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to the exclusion of the son. From the conclusion of law we have arrived at, it follows that the son and the daughters of Varubai became co-owners having equal shares in the property. They have no right to eject the appellant, who stands in the shoes of the son. But, though the exclusive title set up by them is negatived by our conclusion of law, yet relief can be given to them in this suit for ejectment by way of joint possession with the appellant: *Naranbhai v. Ranchod*<sup>(1)</sup>. But before a decree for joint possession is passed, it is necessary to determine whether all or any of the respondents (plaintiffs) were unmarried when their mother Varubai died, because it is only the unmarried who would be entitled to share in the property with the son in preference to the married. Unless the parties are agreed on this question of fact, we must ask the lower Court to find on the following issue after taking such evidence as either party may adduce :—

(1) Was any, and if so, which of the plaintiffs, unmarried when their mother Varubai died and the succession to the property in dispute opened?

The onus will lie in the first instance on the plaintiffs.

Finding to be returned within three months.

On its return there will be a decree for joint possession in favour of those entitled.

*Issue sent down.*

R. R.

(1) (1901) 26 Bom. 141.

## CRIMINAL APPELLATE.

*Before Mr. Justice Chandavarkar and Mr. Justice Heaton.*

EMPEROR v. GANESH DAMODAR SAVARKAR\*.

*Indian Penal Code (Act XLV of 1860), sections 107, 108, 121,*

*124A—Abetment—Sedition—Waging of war.*

The accused published a book containing eighteen poems, of which four were the subject-matter of the charge. The general trend of the poems charged, as well as the remaining ones in the book evinced a spirit of bloodthirstiness and

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\* Criminal Appeal No. 290 of 1909.

murderous eagerness directed against the Government, conveyed the urgency of taking up the sword, and made an appeal of blood-thirsty incitement to the people to take up the sword, form secret societies and adopt guerilla warfare for the purpose of rooting out the British rule.

*Held*, that the accused committed the offence of abetting the waging of war (section 121 of the Indian Penal Code), by the publication of the poems charged.

*Held*, further, that the Court was entitled to look into the poems other than those forming the subject-matter of the charge, for the purpose of finding out the intention of the writer and the design of the publication.

*Per CHANDAVARKAR, J.*:—Under the Indian Penal Code, the waging or levying of war and the abetting of it are put upon the same footing by section 121: that is, the abetting of waging of war is under the Code as much an offence of treason as the waging of war itself.

The word “abetment” is defined in section 107 of the Code and one of its meanings, as given there, is “instigating any person to do anything.” This meaning is not excluded by anything that occurs in section 121. The general law is laid down in sections 107—120 of the Code. According to it, “to constitute the offence of abetment it is not necessary that the act abetted should be committed, or that the effect requisite to constitute the offence should be caused.” This applies to the abetment of the waging of war against the King as much as to the abetment of any other offence under the Code. The only difference created between the former offence and other offences is that, while under the general law as to abetment a distinction is made for the purposes of punishment between abetment which has succeeded and abetment which has failed, section 121 does away with that distinction so far as the offence of waging war is concerned, and deals equally with an abettor whose instigation has led to a war and one whose instigation has taken no effect whatever. And that for this simple reason that such a crime more than any other must be sharply and severely dealt with at its very first appearance and nipped in the bud with a strong hand.

*Per HEATON, J.*:—Under section 107 of the Indian Penal Code there may be instigation of an unknown person.

The word “abet” as used in section 121 of the Code, has the same meaning as is given to it by section 107. The “abetment” meant by section 121 is not necessarily confined to abetment of some war in progress. There may be, and usually is, instigation of rebellion before rebellion actually begins: that kind of instigation is under the Code abetting waging war against the King.

So long as a man only tries to inflame feeling, to excite a state of mind, he is not guilty of anything more than sedition. It is only when he definitely and clearly incites to action that he is guilty of instigating and therefore abetting the waging of war.

