

THE INDIAN LAW REPORTS. [VOL. XXII.]
ORIGINAL CRIMINAL.

Before Mr. Justice Strachey.

1897.

QUEEN-EMPRESS v. BAL GANGADHAR TILAK AND KESHAV
MAHADEV BAL.

Penal Code (Act XLV of 1860), Sec. 124 A—Evidence—Writings showing intention or animus—Letters of contributors published in newspapers—Disaffection—Order to prosecute—Criminal Procedure Code (Act X of 1882), Sec. 196—Construction—Reference to proceedings in Legislative Council

The accused, who was the editor, proprietor, and publisher of the *Kesari* newspaper, was charged under section 124 A of the Penal Code (Act XLV of 1860) with exciting and attempting to excite feelings of disaffection to Government by the publication of certain articles, &c., in the *Kesari* in its issue of the 15th June, 1897.

At the trial an order for the prosecution given by Government under section 196 of the Criminal Procedure Code (Act X of 1882) in the following form, dated July 26, 1897, was tendered in evidence:—

"Under the provisions of section 196 of the Code of Criminal Procedure, Mirza Abas Ali Baig, Oriental Translator to Government, is hereby ordered by His Excellency the Governor in Council to make a complaint against Mr. Bal Gangadhar Tilak, B.A., LL.B., of Poona, publisher, proprietor and editor of the *Kesari*, a weekly vernacular newspaper of Poona, and against Mr. Hari Narayan Gokhale, of Poona, printer of the said newspaper, in respect of certain articles appearing in the said newspaper, under section 124 A of the Indian Penal Code and any other section of the said Code which may be found to be applicable to the case."

Counsel for the accused objected that the order was too vague and should have specified the articles with reference to which the accused was to be charged.

Held, that the order was sufficient and was admissible, but that if it were not sufficient, the commitment might be accepted and the trial proceeded with under section 532 of the Code of Criminal Procedure. *Queen-Empress v. Morton*(1) followed.

In order to show the intention of such publications, counsel for the prosecution tendered in evidence a certain letter signed "Ganesh" which appeared in the issue of the *Kesari* of May 4, 1897. Objection was taken that it was not admissible, inasmuch as letters to newspapers often express opinions which are not the opinions of the editor and publisher.

Held that the letter was admissible to show intention and animus.

The proceedings in the Legislative Council which result in the passing of an Act cannot be referred to as aids to the construction of that Act. *Administrator General of Bengal v. Premal Mullick*(2) followed.

(1) I. L. R., 9 Bom., 283.

(2) I. L. R., 22 I. A., 107.

Section 124 A of the Penal Code (Act XLV of 1860) explained. Meaning of the word "disaffection".

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At the close of the Judge's charge to the jury, counsel for the first accused asked that the following points might be reserved for the decision of the Court under section 434 of the Criminal Procedure Code (Act X of 1832), viz:—

1. Whether the order for the prosecution was sufficient under section 196 of the Criminal Procedure Code.
2. Whether the High Court had power, in the absence of a sufficient order, to accept the commitment of the accused under section 532 of the Criminal Procedure Code and to proceed with the trial.
3. Whether the meaning given to the term "disaffection" by the Judge in his charge to the jury was correct.

The Judge declined to reserve the above points.

The first accused having been convicted applied to a Full Bench under clause 41 of the Amended Letters Patent, 1835, for a certificate that the case was a fit one for appeal to the Privy Council. The points upon which he desired to appeal were those which his counsel at the close of the trial asked the Judge to reserve as above stated.

The Full Bench refused to grant the certificate.

THE first accused was the editor, proprietor and publisher and the second accused was the acting printer and manager of a newspaper called the *Kesari*. They were charged under section 124 A of the Penal Code (Act XLV of 1860) with (1) exciting, and (2) attempting to excite, feelings of disaffection to the Government established by law in British India by publishing in Bombay certain paragraphs and articles in the said newspaper in its issue of the 15th June, 1897. The first of the publications complained of appeared in the said newspaper under the heading "Shivaji's Utterances" and was partly in verse: the second was an account of the proceedings at the Shivaji's coronation festival held on the 12th June, 1897. The publications were as follows:—

I.

SHIVAJI'S UTTERANCES.

By annihilating the wicked I lightened the great weight on the terraqueous globe. I delivered the country by establishing "swarājya" (1) (and) by saving

(1) Literally, "one's own government," native rule.

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religion. I betook myself to heaven⁽¹⁾ to shake off the great exhaustion which had come upon me. I was asleep; why then did you, my darlings, awaken me? I had planted upon this soil the virtues that may be likened to the Kalpavriksha⁽²⁾, of sublime policy⁽³⁾, based on a strong foundation, valour in the battlefield like that of Karna⁽⁴⁾, patriotism, genuine dauntlessness, (and) unity the best of all. Perhaps you now wish to show me the delicious fruits of these. Alack! What is this? I see a fort has crumbled down. Through (mis) fortune I get a broken stone to sit upon. Why does not my heart break like that this day? Alas! Alas! I now see with (my own) eyes the ruin of (my) country. Those forts of mine, to build which I expended money like rain, to acquire which fresh (and) fiery blood was spilled there, from which I sallied forth roaring like a lion through the ravines, have crumbled down. What a desolation is this! Foreigners are dragging out Lakshmi⁽⁵⁾ violently by the hand⁽⁶⁾ by (means of) persecution. Along with her plenty has fled (and) after (that) health also. This wicked Akábaya⁽⁷⁾ stalks with famine through the whole country. Relentless death moves about spreading epidemics of diseases.

Shlók (Metre).

Say, ye, where are those splendid Mávlas, my second lives⁽⁸⁾, who promptly shed their blood on the spot where my perspiration fell? They eat bread once⁽⁹⁾ (in a day), but not enough of that even. They toil through hard times by tying up their stomachs (to appease the pangs of hunger). Oh people! how did you tolerate in the Kshetra⁽¹⁰⁾ the incarceration of those good preceptors, those religious teachers of mine, the Bráhmans whom I protected, (and) who, while they abided by their own religion in times of peace, forsook the darbha⁽¹¹⁾ in (their) hands for arms which they bore when occasion required? The cow—the foster-mother of babes when (their) mother leaves (them) behind—the mainstay of the agriculturists, the impartor of strength to many people, which I worshipped as my mother, and protected more than (my) life, is taken daily to the slaughter-house and ruthlessly slaughtered (there). “He himself came running exactly within the line of fire of (my) gun!” “I thought (him to be) a bear!” “Their spleens are daily enlarged!” How do the white men escape by urging these meaningless pleas? This great injustice seems to prevail in these days in the

(1) The text of “heaven” literally means “the Paradise of Indra.”

(2) One of the five trees of Indra’s heaven which yields whatever may be desired.

(3) May also mean “morality.”

(4) The name of the half-brother to the Pándav princes, famed for munificence.

(5) The goddess of wealth.

(6) There being a pun upon the word “kara,” which means both “the hand” and “taxes,” the second meaning of this sentence may be got at by substituting “by (levying) taxes” for “by the hand.”

(7) The eldest sister of Fortune; *Miss Fortune*; misfortune personified.

(8) “Second lives,” i.e., beloved.

(9) Meaning, they take only one meal a day.

(10) A sacred grass used in sacrifices, &c.

(11) A sacred place,

tribunals of justice. Could any man have dared to cast⁽¹⁾ an improper glance at the wife of another, a thousand sharp swords (would have) leapt out of (their) scabbards instantly. Now, (however,) opportunities are availed of in railway carriages, and women are dragged by the hand. You eunuchs! How do you brook this? Get that redressed! "He is mad. Lift him up and send him at once on a pilgrimage." "He is fond of pleasure. Deprive (him of his) powers, saying that it would be for a time only." This is the way in which royal families are being handled now. What misfortune has overtaken (the land)! How have all these kings become quite effeminate, like those on the chess-board! How can I bear to see this heart-rending sight? I turn (my) glance in another direction after telling (*i.e.*, leaving with you) a brief message. Give my compliments to my good friends, your rulers, over whose vast dominions the sun never sets. Tell them "How have you forgotten that old way of yours, when with scales in hand you used to sell (your goods) in (your) warehouses?" (As) my expeditions in that direction were frequent, it was at that time possible (for me) to drive you back to (your own) country. The Hindus, however, being magnanimous by nature, I protected you. Have you not thus been laid under deep obligations? Make, then, your subjects, who are my own children, happy. It will be good for (your) reputation if you show your gratitude now by discharging this debt (of obligation).

Mark of the Bhawani Sword.

II.

The Shri-Shivaji-coronation festival here commenced on Saturday, the 12th instant, and was brought to a close last night. The temple of Vithal, near the Lakdipul (*i.e.*, wooden bridge), was decorated in an excellent style for the festival. An image of Shri Shivaji on horseback was installed and around (it) were arranged pictures of Shri Shivaji Mahārāja drawn by different artists. The picture drawn specially for this festival by Mr. Pimpalkhare, the accomplished local artist, representing the incident of Samarth Ramdas Swami and Shri Shivaji Mahārāja meeting in the jungle at the foot of Sajjangad and the Samarth exhorting Shri Shivaji; and the "bust" of the Mahārāja executed by Mr. Bhide, were worth seeing. (Some) students having recited *pada* (songs) in praise (of Shivaji) at the commencement of the festival, Professor Paranjpe read the *Purān*. He had for the text of his *Purān* (reading) the story in the Mahābhārata, about the exasperation on (his) return (home) of the ambitious Suyodhana at the sight of the *Rājasuya* sacrifice⁽²⁾ performed by Dharmarāja, his thoughts in that connection (and) the conversation he had with Shakunimāma and Dhritarāshtra (on the subject). The *Purān* reader having, with a view to give (his audience a clear idea of the *Rājasuya* sacrifice, compared it with the Diamond Jubilee, commenced the *Purān* (reading), observing, by way of an exordium, that his was not an attempt to uphold (or justify) what Duryodhana did, but

(1) The text of these words literally means "oblique vision."

(2) A sacrifice performed by a universal monarch attended by his tributary princes.

