urged that although he is the registered printer and publisher of the *Pratod* newspaper, he had ceased to take any part in its management long before the publication of the libel, and that he is not criminally responsible for its publication, even though seditious matter is contained in it.

It will be convenient, before referring to the terms of the article the subject of the charges, to consider the meaning of the section upon which the prosecution is based. That section enacts that whoever by words, &c. . . excites or attempts to excite feelings of disaffection to the Government established by law in British India, shall be punished with transportation for life for any term, to which 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. The punishment, it will be observed, varies according to the nature and gravity of the offence from simple fine to life-long transportation and fine. The explanation appended to the enacting part of the section does not directly deal with attacks or libels upon the Government itself, but with comments or attacks upon the measures of Government. It runs thus: "Such a disapprobation of the measures of the Government as is compatible with a disposition to render obedience to the lawful authority of 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." From this it follows that a wider latitude is allowed to a writer who comments on, or attacks the measures of the Government than to a writer who attacks the Government directly. Neither the section nor the explanation, however, defines the term "disaffection," nor is it defined in other parts of the Code. We must ascertain first its meaning in its usual popular and ordinary sense, and then consider whether from the scope and wording of the section read as a whole it is used there with the same or in a different signification.

In Murray's Dictionary—at present the most complete dictionary of the English language so far as it has been published—it is

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stated that the adjective "disaffected" is almost always employed in a special sense as meaning "Unfriendly to the Government or the constituted authority; Disloyal." The noun "disaffection" is defined as "absence or alienation of affection or kindly feeling —dislike—hostility." *Specially*, "Political alienation or discontent, a spirit of disloyalty to the Government or existing authority." The quotations given show the correctness of this view. From *The Rambler* (A. D. 1751) we have this passage:—"Thou hast reconciled disaffection—thou hast suppressed rebellion"; and in Green's History (A.D. 1874) we find "The popular disaffection told even in the Council of State." In this last sense it is, I think, employed in the main portion of the section we are considering.

An attempt to excite feelings of disaffection to the Government is thus 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 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." 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, 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 disapprobates certain measures of Government. The converse proposition does not appear to me to be true or deducible from the explanation, namely, that a subject who is ready to obey Government and support its lawful authority is necessarily loyal or well affected. He may be a rebel at heart though for the time being prepared to obey and support Government. The distinction is doubtless fine, but I think it exists, and 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 upon the desirability or expediency of obeying and supporting Government. The ordinary meaning of the term disaffection in the main portion of the section is not, I think, varied by the explanation.

The article in the present case is not one which is concerned with any measure of Government. If libellous, it is by reason of its exciting feelings of disaffection to the Government itself—causing the people to hate the constitution under which they live and to desire to subvert and change it for another form of Government. It opens with an untruthful representation of the aims and wishes of the Canadian subjects of Her Majesty, but as to this I think it must be assumed in favour of the accused that he was misled by some notification which had been seen by him, or by a reference to some such notification which had been published in some other paper, or otherwise had come to his knowledge. The accused were not questioned about this, nor has the prosecution proved the contrary. It ought not, I think, to be presumed that the existence of the notification was evolved from the imagination of the writer. 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

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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 feelings of disaffection to the Government established by law in British India. The publication of the libel is, I think, an offence under section 124 A. The first accused was, therefore, in my opinion, properly convicted.

As to the second accused, he is admittedly the proprietor of the *Pratod*. He is its declared printer and publisher. *Primâ facie*, therefore, he is responsible for what is published in it. When the prosecution has proved these facts, the *onus* is thrown upon the accused No. 2 to rebut the inference which arises from them. *Ramaswami* v. *Lokanada* (1) is, I think, an authority in favour of this view of the law. I think that its reasoning is applicable to a prosecution under section 124 A. From his own statement, corroborrated as it is by the evidence of some of the witnesses for the prosecution, I think it is established that the accused No. 2 now leaves the general management of the *Pratod* to the first accused, but I am not satisfied that he is not from day to day cognizant of the more important matters which appear in it. This being so I am not prepared to upset the conviction in his case. His offence appears, however, to me to have consisted rather in passively acquiescing in, and negligently allowing the publication of the libel in question, than in actively directing it.

As to punishment, it should in each case be commensurate with the offence. As to the article itself, there is nothing practical about it. It sets nothing tangible before its readers. It is calculated, I think, rather to excite unrealizable dreams—abstract feelings of discontent—than to spur to immediate action, and I do not think that the other articles put in to show the intent of the writer carry the case any further. This should be taken into consideration. The article also does not vituperate the Government at present existing. This is, I think, a feature to be borne

(1) I. L. R., 9 Mad., p. 387.

in mind. It appears, after all, in but an obscure paper published in a small town by an obscure person. The circulation of the *Pratod* is very small. The libel is written at a period when profound peace dwells in the land, and the law as it exists upon the subject of creating disaffection has been so long left in abeyance that its true purport may not have possibly been realized by the accused. At the same time the article certainly is calculated, and I think intended, to widen the slight breach or misunderstanding which in some parts of the country exists between the Government and its subjects, when the aim of all good writers should be to lessen and to close it.

