

CHAPTER V.

SOME NOTABLE TRIALS.

A PERIOD of six years elapsed before another prosecution was instituted for sedition, but in 1897 three notable trials took place. Two of these were held in Bombay and the third at Allahabad, while all of them had a direct bearing on the legislation of 1898. The first in priority of time, if not in importance, was the case of *Queen-Empress v. Bal Gangadhar Tilak* (22 Bom. 112), commonly known as 'Tilak's case.' This trial, which ended in a conviction, had the distinction of passing through three stages. There was the trial in the High Court, then the application for leave to appeal to the Privy Council, and finally the application before the Privy Council itself, where the accused had for his counsel the present Prime Minister and other eminent barristers. The trial in the High Court was before Justice Strachey, whose celebrated charge to the jury, though repeatedly attacked for misdirection, was ultimately approved and endorsed by the Privy Council.

It is an exhaustive exposition of the law, dealing as well with a great variety of questions incidental to such trials, and may be regarded as a compendium both of the law and the practice which pertains to sedition. It will be necessary, therefore, to refer to this charge very frequently as an authority on many points, but for the present it will suffice to consider it only in its relation to the legislation of the following year, on which it exercised an important influence.

The facts established at the trial were as follows: Tilak was the proprietor, editor, and publisher of a weekly vernacular newspaper called the *Kesari*, published at Poona, and having a large circulation in the province, with a list of six or seven thousand subscribers. His co-accused was the acting manager. Tilak had some ten years before signed a declaration as publisher under Act XXV of 1867 (see *Appx.*), which rendered him *prima facie* liable, as was pointed out to the jury, for the

publication of every article, and in fact of "every part of any paper bearing a name corresponding to that mentioned in the declaration." This was not disputed, nor indeed was any attempt made to shirk responsibility in respect of the articles in question.

The seditious matter charged was contained in two different series of publications, which appeared in the issue of the 15th June 1897. The first was a highly metaphorical and barely intelligible rhapsody, partly in verse, entitled "*Shivaji's Utterances.*" The other purported to be a report of the proceedings at the Shivaji Coronation Festival, with a summary of the speeches delivered at the celebration of the 12th June, including one from Tilak himself, who was the President.

Among the remarkable utterances attributed to the heroic Shivaji, on his awakening from a sleep of centuries to view the desolation of his native land, were the following:—"By annihilating the wicked I lightened the great weight on the terraqueous globe. I delivered the country by establishing 'Swarajya' (independence), and by saving religion. I betook myself to heaven to shake off the exhaustion which had come upon me. I was asleep; why then did you, my darlings, awaken me? I had planted upon this soil the virtues that may be likened to the Kalpavriksha, of sublime policy, based on a strong foundation, valour in the battlefield like that of Karna, patriotism, genuine dauntlessness, and unity, the best of all. Perhaps you now wish to show me the fruits of these. Alack! What is this? I see a fort has crumbled down. Through this misfortune I get a broken stone to sit upon. Why does not my heart break like that this day? Alas! alas! I now see with my own eyes the ruin of my country. Those forts of mine, to build which I expended money like rain, to acquire which fresh fiery blood was spilled, from which I sallied forth roaring like a lion through the ravines, have crumbled down. What a desolation is this! Foreigners are dragging out Lakshmi (affluence) violently by the hand (or by taxation), by means of persecution. Along with her plenty has fled, and after that health also. This wicked Akabaya stalks with famine through the whole country. Relentless death moves about spreading epidemics of diseases."

Then follows a wild metrical rhapsody full of covert allusions to the tribulations of the people, the miseries of toil and hunger, the ruthless slaughter of cows, the brutal treatment of women, and the killing of natives on trivial pretexis. "How do the white men escape by urging these meaningless pleas? This great injustice seems to prevail in these days in the tribunals of justice. Could any man have dared to cast an improper glance at the wife of another, a thousand sharp swords would have leapt out of their scabbards instantly. Now however opportunities are availed of in railway carriages, and women are dragged by the hand. You eunuchs! How do you brook this?"

