

## CHAPTER VI.

### SOME NOTABLE TRIALS—*contd.*

THE next trial of note also took place in Bombay, and about the same time as Tilak's case. It came up on appeal to the High Court a few months later and was heard by a Full Bench. It is the case of *Queen-Empress v. Ramchandra Narayan and another* (22 Bom. 152), and the decision is of the highest value as affording not only the interpretations of the learned Judges as to the law of sedition, but also their views on its proper application, and the measure of punishment to be awarded for the crime. The first accused was the editor, and the second the proprietor, and publisher of a newspaper called the *Pratod*, which was printed and published at Islampur in the Satara district. The appellants had been convicted by the Sessions Judge of Satara and sentenced respectively to transportation for life and for seven years.

The article charged as seditious appeared in the issue of the 17th May 1897, and was as follows:—

“*Preparations for becoming Independent.*”

“Canada is a country in North America under the British rule, the people of which have now become intolerant of their subjection to England. Though they are subject to the British people, they are not effeminate like the people of India. It is not their hard lot to starve themselves for filling the purse of Englishmen. They are not obliged to pay a pie to England. Their income from land-revenue and taxes are expended for their own benefit. They enact their own laws independently, and appoint their own officers, except one or two who are sent from England. Of even this nominal dependence they have become impatient, and are now busy making efforts to throw it off. It is natural for them to envy their neighbours, who, after casting off their English nationality, and assuming the designation of Americans, are now enjoying the blessings of a free nation. They have appointed a committee to frame an independent constitution for themselves. This committee

has issued a notification of their aims, copies of which have been distributed even in India. In this notification they have clearly stated their intention of throwing off the English yoke, and establishing a Government of their own. Like us, they are not men given to prattling, but can act up to their word. There is also strong unity amongst them. Spirited men show by their actions what stuff they are made of. There are no people on earth who are so effeminate and helpless as those of India. We have become so callous and shameless that we do not feel humiliation, while we are laughed at by all nations for losing such a vast and gold-like country as India. What manliness we can exhibit in such a condition is self-evident."

Two other articles were put in evidence to prove *animus*. The arguments of Counsel are unfortunately not reported. The comments of Sir C. Farran, C. J., on the article in question, however, are as follows:—"It opens with an untruthful representation of the aims and wishes of the Canadian subjects of Her Majesty." "Having started with this misleading account of the position of the Canadians, their aims and wishes, he proceeds to contrast their political position with that of Her Majesty's Indian subjects, greatly to the prejudice of the latter. The writer then goes on to address his readers. He informs them that they once possessed a vast and gold-like country—India—and assures them that they are laughed at by all nations for having lost it. He upbraids them for their effeminacy and want of spirit, and urges them to action: 'Spirited men show by their actions what stuff they are made of.' He ends with this enigmatic passage: 'How we can exhibit manliness in such a condition is self-evident.' The article as a whole has, I think, the object of making its readers impatient of their allegiance to a foreign Sovereign, and creating in them the desire of casting off their dependence upon England—in other words, of exciting disaffection to the Government established by law in British India."

Justice Parsons, concurring, expressed his views on the article thus:—"Under the false representation of what the Canadians were about to do, it chides the people of India for their effeminacy and want of spirit, and exhorts them to exhibit some manliness, in order to cast off their subjection to the English rule, to

establish a Government of their own, and to become independent. In veiled language, but in no uncertain tone, it attempts to excite the readers to subvert the Government, and replace it by another."

Justice Ranade, commenting on the same article, said:—  
 "Its evident animus was to excite a feeling of aversion and hatred. It was not directed as an attack against any particular act or measure of Government or its officers, but it appears to be the outcome of a general sense of vague dissatisfaction with the existing political constitution and order. As a statement of well-known contemporary facts, it is not true to state that Canada is desirous of throwing off the English connection. An imaginary ideal of independence is held up for imitation, and the people of this country are blamed for their apathy in the matter, and scornfully disparaged for their want of spirit. It is quite clear, therefore, that the words are calculated to create the feeling which the law reprobates and seeks to punish."