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APPEAL from conviction and sentence recorded by B. C. Kennedy, Sessions Judge of Násik.

The accused was charged with offences punishable under sections 121 and 124A of the Indian Penal Code.

The facts were that early in 1908, he published a booklet styled "The Laghu Abhinav Bharat Mala." It contained in all eighteen poems in number, of them, the poems which formed the subject-matter of the charge, were those numbered 5, 7, 9, 17 (verses 4-7). They ran as follows:—

V. An old moral story<sup>(1)</sup>

Oh! you stout hearted, hear an interesting story; lovingly keep in (your minds, the beautiful moral<sup>(2)</sup>) of it.

This (sort of) fun has taken place over and over again from ancient times; the black god of black (people) gives a drubbing to the foreign demons.

2. Madhu and Kaitabh<sup>(3)</sup> were foreign demons on inimical terms with the creator; Vishnu, the black (god) of the blacks, destroyed them in no time.

3. Similarly when the foreign demon named Hiranyaksha became very powerful, the black Varaha<sup>(4)</sup> sent<sup>(5)</sup> him to the kingdom of (the god of) death.

4. The sable Shree Ram took up cudgels on behalf of the blacks and killed the arrogant alien ruler Ravan.

5. Oh! alien Kansa: do not truly give yourself airs through the intoxication of royal (authority); the dark Krishna the god of the blacks will destroy<sup>(6)</sup> you.

6. The dark complexioned lord Shivaji (was) to the blacks a good (and) stout hearted friend; the alien Mlechhas have had (a taste of) his Maratha hospitality.

7. If any foreign Rakshas become irresistibly insolent in future, king Kali of the blacks will drive them beyond the seas (or the Indus).

VII. Sentiment of the people of Shivaji's times.

(In these verses the sentiments entertained by the people at the time of Shivaji's birth are described).

1. The Aryans invoke (God) Ganesh to destroy (their state of) dependence. Oh God! take the sword in hand and be ready for battle. (Chorus). Oh (God)! the demons of dependence have produced great misery on the earth; the people have been harassed; Oh! auspicious one of the world, fondle them with (thy) loving hands.

(1) Literally, fun.

(2) Substance.

(3) Names of demons said to have been killed by Vishnu.

(4) Boar, an incarnation of Vishnu.

(5) Literally, shewed him the darbar.

(6) Literally, make turmeric powder of you.

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2. This demon is more<sup>(1)</sup> cruel (and) irresistibly powerful than Sindhur<sup>(2)</sup>. In a drama of fraud we say he is treacherous, a cut-throat and a wretch.

3. Petitions and prayers have often been presented and offered in humble prostrations. But he, really the meanest of all, does not yield to our supplications.

4. Only one remedy is left now (and that is) striking<sup>(3)</sup> with the sword. This wicked being must, anyhow, be destroyed by various means<sup>(4)</sup>.

5. The powerless mouse, (on which you usually) ride, will be crushed entirely on the battlefield; and, therefore, I tell you to mount on a steed as swift as the wind.

6. O Munificent one! be similarly armed with new weapons. These old weapons are now not of much use in battle.

7. Never give (open) battle to the enemy, his army is vast. Guerrilla tactics should be resorted to, as they are the mainstay of a small force.

8. The whole of this plan should be carried out secretly by gathering together hardy patriots who are like a bouquet of beautiful flowers.

9. On your achieving some slight success the immortal kings of various places and also their Sardars will, indeed, come to assist you.

10. Oh Lord! May you kill the demon and give victory to the people, and grant mother earth! Oh (lord)! the beautiful and suspicious wreath of independence.

11. Hearing this invocation of the Aryas, God Ganpati was deeply touched and then having incarnated himself as Shivaji, he killed the (demon of) dependence.

IX. Who obtained independence without war?

1. Was glorious Rama, sable as a cloud, a fool to have freed his mother, the earth, from servitude? Did he then wage war to no purpose? Who obtained independence without war?