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(only) to lay before them the⁽¹⁾ philosophical enquiry pursued in the Mahábhárat as to the potency and quality of ambition which inspires all beings, and the innate power it has of elevating a country or a party. Professor Paranjpe's style of speaking is vigorous and impressive, (and) therefore the excellence of the most beautiful picture which Shri Vyása has depicted of an ambitious mind was on this occasion well impressed upon the minds of (his) hearers by the *Purán* reader. ⁽²⁾ "Discontent is the root of prosperity; but contentment destroys prosperity." These maxims were the sum and substance of the *Purán* (reading). The dissertation as to how a man, even in affluent circumstances, prefers death in his exasperation to the indignity of being trampled under foot by his enemies, and how a discontented man secures co-operation and makes up for the lack of arms (and) missiles by (his) craftiness and other matters, was specially impressive. After the *Purán* (reading) was over, Professor Jinsiware very earnestly requested the audience to study the Mahábhárat. Professor Jinsiware on this occasion said that the reason why Shri Shivaji Mahárája should be considered superior to Caesar (and) Napoleon was that, while the great men of Europe were actuated by ambition alone, like Duryodhana, the uncommon attributes displayed by our Mahárája were not the blaze of the fire of ambition or discontent, but were the outcome of the terrible irritation at the ruin of his country and religion by foreigners. After the (reading of the) *Purán* there was a *Kirtan* ⁽³⁾ by the pious Matangi Báva at night. The verses composed by the Báva himself on the coronation (of Shivaji) were couched in simple language, and as the Báva had all the accompaniments required for the *Katha* ⁽⁴⁾ with him, the *Katha* ⁽⁴⁾ was very much enjoyed. ⁽⁵⁾ Veda-Shástra Sampanna ⁽⁵⁾ Matangi had specially come here from Sátara for this *Katha* ⁽⁴⁾.

On the morning of the second day there were athletic sports in Vinchurkar's Wáda. The students of the New English School and the Nutan Maráthi Vid-yálaya and the other schools acquitted themselves creditably in their performance with Indian clubs and on the malkhamb⁽⁶⁾. The students of the New School showed themselves to be proficient in playing káthi⁽⁷⁾, dándpatta⁽⁸⁾, botháti⁽⁹⁾, &c. We hope that the students of other schools will follow their example (in this matter). The students attending the various schools as well as the people attending the gymnasia at this place will not find a better occasion than the festival (of the anniversary) of Shivaji's birth for exhibiting their skill in manly

(1) This may also be thus rendered: — "but (only) to lay before them, in an elementary form, the enquiry pursued in the Mahábhárat," &c.

(2) This text is in Sanskrit.

(3) Celebrating the praises of a god with music and singing.

(4) A legend of the exploits of some god related with music and singing.

(5) Learned in the Vedas and Shástras.

(6) A pillar on which the athletes perform their feats.

(7) A stick.

(8) Exercise with a fencing stick in one hand and the weapon called "patta" in the other.

(9) A staff of bamboo with a top-knot or bunch of cloth.

sports. If the managers of the various schools take concerted action in this matter, it is likely to give special encouragement to physical and manly sports amongst boys. We hope that this our suggestion will be duly considered by the principals of different schools. Well, on the night of the same day a lecture on the subject of "The killing of Afzulkhan" was delivered by Professor Bhanu, under the presidency of Mr. Tilak. The Professor ably refuted the charge of "murder" which English historians bring against Shri Shivaji Mahārāja. The Professor has abundant (or strong) evidence in his possession (to prove) that Pantoji Gopinath was not a servant of Afzulkhan, but was from the first a servant of Shri Shivaji Mahārāja. (1) Professor Bhanu having no permission to publish the papers relating to this matter for two years (more), did not place his (documentary) evidence on this (subject) before the meeting (1). It is, therefore, evident that the charge of treachery brought against Pantoji Gopinath is literally false. How was it possible for the Mahārāja even to imagine that Afzulkhan, who had undertaken on oath either to seize (Shivaji) and bring him alive or to kill him and bring his head to Bijapur, and who had on (his) way trodden under foot the goddess of Tuljāpur and the Vithoba of Pandharpur, meant really to treat with him? What treachery did the Mahārāja commit if he went to meet Afzulkhan on the *machi* (2) of Pratāpgad after making every preparation for battle for his (own) safety? The English historians assert that the Mahārāja was the first to thrust in the *waghnakhs* (3), but we see it stated in two *bakhars* (i.e., memoirs), one of them written thirty years after the death of the Mahārāja and the other about a hundred years after (his) death, that Afzulkhan was the first to strike (Shivaji). Even if we assume that the Mahārāja was the first to strike Afzulkhan, what right has any writer to call that man a "murderer" who, while nine years of age, had divine inspiration not to bow down his head in the slightest degree before the Musalman Emperors? If Mazzini of Italy dons a mourning dress from (his) ninth year for the loss of the independence (of his country), why should not the Mahārāja even at a tender age be stirred to put forth prodigious efforts for protecting (4) the walking and speaking depositories of knowledge (4) and the kine which are the living index of our prosperity? How can English writers have the audacity to belaud Clive and Warren Hastings, who were incomparably inferior to the Mahārāja and whose careers were fraught with foul deeds? Is it not a deliberate outrage to the purity of truth that the pen of the same English writers, whose (code of) morality refrains from applying the epithet "rebel" in speaking of Washington, calls Shivaji a rebel? The history of Europe cannot show even a single upright man of Shivaji's type. History will find fault with Shivaji, (but) from the point of view of ethics his act does not merit censure. How can the European science of ethics, which has "the greatest good of the greatest number" as its basis (or principal axiom), condemn Shivaji for abandoning a minor duty for the purpose of accomplishing the major one?

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(1) These brackets are in the original.

(2) Level ground at the foot or between the foot and summit of a mountain.

(3) A weapon resembling a tiger's claw.

(4) i.e., the Brahmins.

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In the Mahābhārat a man of this type is called "*Buddha*"⁽¹⁾. The Professor concluded (his discourse on) the original theme with the declaration that even if (the Mahārāja) had committed five or fifty more faults (? crimes), more terrible than those which historians allege Shivaji committed, he would have been just as ready as at that moment to profoundly prostrate himself a hundred times before the image of the Mahārāja.

At the conclusion of the lecture Professor Bhanu said: Every Hindu, every Marāṭha, to whatever party he may belong, must rejoice at this (Shivaji) festival. We all are striving to regain (our) lost independence, and this terrible load is to be uplifted by us all in combination. It will never be proper to place obstacles in the way of any person who, with a true mind, follows the path of uplifting this burden in the manner he deems fit. Our mutual dissensions impede our progress greatly. If any one be crushing down the country from above, cut him off; but do not put impediments in the way of others. Let bygones be bygones; let us forget them and forgive one another for them. Have we not had enough of that strife, which would have the same value in the estimation of great men as a fight among rats and cats? All⁽²⁾ occasions like the present festival, which (tend to) unite the whole country, must be welcome. So saying the Professor concluded his speech. Afterwards Professor Jinsiwale said: If no one blames Napoleon for committing two thousand murders in Europe, (and) if Cæsar is considered merciful though he needlessly committed slaughters in Gaul (France) many a time, why should so virulent an attack be made on Shri Shivaji Mahārāja for killing one or two persons? The people who took part in the French Revolution denied that they committed murders and maintained that they were (only) removing thorns from (their) path. Why should not the same principle (? argument) be made applicable to Mahārāshtra? Being inflamed with partisanship, it is not good that we should keep aside our true opinions. It is true that we must (i.e., should not hesitate to) swallow down our opinions on any occasion when an expression of them might be thought detrimental to the interests of the country (i.e., nation), but no one should permit his real opinions to be permanently trodden under foot. Professor Jinsiwale concluded his speech by expressing a hope that next year there will be witnessed greater unity amongst the various parties in Poona on the occasion of this festival.

After the conclusion of Professor Jinsiwale's speech, the President, Mr Tilak, commenced his discourse. It was needless to make fresh historical researches in connection with the killing of Afzulkhan. Let us even assume that Shivaji first planned and then executed the murder of Afzulkhan. Was this act of the Mahārāja good or bad? This question which has to be considered should not be viewed from the standpoint of even the Penal Code or even the Smritis of Manu or Yādnyavalkya, or even the principles of morality laid down in the western and eastern ethical systems. The laws which bind society are for common men like

(1) *Menas*, in Sanskrit, "enlightened".

(2) This sentence may also be rendered thus: "The more the occasions like..... the whole country, the better."

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yourselves and myself. No one seeks to trace the genealogy of a Rishi, nor to fasten guilt upon a king. Great men are above the common principles of morality. These principles fail in their scope to reach the pedestal of great men. Did Shivaji commit a sin in killing Afzulkhan or how? The answer to this question can be found in the Mahābhārat itself. Shrimat Krishna's advice (teaching) in the Gītā is to kill even our teachers (and) our kinsmen. No blame attaches (to any person) if (he) is doing deeds without being actuated by a desire to reap the fruit (of his deeds). Shri Shivaji Mahārāja did nothing with a view to fill the small void of his own stomach (i.e., from interested motives). With benevolent intentions he murdered Afzulkhan for the good of others. If thieves enter our house and we have not (sufficient) strength in our wrists to drive them out, we should without hesitation shut them up and burn ⁽¹⁾ them alive. God has not conferred upon the *Mlechhas* ⁽²⁾ the grant inscribed on a copperplate of the kingdom of Hindustān. The Mahārāja strove to drive them away from the land of his birth; he did not thereby commit the sin of coveting what belonged to others. Do not circumscribe your vision like a frog in a well. Get out of the Penal Code, enter into the extremely high atmosphere of the Shrimat Bhagavatgītā, and (then) consider the actions of great men. After making the above observations in connection with the original theme, Mr. Tilak made the following remarks relating to the concluding portion of Professor Bhanu's address:—A country which (i.e., a people who) cannot unite even on a few occasions should never hope to prosper. Bickerings about religious and social matters are bound to go on until death; but it is most desirable that on one day out of the 365 we should unite at least in respect of one matter. To be one in connection with Shivaji does not mean that we are completely to forget our other opinions. For quarrelling there are the other days of course. We should not forget that Ram and Ravan felt no difficulty whatever to meet in the same temple on the occasion of worshipping (the god) Shankar. After the lecture, *pada* (verses) of the Sanmitra Samāj and Mahārāshtra Mela were sung, and this brought the second day's (celebration) to a close.