This terrible picture of India under British rule concludes with the following peroration. "Give my compliments to my good friends, your rulers, over whose vast dominions the sun never sets. Tell them 'How have you forgotten that old way of yours, when with scales in hand you used to sell your goods in your warehouses!' As my expeditions in that direction were frequent, it was at that time possible to drive you back to your own country. The Hindus, however, being magnanimous by nature I protected you. Have you not been laid under deep obligations? Make then your subjects, who are my own children, happy. It will be good for your reputation if you show your gratitude now by discharging this debt." The sign of a Bhawani sword was affixed to the end of this.

The second extract charged as seditious consisted of a report of various lectures, discourses, and speeches delivered in celebration of the great Shivaji, who was freely compared by the speakers with other historical personages, such as Cæsar, Napoleon, Mazzini, Clive, and Hastings, though much to the disadvantage of the latter. One learned Professor devoted his lecture specially to the justification of Shivaji for the 'Killing of Afzul Khan,' at the conclusion of which he pointed the following moral— "Every Hindu, every Maratha, to whatever party he may belong, must rejoice at this Shivaji festival. We all are striving to regain our lost independence, and this terrible load is to be uplifted by us all in combination. It will never be proper to place obstacles in the way of any person, who, with a true mind, follows the path of uplifting this burden in the manner he deems

fit. Our mutual dissensions impede our progress greatly. If any one be crushing down the country from above, cut him off; but do not put impediments in the way of others. All occasions like the present festival, which tend to unite the whole country, must be welcome.”

Another Professor following in the same strain said:—“If no one blames Napoleon for committing two thousand murders in Europe, if Cæsar is considered merciful, though he needlessly committed slaughter in Gaul many a time, why should so virulent an attack be made on Shri Shivaji Maharaja for killing one or two persons? The people who took part in the French revolution denied that they committed murders, and maintained that they were only removing thorns from their path. Why should not the same principle be made applicable to Maharashtra” (*i.e.*, the Mahratta country)?

Whatever other speakers may have lacked in animation and vigour was amply compensated by the President himself, who brought the meeting to a close. The following are some passages from his speech—“If thieves enter our house, and we have not strength in our wrists to drive them out, we should without hesitation shut them up and burn them alive. God has not conferred upon the *Mlenchhas* (foreigners) the grant inscribed on copperplate of the Kingdom of Hindustan. The Maharaja strove to drive them away from the land of his birth; he did not thereby commit the sin of coveting what belonged to others. Do not circumscribe your vision like a frog in a well. Get out of the Penal Code, enter into the extremely high atmosphere of the Shrimat Bhagavatgita, and consider the actions of great men.”

In commenting on these extracts from the *Kesari* it was contended, on behalf of the Crown, that, though “there was nothing necessarily disloyal in celebrating the anniversary of Shivaji, who was unquestionably a great and distinguished man, advantage had been taken of the celebration to use language with reference to the British Government which was intended to excite disaffection,” and to incite its readers “to follow the example of Shivaji and overthrow British rule.” One of the articles “contained a clear attempt to justify political assassination,” and it was a significant fact, though no connection could be ac-

tually traced, that "within a week of their publication Mr. Ayerst and Mr. Rand had been murdered at Poona." It was also contended that a comparison had been drawn "between the condition of the people under Shivaji and under British rule altogether unfavourable to the latter," and that this was done "for the purpose of exciting disaffection."

For the defence it was argued that "the articles describing the sufferings of the people were quite consistent with loyalty. They no doubt set forth grievances, but it was not seditious to do that." "The articles on the Jubilee showed a genuine loyalty." "No doubt there were articles in praise of Shivaji," but they "only expressed a general admiration for him as a man of extraordinary power and talent;" and further that "the object of the accused was clearly only to create a national sentiment, just as the Scotch, Welsh and Irish people by their national celebrations endeavour to keep alive and foster a national spirit." There was no suggestion of "overthrowing the British Government."