2. How many petitions did the people of Netherlands send? Those princes of mendicancy offered many a prayer to (their) enemy. Did<sup>(5)</sup> they then obtain their kingdom? Who obtained independence without war?

3. Ask the Greeks themselves how they achieved their national emancipation. (There are) no other paths leading to emancipation than war. Who obtained independence without war?

4. The Swiss did not (merely) offer weak resistance (to the enemy) through fear of the armies of wicked persons, (they) quickly proceeded to (perform) the sacrifice of a good war. Who obtained independence without war?

(1) Literally, excessively.

(2) Name of a demon.

(3) Literally, beating.

(4) Literally, efforts.

(5) Literally, did their kingdom then come into their wallet.

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5. Tyrol would not bend (the knee) to her enemies. She would not (also) choose (a policy of) beggary. She rather appealed to her own sword. Who obtained independence without war?

6. Had the great Shivaji any eager desire to sacrifice in vain the lives of others? (But) of how many (of his) brethren had (he) to shed the blood? Who obtained independence without war?

7. Similarly, heroic Italy struggled manfully on the battle-field by founding (her) secret societies in good time. Good fortune followed (1) her spontaneously. Who obtained independence without war?

8. The Americans did the same. They fought and drove away their country's servitude. Then that servitude fled towards the East. Who obtained independence without war?

9. Know it to be an established truth of the past that no one is able to obtain independence without war. He who desires Swaraja must wage war. Who obtained independence without war?

The prayer of the Mavalas to God Shiv.

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XVII. 4. At night the leaders full of love, hold secret consultations in the interest of their country and thoughtfully weigh the strength of the enemies with a view to conquer them.

5. The youths whose minds are longing for battle unfurl the flags over their steeds; like wise \* \* \* \* .

6. Men by taking exercises in the gymnasium belonging to secret society have, indeed, under difficulties developed strong wrists.

7. And in the like manner, behold, O Lord, the naked (i. e., unsheathed) swords, being as it were the beloved wives of heroes have grown highly impatient to swim in pools of blood.

The accused was tried before the Sessions Judge of Násik with the aid of assessors: the Judge agreeing with the assessors found the accused guilty of having attempted to excite disaffection towards His Majesty the King Emperor (section 124A of the Indian Penal Code) and of having abetted the waging of war against the King Emperor (section 121A of the Code). The accused was sentenced to undergo rigorous imprisonment for two years for the first offence; and to transportation for life with forfeiture of property, for the second.

The accused appealed to the High Court.

At the hearing, the Court directed all the poems in the book to be translated.

(1) Literally, came calling after her.

*Baptista* (with him *B. V. Desai*), for the accused.—We submit that the conviction and sentence under section 121 of the Indian Penal Code are contrary to law. First, because, the poems charged have no reference to the Government of India or to the present time; and, second, because (1) the poems charged do not constitute abetment of waging war against the King as contemplated by section 121; and (2) that they do not even amount to abetment as defined by section 107 of the Code.

[Counsel here commented on all the poems charged and contended that all they conveyed was merely mythological allusion; and they referred to times long since past. He said that viewed as such they have no reference near or remote to the present Government of India; and did not constitute any of the offences charged. He went on.]

Assuming for argument's sake that the poems do refer to the British Government, then we say that they do not fall within the purview of section 121. In England, there are two kinds of levying war—one against the person of the King and the other against the Majesty of the King: *In re Gordon*<sup>(1)</sup>. The former kind seems to have been contemplated by section 121; the section does not take in the second kind at all. To wage war in order to subvert the Government of India would be to wage war against the Majesty of the King; but it is no offence under section 121.

Assuming that section 121 includes the waging of war against the Majesty of the King, then even the accused has committed no offence. The lower Court has found him guilty of "abetment" of waging war under section 121. We submit abetment under section 121 is not the same as abetment under section 107. To abet under section 121 means joining or aiding an existing insurrection. This appears from the illustrations to the section.