On the third day Professor Jinsiwale delivered a very long lecture, which was replete with information. As it is not at all possible to compress Professor Jinsiwale's address in a brief space, we cannot give even a summary of it to-day. We are glad to say that the *Kirtan* of the pious Ghamande was, as usual, worth hearing. He took up the same story (subject) of the assassination of Afzulkhan, and though it was (narrated) in the old style, it was full of new thoughts, as is usually the case with the Bāva (i.e., preacher).

Other articles and extracts from the *Kesari* and from another newspaper called the *Mahrātta* (of which the first accused was

(1) The text of 'burn alive' may on the authority of Molesworth's Dictionary be translated 'oppress or torment (them) exceedingly.'

(2) The generic term for a barbarian or foreigner, that is, for one speaking any language but Sanskrit and not subject to the usual Hindu institutions

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also the publisher and proprietor) of dates prior to the 15th June 1897 were put in evidence to show animus on the part of the accused. Articles were put also in evidence by the defence to show that the accused were not actuated by any intention to excite feelings of disaffection to the Government.

Lang (Advocate General), *Macpherson* and *Strangman* for the prosecution.

Pugh and *Davar* appeared for the first accused.

The second accused was not defended.

Lang in opening the case read section 124 A of the Penal Code and as to the meaning of the word "disaffection" referred to the definition given in Johnson's Dictionary, Webster's Dictionary, &c., viz., dislike, disgust, unfriendliness, ill-will, alienation, disloyalty, hostility, &c., and to the construction of it by Petheram, C. J., in his charge to the jury in the case of *Queen-Empress v. Jogendra Chunder Bose*⁽¹⁾.

In commenting upon the extracts from the *Kesari* he said there was nothing necessarily disloyal in celebrating the anniversary of Shivaji, who was unquestionably a great and distinguished man, but he contended that advantage had been taken of the celebration to use language with reference to the British Government which was intended to excite disaffection, and to incite those who heard and read the speeches and articles contained in the *Kesari* to follow the example of Shivaji and overthrow British rule. That was plainly the object of the accused. In order to show the intention he referred to an extract from the *Kesari* of May 4th, 1897, which appeared in the form of a letter signed 'Ganesh.'

Pugh objected that a letter addressed to a newspaper could not be used to show the animus or intention of the editor or publisher of the paper. Letters appearing in newspapers often give expression to opinions which are not the opinions of the editor and publisher.

Lang, *contra*, contended that all contributions to the paper which appeared in it were accepted by the publisher and might be used

(1) I. L. R., 19 Cal., 35 at p. 44.

in evidence against him. These contributions were of the same tendency and expressed the same opinions as were found in the articles for which the editor and publisher was necessarily responsible.

[STRACHEY, J.:—I do not think that I can exclude the evidence. As in cases of defamation, the proprietor and publisher would be liable for articles or letters published by him, though purporting to be signed by outsiders, and, therefore, I think that such contributions are admissible to show his intention and animus, as well as articles purporting to represent the views of the paper. It is, of course, open to the accused to put in any contributions of a different tendency which he may have published, and so to show that those put in by the Crown do not express his intention.]

Lang, continuing, referred to other articles which, he submitted, drew a comparison between the condition of the people under Shivaji and under British rule, altogether unfavourable to the latter, and contended that they were published for the purpose of exciting disaffection against the latter.

He argued that one of the articles in the *Kesari* on which the charges were framed contained a clear attempt to justify political assassination. It was significant that within a week of the publication of these articles, Mr. Ayerst and Mr. Rand were murdered at Poona. He could not produce evidence to show that these murders were directly caused by the publication of these articles. It would be for the jury to form an opinion as to the probable effect of publishing such articles at a time when much excitement and distress existed in consequence of the famine and plague and the measures which the Government had been obliged to take to prevent the spread of the latter.

At the conclusion of the Advocate General's speech, evidence was called. The first witness was Mirza Abas Ali Baig, by whom the prosecution was instituted. He said :

"I am the Oriental Translator to the Government of Bombay. I instituted these prosecutions under the orders of Government in respect of these articles of the 15th June."

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Lang tendered in evidence the order given by Government under section 196 of the Criminal Procedure Code (Act X of 1882) which was as follows:—

“Under the provisions of section 196 of the Code of Criminal Procedure, Mirza Abas Ali Baig, Oriental Translator to Government, is hereby ordered by His Excellency the Governor in Council to make a complaint against Mr. Bal Gangadhar Tilak, B.A., LL.B., of Poona, publisher, proprietor and editor of the *Kesari*, a weekly vernacular newspaper of Poona, and against Mr. Hari Narayan Gokhale of Poona, printer of the said newspaper, in respect of certain articles appearing in the said newspaper, under section 124 A of the Indian Penal Code and any other section of the said Code which may be found to be applicable to the case.

“By order of His Excellency the Governor in Council,

“S. W. EDGERLEY,

“Secretary to Government.

“*Poona, July 26, 1897.*”

Pugh objected. This order is inadmissible. It is not a sufficient order under section 196. It is not in proper form. It is too vague. It does not specify the articles with reference to which complaint is to be laid. The *Kesari* newspaper has been in existence for seventeen years. This order would permit a prosecution for any article which has appeared during all that time. A general sanction is not a good one—*Queen-Empress v. Samavir*⁽¹⁾. Here the order is indefinite. He also cited *Reg. v. Vinayak Divakar*⁽²⁾.

Lang, contra:—Section 196 does not require the order to be in writing. The witness has sworn that he had the authority of Government to institute this prosecution on the two articles in the *Kesari* on which the accused was charged. That sufficiently proves the order. If, however, that is not sufficient, I tender a further and later order of Government in this matter. The document now tendered was as follows:—

“Whereas under the provisions of section 196 of the Code of Criminal Procedure, Mirza Abas Ali Baig, Oriental Translator to Government, was, by order of His Excellency the Governor in Council, dated 26th July, 1897, ordered to make a complaint against Mr. Bal Gangadhar Tilak, B.A., LL.B., of Poona, publisher, proprietor and editor of the *Kesari*, a weekly vernacular newspaper of Poona, in respect of an offence committed by him punishable under

(1) I. L. R., 16 Mad., 468.

(2) 8 Bom. H. C. Rep., 32 Cr. Ca.

section 124 A of the Indian Penal Code, and whereas under the same provisions of the said section 196 the said Mirza Abas Ali Baig was by further order of His Excellency the Governor in Council, dated the 27th July, 1897, ordered to make a complaint against Keshav Mahadev Bal, clerk in charge or acting manager of the Aryabhusan Press in Poona as printer of the said newspaper *Kesari* in respect of an offence committed by him punishable under the said section 124 A of the Indian Penal Code. It is by order of His Excellency the Governor in Council hereby declared that the said orders had and have reference to certain articles appearing on page 2 of the said *Kesari* newspaper of issue, dated the 15th June, 1897, under the heading or title 'Shivaji's Utterances' and in paragraph on page 3 of the same issue beginning with the 2nd paragraph commencing in the 1st column which said articles at the time when the said orders were passed were then before and under the consideration of His Excellency the Governor in Council."

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Pugh:—This further order is not admissible. It is simply a declaration that the previous order related to the articles in question. It is not for the Governor in Council but for the Court to say what is the construction and meaning of the first order.

[STRACHEY, J.:—I do not think it necessary to consider the admissibility of this last document, as I must hold the order of the 26th July to be sufficient and to be admissible. Under section 196 of the Code, no Court is to take cognizance of any offence punishable under Chapter VI of the Penal Code, in which section 124 A occurs, unless upon complaint made by order of, or under authority from the Governor-General in Council or the Local Government. In this case a complaint has been made of an offence punishable under section 124 A, it was made by the Oriental Translator to Government, an order by the Local Government to the complainant for the prosecution of the prisoner under section 124 A is produced, and the complainant in the witness box has sworn that he instituted the prosecution in respect of these articles by order of the Government. Mr. Pugh has objected to the order on two grounds, first, that it directs a prosecution in respect of certain "articles" and that the extracts in question do not fall within that description, and secondly that the order does not satisfy the requirements of section 196 because it is too vague and does not specify by date or otherwise the extracts in respect of which action is to be taken. As to the first point, I am of opinion that the word "articles" in the order

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covers and was intended to cover not only articles in the strict sense, but, generally, matter published in the paper which was considered objectionable. As to the second point, if any particular articles or any dates had been specified, the complainant would no doubt have been limited to them, but the effect of no such specification being made is to give him the widest latitude in selecting the matter to be complained of. It is only necessary to see whether the complaint relates to matters falling within the words "certain articles appearing in the said newspaper," and it is obvious that it does, and the order is, therefore, complied with. It may be desirable, and I think it is, that orders under section 196 should be expressed with greater particularity, but I cannot read into the section restrictions which are not there. The section does not prescribe any particular form of order, and does not even require the order to be in writing. I am, therefore, of opinion that the order is sufficient. But even if I am wrong in this view, and if the order does not comply with section 196, I am still of opinion that the objection must be disallowed. The section says that no Court shall take cognizance of an offence punishable under Chapter VI of the Penal Code unless upon complaint made by order of or under authority from the Government. It is the Magistrate who takes cognizance of an offence upon complaint (section 191): the High Court takes cognizance of an offence not upon complaint, but upon commitment (section 194). Therefore, this is really an objection that the Magistrate, for want of a proper order under section 196, had no jurisdiction to take cognizance of the offence upon the complaint and to commit the accused for trial, and that, there being no valid commitment, the High Court has no jurisdiction to try the accused. But although in general where the Magistrate has no jurisdiction to commit an accused for trial, the High Court cannot accept the commitment; section 532 of the Code creates an exception, and provides that in such a case the High Court may accept the commitment if it considers that the accused has not been injured thereby, unless during the proceedings before the Magistrate he objected to the Magistrate's jurisdiction. Mr. Pugh has argued that section 532 does not apply to the absence of a proper order under section 196, but I think that I am bound by the decision of the Full Bench in *Queen-*

Empress v. Morton⁽¹⁾ to hold that it does. In this case no objection was taken in the Magistrate's Court, and I cannot hold that the accused has been in any way prejudiced. The object of section 196 is to prevent unauthorized persons from intruding in matters of State by instituting State prosecutions, and to secure that such prosecutions shall only be instituted under the authority of the Government. I have no doubt that these proceedings have been authorized by the Government, and I disallow the objection.]