It was further sought to construe the section by reference to the speech of Sir James Stephen in Council, on the passing of the Bill in 1870, as had been done in the *Bangobasi* case, but this was disallowed by the Judge on the authority of the Privy Council ruling in the case of *The Administrator-General of Bengal v. Premal* (22 I. A., 107). Counsel also referred to the charge of Cave, J., in *Reg. v. Burns*, and of Fitzgerald, J., in *Reg. v. Sullivan* (see *Chs. ii—iii*).

His lordship in charging the jury explained first the individual responsibility of each of the accused, and then proceeded to expound the law as follows:—"In the first place, in construing the section, I do not propose to discuss the English law of seditious libel, though I have most fully considered the cases to which counsel has referred, and the writings of Sir James Stephen and others on the subject. I believe that the explanation which I shall give you is not in any way inconsistent with the best English authorities; but in England the offence of seditious libel is not a statutory offence defined by Act of Parliament, but a common law misdemeanour elaborated by the decisions of Judges. In this country the law

to be applied is the Penal Code. I will now ask you to look at the section and the way it is worded."

His lordship thereupon read the section as it then stood (see *Ch. i*), and continued :—" You will observe that the section consists of two parts : first a general clause, and then an explanation. The object of the explanation is a negative one, to show that certain acts which might otherwise be regarded as exciting or attempting to excite disaffection are not to be so regarded. We must, therefore, first consider the first or general clause of the section by itself, and then see how far the explanation qualifies it. The offence as defined by the first clause is exciting or attempting to excite feelings of disaffection to the Government. What are 'feelings of disaffection ?' It means hatred, enmity, dislike, hostility, contempt, and every form of ill-will to the Government. 'Disloyalty' is perhaps the best general term, comprehending every possible form of bad feeling to the Government. That is what the law means by the disaffection which a man must not excite or attempt to excite ; he must not make or try to make others feel enmity of any kind towards the Government." He subsequently added, " The word 'disaffection' covers, in my opinion, all those terms."

"You will observe," he continued, " that the amount or intensity of the disaffection is absolutely immaterial except perhaps in dealing with the question of punishment : if a man excites or attempts to excite feelings of disaffection, great or small, he is guilty under the section. In the next place it is absolutely immaterial whether any feelings of disaffection have been excited or not by the publication in question. You will observe that the section places on absolutely the same footing the successful exciting of feelings of disaffection, and the unsuccessful attempt to excite them, so that if you find that either of the prisoners has tried to excite such feelings in others, you must convict him even if there is nothing to show that he succeeded."

"Again," he added, " it is important that you should fully realise another point. It is not the exciting or attempting to excite mutiny or rebellion, or any sort of actual disturbance, great or small. Whether any disturbance or outbreak was caused by these articles is absolutely immaterial.

I am aware that some distinguished persons have thought that there can be no offence against the section unless the accused either counsels or suggests rebellion or forcible resistance to the Government. In my opinion, that view is absolutely opposed to the express words of the section itself, which as plainly as possible makes the exciting or attempting to excite certain feelings, and not the inducing or attempting to induce to any course of action, such as rebellion or forcible resistance, the test of guilt. I can only account for such a view by attributing it to a complete misreading of the explanation attached to the section, and to a mis-application of it beyond its true scope.’

In dealing with the explanation in the latter portion of the section his lordship said :—“ Its object is to protect from the condemnation pronounced by the first clause certain acts which it distinguishes from the disloyal attempts which the first clause deals with. The thing protected by the explanation is ‘ the making of comments on the measures of the Government’ with a certain intention. This shows that the explanation has a strictly defined and limited scope.” “ It does not apply to any writing which consists not merely of comments upon Government measures, but of attacks upon the Government itself, its existence, its essential characteristics, its motives, or its feelings towards the people.’”

