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own shares. The purchase-money, however, came into their hands; and as administrators they would be bound to administer the same as part of the assets of the estate; but whether they do so or not, it does not affect the title of the purchaser. (See in this connection, *West of England and South Wales District Bank* v. *Murch* (1) and *Corser* v. *Cartwright* (2).

We hold, therefore, that Uma Churn acquired a good title under his purchase; and it follows, therefore, that he was entitled to sell the notes to Mr. Braunfeld. No doubt, before Mr. Braunfeld obtained his conveyance, the plaintiff gave him notice of his purchase, but this was *after* he (Mr. Braunfeld) had entered into a contract for the purchase with Uma Churn, and paid a portion of the purchase-money.

Upon these grounds we are of opinion that the plaintiff is not entitled to succeed in this case; the result being that the appeal will be dismissed with costs.

Appeal dismissed.

T. A. P.

ORIGINAL CRIMINAL.

Before Sir W. Comer Petheram, Knight, Chief Justice.

QUEEN-EMPRESS *v.* JOGENDRA CHUNDER BOSE AND OTHERS.

1891 *August* 25.

Disaffection and disapprobation—Penal Code (Act XLV of 1860), *ss.* 124A, 500—*Defamation.*

The terms 'disaffection' and 'disapprobation' explained, and section 124A referred to, and explained to the Jury.

JOGENDRA CHUNDER BOSE, Kristo Chunder Banerjee, Brojo Raj Banerjee, and Arunodoy Roy were committed for trial at the Calcutta Sessions by the Officiating Chief Presidency Magistrate as the Proprietor, Editor, Manager, and Printer of the *Bangobasi*, a weekly vernacular newspaper, having a large mofussil circulation and having its office at No. 34-1, Colootollah Street.

The accused were charged under sections 124A and 500 of the Penal Code with attempting to excite feelings of disaffection to the Government established by law in British India, and with

(1) L. R., 23 Ch. D., 138. (2) L. R., 7 H. L., 731.

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defaming the Government of India by publishing certain articles on the 28th of March, the 16th of May, and the 6th of June 1891. The charges under section 500 were, however, during the course of the argument at the trial, struck out.

The articles in respect of which the above charges were framed were five in number, and may be shortly summarised as follows:—

" *Our Condition.*"

"The English ruler is our lord and master, and can interfere with our religion and usages by brute force and European civilisation. The Hindu is powerless to resist; but he is superior to your nation in good morals, in gentle conduct, and in good education. Hindu civilisation and the Hindu religion are in danger of being destroyed."

" *The Revealed form of the English Ruler.*"

"The Englishman stands revealed in his true colours. He has the rifle and bayonet, and slanders the Hindu from the might of the gun. How are we to conciliate him? We cannot expect mercy or justice from him. Our chief fear is that religion will be destroyed, but the Hindu religion will nevertheless remain unshaken."

" *For the uncivilised, undisguised policy is good.*"

"We suffer from the ravages of famine, from inundations, from the oppressive delays of the law courts, from accidents on steamers and railways. All these misfortunes have become more prevalent with the extension of English rule in India; but our rulers do not attempt to remove these troubles or to ameliorate our condition. All their compassion is expended in removing the imaginary grievances of girl-wives, and in interfering with our customs. We should freely vent our real grievances."

" *The most important and the first idea of the uncivilised Hindu.*"

"We are unable to rebel, but we are not of those who say it would be improper to do so if we could. We have been conquered by brute force, but we are superior to the English in ethics and morality, in which we have nothing to learn from them. You may crush the body, but you cannot affect the mind. Others like

Aurungzebe and Kalapahar have tried before you and failed. You should not try and suppress girl-marriage because you won at Plassey and Assaye. It is error and presumption on your part to attempt to reform our morals."

"What is the end to be?"

"The outlook is a gloomy one. In 50 years death is certain, as food has quadrupled in price in the last 30 years. The land is fertile, yet a mountain could be constructed from the bones of those who perished in the Orissa famine alone. Parents have devoured their children. Famines must result from high prices, and the recent riot at Benares is to be attributed to this cause. Education renders people unfit to earn their living by manual labour. The cause of all this is the drain put upon the country by the British Government which will never cease until the country is completely exhausted."

Other articles were referred to at the trial written subsequently to the above dates, and up to within a week of the initiation of the proceedings. These articles were sought to be used in the character of fresh evidence to show animus on the part of the accused.