Pugh, in addressing the jury for the accused No. 1, submitted that the articles on which the accused were charged did not fall within section 124 A. Tilak had taken an independent line with regard to the measures taken by Government in dealing with the plague and had co-operated with Government in that work. His action in that respect brought him into opposition to the leading men of his community. That was surely not consistent with any attempt to cause disaffection. The articles describing the sufferings of the people were quite consistent with loyalty. They no doubt set forth grievances, but it was not seditious to do that. There were articles in the *Kesari* describing the power and resources of the British Government. They would not have appeared if the publisher was seeking to stir up disaffection, for they would only show how hopeless any attempt at revolt would be. The articles on the Jubilee showed a genuine loyalty. No doubt there were articles in praise of Shivaji. They, however, only expressed a general admiration for him as a man of extraordinary power and talents. The books used in the schools subject to Government inspection used expressions about Shivaji as strong as any in these articles. The object of the accused was clearly only to create a national sentiment, just as the Scotch and Welsh and Irish people by their national celebrations endeavour to keep alive and foster a national spirit. There was not any suggestion of overthrowing the British Government. That could never be attempted except by a combination of Hindus and Mahomedans, and praises of Shivaji were not likely to bring about such a combination.

As to the meaning of section 124 A, he referred to the speech

(1) I. L. R., 9 Bom., 288.

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of the Legal Member of the Indian Legislative Council when proposing its enactment.

[STRACHEY, J.:—I do not think, Mr. Pugh, you can refer to that speech as showing the meaning of the section.]

Pugh contended that the speech might be referred to, and cited, in support of his contention, *In re Mew*⁽¹⁾; *The Queen v. The Bishop of Oxford*⁽²⁾; *Queen Empress v. Kartick Chunder*⁽³⁾; *Romesh Chunder v. Hiru Mondal*⁽⁴⁾; *Gopal Krishna v. Sakhojirao*⁽⁵⁾; *Regina v. Courvoisier*⁽⁶⁾; *Shaik Moosa v. Shaik Essa*⁽⁷⁾.

STRACHEY, J.:—I have no doubt upon the point that has been raised. It is clearly settled by authority. Mr. Pugh has cited both English and Indian cases in support of his contention. The first English case he cited was that of *In re Mew*⁽¹⁾ in which it is true that Lord Westbury referred to a speech made in the House of Commons. That, however, was so far back as 1861. It is clear, I think, that since then in England the practice has been not to refer to speeches made in the Legislature for the purpose of construing statutes. In the case of *The Queen v. The Bishop of Oxford*⁽²⁾, which came before the Court of Appeal in 1879, Mr. Bowen, afterwards Lord Bowen, who was counsel for the appellant, alluded in his argument to the speech made by the Lord Chancellor in the House of Lords upon the third reading of the Public Worship Regulation Bill as an authority upon the construction of the Church Discipline Act, which had for many years been law. An objection was at once taken that a report of a debate in Parliament was not receivable as an interpretation of a statute. Mr. Bowen expressly admitted that the speech to which he referred was inadmissible so far as it related to the effect of the bill before the House of Lords, but contended that he might refer to it as a statement by the Lord Chancellor of what the law was at the time the speech was made. He thus sought to use it not for the purpose of construing the bill which was being introduced at the time the speech was delivered, but

(1) 31 L. J. Bkey., 87.

(2) 4 Q. R. D., 525.

(3) I. L. R., 14 Cal., 721 at p. 728.

(4) I. L. R., 17 Cal., 852.

(5) I. L. R., 18 Bom., 133.

(6) 9 C. and P., 362.

(7) I. L. R., 8 Bom., 241 at p. 247.

(8) 4 Q. B. D. at p. 534.

merely to show the then existing state of the law. The Judges were divided as to whether they could allow the speech to be read. Baggallay, L. J., said (p. 576) that he had some doubts whether it was right to permit it, but, on the whole, did not object, and Thesiger, L. J., considered it to be "inexpedient in a very high degree." Bramwell, L. J., however, saw no objection to its being done. That case went on appeal to the House of Lords, and during the argument of the appeal, Lord Cairns and Lord Selborne expressed the strongest disapproval of the conduct of the Court of Appeal in allowing the speech to be cited. Their disapproval is not stated in the Law Reports, but in the Law Journal report ⁽¹⁾; see also *South Eastern Railway Co. v. Railway Commissioners* ⁽²⁾. It will be observed that even those Judges of the Court of Appeal who allowed the speech to be cited, only allowed it for the purpose of construing a statute in force at the time when the speech was made. They never suggested, any more than counsel had done, that it might be cited as an authority for the construction of the bill before the Legislature. The language of one of them at least strongly implies the contrary. That is what Mr. Pugh desires to do here. He wishes to refer to Sir James Stephen's speech for the purpose of construing the section which he was then proposing to introduce into the Penal Code. That, I think, upon the authority of the English cases he cannot do.

But in India the law is now quite clear. It is true that there have been decisions in the Courts in India in favour of allowing the proceedings in the Legislative Council to be referred to for the purpose of construing an Act, but the Privy Council in a case decided so recently as 1895 (*The Administrator General of Bengal v. Premlal* ⁽³⁾) has held that this ought not to be done. If there has been a practice to the contrary in the Courts in India, that practice is wrong and cannot be permitted any longer. I am bound by this decision of the Privy Council, and I must hold that it is inadmissible to take as an aid in the construing of an Act the proceedings in the Legislative Council which resulted in the passing of that Act. But if I were free to consider the ques-

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(1) 49 L. J. (Q. B.), 578. *Julius v. Bishop of Oxford*.

(2) 53 L. J. (Q. B.), 203.

(3) L. R., 22 I. A., 107.

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tion apart from authority, I may say that I agree entirely with the judgment of Edge, C. J., in *Kadir Buksh v. Bhawani* ⁽¹⁾ in which he condemned the practice of referring to the proceedings in the Legislature in order to ascertain the meaning of an Act. I think with him that "if Judges were to allow their minds to be influenced in the construing of a statute by debates in Parliament or reports of Select Committees or other bodies on the bill, statute law would be reduced to confusion, and instead of there being one principle of construction of statutes well understood by lawyers the construction of statutes would be reduced to no principle at all." Mr. Pugh can, of course, read any passages from Sir James Stephen's speech as a part of his address, and as stating his own argument in words which he adopts as his own, but he cannot cite them as Sir James Stephen's opinion and as authority showing the construction to be put upon the section.

Pugh, continuing, read passages from the speech of Sir James Stephen in the Legislative Council when proposing the enactment of section 124 A as part of his argument to show that the section was really intended to punish an attempt to create a rebellious spirit against Government. The Advocate General had referred to dictionaries for the meaning of the word 'disaffection,' but the question here was not as to the etymological meaning of the word 'disaffection,' but as to its meaning as defined by law. The jury should take a generous and liberal view of the articles on which the accused was charged. He referred to Cave J.'s judgment in *Reg. v. Burns* ⁽²⁾; the summing of Fitzgerald, J., in the *Queen v. Sullivan* ⁽³⁾; *Queen-Empress v. Kahanji* ⁽⁴⁾.

The Judge then charged the jury as follows:—

STRACHEY, J.:—Gentlemen of the Jury,—The two accused, Bal Gangadhar Tilak and Keshav Mahadev Bal, are here arraigned before you upon two charges. Each of them is charged, in the first place, with having excited feelings of disaffection towards the Government established by law in British India. Each of them is also charged with having attempted to excite feelings of disaffection towards the Government established by law in British

⁽¹⁾ I. L. R., 14 All., 145 at p. 150.

⁽²⁾ 16 Cox. Cr. Ca. 355 at p. 359.

⁽³⁾ 11 Cox. Cr. Ca., 44.

⁽⁴⁾ I. L. R., 18 Bom., 778.

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India. And they are charged with doing these things by means of certain articles appearing in a newspaper called the *Kesari* of the 15th June of this year. Before going into any other part of the case, it is necessary to explain to you what is the responsibility of these persons, if any attaches to them, in respect of these articles; and, secondly, we will proceed to consider what is the nature of the offence with which they are charged. I have directed that copies of section 124 A of the Indian Penal Code should be distributed among you, and if they have not already been distributed, this will presently be done. The section, you will observe, defines the offences of exciting, or attempting to excite, feelings of disaffection. It has been held by the late Chief Justice of Calcutta, Sir Comer Petheram, that it is not only the writer of the alleged seditious article but whoever uses in any way words or printed matter for the purpose of exciting feelings of disaffection to the Government that is liable under the section, whether he is the actual author or not; and I entirely agree with him. The question is, whether the accused used words printed in a newspaper for the purpose of exciting disaffection towards the Government. That is what you have to consider.