Assuming, however, that abetment under section 121 is the same as abetment defined in section 107, the facts of this case do not constitute abetment under section 107. For first, there is no instigation in fact whatever. Secondly, there must be evidence to show that some person was actually instigated. Thirdly, the

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(1) (1781) 21 St. Tr. 486, 615.

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instigation must be in the present case "to wage war against the King". To that definite thing a person must be instigated. Of that, there is no evidence here. The poems are, on the face of them, puerile, and nobody should take them seriously. The poems may inflame feeling or excite hatred of foreign rule, but they fall far short of a call to arms or action and therefore do not constitute instigation.

The conviction and sentence passed under section 121 should, I submit, be set aside.

*G. S. Rao*, acting Government Pleader, for the Crown.—The abetment under section 121 and section 107 is the same. The effect of section 7 is that the term "abetment" is used in one uniform sense throughout the Code. The reason for making a special mention of 'abetment' in section 121 was to make it as highly punishable as the substantive offence. In the same way, section 121-A punishes conspiracy though section 107 provides for conspiracy.

The person instigated would here be the reader of the poems; and the thing instigated would be to wage war. The offence, therefore, is complete.

*Baptista* was heard in reply.

*CHANDAVARKAR, J.*—This is an appeal from the judgment of the Sessions Judge of Nasik, convicting the appellant Ganesh Damodar Savarkar, of the offences under sections 124A and 121 of the Indian Penal Code, that is, of exciting disaffection towards His Majesty the Emperor and the Government established by law in British India and of abetting the waging of war against His Majesty. The appellant has been sentenced by the learned Sessions Judge to two years' rigorous imprisonment for the offence under section 124A, and to transportation for life with forfeiture of all property to the Crown under section 121.

The offences arise out of four, from among a series of eighteen, poems, published in a book entitled *Laghu Abhinava Bharata Mala*, i e., a Short Series for New India, and recorded as exhibit G as part of the evidence in the case. The four poems are those numbered in the book as 5, 7, 9 and 17, respectively. Of poem

No. 17, only verses 4 to 7 form the subject-matter of the offences proved.

When the appeal came on for hearing before us on the 13th of October, Mr. Baptista contended that none of these four poems had or were intended by their writer to have any reference either to His Majesty the King-Emperor or to the British Government in India or to the present political condition of the country. On examining the series of poems in the book, exhibit 6, containing the four poems, it appeared to us that there were other poems in it besides those four, which threw light on the intent of the writer; and that, as the whole book had been allowed in the lower Court to go in as evidence without any objection, all the poems in the book could be referred to for the purpose of determining the intention, character, and object of the poems selected as the basis of the charges against the appellant in the lower Court. We adjourned the hearing for an official translation of the whole series of poems in the book into English and also to enable the appellant's legal advisers to argue the appeal with reference to the bearing of the whole series on the poems forming the subject-matter of the charges.

In supporting this appeal, Mr. Baptista, the learned counsel for the appellant, has raised two points. First, he contends that the poems charged as treason and sedition are either mythological or historical references and do not relate either to the British Government of India or the present times. I cannot accede to this argument. It is true that the writer has chosen either mythological or historical events and personages, but that is for the purpose of illustrating and emphasising his main thesis, that the country should be rid of the present rule by means of the sword. The innuendoes cannot be mistaken or misunderstood. For instance, the 5th poem purports to refer to the destruction of "foreign demons" by Rama, Krishna, and Shivaji. But that it is not a mere description of the past but is meant to be a covert allusion to the British is apparent from the frequent use of the term "black" referring to the people of this country. Any one can see that the frequent play upon the word "black" is intended as a contrast to the word

