CHAPTER III.

SEDITION AT COMMON LAW.—*contd.*

THE second of the two leading cases on this subject, *Reg.* v. *Burns*, is regarded by some as even more important than the first. The learned editors of 'Russell on Crimes' assert (p. 302) that "the present view of the law is best stated in *R.* v. *Burns* (16 Cox, 355)," and thereafter set out *in extenso* Justice Cave's memorable charge to the jury (pp. 303—6), as containing probably the most comprehensive summary of the law. It will therefore be necessary in the present chapter to refer to it in considerable detail, setting out the main portions, or those at least which seem to be applicable to trials in this country.

In this case John Burns, now a member of the Privy Council and of the present Cabinet, was, in the year 1886, indicted, along with three other persons, for "unlawfully and maliciously uttering seditious words of and concerning Her Majesty's Government with intent to incite to riot, and, in other counts, with intent to stir up ill-will between Her Majesty's subjects and for conspiring together to effect the said objects."

The indictment was in respect of certain speeches delivered by the four defendants to a large mob of persons, chiefly composed of unemployed workmen, first in Trafalgar Square and subsequently in Hyde Park. The speeches were, on each occasion, followed by serious disturbances, which were alleged to be the immediate result of the inflammatory language employed by the defendants. It was in evidence that after the delivery of the speeches in Trafalgar Square a procession was formed of some 3,000 to 4,000 persons, in which the defendants took part, and the crowd moved *en masse* towards the West-end. On the way a demonstration took place in front of the Carlton Club, where the mob indulged in stone-throwing and a number of windows were broken. Further disturbances occurred *en route* to Hyde Park, where more speeches were delivered. These again were followed by similar disorderly occurrences.

It was not suggested by the Crown "that the defendants desired the disturbances to take place, or that they directly incited the crowd to cause those disturbances;" but that they "must have been aware of, and were answerable for, the natural results of the language they used."

Justice Cave in charging the jury said:—"It is now my duty to explain to you the rules of law which ought to govern you in considering this case, and also to summarise shortly for your benefit the evidence which has been given, so that you may have the less difficulty, in applying the principles of the law to that evidence. There is undoubtedly no question at all of the right of meeting in public, and the right of free discussion is also perfectly unlimited, with the exception, of course, that it must not be used for the purpose of inciting to a breach of the peace or to a violation of the law.

The law upon the question of what is seditious and what is not, is to be found stated very clearly in a book by a learned judge, who has undoubtedly a greater knowledge of the criminal law than any other judge who sits upon the bench, and what he has said upon the subject of sedition was submitted to the other learned judges, who some time back were engaged with him in drafting a Criminal Code, and upon their report the Commissioners say that his statement of the law appears to them to be stated accurately as it exists at present. So that that statement has not only the authority of Stephen, J., but also the authority of the very learned judges who were associated with him in preparing the Criminal Code. This is what he says on seditious words and libels: '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.' That is what we have to do with to-day. 'If the matter so published is contained in anything capable of being a libel, the offence is called the publication of a seditious libel.'"

"The next question that one asks is this: There are two offences, one is the offence of speaking seditious words, and the other offence is the publication of a seditious libel. It is obviously important to know what is meant by the word sedition, and Stephen, J., proceeds in a subsequent article to give a definition of it."

The learned Judge here cited Sir James Stephen's definition of a 'seditious intention,' which has been set out in the previous chapter, and continued :—"He goes on to point out what sort of intention is not seditious. It is also important to consider that, because there we get a light thrown upon the subject from another side." After citing the explanation to the foregoing definition (see *Ch. ii*) his lordship added :—"So there he gives in these two classes what is, and what is not, sedition. Now, the seditious intentions which it is alleged existed in the minds of the prisoners in this case are : first, an intention to excite Her Majesty's subjects to attempt otherwise than by lawful means the alteration of some matter in Church or State by law established ; and, secondly, to promote feelings of ill-will and hostility between different classes of Her Majesty's subjects. This is necessarily somewhat vague and general, particularly the second portion, which says it is a seditious intention, to intend to promote feelings of ill-will and hostility between different classes of Her Majesty's subjects. I should rather prefer to say that the intention to promote feelings of ill-will and hostility between different classes of Her Majesty's subjects may be a seditious intention according to circumstances, and of those circumstances the jury are the judges ; and I put this question to the Attorney-General in the course of the case : 'Suppose a man were to write a letter to the papers attacking bakers or butchers generally with reference to the high prices of bread or meat, and imputing to them that they were in a conspiracy to keep up the high prices, would that be a seditious libel—being written and not spoken ?' To which the Attorney-General gave me the only answer which it was clearly possible to give under the circumstances : 'That must depend upon the circumstances.' I, sitting here as a judge, cannot go nearer than that. Any intention to excite ill-will and hostility between different classes of His Majesty's subjects may be a seditious intention ; whether in a particular case this is a seditious intention or not, you must judge and decide in your own minds, taking into consideration the whole of the circumstances of the case."

