, otherwise than by lawful means, the alteration of any matter in Church or State by law established, or to raise discontent or disaffection amongst Her Majesty's subjects, or to promote feelings of ill-will and hostility between different classes of such subjects."

Then it is explained further that, "An intention to show that Her Majesty has been misled or mistaken in her measures, or to point out errors or defects in the Government or constitution as by law established, with a view to their reformation, or to excite Her Majesty's subjects to attempt by lawful means the alteration of any matter in Church or State by law established, or to point out, in order to their removal, matters which are producing, or have a tendency to produce, feelings of hatred and ill-will between classes of Her Majesty's subjects, is not a seditious intention."

Finally, the intention referred to might be presumed from conduct, which would, of course, include the language employed. "In determining whether the intention with which any words were spoken, any document was published, or any agreement (*i.e.*, for seditious conspiracy) was made, was or was not seditious, every person must be deemed to intend the consequences which would naturally follow from his conduct at the time and under the circumstances in which he so conducted himself."

Seditious conspiracy is thus defined :—"Every one commits a misdemeanour who agrees with any other person or persons to do any act for the furtherance of any seditious intention common to both or all of them."

"If a meeting is held for the purpose of speaking seditious words to those who may attend it, those who take part in that design are guilty of a seditious conspiracy."

These were the terms in which the English law of sedition was defined by one of the highest authorities on the Criminal law. But to this must be added the elaborate definitions now to be found in the monumental treatise expressly referred to by the learned jurist, as "Russell on Crimes."

In the latest edition of that work sedition is thus defined :—"Sedition consists in acts, words, or writings, intended or calculated, under the circumstances of the time, to disturb the tranquillity of the State, by creating ill-will, discontent, disaffection,

hatred, or contempt, towards the person of the King, or towards the Constitution or Parliament, or the Government, or the established institutions of the country, or by exciting ill-will between different classes of the King's subjects, or encouraging any class of them to endeavour to disobey, defy, or subvert the laws or resist their execution, or to create tumults or riots, or to do any act of violence or outrage, or endangering the public peace."

This admirable definition leaves nothing to be desired in completeness, lucidity, and expressiveness. It comprises in fact the essence of the English case-law extending over a long period of years, and may be accepted as the final result of a careful selection of the most approved authorities.

To this is appended a second definition founded upon the older authorities, which may be cited for its historical interest. It is stated thus:—"According to the older authorities it is seditious wantonly to defame or indecorously to calumniate that economy, order, and constitution of things which make up the general system of the law and Government of the country; and more particularly to degrade or calumniate the person or character of the Sovereign, or the administration of his Government by his officers and ministers of State, or the administration of justice by his judges, or the proceedings of either House of Parliament."

From a comparison of these definitions it will be seen that the new measure introduced in 1870 by Sir James Stephen, was, as he described it, substantially the same as the law of England, as in fact it was intended to be.

For a complete exposition of the law, however, recourse must be had to the two leading cases of *Reg. v. Sullivan* (11 Cox, 44) and *Reg. v. Burns* (16 Cox, 355); and to the celebrated charges, delivered respectively by Lord Fitzgerald and Justice Cave. The former was a trial for 'seditious libel,' and the latter for uttering 'seditious words.'

In the first of these cases the defendants Sullivan and Pigott were in the year 1868, indicted for printing and publishing seditious libels upon Her Majesty's Government in their newspapers—the *Weekly News* and the *Irishman*.

Lord Fitzgerald, in addressing the grand jury for the County of Dublin, said:—"I have now to direct your attention

to two cases of great public importance, in which the Attorney-General prosecutes the publishers of two weekly newspapers for a series of printed articles alleged to be seditious libels of a very dangerous character. As such prosecutions are unusual, I think it necessary, in the first instance to define sedition, and point out what is a seditious libel. Sedition is a crime against society, nearly allied to that of treason, and it frequently precedes treason by a short interval. Sedition in itself is a comprehensive term, and it embraces all those practices, whether by word, deed, or writing, which are calculated to disturb the tranquillity of the State, and lead ignorant persons to endeavour to subvert the Government and the laws of the empire. The objects of sedition generally are to induce discontent and insurrection, and to stir up opposition to the Government, and bring the administration of justice into contempt: and the very tendency of sedition is to incite the people to insurrection and rebellion. Sedition has been described as disloyalty in action, and the law considers as sedition all those practices which have for their object to excite discontent or dissatisfaction, to create public disturbance, or to lead to civil war; to bring into hatred or contempt the Sovereign or the Government, the laws or constitution of the realm, and generally all endeavours to promote public disorder."