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“white” and the implication is that the “black” are ruled by the “white” and that the latter will and must be killed by “a black leader of the black.” So also as to the next poem, No. 7. Under the guise of an invocation or prayer to Ganesh, the god who, according to Hindu belief, destroys evil, the writer calls upon him to take up the sword and be ready for war, because “the demons of subjection have spread lamentation all over the world.” The “demons” are characterised as “dissembling, notorious, treacherous, cut-throat.” “Applications and petitions,” says the writer, “were frequently made, attended with abject submissions. But this meanest of the mean would not indeed be persuaded by begging.” And he goes on to say that “this meanest of the mean” must be killed “by the blows of the sword.” This poem is headed “the state of mind of the people at the time of Shivaji’s birth.” The people are supposed to offer a prayer to the god Ganesh to take up the sword and exterminate the demon who has subjected the country to dependence. The allusion to petitions rejected is obviously to what is called by some “the policy of mendicancy.” Ganesh is asked to take birth as Shivaji. The writer evidently has in mind the Ganapati *melas* of the present times and he who runs may read the animus of the lines and the lesson intended to be conveyed. The 9th poem, which is headed “Who obtained independence without war?” winds up with this remark: “He who desires *swarajya* (one’s own rule) must make war.” The 17th poem professes to be a “prayer of the Mavlas to the god Shiva,” but one can plainly see that the sting of the verses lies in the covert allusion to the present rulers of British India. The translation of the poems into English brings out the sting clearly enough, but to those who know Marathi, who can either sing or understand the poems sung, the venom is too transparent to be mistaken for anything else than a call to the people to wage war against the British Government. It is idle for counsel to quibble about the meaning of certain words in the poems, such as *parke* and *kala* and argue that they have no reference to the present times.

No doubt the writer has used several words, each having a double meaning, but that meaning only serves to emphasise the fact that the writer’s main object is to preach war against the

present Government, in the names of certain gods of the Hindus and certain warriors such as Shivaji. Those names are mere pretexts for the text which is: "Take up the sword and destroy the Government because it is foreign and oppressive." For the purpose of finding the motive and intention of the writer, it is unnecessary to import into the interpretation of the poems sentiments or ideas borrowed from the Bhagavad Gita. The poems afford their own interpretation, and no one who knows Marathi can or will understand them as preaching anything but war against the British Government. Mr. Baptista has conceded that, if the poems be construed as referring to the British Government, they fall within the meaning of sedition under section 124A of the Indian Penal Code. That they are such as to excite disaffection goes without saying.

The only question is whether these poems also fall within section 121 of the Code and amount to an abetment of the waging of war against the King-Emperor and his rule in India. Mr. Baptista's contention is that the word *abet* in this section must be construed as excluding all idea of mere instigation, and that, for the purposes of the offence of abetment under this section, there must be some actual insurrection; that, in other words, it must be shown that a large multitude was collected and had weapons for mischief. Under the English law "mere words spoken, however wicked and abominable, if they do not relate to any act or design then actually on foot against the life of the King, or the levying of a war against him, and in the contemplation of the speaker, do not amount to treason." And the same has been held to apply to writings: *King v. Andrew Hardie* (1). But under our Penal Code, the waging or levying of war and the abetting of it are put upon the same footing by section 121. That is, the abetting of waging of war is under the Code as much an offence of treason as the waging of war itself. The word "abetment" is defined in section 107 of the Code and one of its meanings, as given there, is "instigating any person to do anything." This meaning is not excluded by anything that

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(1) (1820) 1 St. Tr. (N. S.) 610 at p. 625.

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occurs in section 121. The general law as to abetment is laid down in sections 107 to 120 of the Code. According to it "to constitute the offence of abetment it is not necessary that the act abetted should be committed, or that the effect requisite to constitute the offence should be caused." This applies to the abetment of the waging of war against the King as much as to the abetment of any other offence under the Code. The only difference created between the former offence and other offences is that, while under the general law as to abetment a distinction is made for the purposes of punishment between abetment which has succeeded, and abetment which has failed, section 121 does away with that distinction, so far as the offence of waging war is concerned and deals equally with an abettor whose instigation has led to a war and one whose instigation has taken no effect whatever. And that for this simple reason that such a crime more than any other must be sharply and severely dealt with at its very first appearance and nipped in the bud with a strong hand.