“ A man may criticise or comment on any measure or act of the Government, whether legislative or executive, and freely express his opinion upon it. He may express the strongest condemnation of such measures and he may do so severely, and even unreasonably, perversely and unfairly. So long as he confines himself to that he will be protected by the explanation. But if he goes beyond that, and, whether in the course of comments upon measures or not, holds up the Government itself to the hatred or contempt of his readers—as, for instance, by attributing to it every sort of evil and misfortune suffered by the people, or dwelling adversely on its foreign origin and character, or imputing to it base motives, or accusing it of hostility or indifference to the welfare of the people—then he is guilty under the section, and the explanation will not save him.’”

In construing the concluding terms of this clause, which have since been altered, his lordship alluded to their very apparent liability to misconstruction as follows :—“ I believe that it is an inaccurate reading of this part of the explanation, a too exclusive attention to the expressions about obedience and resistance, and an insufficient attention to other expressions equally important, which has caused some people to misunderstand the whole section, and to imagine that no one can be convicted under it, even if he assails the Government itself and not merely Government measures, unless he counsels or suggests rebellion or forcible resistance.”

In view of these significant remarks the obvious necessity of importing plainer language into the law was at once recognised, and legislation speedily followed.

In dealing with the extracts from the *Kesari* his lordship said : “ You will thus see that the whole question is one of intention of the accused in publishing these articles.” “ But you may ask ‘ how can we tell whether his intention was simply to publish a historical discussion about Shivaji and Afzul Khan, or whether it was to stir up, under that guise, hatred against the Government ? ’ You must gather the intention as best you can from the language of the articles ; and you may also take into consideration, under certain conditions, the other articles that have been put in evidence. But the first and most important index of the intention of the writer or publisher of a newspaper article is the language of the article itself. What is the intention which the articles themselves convey to your minds ? In considering this, you must first ask yourselves what would be the natural and probable effect of reading such articles in the minds of the readers of the *Kesari*, to whom they were addressed ? Would the feeling produced be one of hatred to the Government, or would it be simply one of interest in a poem and a historical discussion about Shivaji and Afzul Khan, and so forth ? ”

His lordship continued :—“ But in the next place, in judging of the intention of the accused, you must be guided not only by your estimate of the effect of the articles upon the minds of their readers, but also by your common sense, your knowledge of the world, your understanding of the meaning of words, and

your experience of the way in which a man writes when he is animated by a particular feeling."

"It may not be easy to express the difference in words ; but the difference in tone and spirit and general drift between a writer who is trying to stir up ill-will and one who is not, is generally unmistakable, whether the writing is a private letter, or a leading article, or a poem, or the report of a discussion. You can form a pretty accurate notion of what a man is driving at, or what he wants to convey, from a perusal of the writing, and can generally tell whether the writing is inspired by good-will or is meant to create ill-will. It is not very difficult to distinguish between the language of hostility and the language of loyalty and good-will, or of criticism and comment."

Such are the main principles of the law of sedition as laid down by Justice Strachey in his charge to the jury in Tilak's case. It will be necessary to refer to it again as an authority on many incidental questions. This charge derives a special importance from the fact that it came before the Privy Council and was considered by Lords Halsbury, Hobhouse, and Davey, and Sir Richard Couch. The Lord Chancellor in delivering judgment said :—" Their Lordships are of opinion, taking a view of the whole of the summing-up, which is of very great length, that there is nothing in that summing-up which calls upon them to indicate any dissent from it or any necessity to correct what is therein contained."

It was moreover cited at great length and approved by a Full Bench of the Allahabad High Court, and was mainly instrumental in bringing about the legislative changes that followed.

Tilak was found guilty by a majority of six to three, and sentenced to eighteen months' rigorous imprisonment.