The matter complained of consists of two articles published in the *Kesari* of the 15th June. As to the preliminary question of the connection of the accused with these articles, I will take the case of the prisoner Tilak first. The *Kesari* is a weekly paper, published in Maráthi every Tuesday at Poona. It has a considerable circulation, having six or seven thousand subscribers, not only in Poona, but in many other places, including Bombay. This particular issue of the 15th June contained these two articles, and it was sent by post from the office at Poona to the subscribers in Bombay and elsewhere. So the paper's publication extended to Bombay. I only mention this matter of publication in Bombay, because it gives this Court jurisdiction to try this case. Sending the newspaper by post from the office where it is published to other places constitutes in law the publication in Bombay or any other place to which it is so sent. It is not denied by the defence that there was this particular publication in Bombay. It is in evidence that a copy of the paper containing these articles was sent from the office, and posted at Poona on the 15th, and

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reached a particular subscriber at Bombay on the 16th of June. The prisoner Tilak is the proprietor and editor of that paper, and he is also the publisher. He has not attempted to dispute that, but has admitted it. He has also, in his statement before the committing Magistrate, admitted that he was cognisant of the fact that the paper was despatched to various places, including Bombay. It is further in evidence that before any matter is published in the *Kesari*, proofs are submitted to him. Upon the evidence you would be justified in holding that he is the publisher of this paper, and also the publisher of these particular articles in the paper. He has signed a declaration under an Act which the Legislature passed in 1867, and that declaration is in evidence. The Act requires the publisher of every newspaper to make a certain declaration that he is the publisher of it. The declaration in regard to the *Kesari* was made by Tilak some time in 1887. The law says that that may be taken as sufficient *prima facie* evidence that the person signing the declaration is the publisher of every part of any paper bearing a name corresponding to that mentioned in the declaration. And, therefore, under that Act, in the absence of any evidence to the contrary, you will be justified in holding that the prisoner Tilak was the publisher of every article and every word in the *Kesari*. He published it through his servants; and it must be taken as a fact, until the contrary is proved, that he authorised them not only to print it, but to give it out to the world and to distribute it in Poona and various other places, among them being Bombay. You will be justified in holding, in the absence of any evidence to the contrary, that Tilak was the publisher, and that he published these particular articles at Bombay by causing the paper containing them to be sent to and distributed in Bombay through his agents on the 15th of June. The prisoner has not disputed, but on the other hand has boldly avowed, his connection with the paper. He has not attempted to shirk any responsibility which attaches to him in respect of these articles. So much with regard to the responsibility of Tilak.

Now I turn to the question of the responsibility of the other accused person Bal, who takes up a different position altogether. He has admitted in the statement which he has handed to the

Court that he was the acting manager of the paper in June last. He had been acting for some time in the place of the substantive holder of the office, who had been absent since last October. The second accused was officiating for that person. Letters signed by him "for manager" have been put in. In one letter he describes himself as "acting manager." He was head printer also of the Arya Bhushan Press, where the *Kesari* and the *Mahratta*, also belonging to the prisoner Tilak, are printed. As the acting manager he superintended the printing of the paper, because he was also acting printer. He is not the registered printer. It is further in evidence, and witnesses for the Crown have told you, what was the practice in the office with regard to printing matter for publication. Bal used to receive manuscripts, and he used to make them over to the compositors, and when proofs were handed to him he sent them to Tilak. He does not deny that. He is the officiating manager, he is the officiating printer, and he is the person through whose hands proofs ordinarily passed, and he was occupying that position on the 15th of June. Observe what he says in his statement that, although the proofs passed through his hands, it was not his business to correct them. He says that he was a paid servant, receiving only Rs. 30 per month. It was not his duty to pay attention to or correct the proofs that passed through his hands, which were corrected by a corrector and then submitted to Tilak. That statement of his is borne out by the evidence of the witnesses for the Crown. The witnesses say that it was not his business to examine the proofs. They were corrected by a corrector. That, in a nut-shell, is the evidence of the part taken by the second accused in bringing out these articles. Apparently the literary department was not under his control. That being the state of facts, how have you to deal with the question of his responsibility? You have to deal with it in this way. As he was the manager and superintendent in bringing out the matter—which was distinct from having a control over the literary department—as he was the printer of it, you may presume that he was acquainted with what he was printing and distributing. You have to find whether he authorised the insertion of these articles or their distribution. It is a pure question of fact. If you are not satisfied that

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the prisoner was cognisant of the particular articles, or that he directed or authorised the insertion or distribution of them, then I will advise you to find him not guilty, because you must have regard to the section, which requires distinct proof by the Crown against him. You must be satisfied that for printing or using the words that were published, he was responsible, and that he used those words for the purpose of exciting disaffection. If you come to the conclusion that he knew nothing about these articles, then it is a question for you to consider whether you can properly say that he used those words with that purpose in his mind. It is entirely for you to consider whether you believe Bal's uncontradicted statement that he was absolutely ignorant of what appeared in these articles.

But this does not apply to Tilak. He stands in a different position. Tilak was the proprietor and publisher of the paper, and he must be taken as authorising the publication of everything appearing in the paper. No evidence has been called on his part to refute or rebut that position. He must be presumed to have been cognisant of what was published in his paper. * * * If you are satisfied that the two prisoners, or either of them, are responsible for the publication of these two articles in the *Kesari*, the next question is whether that makes either of them guilty of an offence under section 124 A of the Penal Code. Did they or either of them, by means of the articles, excite or attempt to excite in their readers feelings of disaffection to the Government established by law in British India? That is a question of the meaning and effect of the articles, and the intention of the accused in publishing them, and it is entirely and exclusively a question for you to decide. But there is a preliminary question to be considered, and that is, what is the meaning of section 124 A of the Penal Code, and what is the nature of the offence which it makes punishable? That preliminary question is for me to decide. The Code of Criminal Procedure requires you to accept from me the explanation of the section and of the offence—if my explanation is wrong, the responsibility rests upon me and me alone—and it is then for you to determine, upon the evidence before you, whether the facts constituting the offence as explained by me have been established, and whether the prisoners are guilty or not.

Now, I come to deal with the law as contained in section 124 A of the Indian Penal Code, and before I read it I would point out that there are certain matters which I shall ask you to dismiss altogether from your minds. In the first place, in construing the section I do not propose to discuss the English law of seditious libel, though I have most fully considered the cases to which Mr. Pugh has referred, and the writings of Sir James Stephen and others on the subject. I believe that the explanation which I shall give you is not in any way inconsistent with the best English authorities; but in England the offence of seditious libel is not a statutory offence defined by Act of Parliament, but a common law misdemeanour elaborated by the decisions of Judges. In this country the law to be applied is the Penal Code. I will now ask you to look at the section and the way it is worded. It says: "Whoever by words, either spoken or intended to be read, or by signs, or by visible representations, 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 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." To the above is appended the following explanation:—"Such a disapprobation of the measures of the Government as is compatible with a disposition to render obedience 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." You will observe that the section consists of two parts: first, a general clause, and then an explanation. The object of the explanation is a negative one, to show that certain acts which might otherwise be regarded as exciting or attempting to excite disaffection, are not to be so regarded. We must, therefore, first consider the first or general clause of the section by itself, and then see how far the explanation qualifies it.

The offence as defined by the first clause is exciting or attempting to excite feelings of disaffection to the Government.

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What are "feelings of disaffection"? I agree with Sir Comer Petheram in the *Bangobasi* case that disaffection means simply the absence of affection⁽¹⁾. It means hatred, enmity, dislike, hostility, contempt, and every form of ill-will to the Government. "Disloyalty" is perhaps the best general term, comprehending every possible form of bad feeling to the Government. That is what the law means by the disaffection which a man must not excite or attempt to excite; he must not make or try to make others feel enmity of any kind towards the Government. You will observe that the amount or intensity of the disaffection is absolutely immaterial except perhaps in dealing with the question of punishment: if a man excites or attempts to excite feelings of disaffection, great or small, he is guilty under the section. In the next place, it is absolutely immaterial whether any feelings of disaffection have been excited or not by the publication in question. It is true that there is before you a charge against each prisoner that he has actually excited feelings of disaffection to the Government. If you are satisfied that he has done so, you will, of course, find him guilty. But if you should hold that that charge is not made out, and that no one is proved to have been excited to entertain feelings of disaffection to the Government by reading these articles, still that alone would not justify you in acquitting the prisoners. For each of them is charged not only with exciting feelings of disaffection, but also with attempting to excite such feelings. You will observe that the section places on absolutely the same footing the successful exciting of feelings of disaffection and the unsuccessful attempt to excite them, so that, if you find that either of the prisoners has tried to excite such feelings in others, you must convict him even if there is nothing to show that he succeeded.

(1) This should have been "the contrary of affection": see I. L. R., 19 Calc. at p. 44. "Disaffection means a feeling contrary to affection, in other words, dislike or hatred." "Disaffection" is defined in The New English Dictionary as "absence or alienation of affection or kindly feeling, dislike, hostility, political alienation or discontent, a spirit of disloyalty to the Government or existing authority": in Latham's edition of Johnson as "dislike, ill-will, want of zeal for the Government, want of ardour for the reigning prince": in Webster as "state of being disaffected, alienation or want of affection or good-will, unfriendliness, disloyalty," with synonyms "dislike, disgust, unfriendliness, ill-will, alienation, disloyalty, hostility."—A. S.

Again, it is important that you should fully realize another point. The offence consists in exciting or attempting to excite in others certain bad feelings towards the Government. It is not the exciting or attempting to excite mutiny or rebellion, or any sort of actual disturbance, great or small. Whether any disturbance or outbreak was caused by these articles, is absolutely immaterial. If the accused intended by the articles to excite rebellion or disturbance, his act would doubtless fall within section 124 A, and would probably fall within other sections of the Penal Code. But even if he neither excited nor intended to excite any rebellion or outbreak or forcible resistance to the authority of the Government, still if he tried to excite feelings of enmity to the Government, that is sufficient to make him guilty under the section. I am aware that some distinguished persons have thought that there can be no offence against the section unless the accused either counsels or suggests rebellion or forcible resistance to the Government. In my opinion, that view is absolutely opposed to the express words of the section itself, which as plainly as possible makes the exciting or attempting to excite certain feelings, and not the inducing or attempting to induce to any course of action such as rebellion or forcible resistance, the test of guilt. I can only account for such a view by attributing it to a complete misreading of the explanation attached to the section, and to a misapplication of the explanation beyond its true scope. Lastly, the authority or institution against which it is an offence to excite or attempt to excite feelings of disaffection is "the Government established by law in British India." What is the meaning of that expression? It means, in my opinion, British rule and its representatives as such,—the existing political system as distinguished from any particular set of administrators. The result is that you have to apply this test to the case of each of these two prisoners: did he, by these articles, try to excite in the minds of their readers feelings of disloyalty or enmity to the Government?