These observations are of the highest importance as instances of judicial criticism on concrete examples of seditious matter, and may furnish a guide for the interpretation of similar material. It is, however, the judicial interpretation of the law as it then stood, prior to its alteration, that forms perhaps the most important part of this Full Bench decision.

Sir C. Farran, C. J., after citing the section (see *Ch. i*) observed:—"Neither the section nor the explanation, however, defines the term 'disaffection,' nor is it defined in other parts of the Code." His lordship then proceeded to determine its meaning. Referring to Murray's Dictionary he found the special signification of the word to be—"Political alienation or discontent, a spirit of disloyalty to the Government or existing authority," and then proceeded—"An attempt to excite feelings of disaffection to the Government is equivalent to an attempt to produce hatred of Government as established by law, to excite political discontent, and alienate the people from their allegiance."

"This," he added, "is an offence under English law. In Stephen's Criminal Law the publication of a libel with seditious intent is classed as a misdemeanour, and seditious intention is thus defined: '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 to raise discontent or disaffection amongst Her Majesty's subjects' (see *Ch. ii*). I quote the passage as conveniently summarising the English law. It is, I think, fully supported by the rulings of the English Judges and all the recognised text-books on criminal law."

"Turning to the explanation," he continued, "we find that disapprobation of the measures of Government is not disaffection, provided that it is of such a nature as to be compatible with a disposition to obey Government and to support its lawful authority against attempts to resist or subvert it. The meaning of that passage appears to me to be that a loyal subject who disapproves Government measures is not to be deemed disloyal or disaffected on that account if, notwithstanding his disapprobation of such measures, he is ready to obey and support Government. If he is at heart loyal, he is not disaffected merely because he disapproves certain measures of Government. On the other hand "he may be a rebel at heart, though for the time being prepared to obey and support Government. It consequently follows that the publication of a libel exciting to disaffection against Government itself—the constitution established by law—may be an offence, though the libel may insist on the desirability or expediency of obeying and supporting Government."

It would seem to follow from his lordship's remarks that a man might be clearly guilty of exciting disaffection and yet have escaped through the meshes of the explanation by the method indicated. If this was so the necessity for altering it is abundantly clear. His lordship added—"The ordinary meaning of the term 'disaffection' in the main portion of the section is not, I think, varied by the explanation."

Justice Parsons' interpretation of the term 'disaffection' is also important. "It must be taken," he said, "to be employed in its special sense as signifying political alienation or discontent, that is to say, a feeling of disloyalty to the Government or existing power, which tends to a disposition not to obey, but to resist and attempt to subvert that Government or power. Its meaning thus exactly corresponds to the almost, if not quite, universally accepted meaning of its adjective 'disaffected.' To

make or attempt to make a person disaffected, that is to excite or attempt to excite in him a feeling of disloyalty to Government, or to excite or attempt to excite in his mind a disposition to disobey, to resist the authority of, or to subvert the existing Government, is the act under this section declared an offence."

Justice Ranade's definition of the same term is a model of precision and apt phraseology. After an elaborate inquiry into the English law of sedition, he said:—"Disaffection, as thus judicially paraphrased, is a positive political distemper, and not a mere absence or negation of love or good-will. It is a positive feeling of aversion which is akin to 'disloyalty,' a defiant insubordination of authority, or when it is not defiant, it secretly seeks to alienate the people, and weaken the bond of allegiance, and prepossesses the minds of the people with avowed or secret animosity to Government, a feeling which tends to bring the Government into hatred or contempt by imputing base or corrupt motives to it, makes men indisposed to obey or support the laws of the realm, and promotes discontent and public disorder."

The convictions of both the accused were confirmed, but the sentences, which were found to be out of all proportion to the gravity of the offence, were reduced to one year's rigorous and three months' simple imprisonment. The reasons for this were specifically set out by the Chief Justice, and will be referred to hereafter (see *Ch. vi*).