The Officiating Standing Counsel (Mr. *Pugh*), Mr. *Woodroffe*, Mr. *Evans*, and Mr. *Dunne* appeared for the Crown.

Mr. *Jackson*, Mr. *N. N. Ghose*, Mr. *Graham*, and Mr. *Sinha* appeared for the accused.

Mr. *Pugh* in opening the case for the prosecution at great length, first dealt with the topics referred to in the articles, which have been noticed briefly for the purposes of the present report. And in connection with the liberty of the Press, pointed out that it had only been interfered with for three years since Lord Metcalfe's time (1835), that is to say, in 1857, and from 1878 to 1881, and continued as follows:—If the Press are at liberty to hold up the Government of a country to public execration as being destroyers and persecutors of the people, as having a settled design to destroy the religion of the people, and as being the cause of famines and other calamities, it would be impossible for any Government to exist. That amounts to exciting feelings of disloyalty and disaffection, which

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has found vent in riots at Calcutta, Benares, and elsewhere. I would refer to the remarks of Baron Deasy in the case of *Reg.* v. *Pigott* (1), in which it was pointed out that the Government had a right to protect itself by bringing the newspaper before a Jury. If newspapers attempt to excite feelings of sedition and no redress can be obtained from Juries, then some stringent measures curtailing the liberty of the Press, as had been done in 1878, would have to be adopted. The case of Ireland is analogous to the case here, and *Reg.* v. *Pigott* (1) is therefore a case in point. In these articles no attempt at a reasonable discussion of the Age of Consent Bill is to be found. There is nothing but vituperation and invective. In one of the articles it is stated that rebellion was not possible, and the intention here is to bring the people into this frame of mind:—"We would rebel if we could," which is inconsistent with loyalty to Government. The intention of the articles in referring to famines and high prices and charging the Government with persecuting the Hindu religion is to make the people discontented and dissatisfied. These writings must be measured with reference to the circumstances of a country where there is always danger of riots. It is always dangerous to attempt to excite the religious feelings of the people, and where the Government is compared to the Emperor Aurungzebe, one of the most persistent persecutors of the Hindu religion, and to Kalapahar, whose name was held in the greatest abhorrence by Hindus, surely the public peace is imperilled. Again, the articles are directed to inflame the prejudices of people of the lower classes by appealing to their superstitious feelings. With this object the British Government were compared to revolting characters in the Hindu mythology.

[Mr. *Pugh* then proceeded to read and comment on the articles at length, and in addressing the Court upon the history and construction of section 124A continued as follows]:—

Section 124A was framed by the Indian Law Commissioners in 1837, the enfranchisement of the Press having taken place in 1835. In 1839 it was proposed to insert the section in the draft Penal Code. The section was, however, unaccountably omitted from the Indian Penal Code in 1860. In 1870 the present section

(1) 11 Cox, Cr. Ca., 60 (61).

became law, and from that time to this there has been no prosecution under the section. Practically the offence before the Jury is the attempting to excite, by words intended to be read, feelings of disaffection to the Government, the *Explanation* to the section is intended to cover every sort of lawful criticism of the measures of the Government. Merely to excite disapprobation is not an offence, but the disapprobation must be compatible with a disposition to support the authority of the Government against unlawful attempts to subvert or resist that authority. It is impossible to say that these articles are consistent with such a disposition to render obedience to and to support the Government. The term 'disaffection' is a wide one, and does not necessarily point to a direct incitement to rebellion or any particular form of force. The word is used in the State trials for seditious libel before the Commonwealth, and in Ludlow's *Memoirs* as applicable to persons discontented with the Government, who did not show their discontent by overt acts. The meaning is "to be or cause to be without affection, attachment, friendship, regard, love, or goodwill; to dislike, to have discontent, to dissatisfy, to discompose."—*Metropolitan Encyclopædia*, 1845.

In the present case the Jury must go upon section 124A. The law of England is even stricter than the section, and it is laid down in Sir J. Stephen's *History of the Criminal Law* (1) that the law of France and Germany, not to speak of that of Russia, is severer than that of England. A seditious intention by the law of England is an intention not merely to bring into disrepute or excite disaffection against the Government or the Constitution of the United Kingdom, but to raise discontent or dissatisfaction between different classes of Her Majesty's subjects. In India, apparently, it is not an offence to incite class against class, and section 124A has nothing to do with this subject. The case of *Reg.* v. *Burns and others* (2) will be relied upon to show that there must be some direct appeal to arms, but the question in that case was whether there had been any incitement to one class to use force against another class. That case, therefore, and others of the same kind have no application to the present. Then

(1) Chap 24, Vol. II., p. 395.
(2) 16 Cox. Cr. Ca., 355.