Now I come to the explanation to section 124 A, and the question is how far it qualifies the section as just explained by me, and whether it supplies you with any other test to apply to these articles. Let us read the explanation again:—"Such a disap-

probation of the measures of the Government as is compatible with a disposition to render obedience 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." Let us consider each part of this explanation, as we have considered each part of the first clause. Observe first that, as I have already said, while the first clause shows affirmatively what the offence made punishable by the section is, the explanation states negatively what it is not: it says that something "is not disaffection," and "is not an offence within this clause." Therefore its object is to protect from the condemnation pronounced by the first clause certain acts which it distinguishes from the disloyal attempts which the first clause deals with. The next and most important point for you to bear in mind is that the thing protected by the explanation is "the making of comments on the measures of the Government" with a certain intention. This shows that the explanation has a strictly defined and limited scope. Observe that it has no application whatever unless you come to the conclusion that the writings in question can fairly and reasonably be construed as "the making of comments on the measures of the Government." It does not apply to any sort of writing except that. It does not apply to any writing which consists not merely of comments upon Government measures, but of attacks upon the Government itself. It would apply to any criticisms of legislative enactments, such as the Epidemic Diseases Act, or any particular tax, or of administrative measures, such as the steps taken by the Government for the suppression of plague or famine. But if you come to the conclusion that these writings are an attack not merely upon such measures as these, but upon the Government itself, its existence, its essential characteristics, its motives, or its feelings towards the people, then you must put aside the explanation altogether, and apply the first clause of the section. In the next place, supposing that you are satisfied that these writings can fairly and reasonably be construed as "comments on the measures of the Government" and not as attacks upon

the Government itself, still you cannot apply the explanation unless you believe that such comments were made with the intention of exciting only "such a disapprobation of the measures of the Government as is compatible with a disposition to render obedience 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." This, you will see, draws a distinction between attempting to excite feelings of "disaffection" to the Government, and intending to excite only a certain species of "disapprobation" of Government measures; and protects the latter only. What is the meaning of "disapprobation" of Government measures as contrasted with "disaffection" to the Government? I agree with Sir Comer Petheram that while disaffection means the absence of affection or enmity, disapprobation means simply disapproval; and that it is quite possible to like or be loyal to any one, whether an individual or a Government, and at the same time to disapprove strongly of his or its measures. This distinction is the essence of the section. It shows clearly what a public speaker or writer may do, and what he may not do. A man may criticise or comment upon any measure or act of the Government, whether legislative or executive, and freely express his opinion upon it. He may discuss the Income Tax Act, the Epidemic Diseases Act, or any military expedition, or the suppression of plague or famine, or the administration of justice. He may express the strongest condemnation of such measures, and he may do so severely, and even unreasonably, perversely and unfairly. So long as he confines himself to that, he will be protected by the explanation. But if he goes beyond that, and, whether in the course of comments upon measures or not, holds up the Government itself to the hatred or contempt of his readers,—as for instance, by attributing to it every sort of evil and misfortune suffered by the people, or dwelling adversely on its foreign origin and character, or imputing to it base motives, or accusing it of hostility or indifference to the welfare of the people,—then he is guilty under the section, and the explanation will not save him.

The object of the explanation is to protect honest journalism and *bona fide* criticism of public measures and institutions with

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a view to their improvement, and to the remedying of grievances and abuses, and to distinguish this from attempts, whether open or disguised, to make the people hate their rulers. So long as a journalist observes this distinction, he has nothing to fear. It seems to me that this view of the law secures all the liberty which any reasonable man can desire, and that to allow more would be culpable weakness, and fatal to the interests not only of the Government but of the people. But now there are other words in the explanation which we have still to consider. To come within the protection of the explanation, a writing must not only be the making of comments on Government measures with the intention of exciting only disapprobation of them as distinguished from disaffection to the Government, but the disapprobation must be "compatible with a disposition to render obedience 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." What that means is that even exciting disapprobation of Government measures may be carried too far. For instance, if a man published comments upon Government measures which were not merely severe, unreasonable or unfair, but so violent and bitter, or accompanied by such appeals to political or religious fanaticism, or addressed to ignorant people at a time of great public excitement, that persons reading those comments would carry their feelings of hostility beyond the Government measures to their author, the Government, and would become indisposed to obey and support the Government, and if it could fairly be gathered from the writing as a whole that the writer or publisher intended these results to follow, then he would be guilty under the section and would not be protected by the explanation. Observe the nature of this "disposition," which makes the whole difference between a "disapprobation" of measures which amounts to "disaffection" to the Government, and a disapprobation which does not. It is not merely "a disposition to render obedience to the lawful authority of the Government." It is a disposition both to render obedience and also to support the lawful authority of the Government against unlawful attempts to subvert or resist it. And it is a disposition to support that lawful

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authority against unlawful attempts not only to "resist" it—that is, to oppose it—but also to "subvert" it—that is, to weaken and undermine it by any unlawful means whatever. And, lastly, it is a disposition to support the Government against all such unlawful attempts whenever occasion may arise, not only against any particular unlawful attempt proceeding or impending at the time of the publication. I believe that it is an inaccurate reading of this part of the explanation, a too exclusive attention to the expressions about obedience and resistance, and an insufficient attention to other expressions equally important, which has caused some people to misunderstand the whole section, and to imagine that no one can be convicted under it even if he assails the Government itself, and not merely Government measures, unless he counsels or suggests rebellion or forcible resistance.

You will thus see that the whole question is one of the intention of the accused in publishing these articles. Did they intend to excite in the minds of their readers feelings of disaffection or enmity to the Government? Or did they intend merely to excite disapprobation of certain Government measures? Or did they intend to excite no feeling adverse either to the Government or its measures, but only to excite interest in a poem about Shivaji and a historical discussion about his alleged killing of a Mahomedan general? These are the questions which you have to consider. But you may ask, how are we to ascertain whether the intention of the accused was this, that, or the other? How can we tell whether his intention was simply to publish a historical discussion about Shivaji and Afzul Khan, or whether it was to stir up, under that guise, hatred against the Government? There are various ways in which you must approach the question of intention. You must gather the intention as best you can from the language of the articles; and you may also take into consideration, under certain conditions, the other articles that have been put in evidence, such as the articles about the plague and the Diamond Jubilee and so forth. But the first and most important index of the intention of the writer or publisher of a newspaper article is the language of the article itself. What is the intention which the articles themselves convey to your minds?

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In considering this, you must first ask yourselves what would be the natural and probable effect of reading such articles in the minds of the readers of the *Kesari*, to whom they were addressed? Read these articles, and ask yourselves how the ordinary readers of the *Kesari* would probably feel when reading them. Would the feeling produced be one of hatred to the Government, or would it be simply one of interest in a poem and a historical discussion about Shivaji and Afzul Khan and so forth? If you think that the only feelings which such readers would be excited to are feelings of interest in a poem or a historical or ethical discussion, then you may presume that that is all the accused intended to excite. If you think that such readers would naturally and probably be excited to entertain feelings of enmity to the Government, then you will be justified in presuming that the accused intended to excite feelings of enmity or disaffection. As a matter of common sense a man is presumed to intend the natural and ordinary consequences of his acts: he cannot, speaking generally, say: Although this language would have the natural and ordinary effect of exciting feelings of disaffection, I did not when publishing it intend that it should do so. But in considering what sort of effect these articles would be likely to produce, you must have regard to the particular class of persons among whom they were circulated, and to the time and other circumstances in which they were circulated. In judging what would be the natural and ordinary consequences of a publication like this, and what, therefore, was the probable intention of the writer or publisher, I must impress on you, as perhaps the most important point in my summing up, that you must bear in mind the time, the place, the circumstances, and the occasion of the publication. An article which, if published in England, or among highly educated people, would produce no effect at all—such as an article on cow-killing—might, if published among Hindus in India, produce the utmost possible excitement. An article which, if published at a time of profound peace, prosperity and contentment would excite no bad feeling, might, at a time of agitation and unrest, excite intense hatred to the Government. When you are considering the probable effect of a publication upon people's minds, it is essential to consider who the people are. In my opi-

nion, it would be idle and absurd to ask yourselves what would be the effect of these articles upon the minds of persons reading them in a London drawing-room or in the Yacht Club in Bombay; but what you have to consider is their effect, not upon Englishmen or Parsis or even many cultivated and philosophic Hindus, but upon the readers of the *Kesari* among whom they are circulated and read—Hindus, Maráthas, inhabitants of the Deccan and the Konkan. And you have to consider not only how such articles would ordinarily affect the class of persons who subscribed to the *Kesari*, but the state of things existing at the time, not in the year 1890 or 1891, or 1892 or 1893, or even 1896, but in June 1897, when these articles were disseminated among them. Then you have to look at the standing and the position of the prisoner Tilak. He is a man of influence and importance among the people; he would be in a position to know what effect such articles would probably produce in their minds. Would then the readers of the *Kesari* at that time, and in the then existing state of the country and of public feeling, regard the articles as a poem and a historical discussion applying no moral to the British Government here and now, or would they be excited by them to feelings of enmity to the Government?