But it is urged that in the present case there has been no instigation by the appellant of any person or ascertained body of persons by means of these poems to wage war. It is in evidence and is admitted before us by appellant's counsel that the book containing the poems was exposed for sale and published and that copies of it were circulated among the public, that is, among a large number of persons. Because that number cannot be definitely ascertained or counted, it cannot be said that the publication was not to "a body of persons."

Mr. Baptista's last argument is that these poems do not instigate any one to wage war but merely prepare the minds of the people for war and constitute no more than constructive treason. That is asking us to put too mild a construction on the poems—a construction which is not supported by the plain words, not to say the innuendoes of the poems. The fifth poem does not indeed contain any direct instigation to war, but the seventh poem, in the name of the god Ganesha, is substantially an appeal to people to take up the sword and fight with "the demons" who, it is said, "have spread lamentation

throughout the country" by subjecting it to their rule. And the ninth poem concludes by saying that he who wishes for *Swarajya* must wage war. And that is the dominating idea or text of the whole book. We are entitled to look into the poems other than those forming the subject-matter of the charges for the purpose of finding out the intention of the writer and the design of the publication. In poem No. 6 the writer calls upon Aryans to devise some remedy against what he calls the slavery of foreign rule and says that the kingdom of independence can be obtained only through "pools of blood." Poem No. 2 is a most direct appeal to young men "to gird up their loins," "cast off foreign yoke," "take up sticks," and "cut out the cage of slavery." Merely saying that independence cannot be gained without fighting may not amount to treason, but here it is more than that. A spirit of blood-thirstiness and murderous eagerness directed against the Government and "white" rulers runs through the poems: the urgency of taking up the sword is conveyed in unambiguous language, and an appeal of blood-thirsty incitement is made to the people to take up the sword, form secret societies, and adopt guerrilla warfare for the purpose of rooting out "the demon" of foreign rule. All this is instigation.

For these reasons the convictions and sentences under sections 121 and 124A must be confirmed and the appeal dismissed.

HEATON, J.—The appellant in this case has been tried for, convicted of, and punished for sedition and abetment of waging war against the King under sections 124A and 121 of the Indian Penal Code, in that he published certain poems. The correctness or otherwise of the conviction depends entirely on the character of the poems. Certain of them are specifically referred to in the charge. The rest have been referred to in argument and a perusal of the whole is necessary in order to ascertain the true character of those specifically referred to in the charge.

There are in all eighteen poems.

No. 1 is a prayer to God to grant independence.

No. 2 is a lament that India is enslaved and is without independence.

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No. 3 is a dialogue between Shivaji and others, in which Shivaji exhorts his hearers to plant the banner of independence.

No. 4 is loving advice to a drunkard.

No. 5 recites how in the past the gods or heroes of the blacks punished the enemies of the blacks (or aliens) and that if hereafter foreign (or inimical) demons become arrogant they will be driven beyond the sea.

No. 6 is a hymn to the goddess of independence.

No. 7 describes how, prior to the birth of Shivaji, there was a desire that subjection should be overcome by making war, and how Shivaji came and conquered. The poem is suggestive of the need of similar action now.

No. 8 is a prayer for independence amongst other things.

No. 9 is a prayer with the refrain "who ever got independence without battle"?

No. 10 is a lament that the country has fallen into servitude and an exhortation to get independence even by fighting.

No. 11 is an exhortation to the young to fight for independence.

No. 12 holds up those who are not in favour of independence to scorn and the patriot to reverence.

No. 13 is a prayer to God to put an end to the dependence and servitude of the country and to bring independence.