Having thus defined the character of the offence, the learned Judge continued:—"It is scarcely necessary to point out that to accomplish treasonable purposes, and to delude the weak, the unwary, and the ignorant, no means can be more effectual than a seditious Press. With such machinery the preachers of sedition can sow widecast those poisonous doctrines, which, if unchecked, culminate in insurrection and revolution. Lord Mansfield likened a seditious and licentious Press to Pandora's box—the source of every evil. Words may be of a seditious character, but they might arise from sudden heat, be heard only by a few, create no lasting impression, and differ in malignity and permanent effect from writings. Sir Michael Foster said of the latter: 'seditious writings are permanent things, and if published they scatter the poison far and wide. They are acts of deliberation, capable of satisfactory proof, and not ordinarily liable to misconstruction; at least they are submitted to the judgment

of the Court naked and undisguised, as they came out of the author's hands.' "

The learned Judge next referred to the various articles published in the *Irishman*, which he divided into three classes. "As to the articles extracted from other papers," he said, "it was recently contended that, even if these articles were of a seditious or treasonable character, yet the defendant was justified in publishing them as foreign news. I am bound to warn you against this very unsound contention, and I may now tell you, with the concurrence of my learned colleague, that the law gives no such sanction, and does not in the abstract justify or excuse the republication of a treasonable or seditious article, no matter from what source it may be taken. In reference to all such republications the time, the object, and all the surrounding circumstances are to be taken into consideration, and may be such as to rebut any inference of a criminal intention in republication." But in the absence of such circumstances "it would be reasonable to infer that the publisher intended what would be the natural consequences of his acts—namely, to promote some seditious object. If the law be powerless in the case of such publications, then we may as well blot out from the Statute book the chapter on seditious libel, which would take away from society the great protection which the law affords to their institutions."

The learned Judge then referred to the articles in detail and continued:—"The crime is laid in the intent, and you can only find a Bill against the accused when you come conscientiously to the conclusion—assuming you find the articles to be seditious—that they were published with the intent laid in the indictment—namely, to spread, stir up, and excite disaffection and sedition amongst the Queen's subjects, to excite hatred and contempt towards Her Majesty's Government and administration, to encourage, foster, and keep alive the Fenian conspiracy. The intention charged is varied in each Court."

"With respect to the question of the freedom of the Press," his lordship added, "I feel bound to say a few words. Since 1692 there was complete liberty of the Press in great Britain and Ireland. By liberty of the Press I mean complete freedom to write and publish without censorship and without restriction, save such as was absolutely necessary for the

preservation of society. Our civil liberty is largely due to a free Press, which is the principal safeguard of a free State, and the very foundation of a wholesome public opinion. Every man is free to write as he thinks fit, but he is responsible to the law for what he writes ; he is not, under the pretence of freedom, to invade the rights of the community, or to violate the constitution, or to promote insurrection, or endanger the public peace, or create discontent, or bring justice into contempt or embarrass its functions. Political or party writing, when confined within proper and lawful limits, is not only justifiable, but is protected for the public good, and such writings are to be regarded in a free and liberal spirit. A writer may criticise or censure the conduct of the servants of the Crown or the acts of the Government—he can do it freely and liberally—but it must be without malignity, and not imputing corrupt or malicious motives. With the same motives a writer may freely criticise the proceedings of Courts of justice and of individual judges—nay he is invited to do so in a free and fair and liberal spirit. The law does not seek to put any narrow construction on the expressions used, and only interferes when plainly and deliberately the limits are passed of frank and candid and honest discussion. Lord Kenyon has quaintly said, ‘a man may publish whatever a jury of his countrymen think is not blamable.’ In ordinary cases the facts are for the jury and the law for the judge ; but in cases of libel, and with a view to the true freedom of the Press the law casts on the jury the determination of both law and fact. You are to determine whether or not the publications in question are or are not seditious libels.’