But in the next place, in judging of the intention of the accused, you must be guided not only by your estimate of the effect of the articles upon the minds of their readers, but also by your common sense, your knowledge of the world, your understanding of the meaning of words, and your experience of the way in which a man writes when he is animated by a particular feeling. Read the articles, and ask yourselves, as men of the world, whether they impress you on the whole as a mere poem and a historical discussion without disloyal purpose, or as attacks on the British Government under the disguise of a poem and historical discussion. It may not be easy to express the difference in words; but the difference in tone and spirit and general drift between a writer who is trying to stir up ill-will and one who is not, is generally unmistakeable, whether the writing is a private letter, or a leading article, or a poem, or the report of a discussion. You can form a pretty accurate notion of what a man is driving at, or what he wants to convey, from

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a perusal of the writing, and can generally tell whether the writing is inspired by good-will or is meant to create ill-will. It is not very difficult to distinguish between the language of hostility and the language of loyalty and good-will or of criticism and comment. You must ask yourselves, having read the articles, whether the writer or publisher is trying to stir up the feelings of his readers against the Government, or is trying to do something altogether different. If the object of a publication is really seditious, it does not matter what form it takes. Disaffection may be excited in a thousand different ways. A poem, an allegory, a drama, a philosophical or historical discussion, may be used for the purpose of exciting disaffection, just as much as direct attacks upon the Government. You have to look through the form and look to the real object: you have to consider whether the form of a poem or discussion is genuine, or whether it has been adopted merely to disguise the real seditious intention of the writer. Again, in judging of the intention of the writer or publisher, you must look at the articles as a whole, giving due weight to every part. It would not be fair to judge of the intention by isolated passages or casual expressions without reference to the context. You must consider each passage in connection with the others and with the general drift of the whole. A journalist is not expected to write with the accuracy and precision of a lawyer or a man of science; he may do himself injustice by hasty expressions out of keeping with the general character and tendency of the articles. It is this general character and tendency that you must judge the intention by, looking at every passage so far as it throws light upon this. You have heard much discussion as to the exact meaning of various expressions in these articles and the best way of rendering certain passages into English. You must remember that there has been a dispute about the correctness of some of the translations which have been put before you. For most of you the documents that you have to deal with are, in their original form, in a foreign language. I do not intend to trouble you with any criticism of the various renderings which are in evidence. The discussions which have taken place on the subject are, I assume, within your recollection. They no doubt were necessary, and it is important that we should, as far as possible, exactly understand

the true meaning of every word. But it would be a great mistake to let the decision of this case turn upon mere verbal niceties of translation or discussions as to the best English equivalents of particular Maráthi terms. We must look at these articles, not as grammarians or philologists might do, but as the ordinary readers of the *Kesari* would look at them—readers who are impressed not by verbal refinements but by the broad general drift of an article. Two translations have been put before you, one of which has been called a free and the other a literal translation. Both are equally official translations. What I would advise you is that wherever there is no dispute about the accuracy of the free translation, where its rendering has not been challenged, you should be guided by the free translation. It is altogether a mistake to suppose that because a translation is literal, it is more correct than the translation which is called free. It does not follow that the most literal translation of a passage is that which best conveys its meaning in English. What we want to get at is the way in which an ordinary reader would understand the whole article, and hence to gather the intention with which the article was written and published. An absolutely literal translation from one language to another may give in the second language an extremely imperfect and really inaccurate idea of the meaning and spirit of the original. These documents have been translated by a translator of the Court, a Hindu gentleman, whose capacity to translate cannot for one moment be doubted. The accuracy of his literal rendering of the articles has not been challenged by the defence; but the defence have found fault with the free translation as regards certain expressions occurring in the articles. The free translation does not profess to give the absolutely literal meaning of the words, but their real genuine equivalents in English. As I have said, where the accuracy of the free translation is not disputed, I advise you to be guided by that: where there is any dispute, I advise you to compare the literal with the free translation, to look at the context of the disputed passage, and to judge, by reference to that, which conveys the true meaning and intention. Again, where there is a conflict of evidence as to the meaning of a particular expression, I would advise you to give,

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under the usual rule, the benefit of any reasonable doubt to the accused. Were the accused publishing a harmless poem and historical discussion, or were they using the form of a poem and a historical discussion for the real purpose of exciting enmity to the Government? In dealing with this question, as with all others in a criminal case, you must remember to give the accused the benefit of any reasonable doubt, and to give the articles not only a fair but a liberal and generous consideration. You must remember that the prosecution have to establish against the accused that the construction of the articles which they have put forward is the true one. In all cases, and whether the charge is one of sedition or murder or any other offence, the prosecution have to prove their case; and here they have to prove their construction of the articles, and to prove that the articles were published by the accused with the intention of exciting disaffection.

I will now come to the articles, but in doing so I wish you to bear in mind the nature of the Shivaji controversy. (His Lordship then proceeded to analyse and comment upon the articles on which the charges were drawn and also the various other articles that had been put in evidence, and concluded by asking the jury to give the matter an impartial consideration. He urged them to read the articles with the other evidence, and putting aside all prejudice from their minds, to say if Tilak was trying to make his readers hate the Government, or was commenting upon Government measures simply with the object of exciting a disapprobation compatible with a disposition to obey and support the Government, or was trying to interest his readers in a poem and a historical discussion with no practical application to the present day. His Lordship also impressed upon the jury, in view of the importance of the case, to endeavour to come to an unanimous verdict.)

[The jury then retired.]

Pugh:—May I ask your Lordship for a reservation upon two points. The first is whether there is any sufficient order or authority, within the meaning of section 196 of the Criminal Procedure Code, for the complaint made in this case; and secondly,

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whether this Court had power, notwithstanding the absence of a sufficient order or authority, to accept the commitment under section 532 of the Criminal Procedure Code, and proceed with the trial. Then there is a third point in regard to the Charge. It is a question as to the meaning of the term "disaffection," and this is of very great moment. Although this is only the second case under this section, others are pending, some in this Court and others outside the Court, which will come up immediately for decision. What I desire to put before the Court is as to the meaning of the term "disaffection." Your Lordship has put it that disaffection is simply want of affection, afterwards explaining it by ill-will, dislike, and enmity. The point, I take it, is that disaffection is the absence of affection. The point I ask to have reserved is whether your Lordship's direction to the jury that disaffection means simply want of affection in any degree towards British rule or its representative, is correct.

STRACHEY, J.:—That is not quite a complete account. I was anxious not to pin down the jury to "absence of affection,"⁽¹⁾ and that is why I also included those other terms, enmity, ill-will and so forth, as to the meanings of which there may be some shadow of difference. The word disaffection covers, in my opinion, all those terms.

Pugh:—I understood your Lordship to say that disaffection was absence of affection in any degree, and that you illustrated it by ill-will, dislike, enmity.

STRACHEY, J.:—I held that disaffection was a common term embracing all these others.

Pugh:—My point is that disaffection does not mean, as Sir Comer Petheram put it, "the contrary of affection."

STRACHEY, J.:—I have considered the various points which Mr. Pugh has asked me to reserve. I am of opinion that no good purpose would be served by reserving them, and I decline to reserve them.

The jury by a majority of six to three found the first prisoner guilty, and they unanimously acquitted the second.

(1) See note at p. 134 ante.

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The first prisoner having been convicted, subsequently applied under clause 41 of the Amended Letters Patent, 1865⁽¹⁾, for leave to appeal to the Privy Council. The following is the material part of his petition :—

"6. That in the course of the said trial the said alleged sanction or authority to prosecute your petitioner was tendered in evidence on the part of the prosecution and was objected to on behalf of your petitioner on the ground that the same was not a sufficient order or authority under section 196 of the Code of Criminal Procedure for the complaint against your petitioner in respect of the offence charged against him, but the said objection was overruled, the learned Judge holding that the said alleged sanction was sufficient within the said section, and that even if it was not, the effect, if any, was cured by the provisions of section 532 of the said Code. Your petitioner humbly submits that the reception of the said sanction in evidence greatly prejudiced him in his trial."

"9. That in the course of his summing up to the jury the said learned Judge, among other things, directed the jury and, as your petitioner is advised, misdirected the jury as follows, that is to say :—

(a) That 'disaffection' meant simply absence of affection.

(b) That it meant hatred, enmity, dislike, hostility, contempt and every form of ill-will to the Government.

(c) That disloyalty was perhaps the best general term, and that it comprehended every possible form of bad feeling to the Government.

(d) That a man must not make or try to make others feel enmity of any kind against the Government.

(e) That the word Government meant British rule or its representatives or administrators.

"10. That before the verdict of the jury was delivered your petitioner's counsel applied to the said learned Judge to reserve the following questions of law, namely :—

(1) Clause 41 :—

"And we do further ordain that from any judgment, order, or sentence of the said High Court of Judicature at Bombay made in the exercise of original criminal jurisdiction, or in any criminal case where any point or points of law have been reserved for the opinion of the said High Court in manner hereinbefore provided by any Court which has exercised original jurisdiction, it shall be lawful for the person aggrieved by such judgment, order, or sentence to appeal to Us, Our heirs or successors, in Council, provided the said High Court shall declare that the case is a fit one for such appeal, and under such conditions as the said High Court may establish or require, subject always to such rules and orders as We may, with the advice of Our Privy Council, hereafter make in that behalf."

(1) whether there is any sufficient order or authority, within the meaning of section 196 of the Criminal Procedure Code, for the complaint made in this case;

(2) if not, whether this Court had power nevertheless to accept the commitment under section 532 of the Criminal Procedure Code and to proceed with the trial;

(3) whether the direction to the jury that disaffection means simply absence of affection in any degree towards the British rule or its administrators or representatives is correct;

for the opinion of this Honourable Court, but that His Lordship declined to do so.

"11. That your petitioner thereafter through his solicitor Mr. Bhaishanker Nanabhai applied to the Honourable the Advocate General for a certificate under section 26 of the Letters Patent, but the Honourable the Advocate General declined to grant it.

"12. That your petitioner is advised and verily believes that, in addition to the specific instances above mentioned, the learned Judge also misdirected the jury upon other points, and that, if the learned Judge had not so misdirected the jury as above mentioned, the majority of the jury would not have found a verdict against your petitioner.

"13. That this case is one of the greatest importance not only to your petitioner, but to the whole of the Indian Press and also to all the Indian subjects of the Crown, inasmuch as, according to His Lordship's charge, a petition for the redress of grievances however unobjectionable in other respects would subject the person or persons presenting the same to the punishment provided by section 124 A of the Indian Penal Code.

"14. That your petitioner is also advised and verily believes that, if the said charge be held to be a correct exposition, it will seriously interfere, if not entirely do away, with the liberty of the press and the right of freedom of speech and public meeting in India.

"Your petitioner, therefore, humbly prays that Your Lordships will be pleased to declare under clause 41 of the Letters Patent that this case is a fit one for appeal to Her Majesty in Council."