The last of the three notable trials of the year 1897 took place at Allahabad. This was the case of *Queen-Empress v. Amba Prasad* (20 All. 55), which came up on appeal before a Full Bench of the High Court on the 14th December of that year. The report of the case unfortunately contains no statement of the facts, no arguments of Counsel, and no indication of the nature of the matter charged as seditious. The only facts available are such as can be gathered from the judgment of the Full Bench, which was delivered by Sir John Edge, C. J.

It appears from this that the accused Amba Prasad, a Hindu Kayesth, was a native of Moradabad, and that he was the proprietor, editor, and publisher of a newspaper called the *Jamī-ul-Ulam*. The paper was published in Moradabad, and, as its name would indicate, had its chief circulation among Mahomedans.

The article in question which would seem to have been of a grossly seditious character, had appeared in the issue of the 14th July. At his trial before the Sessions Judge of Moradabad the accused pleaded guilty, and was sentenced to eighteen months' rigorous imprisonment. Against this sentence he appealed to the High Court.

Their lordships dismissed the appeal in the following terms:—

“ In the case before us Amba Prasad has pleaded guilty to an attempt, by the publication of the article in question, to excite feelings of disaffection to the Government established by law in British India. He was well advised to plead guilty, as on an examination of that article the only possible defence open to him was that of insanity. His counsel before us could not suggest that there was the slightest justification or excuse for the gross and libellous charges against the Government contained in the article. Amba Prasad, in publishing that article, could have had but one object in view, and that was to excite amongst Her Majesty's Indian subjects feelings of disaffection, disloyalty to the Government established by law in British India. The particular article, taken in conjunction with other articles published in his newspaper, shows that his object was to excite not merely passive disaffection, which in itself is an offence, within section 124A of the Indian Penal Code (see *Ch. 2*), but active disloyalty and rebellion amongst his Muhammadan fellow-subjects. The criminal offence which Amba Prasad committed is an exceedingly grave one. That offence he committed regardless of the ruin, misery, and punishment which would have fallen on any of his fellow-countrymen who might have been so ignorant as to believe that the statements which he published were true, and who acting on such belief might have entered upon a course of active disloyalty to the Government. Amba Prasad is not a Muhammadan; he is a Kayesth.” “ Amba Prasad alleges in his grounds of appeal that his plea of guilty, and an apology, which he tendered after he had been committed for trial, entitled him to have only a nominal punishment inflicted upon him. His conviction was inevitable. An apology, particularly made after commitment, in such a case as this, need not be considered. Having regard to the gravity of the offence which Amba Prasad committed, and to the misery, ruin, and punishment which he

might have brought upon ignorant people, the sentence which was passed on him was entirely inadequate. We dismiss this appeal."

Such was the conclusion arrived at on the facts, but it is not this so much as the elaborate inquiry into the law that preceded it, which constitutes the special importance of this case. After an exhaustive review of the three notable trials which had taken place, and a careful examination of all the judicial views which had been expressed from time to time, their lordships proceeded to lay down their own views as to the true meaning of the section—a question which admittedly was not entirely free from difficulty.

"If there be any difficulty as to the true meaning of section 124A," their lordships said, "it is caused by the *Explanation* which forms part of that section" (see *Ch. 2*). Justice Strachey had experienced a similar difficulty, and Sir C. Farran had been hardly satisfied with the phraseology of it.

"In our opinion," their lordships continued, "any one who, by any of the means referred to in section 124A of the Indian Penal Code, excites or attempts to excite feelings of hatred, dislike, ill-will, enmity or hostility towards the Government established by law in British India, excites or attempts to excite, as the case may be, feelings of 'disaffection,' as that term is used in section 124A, no matter how guardedly he may attempt to conceal his real object. It is obvious that feelings of hatred, dislike, ill-will, enmity, or hostility towards the Government, must be inconsistent with and incompatible with a disposition to render obedience to the lawful authority of the Government, and to support that lawful authority against unlawful attempts to subvert or resist it. The 'disapprobation of the measures of the Government' may or may not, in any particular case, be the text upon which the speech is made, or the article or letter is written; but if, upon a fair and impartial consideration of what was spoken or written, it is reasonably obvious that the intention of the speaker or writer was to excite feelings of disaffection to the Government established by law in British India, then a Court or a jury should find that the speaker or writer or publisher, as the case might be, had committed the offence of attempting to excite feelings of disaffec-