It will be observed that promoting class hatred is not included in the offence of sedition in India. It is, however, none the less an offence, and punishable under the Penal Code, though

not under section 124A. It must therefore be dealt with hereafter under the head of Cognate offences.

"You may not unnaturally say," his lordship continued, "that that is a somewhat vague statement of the law, and ask by what principle shall we be governed in deciding when an intention to excite ill-will and hostility is seditious and when it is not. For your guidance, I will read you what was said by Fitzgerald, J., in the case of *Reg.* v. *Sullivan*, which was a prosecution for a seditious libel, the only difference between the two cases being of course that, while seditious speeches are spoken, a seditious libel is written, but in each of them the adjective 'seditious' occurs, and what is seditious intention in the one case will equally be a seditious intention in the other." The learned Judge here cited Lord Fitzgerald's well-known definition of sedition, which has been set out in the previous chapter, as well as the dictum of Sir Michael Foster, and continued:—"That points to the nature of the proof between seditious writing and words, and also points to a difference in the effect which they have, and the extent to which that effect goes, though of course in regard to seditious words there may be a very great distinction between words uttered to two or three companions in social intercourse and words uttered to a large multitude."

The learned Judge then cited Lord Fitzgerald's concluding remarks, in which he summed up the whole case at the trial, which have also been set out in the previous chapter, and went on to add:—"Now that language was used in reference to a seditious libel, but changing the language so as to apply to a speech, the principles thus laid down are clearly applicable to the case which you have now got before you."

"If you think that these defendants, from the whole matter laid before you, had a seditious intention to incite the people to violence, to create public disturbances and disorder, then undoubtedly you ought to find them guilty. If from any sinister motive, as, for instance, notoriety, or for the purpose of personal gain, they desired to bring the people into conflict with the authorities, or to incite them tumultuously and disorderly to damage the property of any unoffending citizens, you ought undoubtedly to find them

guilty. On the other hand, if you come to the conclusion that they were actuated by an honest desire to alleviate the misery of the unemployed—if they had a real *bonâ fide* desire to bring that misery before the public by constitutional and legal means, you should not be too swift to mark any hasty or ill-considered expression which they might utter in the excitement of the moment. Some persons are more led on, more open to excitement than others, and one of the defendants, Burns, even when he was defending himself before you, so prone was he to feeling strongly what he does feel, that he could not refrain from saying that he was unable to see misery and degradation without being moved to strong language and strong action. I mention that to you to show you the kind of man he is, and for the purpose of seeing, if you come to the conclusion that he was honestly endeavouring to call the attention of the authorities to this misery and honestly endeavouring to keep within the limits of the law and the constitution, that you should not be too strong to mark if he made use of an ill-considered, or too strong an expression."

His lordship then dealt with the particular charge in the case. "It divides itself," he said, "roughly into two heads. There is, first, the charge that they uttered certain words upon the occasion of this demonstration, and that is separated into nine counts, and then there comes a general charge which involves the whole of them, namely, that they agreed together before they went to this meeting that they would make speeches with the intention of exciting the people to disorder. I am unable to agree entirely with the Attorney-General when he says that the real charge is that, though these men did not incite or contemplate disorder, yet, as it was the natural consequence of the words they used, they are responsible for it. In order to make out the offence of speaking seditious words there must be a criminal intent upon the part of the accused, they must be words spoken with a seditious intent; and although it is a good working rule to say that a man must be taken to intend the natural consequences of his acts, yet if it is shown from other circumstances, that he did not actually intend them, I do not see how you can ask a jury to act upon what has then become a legal fiction."

"I am glad to say," he continued, "that with regard to this matter I have the authority again of Stephen, J., who, in his 'History of the Criminal Law,' has dealt with this very point; he deals with it in reference to the question of seditious libel. Stephen, J., says: 'To make the criminality of an act dependent upon the intention with which it is done is advisable in those cases only in which the intent essential to the crime is capable of being clearly defined and readily inferred from the facts. Wounding, with intent to do grievous bodily harm, breaking into a house with intent to commit a felony, abduction with intent to marry or defile, are instances of such offences. Even in these cases, however, the introduction of the term 'intent' occasionally led either to a failure of justice or to the employment of something approaching to a legal fiction in order to avoid it. The maxim that a man intends the natural consequences of his acts is usually true, but it may be used as a way of saying that because reckless indifference to probable consequences is morally as bad as an intention to produce those consequences, the two things ought to be called by the same name, and this is at least an approach to a legal fiction. It is one thing to write with a distinct intention to produce disturbances, and another to write violently and recklessly matter likely to produce disturbances.' Now if you apply that last sentence to the speaking of words, of course it is precisely applicable to the case now before you. It is one thing to speak with the distinct intention to produce disturbances, and another thing to speak recklessly and violently of what is likely to produce disturbances."