The application was heard by a Full Bench consisting of Farran, C. J., Candy and Strachey, JJ., on the 24th September.

Russell for petitioner:—The authorities show that the Privy Council will hear appeals in three classes of cases: (1) where questions of jurisdiction arise; (2) where questions of grave importance arise which are likely to recur; (3) where refusal to do so would lead to a failure of justice to the accused—*Pooneakhoty*

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Moodeliar v. The King⁽¹⁾; *Aga Kurboolie Mahomed v. The Queen*⁽²⁾; *Jannokee v. Bindabun*⁽³⁾; *Queen v. Eduljee Byramjee*⁽⁴⁾; *Reg. v. Alloo Paroo*⁽⁵⁾; *Reg. v. Bertrand*⁽⁶⁾; *Queen v. Murphy*⁽⁷⁾; *Reg. v. Reay*⁽⁸⁾; *Reg. v. Pestanji Dinsha*⁽⁹⁾; *Carter v. Molson*⁽¹⁰⁾; *Riel v. The Queen*⁽¹¹⁾; *In re Abraham Mallory Dillet*⁽¹²⁾; *Ex parte Deeming*⁽¹³⁾; *In re MacCrea*⁽¹⁴⁾; *Ex parte Kops*⁽¹⁵⁾. All these cases justify the appeal in the present case. We submit that the sanction given by Government was not a sufficient sanction⁽¹⁶⁾ under section 196 of the Criminal Procedure Code (Act X of 1882) so as to give the Magistrate jurisdiction to hear and to commit the case to the Session. The sanction should set out the complaint, giving dates, particulars, &c. Here the Government gave the Oriental Translator a free hand to bring any complaint he pleased with respect to anything that had appeared in the *Kesari* from the date it first appeared. The nature of the complaint should be definitely stated in the sanction. The Government could not delegate to another the duty that was cast upon it. If the sanction was insufficient, the Magistrate had no jurisdiction to commit.

Next we contend that the Judge misdirected the jury as to the meaning of the word 'disaffection.' It was wrong to say that it was the absence of affection. It really means active disloyalty.

[STRACHEY, J.:—I pointed out that I agreed with Sir Comer Petheram's definition, and I clearly meant to express that. I do not think that the word 'absence' was a fortunate word to use, but I think you will see that taken with the context I meant not mere negation, but an active feeling. I wanted to avoid pruning down the definition to any one word, and the word 'absence' does not accurately represent my meaning. The word was not used as fully defining the meaning of disaffection. You cannot take it that I meant an attitude of mere negation from the words which followed, for I said that disaffection meant exciting the

(1) 3 Knapp P. C., 348, 352.

(2) 4 Moo. P. C. C., 239, 243.

(3) 1 Moo. Ind. Ap., 67 at p. 75.

(4) 3 Moo. Ind. Ap., 468.

(5) 5 Moo. P. C. C., 296.

(6) L. R., 1 P. C., 520.

(7) L. R., 2 P. C., 35, 535.

(8) 7 Bom. H. C. Rep., 77 (Cr. Ca.)

(9) 10 Bom. H. C. Rep., 75.

(10) 8 Ap. Ca., 530.

(11) 10 Ap. Ca., 675.

(12) 12 Ap. Ca., 459.

(13) (1892) Ap. Ca., 422.

(14) I. L. R., 15 All., 311

(15) (1894) Ap. Ca., 650.

(16) See sanction, *supra*, p. 122.

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people to hate their rulers, that is, coupled with the word enmity, and means an active feeling. The words 'absence of affection' were coupled with exciting disapprobation of Government measures with a view to holding Government itself to the hatred or contempt of the readers.]

There must be an excitement to disorder—Mayne's Criminal Law, p. 473.

Lastly, we contend that the Judge was wrong in his definition of the word Government as meaning British rule or its representative or administrator.

Lang (Advocate General) for the Crown:—No case has been made out to justify a certificate of leave to go to the Privy Council. The grounds on which the cases go to the Privy Council are stated in the *Dillet's case*⁽¹⁾ and this case clearly does not fall within the class of cases there specified. There is no question of jurisdiction here. The only point is whether the prosecution was instituted by the authority of Government. No written authority is required. The Magistrate has only to decide whether the Government sanctioned the prosecution. Here the complaint was laid by the Translator to Government, who produced the written order of Government, and the case was conducted by the Government Solicitor. Could any Court for a moment consider it doubtful that the Government had sanctioned the complaint. It is difficult to treat the point seriously. The Code does not require any particular form in which the Government is to give its sanction.

The only other point is the alleged misdirection of the Judge with regard to the word disaffection. I do not admit there was any misdirection. The whole clause must be taken together. Words and passages must not be isolated and regarded separately from the context. Taking the whole clause it was clear that the definition of disaffection given was correct and agreed with that given by Petheram, C. J., in *Queen Empress v. Jogendra Chunder Bose*⁽²⁾.

FARRAN, C. J.—The question to be decided in this case is whether in the opinion of this Court this is a fit case for appeal

(1) 12 Ap. Ca., 459.

(2) I. L. R., 19 Cal., 35.

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to Her Majesty in Council. In reference to that it must be remembered that the Privy Council have themselves laid down certain rules which guide them in considering whether appeals in criminal cases are fit cases for appeal or not, and that they have expressly decided that there is no general appeal in criminal cases. It is only when an important or doubtful question of law arises, or when there has been a miscarriage of justice, that they will deal with appeals in criminal cases. I think this will include nearly all cases—excluding for the moment questions of the absence of jurisdiction—in which appeals have been allowed by the Privy Council. Therefore we have to apply our minds to consider whether in this case there is an important question of law to be considered, whether there has been a miscarriage of justice, and also whether there has been any want of jurisdiction shown in the committing Magistrate or the High Court.

Now, as to the question of jurisdiction, we are all of opinion without doubt that this prosecution was instituted under the authority of Government, and that, to use the words of the present Code (Act X of 1882), this complaint was made “by order of or under the authority of Government.” There is no special mode laid down in the Code whereby the order or sanction of Government is to be conveyed to the officer who puts the law in motion. In this case the prosecution was conducted by the Government Solicitor, it was instituted by the Oriental Translator to Government, and he produced the written order of Government to institute the complaint. Now though the complaint must undoubtedly contain the article complained of to give information to the accused of the charge against him, there is nothing in the Code to show that the written order to make the complaint—if written order is required—must specify the exact article in respect of which the complaint is to be made. Therefore we think that it would be puerile on that point to send the case before another tribunal.

The other ground upon which Mr. Russell has asked us to certify that this is a fit case to be sent to Her Majesty in Council, is that there has been a misdirection, and he based his argument

on one major and two minor grounds. The major ground was that the section cannot be said to have been contravened unless there is a direct incitement to stir up disorder or rebellion. That appears to us to be going much beyond the words of the section, and we need not say more upon that ground. The first of the minor points is that Mr. Justice Strachey in summing up the case to the jury stated that disaffection meant the "absence of affection." But although if that phrase had stood alone it might have misled the jury, yet taken in connection with the context we think it is impossible that the jury could have been misled by it. That expression was used in connection with the law as laid down by Sir Comer Petheram in Calcutta in the *Bangaboshi* case. There the Chief Justice instead of using the words "absence of affection," used the words "contrary to affection." If the words "contrary to affection" had been used instead of "absence of affection" in this case there can be no doubt that the summing up would have been absolutely correct in this particular. But taken in connection with the context it is clear that by the words "absence of affection" the learned Judge did not mean the negation of affection, but some active sentiment on the other side. Therefore on that point we consider that we cannot certify that this is a fit case for appeal.

In this connection it must be remembered that it is not alleged that there has been a miscarriage of justice.

The last minor point was with reference to the definition of the word Government. This is a very minor point in the case, but striking out the words which Mr. Russell has alluded to, but which were not in the original summing up⁽¹⁾, we cannot see that there has been any misdirection as to the meaning of the word

(1) In the copy of the charge annexed to the petition for leave to appeal, the definition of the words in section 124 A of the Penal Code, "the Government established by law in British India" was given thus:—"It means, in my opinion, British rule and its representatives *and administrators* as such—the existing political system as distinguished from any particular set of administrators." In the charge as delivered the words here italicised "*and administrators*" were not used. The sentence should be, "It means, in my opinion, British rule and its representatives as such—the existing political system as distinguished from any particular set of administrators."

1897.

QUEEN-
EMPRESS
v.
BAL GAN-
GADHAR
TILAK.

1897.

QUEEN-
EMPRESSv.
BAL GAN-
GADHAR
TILAK.

Government. We, therefore, think that the application must be refused.

Application refused.

For the Crown:—Mr. E. F. Nicholson, Acting Government Solicitor.

For the prisoner:—Messrs. Bhaishanker and Kanga.

APPELLATE CRIMINAL.

FULL BENCH.

Before Sir C. Farran, Kt., Chief Justice, Mr. Justice Parsons and Mr. Justice Ranade.

1897.

November 23.

QUEEN-EMPRESS v. RAMCHANDRA NARAYAN AND ANOTHER.*

Penal Code (Act XLV of 1860), Sec. 124 A—‘Disaffection’, meaning of—Seditious publication.

The word “disaffection” in section 124 A of the Indian Penal Code (Act XLV of 1860) is used in a special sense as meaning political alienation or discontent, a spirit of disloyalty to the Government or existing authority.

An attempt to excite feelings of disaffection to the Government is equivalent to an attempt to produce political hatred of Government as established by law, to excite political discontent, and alienate the people from their allegiance.

This meaning of the word “disaffection” in the main portion of the section is not varied by the explanation.

PER PARSONS, J.:—The word “disaffection” used in section 124 A of the Indian Penal Code cannot be construed as meaning an absence of or the contrary of affection or love, that is to say, dislike or hatred, but is used in its special sense as signifying political alienation or discontent, that is to say, a feeling of disloyalty to the existing Government, which tends to a disposition not to obey, but to resist and subvert the Government.

PER RANADE, J.:—“Disaffection” is not a mere absence or negation of love or good-will, but 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 im-

* Criminal Appeal, No. 564 of 1897.