tion to the Government established by law in British India. To paraphrase is dangerous, but it appears to us that the disaffection of section 124A is 'disloyalty'; that is the sense in which the word 'disaffection' has been generally used and understood during the century. We are further of opinion that the ordinary meaning of disaffection in section 124A, having regard to the evils at which section 124A strikes, is not varied by the explanation contained in the section.' The same view had been previously expressed by Sir C. Farran, C. J., in the case before mentioned.

"The intention of a speaker, writer or publisher" their lordships continued, "may be inferred from the particular speech, article or letter, or it may be proved from that speech, article or letter, considered in conjunction with what such speaker, writer, or publisher, has said, written, or published on another or other occasions. Where it is ascertained that the intention of the speaker, writer, or publisher was to excite feelings of disaffection to the Government established by law in British India, it is immaterial whether or not the words spoken, written, or published, could have the effect of exciting such feelings of disaffection, and it is immaterial whether the words were true or false, and, except on the question of punishment, or in a case in which the speaker, writer, or publisher is charged with having excited such feelings of disaffection, it is immaterial whether or not the words did, in fact, excite such feelings of disaffection.'

The above passage from the judgment of the Full Bench was subsequently cited in Council as containing a complete summary of the law which had been laid down in the previous cases. Before proceeding, however, to consider the changes that were now introduced into the law, by the remodelling of the section relating to sedition, it will be useful to review shortly the result of the four cases which have been briefly summarised, and to ascertain to what extent the section had been affected by the judicial utterances of the learned judges who took part in the trials.

In the first place it seems pretty clear that the term 'disaffection' had proved a *vexata questio*, for many definitions of the word had been offered, which were not all exactly alike.



Sir C. Petheram, C. J., and Justice Strachey appeared to favour a construction which implied a negative state of mind, opposed to good-will and affection; while Justice Parsons and Justice Ranade expressly favoured an interpretation which implied a positive mental condition, akin to political alienation or disloyalty.

In describing the offence of creating 'disaffection' the English law had been freely resorted to. Sir C. Petheram, C. J., had said:—"It is sufficient for the purposes of the section that the words used are calculated to excite feelings of ill-will against the Government, and to hold it up to the hatred and contempt of the people." Sir C. Farran, C. J., who cited Sir James Stephen, described the offence as "an attempt to produce hatred of Government as established by law, to excite political discontent, and alienate the people from their allegiance." There was, moreover, a general consensus that exciting disaffection was equivalent to exciting disloyalty. The term had been first employed by Justice Strachey, who said:—"Disloyalty' is perhaps the best general term, comprehending every possible form of bad feeling to the Government." It was finally employed by Sir John Edge, C. J., in summing up the conclusions of the Full Bench, when he said:—To paraphrase is dangerous, but it appears to us that the 'disaffection' of section 124A is 'disloyalty:' that is the sense in which the word 'disaffection' has been generally used and understood during the century."

If the word 'disaffection' had presented difficulties, the 'explanation' to the section had undoubtedly proved a veritable crux. The question how far it qualified the main provision had been anxiously considered. The Chief Justices of Bombay and Allahabad were both of opinion that its meaning was not varied by the 'explanation.' Justice Strachey considered that the explanation, or at least the latter part of it, had given rise to serious misconception. It had led people to suppose that nothing short of an incitement to rebellion was an offence within the meaning of the section; and such a view of the law was certainly opposed to its commonly accepted signification. The 'explanation' was therefore clearly ambiguous, and plainer language was wanted to prevent the possibility of misconception.

Such was the situation which presented itself to the Legislature towards the end of the year 1897.