The doctrine here cited by the learned Judge, as enunciated by Sir James Stephen in his 'History,' would seem, at first sight, to be in conflict, with what he has laid down in his 'Digest.' In the passage cited in the previous chapter from his 'Digest,' he lays down the doctrine of intention in the following terms:—"In determining whether the intention with which any words were spoken, (or) any document was published, 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."

But this again is only a re-statement of the maxim enunciated by Lord Tenterden, C. J., in the case of *Haire* v. *Wilson* (9 B. & C., 643), where he said :—"Every man is presumed to intend the natural and ordinary consequences of his act. If the tendency of the publication was injurious to the plaintiff, the law will assume that the defendant by publishing it, intended to produce the injury which it was calculated to effect."

And so also Lord Kenyon, C. J., in *R.* v. *Cuthell* (21 St. T., 641), observed :—"God only knows the hearts of men, and we can collect their meaning only from what they do. These are fallible modes of arriving at knowledge, but we have no better, and we must pronounce men innocent or guilty according to this standard."

The same principle was laid down by Lord Fitzgerald in Sullivan's case (see *Ch. ii*) when he said :—"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."

And again in the case of *Reg.* v. *Burdett* (4 B. & A., p. 120), Justice Best said :—"With respect to whether this was a libel, I told the jury that the question whether it was published with the intention alleged in the information was peculiarly for their consideration; but I added that this intention was to be collected from the paper itself, unless the import of the paper were explained by the mode of publication, or any other circumstances. I added that if it appeared that the contents of the paper were likely to excite sedition and disaffection, the defendant must be presumed to intend that which his act was likely to produce."

It will thus be seen that though it may be correct to say—"It is one thing to write or speak with a distinct intention to produce disturbances, and another to write or speak violently and recklessly of what is likely to produce disturbances"—for the distinction no doubt exists, and is capable of demonstration; yet this in no wise affects the well-established rule which is cited

above, and a presumption will always arise from the acts of a man or his language, and continue to operate against him until it is rebutted.

It would appear, moreover, from the further observations of Justice Cave, that the doctrine enunciated was made subject to some reservation, for he goes on to add:—"I must, however, notwithstanding what I have said upon that subject, go on to tell you that it is not at all necessary to the offence of uttering seditious words that an actual riot should follow, that there should be an actual disturbance of the public peace; it is the uttering with the intent which is the offence, not the consequences which follow, and which have really nothing to do with the offence. A man cannot escape from the consequences of uttering words with intent to excite people to violence solely because the persons to whom they are addressed may be too wise or too temperate to be seduced into that violence. That has, however, no important bearing in this case. If you come to the conclusion that language was used by the defendants or any of them upon the occasion of that meeting in Trafalgar Square, and that it was their intention to excite the people to violence, to a breach of the law, why then that would undoubtedly be the uttering of seditious words."

The learned Judge here evidently means that the intention is to be gathered from the language used, and he goes on to say:—"And I apprehend that the Attorney-General was anxious to fortify himself with this, that the actual disturbances were the natural consequence of what was said, and perhaps for more than one reason. In the first place, the Government undoubtedly declined to prosecute on the assumption that the defendants had actually incited to these particular disturbances, and although that, as I have said, is not at all necessary or essential to the procuring of a conviction, yet undoubtedly that is the moral justification, so to say, the grounds upon which the Government do place the action which they take." Here the learned Judge seems to indicate very clearly that "actual incitement to particular disturbances is by no means essential to a conviction." He then goes on to add:—"As something, no doubt, may be gathered from the effect which was actually produced, there does come a point when one must say, 'This

was so violent and reckless that it is impossible to conceive that the man who uttered this did not intend the consequence which must ensue from it.'" These observations obviously demonstrate the rule that after all a man's language is the only index to his thoughts, his motives, and his intentions.

Lastly, as to the charge of conspiracy the learned Judge said:—"Again with reference to conspiracy there is another passage of Stephen, J.'s book, where he says—'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.' Now in order to have a conspiracy you must have an agreement formed beforehand between the parties to that conspiracy that they will hold or have a meeting, and that the words there spoken shall be words of sedition."