No. 14 is described as a morning song to dependence, and ends thus :—

"O dependence ! let the star of independence, the bestower of knowledge and joy, the wife of the Lord of the Universe, who is as the moon, rise again in the land of the Aryas."

No. 15 is a dialogue implying that the tyrant will be overcome and the land be free.

No. 16 inculcates that the patriot has no fear of prison and contains a good deal favourable to independence.

No. 17 is a prayer to Shiva to come to lead the people to battle.

No. 18 is described as the "Utterances of Nana Phadnavis" and is an incitement to war.

The poems specially referred to in the charge are Nos. 5, 7, 9 and parts of 17.

Briefly summarised, the teaching of this book is that India must have independence: that, otherwise, she will be unworthy of herself: that independence cannot be obtained without armed rebellion and that, therefore, the Indians ought to take arms and rebel. This is quite plain though the teaching is thinly veiled by allusions to mythology and history. It is sedition of a gross kind and very little attempt was made to show that the conviction under section 124A of the Indian Penal Code was not correct.

But it was earnestly argued that the conviction under section 121 was wrong:

It was argued that there was not any instigation and therefore there was not any abetment. With this I will deal later. Then it was argued that there was not any instigation of any known or definite person and that short of this there could not be abetment. The foundation of this argument is to me unintelligible. So far as I am able to understand the meaning of the word 'instigate' as used in section 107 of the Indian Penal Code, there may be instigation of an unknown person. Then it was argued that the instigation, if any, falls under section 117 of the Code which provides a penalty for abetting the commission of an offence by the public or by more than ten persons. Three thousand copies of the book were printed and admittedly it was intended to sell as many as possible. Therefore the instigation was undoubtedly intended to be of the public or of more than ten persons. Consequently the offence committed is punishable under section 117. But it was further argued that it was therefore not punishable under section 121. That argument I am unable to accept. A prosecution under section 121 requires a complaint by the Government (section 196, Criminal Procedure Code). That complaint has been instituted. Having been instituted the accused had to be tried and it had to be determined whether he has committed an offence under section 121. If he has, then he must be punished under that section, whether the offence also falls under some other section or not.

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Therefore the question to be determined is whether the offence under section 121 has or has not been committed. Briefly stated, the most cogent argument for the defence is this:—So long as a man only tries to inflame feeling, to excite a state of mind, he is not guilty of anything more than sedition. It is only when he definitely and clearly incites to action that he is guilty of instigating and therefore abetting the waging of war. That is, it seems to me, a correct statement. Therefore it has to be determined whether the poems recited in the charge do clearly instigate to action. It is contended for the defence that they do not. In my opinion they do. In unmistakable language they tell the readers of the book to form secret societies, to take arms and to revolt against the Government. That is clearly to my mind an instigation to action. Therefore I think the conviction is correct and should be confirmed.

I attach no importance to the argument that the word 'abet' in section 121 means something less than that word as used in section 107 of the Indian Penal Code. Section 7 of the Code refutes that argument. Nor am I impressed by the argument that the abetment meant by section 121 means abetment of some war in progress. There may be and usually is instigation of rebellion before rebellion actually begins. Under the law of this country, instigation of that kind is abetting waging war against the King.

*Appeal dismissed.*

R. R.

## APPELLATE CIVIL.

*Before Mr. Justice Chandanchar and Mr. Justice Knight.*

BASANGOWDA HANMANTGOWDA PATIL AND OTHERS (ORIGINAL PLAINTIFFS), APPELLANTS, v. CHURCHICRIGOWDA YOUNGOWDA AND ANOTHER (ORIGINAL DEFENDANTS), RE-POSDENT.\*

1910.

January 27.

*Practice—Court—Inherent powers—Compromise—Compromise assented to by pleader not specially authorised in that behalf—Decree in terms of compromise—Decree set aside.*

In the course of a suit, a compromise was presented which was signed by the defendants' pleader who was not specially authorised in that behalf. The Court

\* Civil Extraordinary Application No. 215 of 1902.