We alter the sentence on the first accused to one year's rigorous imprisonment. This will, I think, be commensurate with the offence, and will be amply sufficient to deter other newspaper managers from publishing similar articles. The accused No. 2 is an old man. His offence is rather one of negligence in permitting the publication of the article than of taking an active part in it. Three months' simple imprisonment will, I think, be an adequate punishment in his case—and we alter it accordingly. The more severe punishment which the section admits of ought, in my opinion, to be reserved for a more dangerous class of writing published in times of public disturbance.

PARSONS, J.:—I concur. In my opinion the word "disaffection" used in the section under discussion (124 A) cannot be construed to mean an absence of or the contrary of affection, or love, that is to say, dislike or hatred; but must be taken 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 create or attempt to create 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.

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The article in question clearly comes within this definition. 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 incite the readers to subvert the Government and replace it by another. I would confirm the convictions, but alter the sentence on No. 1 to one year's rigorous imprisonment, and on No. 2 to three months' simple imprisonment.

RANADE, J.:—I concur. It seems necessary in the circumstances of this case that I should briefly state the reasons which lead me to this conclusion. To understand correctly the precise scope of section 124 A, it is necessary to bear in mind that this section, together with section 121 A, was avowedly inserted in Chapter VI of the Code relating to offences against the State, with a view to fill up an inadvertent omission of a special provision for the punishment of the offence of abetment of rebellion. In the words of Sir FitzJames Stephen, it was felt that as the causes which produce rebellion are wide, and spread over a longer period, a wider definition of abetment in the case of rebellion was necessary than sufficed in the case of theft or murder. In giving effect to this view, the principles of the English statute and common law were followed, and the section, as originally drafted by the Indian Law Commissioners in 1837, was finally incorporated in the Code in 1870, as substantially representing the law of England of the present day "though much more compressed, and more distinctly expressed."

The connection between English law and this particular section being thus admitted, the precise sense intended to be conveyed by the words "exciting or attempting to excite feelings of disaffection" used in the section can best be ascertained by a study of the corresponding English statutes and the decisions of the great English Judges who have declared what the common law is on the subject of this class of offences against the State. As regards statute law, I need go no further back than 60 George

III and I George IV, c. 8, which was expressly enacted for the punishment of seditious libels, which are described as "libels tending to bring into hatred or contempt the person of the King, or his Government or constitution as by law established, or excite the subjects to attempt the alteration of any matter of Church or State as by law established otherwise than by lawful means." The close correspondence between this provision and the section 124 A, with the explanation attached to it, will be obvious on the most superficial comparisons of both.

The same connection becomes still more obvious when we consider the principles laid down by the Judges in some of the more remarkable prosecutions for seditious libels in England and Ireland. In *R.* v. *Collins*[1], Littledale, J., laid down that the people were allowed to hold free and full and candid discussion of public matters, but they must not do this in a way to excite tumult. In *R.* v. *Tutchin*[2], Holt, C. J., said that no Government is possible if men cannot be called to account for possessing the minds of the people with an ill opinion about the Government. Far more to the point is Lord Ellenborough's pronouncement of the law in his charge to the jury in *R.* v. *Cobbett*[3]. His Lordship said that if the publication is calculated to "alienate the affections of the people" by bringing the Government into disesteem, whether the expedient employed is ridicule or obloquy, the publication is seditious. The same expression,—alienating the affections of the people,—occurs in the charge to the jury in *R.* v. *Lambert*[4] of the same great Judge. In *R.* v. *Sullivan*[5] Fitzgerald, J., defined sedition to be "all practices which have a tendency to disturb public tranquility, and to lead people to subvert the Government and the laws. The objects of sedition are to create discontent and insurrection, or stir up opposition to Government. Sedition is further on described as disloyalty in action. Practices which create discontent and dissatisfaction, or create public disturbance, or bring into contempt or hatred the Government, or the laws and the constitution, are punishable as

(1) 9 C. & P., 456, 461.
(2) 5 St. Tr., 527.
(3) Holt on Libel, 114.
(4) 2 Camp., 400.
(5) 11 Cox, 45.