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the discussions which took place in the Council with reference to this section and with reference to the Vernacular Press Acts should not be taken into consideration in order to arrive at the meaning and construction of the section. With regard to the meaning of 'attempt,' the Jury will have to look to the words which the writer of these articles has used to express his intention, and to the surrounding circumstances. Stephen's *Digest of the Criminal Law,* articles 91—94. In the case of *Reg.* v. *Burdett* (1) Mr. Justice Best lays down that it is for the Jury to collect the intention from the paper itself, unless it is explained by the mode of publication or by any other circumstances. The Jury were to see whether the words used were likely at that period to excite dissatisfaction and irritation, and if they were likely to induce sedition, the intention must be presumed to be to excite what the act was likely to produce. [The remarks of Holroyd, J., at page 135 of the report were also referred to.] The present case is covered by the case of *Reg.* v. *O'Connell* (2), which was held to be a case of conspiracy, because the objects were unlawful. In the case of *Reg.* v. *Sullivan* (3), the duty of the Jury is correctly laid down by Fitzgerald, J., when he charged the Jury that they should deal with the articles in a fair and liberal spirit, not picking out an objectionable sentence here or a strong word there, or giving undue importance to inflated and turbid language, but looking at the real intention and spirit of the articles (4).

Witnesses were then called as to the publication of the articles by the accused, after which Mr. *Evans* summed up in detail the evidence for the prosecution.

PETHERAM, C.J.—I shall direct the Jury as to the meaning of the section.

Mr *Jackson.*—I submit that it is for the Jury to decide with regard both to law and fact.

PETHERAM, C. J.—It will be my duty to direct the Jury on the construction of the section.

(1) 4 B. & Ald., 95 (131).
(2) 11 Cl. & F., 155.
(3) 11 Cox. Cr. Ca., 44.
(4) 11 Cox. Cr. Ca., 59.

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Mr. *Jackson.*—There is no case to go to a Jury under section 124A. The offence under that section really consists in writing a seditious libel, and the publishing it or causing it to be published is no offence under the Penal Code. The prosecution admit that they have been unable to discover who is the writer of these articles. The only person liable is the composer of the articles. If section 124A be read by the side of section 499, it will be seen that no mention is made of publication in the former section, and its omission must have been intentional, as the framers of the law had already the defamation section before them. In England under Lord Campbell's Act the publication of the libel itself had to be proved, and a person is not criminally responsible for the acts of his agents—*Reg.* v. *Holbrook and others* (1).

PETHERAM, C.J.—It appears to me perfectly clear that there is a case to go to the Jury. The question turns upon the meaning of section 124A, and Mr. Jackson's contention is that only the speaker of the words or the composer of the sentences is liable under the section. I do not think that contention is borne out by the words of the section. The offence is attempting to excite disaffection by words intended to be read, and I think that whoever the composer or the writer might be, by whomsoever the writing or the printing was composed, the person who used them for that purpose within the opinion of the Jury was guilty of an offence under section 124A.

Mr. *Jackson.*—I would ask to have the point reserved under section 25 of the Charter.

PETHERAM, C. J., declined to reserve the point.

Jackson, in proceeding to address the Jury, referred to the *Reg.* v. *Sullivan* (2), for the purpose of showing that both d the facts were for the consideration of the Jury, it em to determine the whole question of law and fact, was a seditious libel or not. He referred to the ess in India, and proceeded to call the attention interpretation which the section had received

D., 60. (2) 11 Cox. Cr. Ca., 52.

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from Sir James Stephen and others. And on this point continued]:—