In conclusion his lordship observed :—“ In dealing with the question whether the articles were published with the seditious intention charged in the indictment, you will fairly consider the surrounding circumstances, coupled with the state of the country and of the public mind when the publication took place, for these may be most material in considering the offence. For example, if the country was free from political excitement and disaffection, was engaged in the peaceful pursuits of commerce and industry, the publication of such articles as have been extracted from American papers might be free from danger and comparatively innocent, but in a time of political trouble

and commotion, when the country has just emerged from an attempt at armed insurrection, and whilst it is still suffering from the machinations and overrun by the emissaries of a treasonable conspiracy, hatched and operating in a foreign land, the systematic publication of articles advocating the views and objects of that conspiracy seems to admit but of one interpretation. The intentions of men are inferences of reason from their actions where the action can flow but from one motive, and be the reasonable result of but one intention."

"Now I would invite you to a careful examination of these articles. You should deal with them in a broad and candid and liberal spirit, and subject them to no narrow and jealous criticism. But if on the other hand, from their whole scope, you are coerced to the conclusion that their object and tendency is to foment discontent and disaffection, to excite to tumult and insurrection, to promote the objects of a treasonable conspiracy, to bring the administration of justice into disrepute, or to stir up the people to hatred of the laws and the constitution, then you may, if you think fit, and you ought to find the bills." The grand jury having brought in true bills in both cases, the trials came on in due course.

In Sullivan's case Lord Fitzgerald, in charging the jury, made the following observations:—"You are here in this trial the sole judges of the law and the facts. My duty is to simplify the case you have to determine, assist you if I can, and address you solely in the calm voice of reason. This is a prosecution of a very unusual nature. There has not been one of this character certainly for the last twenty years. The jury are constituted by law the sole judges to determine every question between the Queen and the defendant. I would remind you in the outset that there will be four questions for you to apply your attention to. The first is a question of fact—Did the defendant publish the libels? Upon that there will be no difficulty, for it is not a matter of controversy that Mr. Sullivan, the defendant, is the proprietor and publisher of the *Weekly News*, and that the several articles and wood-cuts were published in that paper. The next question for you to examine into is this—Do these publications, whether printed matter or wood-cuts, fairly bear the interpretation which the Crown has put upon them by the

innuendos ? The next question is one of paramount importance, and it is one of which the jury are the sole judges—whether these publications are seditious libels ? That question of law and fact is entrusted to the jury alone.’

“ If you come to the conclusion,” the learned Judge continued, “ that the defendant published these articles, that the true meaning has been given to them, that they are seditious libels, published with the intention imputed to them, you have all the elements which would warrant you in bringing in a verdict of guilty.’”

“ The man who criticises the conduct of the Government,” he added, “ ought not to impute improper motives, and though he may point out that there is bad administration of justice, yet he should not use language that would indicate contempt of the laws of the land. When a public writer exceeds his limit and uses his privilege to create discontent and dissatisfaction he becomes guilty of what the law calls sedition.’”

“ Now I would invite your attention to the indictment. There are three allegations. It is alleged that the defendant intended by these publications and prints to excite hatred or contempt of Her Majesty’s Government, and the administration of the laws ; and further, that these prints were intended to create dissatisfaction, to excite hatred and contempt of the Government, and to disturb the tranquillity of the realm. Without defining sedition further than for the purposes of this trial, I have to tell you if you in your honest judgment come to the conclusion that these publications, or any of them, are calculated and intended to excite hatred of the Government and the administration of the laws, or create dissatisfaction, or disturb the public peace, then they are seditious libels. I do not think I can put the matter plainer than that.’”