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sedition." The limitations on public discussion are thus laid down in the same judgment. "A journalist is free to canvass and discuss the acts of Government or its Ministers. He is free to discuss and point out errors, but he must do all this in calm and temperate language. He should not impute improper motives." The mere use of strong language is not a crime, but if the publication is of a character to "excite contempt for the Government" or the laws, to bring them into disrepute, or to "excite disaffection," or "disturb public peace," then the publication is punishable.

These extracts will suffice. The Calcutta High Court adopted this same view when Petheram, C. J., observed in I. L. R., 19 Cal., p. 35, that if a publication is calculated to create in the minds of the people to whom it is addressed a disposition not to obey lawful authority, or to subvert or resist that authority, if and when occasion should arise, and if the intention of the writer was to create such a feeling, it is clearly punishable under section 124 A. 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 prepossess 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 decisions quoted above have recognized greater freedom in the criticisms of the acts or measures of Government and its officers than is permitted in attacks on the Government itself, as also against the fundamental laws and the constitution, and it is this difference which is given effect to in the explanation attached to the main section, within the limits therein laid down. This distinction is operative not only in respect of seditious libels, but also in blasphemy and attacks on public morals. Fair and candid and *bonâ fide* criticism is permissible in all these three cases, but when these limits are exceeded in a spirit of reckless

wantonness and levity, legal malice is presumed, and the protection ceases.

Having thus seen what is the character of the main offence and its limitations, the question how far the particular libel under consideration comes within the principle of the law as thus laid down becomes a comparatively easy one. We have only to see whether the words used were calculated to create the public distemper described as disaffection. Did it suggest or counsel or encourage the spirit of public discontent and insubordination to the law? Did it seek to alienate the affections and weaken the bonds of allegiance of the people, or to bring the political order of things as at present established into contempt? Did it promote political unrest or disorder? Of course the question is not whether these bad effects were or were not actually produced, but whether the words were calculated and intended to produce this public mischief. Judged by these tests, it appeared to me that the article in dispute was calculated to produce this mischief. Its evident animus was to excite a feeling of aversion and hatred. It was not directed as an attack against any particular act or measures of Government or its officer, but it appears to be the outcome of a general sense of vague dissatisfaction with the existing political constitution and order. The article was based apparently on no reliable document or notification issued by any responsible party in Canada. 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. The evidence of criminal intention is to be mainly gathered from the article itself, and the other articles which were admitted in evidence. Any actively malevolent intention does not appear clear from this evidence, but there can be no doubt that there was sufficient foundation for the inference of legal malice drawn by the Sessions Judge. In respect of such a publication, the professed writer, as also the registered proprietor, are legally responsible. The Sessions Judge was, therefore, right in convicting both

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the accused. At the same time he greatly overrated the influence and mischief of the publication. The proprietor's responsibility is of a very technical character, and even the writer must be leniently judged because of the insignificance of his paper, its small circulation, and his poor education.

ORIGINAL CIVIL.

Before Sir C. Farran, Kt., Chief Justice, and Mr. Justice Strachey.

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KHUSHAL SADASHIV (ORIGINAL PLAINTIFF), APPELLANT, *v.* PUNAMCHAND JUSRUPJI AND OTHERS (ORIGINAL DEFENDANTS) RESPONDENTS.*

Mortgage—Payment of mortgage-debt by third person at request of mortgagor—Deposit of mortgage-deed and documents of title with such third person at request of mortgagor—Effect of transaction—Equitable mortgage by deposit—Costs—Appeal as to costs.

The first defendant held a mortgage as a security for a loan of Rs. 350. On the 23rd June, 1893, the mortgagors themselves paid him the interest due on the mortgage and on the same day at the request of the mortgagors the plaintiff paid him the principal sum of Rs. 350, which payment was endorsed upon the mortgage-deed. The deed so endorsed together with another document of title was thereupon handed over to the plaintiff by direction of the mortgagors. The plaintiff subsequently brought this suit, alleging that the defendant had agreed to assign over the mortgage to him and praying that he might be ordered to execute a transfer. The lower Court found that there was no agreement to assign the mortgage, but that the plaintiff was, under the circumstances, entitled to have an assignment executed to him by the defendant. It, however, ordered the plaintiff to pay the defendant's costs of suit, being of opinion that the defendant had been justified in refusing to execute a transfer.

On appeal by the plaintiff,

Held, that the plaintiff was not entitled to an assignment of the mortgage from the defendant. If he had been so entitled he ought not to have been ordered to pay the defendant's costs. But

Held also, dismissing the appeal, that the plaintiff had no right of suit against the defendant. The defendant's mortgage was at an end. It was paid off, and nothing remained for the defendant to do but to retransfer the property to the mortgagors or to such person as they should direct, but as there was no contract or privity between the defendant and the plaintiff, the latter could enforce no right against the defendant. His remedy was against

* Suit No. 503 of 1895. Appeal No. 938.