"But, although there may have been no previous conspiracy, yet when people do go to a meeting there are circumstances under which a man may be responsible not only for what he says, but also for what some one else says. Now what are those circumstances? Stephen, J., says: 'If at a meeting lawfully convened seditious words are spoken of such a nature as are likely to produce a breach of the peace, that meeting may become unlawful, and all those who speak the words undoubtedly are guilty of uttering seditious words, and those who do anything to help those who speak to produce upon the hearers the natural effect of the words spoken.' You must do something more than stand by and say nothing. If you express approval of the statements of speakers who utter seditious language that equally will do. But there must be something of that kind. If one man uses seditious words at a meeting, those who stand by and do nothing, although they do not reprobate them, are not guilty of uttering the seditious words. Those even who make a speech themselves are not guilty of uttering seditious words unless you can gather from the language they use that they are endeavouring to assist the other man in carrying out that portion of his speech, and by that course endeavouring to assist him in causing his words, which excite to disorder, to produce their natural effect upon the people." The jury found the defendants not guilty on any of the counts.

"It is sedition," says Mr. Odgers (citing Holt) in his 'Law of Libel,' "to speak or publish of the King any words which would be libellous and actionable *per se*, if printed and published of any other public character. Thus any words will be deemed seditious which strike at the King's private life and conduct, which impute to him any corrupt or partial views, or assign bad motives for his policy, which insinuate that he is a tyrant, careless of the welfare of his subjects, or which charge him with deliberately favouring or oppressing any individual or class of men in distinction to the rest of his subjects."

"Generally speaking, any words, acts, or writing in respect of the public acts or private conduct of the King, which tend to vilify or disgrace the King or to lessen him in the esteem of his subjects, or any denial of his right to the Crown, even in common and unadvised discourse, may be punished as sedition:" (Russell.)

"It is sedition to speak or publish of individual members of the Government words which would be libellous and actionable *per se*, if written and published of any other public character. It is also sedition to speak or publish words defamatory of the Government collectively, or of their general administration, with intent to subvert the law, to produce public disorder, or to foment or promote rebellion. Where corrupt or malignant motives are attributed to the ministry as a whole, and no particular person is libelled, the jury must be satisfied that the author or publisher maliciously and designedly intended to subvert our laws and constitution, and to excite rebellion or disorder. There must be a criminal intent. But such an intent will, of course, be presumed, if the natural and necessary consequence of the words employed be 'to excite a contempt of Her Majesty's Government, to bring the administration of its laws into disrepute, and thus impair their operation, to create disaffection, or to disturb the public peace and tranquillity of the realm.'" (Odgers: and see *R.* v. *Collins*, 9 C. & P., 456.)

"The measures of the King and his advisers, and the proceedings and policy of his Government, may be criticised within due limits without incurring the penalties of sedition. Every man has a right to give every public matter a candid, full, and free discussion; but although the public have a right to discuss

any grievances they have to complain of, they must not do it in a way to excite tumult. This right extends to the Press. But the discussion of political measures cannot lawfully be made a cloak for an attack upon private character. Libels on persons employed in a public capacity may tend to scandalise the Government by reflecting on those who are entrusted with the administration of public affairs, for they not only endanger the public peace, as all other libels do, by stirring up the parties immediately concerned to acts of revenge, but also have a direct tendency to incline the people to faction and sedition": (Russell.)

"To say," said Lord Holt, C. J., in the case of *R.* v. *Tuchin* (14 St. T., 1095), "that corrupt officers are appointed to administer affairs is certainly a reflection on the Government. If men should not be called to account for possessing the people with an ill opinion of the Government, no government can subsist; nothing can be worse to any government than to endeavour to procure animosities as to the management of it; this has always been looked upon as a crime, and no government can be safe unless it be punished."

And so, in the case of *R.* v. *Cobbett* (29 St. T., 1), where the libel was directed against the administration of the Irish Government and the Lord Lieutenant and Chancellor of Ireland, Lord Ellenborough, C. J., said:—"It is no new doctrine that if a publication be calculated to alienate the affections of the people by bringing the Government into disesteem, whether the expedient be by ridicule or obloquy, the person so conducting himself is exposed to the inflictions of the law. It is a crime; it has ever been considered as a crime, whether wrapt in one form or another. The case of *R.* v. *Tuchin*, decided in the time of Lord Chief Justice Holt, has removed all ambiguity from this question.

In reviewing these weighty observations, Mr. Odgers, in his 'Law of Libel,' justly remarks that they must be construed with reference to the times in which they were made. Lord Holt, he says, "clearly was not referring to a quiet change of ministry which in no way shakes the throne, or loosens the reins of order and government. In 1704 the present system of party-government was not in vogue. And even in Lord

Ellenborough's time the ministry were still appointed by the King, and not by the people. By 'the Government' both judges meant, not so much a particular set of ministers, as the political system settled by the constitution, the general order and discipline of the realm."

It will be seen at once that these remarks on the conditions of government now prevailing in England would have no application to India, where the system of government is entirely different. On the contrary, the political system which obtains in this country, approaches more closely to the conception of government attributed to these eminent Judges. This distinction was pointed out at the very first trial for sedition in India.