With regard to the pictorial prints which were charged as seditious, the learned Judge remarked :—“ It was open to the Attorney-General to call intelligent witnesses, and ask them what the true meaning of this picture was ; for, after all, the question is not how Mr. Sullivan meant it, but how it would be understood by an ordinary intelligent individual. It will be for you to take into account the letterpress that accompanies this, in order to assign the true meaning to it ; but there is not much



difference between the meaning assigned to it by the Crown and assigned by the defendant. It is one of those means of deliberate and gigantic deception by which the people of this country are periodically misled. I call it deliberate and gigantic deception, because they were dealing with an acute race—with a people amongst whom education is every day spreading further and further—a people who, if only allowed to know the truth and to form judgments for themselves, are quick-witted and able to form judgments upon what is their true and real interest.

“But we cannot shut our ears to this, that for many years, as well as during the present time, the people were not allowed to know the truth. Can any one say that this picture really and truly represents the state of the Irish nation when it represents Hibernia cast upon the ground, held down by the violent hand of England.”

The learned Judge then dealt with the remaining woodcuts in detail, and finally with the articles which formed the subject of the indictment. In considering these he made the following observations:—“I concur with the counsel for the defendant that if the law of libel was carried out in the full strictness of its letter, it would materially interfere with the freedom of the Press. Hence a great deal depends upon the forbearance of Government, the discretion of judges, and, above all, on the protection of juries. For instance, it is open to the community and to the Press to complain of a grievance. Well, the mere assertion of a grievance tends to create a discontent, which, in a sense, may be said to be seditious. But no jury, if a real grievance were put forward and its redress *bonâ fide* sought, although the language used might be objected to—no jury would find that to be a seditious libel.”

“If the article,” he added, “had simply been a free discussion of these questions, or of the acts of the Government, this prosecution would never have taken place. But the Attorney-General says that the bounds of criticism have been passed.”

“To constitute crime, the criminal intent and the criminal act should concur. But every person must *primâ facie* be taken to intend the natural consequences of his own acts. You cannot dive into the intentions of a man’s heart, save so far as

innuendos ? The next question is one of paramount importance, and it is one of which the jury are the sole judges—whether these publications are seditious libels ? That question of law and fact is entrusted to the jury alone.”

“ If you come to the conclusion,” the learned Judge continued, “ that the defendant published these articles, that the true meaning has been given to them, that they are seditious libels, published with the intention imputed to them, you have all the elements which would warrant you in bringing in a verdict of guilty.”

“ The man who criticises the conduct of the Government,” he added, “ ought not to impute improper motives, and though he may point out that there is bad administration of justice, yet he should not use language that would indicate contempt of the laws of the land. When a public writer exceeds his limit and uses his privilege to create discontent and dissatisfaction he becomes guilty of what the law calls sedition.”

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With regard to the pictorial prints which were charged as seditious, the learned Judge remarked :—“ It was open to the Attorney-General to call intelligent witnesses, and ask them what the true meaning of this picture was ; for, after all, the question is not how Mr. Sullivan meant it, but how it would be understood by an ordinary intelligent individual. It will be for you to take into account the letterpress that accompanies this, in order to assign the true meaning to it ; but there is not much

difference between the meaning assigned to it by the Crown and assigned by the defendant. It is one of those means of deliberate and gigantic deception by which the people of this country are periodically misled. I call it deliberate and gigantic deception, because they were dealing with an acute race—with a people amongst whom education is every day spreading further and further—a people who, if only allowed to know the truth and to form judgments for themselves, are quick-witted and able to form judgments upon what is their true and real interest.

“But we cannot shut our ears to this, that for many years, as well as during the present time, the people were not allowed to know the truth. Can any one say that this picture really and truly represents the state of the Irish nation when it represents Hibernia cast upon the ground, held down by the violent hand of England.”