Originally the section was section 113 of Macaulay's Penal Code, but was for some reason omitted from the Code itself. Sir J. Stephen, when the matter came to be considered in the year 1870, referred to Sir Barnes Peacock, who on looking at his notes, said he thought the section had been omitted by mistake, but had no positive recollection (vide *Gazette of India*, August 6th, 1870, Supp. Vol., 1019, 1311). There was on that occasion a discussion as to section 113, and Sir J. Barnes Peacock proposed a section which was thought to be too severe, and no corresponding section was enacted. Sir J. Stephen in introducing the present section explained what the law of England then was, and stated that he proposed that section 124A should be passed into law, because if there were no provision in the law of India, the offence would fall under the common law of England, and would be more severely punishable; and he most distinctly asserted that there must be an intention to resist by force or an attempt to excite resistance by force before the offence could be brought under the present section. The peculiarity of the law of treason in England is that it considers every thought of the heart criminal, which is to be punished as soon as it is manifested by any overt act, but the clause as it stands insists on a distinction between disaffection and disapprobation. A person may freely say what he pleases about any Government measure or any public man as long as it is consistent with a disposition to render obedience to th lawful authority of Government. In connection with this subjec Sir J. Stephen has clearly said that the freedom of the pre would not be curtailed so long as the principle above laid d was adhered to. Sir J. Stephen has pointed out that far more violent than the ones which have been made the s this prosecution had appeared in the English newspapers and had passed unnoticed. [Mr. *Jackson* then refer HOBHOUSE's minutes of the 18th May 1875 and the 1876 in connection with the discussions on the V. Act, and also referred to Lord Lytton's and speeches in Council, adopting these as part of the view which those authorities then took

meaning of the present section—vide *Gazette of India*, Supp. Vol., 1878, pages 457 to 481.] The interpretation then put upon the section by those competent to do so must be taken as the right interpretation. The Jury have a right to take into account the opinion of such men as Sir J. Stephen, and up to the year 1878 there was but one opinion as to the meaning of the section. When the Vernacular Press Act was repealed in the year 1882, it was again expressly laid down that the freedom of the native press was to be interfered with only on very special occasions—*Gazette of India*, Supp. Vol. 1882, page 90.

[Mr. *Jackson* then went through the articles in great detail, and argued that they contained no direct incitement to rebellion or the use of force, and did not exceed the bounds of legitimate criticism, when allowance was made for the difference between European and native methods of thought and the conservative character of the paper. He also referred to the arguments for and against the Age of Consent Bill.]

PETHERAM, C.J., charged the Jury as follows:—

The four accused are charged with an offence under section 124A of the Penal Code, and inasmuch as the offence in question is treated and defined by that section, I have thought it desirable that you should have the section itself in your hands whilst I explained the law to you, and also whilst it was being discussed by Mr. *Jackson*. There are really two questions for you to consider. First, you must clearly understand what it is that has been made into an offence by the section, and when you understand that, you have to consider whether the evidence before you proves that such an offence has been committed by the prisoners. The section is divided into two parts, and is as follows:—"Whoever, by words either spoken or intended to be read, or by signs, or by visible representation, or otherwise, excites or attempts to excite feelings of disaffection to the Government established by law in British India, shall be punished with transportation for life or for any term, to which a fine may be added, or with imprisonment for a term which may extend to three years, to which fine may be added, or with fine."

Explanation.— Such a disapprobation of the measures of the Government as is compatible with a disposition to render obedience

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to the lawful authority of the Government, and to support the lawful authority of the Government, against unlawful attempts to subvert or resist that authority, is not disaffection. Therefore the making of comments on the measures of the Government with the intention of exciting only this species of disapprobation is not an offence within this clause."

Mr. *Jackson* contended that the words "disaffection" and "disapprobation" were synonymous words, and had one and the same meaning. If that reasoning were sound, it would be impossible for any person to be convicted under the section, as every class of writing would be within the explanation. But you, gentlemen of the Jury, are thoroughly acquainted with the English language, and must know that there is a very wide difference between the meaning of the two words disaffection and disapprobation. Whenever the prefix 'dis' is added to a word, the word formed conveys an idea the opposite to that conveyed by the word without the prefix. Disaffection means a feeling contrary to affection, in *other words*, dislike or hatred. Disapprobation means simply disapproval. It is quite possible to disapprove of a man's sentiments or action and yet to like him. The meaning of the two words is so distinct that I feel it hardly necessary to tell you that the contention of Mr. *Jackson* cannot be sustained. If a person uses either spoken or written words calculated to create in the minds of the persons to whom they are addressed a disposition not to obey the lawful authority of the Government, or to subvert or resist that authority, if and when occasion should arise, and if he does so with the intention of creating such a disposition in his hearers or readers, he will be guilty of the offence of attempting to excite disaffection within the meaning of the section, though no disturbance is brought about by his words or any feeling of disaffection, in fact, produced by them. 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, and that they were used with the intention to create such feeling. The second question for you gentlemen of the Jury, then, will be whether, upon the evidence before you, you think that the articles circulated by the prisoners were calculated to create such feelings in the minds of

their readers, and if so, whether they intended to create such feeling by their circulation.