The learned Judge then dealt with the remaining woodcuts in detail, and finally with the articles which formed the subject of the indictment. In considering these he made the following observations:—“I concur with the counsel for the defendant that if the law of libel was carried out in the full strictness of its letter, it would materially interfere with the freedom of the Press. Hence a great deal depends upon the forbearance of Government, the discretion of judges, and, above all, on the protection of juries. For instance, it is open to the community and to the Press to complain of a grievance. Well, the mere assertion of a grievance tends to create a discontent, which, in a sense, may be said to be seditious. But no jury, if a real grievance were put forward and its redress *bonâ fide* sought, although the language used might be objected to—no jury would find that to be a seditious libel.”

“If the article,” he added, “had simply been a free discussion of these questions, or of the acts of the Government, this prosecution would never have taken place. But the Attorney-General says that the bounds of criticism have been passed.”

“To constitute crime, the criminal intent and the criminal act should concur. But every person must *primâ facie* be taken to intend the natural consequences of his own acts. You cannot dive into the intentions of a man’s heart, save so far as

they are indicated by his acts and their natural consequences. This rule may at times operate harshly, but public policy requires that it should be put in force.’

Finally, in summing up the whole case, the learned Judge said:—“With these observations I leave the case in your hands. I invite you to deal with the case, which is a grave and important case, in a fair, free, and liberal spirit. In dealing with the articles you should not pause upon an objectionable sentence here, or a strong word there. It is not mere strong language, such as ‘desecrated Court of justice,’ or tall language, or turgid language that should influence you. You should, I repeat, deal with the articles in a free, fair, and liberal spirit. You should recollect that to public political articles great latitude is given. Dealing as they do with the public affairs of the day—such articles if written in a fair spirit, and *bonâ fide*, often result in the production of great public good. Therefore I advise and recommend you to deal with these publications in a spirit of freedom, and not to view them with an eye of narrow criticism.”

“Again I say, you should not look merely to a strong word or a strong phrase, but to the whole article. Viewing the whole case in a free, bold, manly and generous spirit towards the defendant, if you come to the conclusion that the publications indicted either are not seditious libels, or were not published in the sense imputed to them, you are bound, and I ask you in the name of free discussion, to find a verdict for the defendant. I need not remind you of the worn-out topic—to extend to the defendant the benefit of the doubt. If, on the other hand, on the whole spirit and import of these articles, you are obliged to come to the conclusion that they are seditious libels, and that their necessary consequences are to excite contempt of Her Majesty’s Government, or to bring the administration of the law into contempt and impair its functions—if you come to that conclusion, either as to the articles or prints, or any of them, then it becomes your duty, honestly and fearlessly, to find a verdict of conviction upon such counts as you believe are proved.” The defendant was found guilty.

These were the principles laid down by Lord Fitzgerald in his two memorable charges, the main portions of which have

been set out above. These are the passages which have been, and are likely to be, cited, on either side, at trials for sedition in India, and may therefore prove useful for reference.

In the trial of Pigott, which immediately followed (11 Cox, 60) and at which Baron Deasy presided, the observations of the learned Judge on the limits of public journalism, may also be cited with advantage.

“A public journalist,” he said, “must respect the existence of the form of Government under which he exercises those very extensive rights and privileges to which I have referred. He must not either covertly or openly devote the pages of his journal towards the overthrow of the Government. He must not when a treasonable conspiracy exists in this land make his journal ancillary to the treasonable purposes of that conspiracy, or supply the members of it with intelligence, or devote his journal to encourage them to persevere in that conspiracy, or to encourage others who may not be embarked in it to become involved in its meshes. He must not spread discontent in the land or inflame the minds of the people, so that they may be more ready to join in the insurrection which conspirators are seeking to bring about.”

“You should make every allowance for freedom of discussion, make every allowance for excitement and passion; and if, after making all these allowances, you think that the limits of fair discussion have been overstepped, and that the defendant has devoted his paper to these purposes or any of them, and with the intention ascribed to him in the indictment, it will be your duty, great as your regard may be for the liberty of the Press, to pronounce a verdict upon such of the counts as you think are sustained by the publications.”

The jury found the defendant guilty.