Having taken this explanation of the section from me, it now rests with you to decide whether the accused by the words of the articles which were intended to be read have been guilty of an attempt to excite disaffection against the Government. You will have to bear in mind the class of paper which is being prosecuted and the class of people among whom it circulated, taking into consideration the articles which have been made the subject of the indictment and the others which have been put in during the course of the trial. Those articles are not addressed to the lowest or most ignorant mass of the people. You will see from the article referring to jute that they were not addressed to the cultivating classes. They are addressed to people of the respectable middle class who can read and understand their meaning—more or less the same class as the writers. You will have to consider, not only the intent of the person who wrote and disseminated the articles among the class named, but the probable effect of the language indulged in. Then you will have to consider the relations between the Government and the people, and having considered the peculiar position of the Government, and the consequence to it of any well-organized disaffection, you will have to decide whether there is an attempt or not to disseminate matter with the intention of exciting the feelings of the people till they become disaffected. British India is part of the British Empire, and is governed like other parts of the Empire by persons to whom the power is delegated for that purpose. There is a great difference between dealing with Government in that sense and dealing with any particular administration. Were these articles intended to excite feelings of enmity against the Government, or, on the other hand, were they merely expressing, though in strong language, disapprobation of certain Government measures? You will bear in mind that the question you have to decide has reference to the intention; and, in fact, the crime consists of the intention, for a man might lawfully do the act without the intention. The evidence of the intent can only be gathered from the articles. The ultimate object of the writer may be one thing, but if, in attaining that object, he uses as the means the exciting of disaffection against the Government,

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then he would be guilty under section 124A. If you think that these people, with the object of procuring the repeal of the Age of Consent Act, or of increasing the sale of their paper, disseminated these articles intending to excite feelings of enmity, you will be bound to find a verdict of guilty. As to the evidence of intent, the articles are the only evidence. The charges are based on the five articles which are the subject of the indictment. Other articles have been quite properly put in during the progress of the trial, but no charges are laid in connection with the latter. They were put in, some by the prosecution and some by the defence, to prove that their view of the intent of the articles charged was indicated in the others. These articles have been read and re-read to you gentlemen so frequently that I do not consider it necessary to discuss them in detail again. I will simply touch on their bearing on the case, and as to whether they disclose an intent to cause disaffection or disapprobation only.

[His Lordship then proceeded to refer to the articles and afterwards continued—]

It will be for you to come to a decision on the tone of these articles. You must not look to single sentences or isolated expressions, but take the articles as a whole, and give them a full, free, and generous consideration as Lord Fitzgerald has said; and even allowing the accused the benefit of a doubt, you will have to say whether the articles are fair comments and merely expressions of disapprobation, or whether they disclose an attempt to excite enmity against the Government.

In leaving the matter to your consideration, gentlemen of the Jury, I would ask you, and ask you earnestly, to dismiss from your minds all questions of prejudice, and look at this matter in as impartial a spirit as possible. The only question is that of the intent; you have nothing to do with the policy of the Government in instituting this prosecution, or the policy of the Government in passing the Consent Act, or what has been called the Gagging Act; you have nothing to do beyond dealing with the evidence in this case; and if you allow anything else to influence you in your decision upon the question before you, you will be failing in your duty.

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Your opinion should not be influenced by the opinions of any person, however eminent. The opinions of many great men have been quoted to you, and you have been requested to accept those opinions as your own in arriving at a correct decision in this case. I would repeat that you are not to accept the opinion of any one, be he ever so eminent; if you do so, you would not be doing your duty; you are to judge of this case, and give your verdict only on the evidence in the case. The only question for you to decide is, were the articles intended, and were they likely, to cause disaffection. The defence urge that the articles only expressed disapprobation of Government measures: the prosecution say they were deliberate attempts to incite the people to disaffection. I have now dealt with the whole matter, and having told you what is the law to guide you, I now ask you to consider your verdict on the evidence before you.

The Jury then retired to consider their verdict. On their return the Clerk of the Crown asked them if they were agreed upon their verdict.

The Foreman of the Jury stated that the Jury were not agreed, and that there was no chance of their returning an unanimous verdict. Upon which His Lordship said that he would not take any verdict that was not unanimous in this case.

The Jury were then discharged, the case being ordered to remain as a remanet for the next Sessions, the accused being enlarged on bail.

Attorney for the prosecution: *The Government Solicitor*, Mr. *R. L. Upton*.

Attorney for the accused: Baboo *Kally Nath Mitter*.

A. A. C.