PRIVY COUNCIL.

P. C.*
1897.
November 19.

BAL GANGADHAR TILAK, PETITIONER, *v.* THE QUEEN-EMPRESS.

(On petition from the High Court at Bombay.)

Privy Council—Leave to appeal—Refusal of leave to appeal from a conviction and sentence—Alleged misdirection to a jury—Indian Penal Code (Act XLV of 1860), Sec. 124 A.

The petitioner applied to the Privy Council for leave to appeal from a verdict finding him guilty on a charge under section 124 A of the Indian Penal Code (Act XLV of 1860).

Held that, consistently with the rules hitherto guiding the Judicial Committee in recommending the grant of leave to appeal from convictions in criminal cases, the petitioner's case was not one in which leave should be granted.

PETITION for leave to appeal from a conviction and sentence (14th September, 1897) of the High Court in its original criminal jurisdiction.

Under an order, dated 26th July, 1897, of His Excellency the Governor in Council, in accordance with section 196 of the Criminal Procedure Code (Act X of 1882), the Official Translator laid an information against Bal Gangadhar Tilak, editor and proprietor of the *Kesari*, a weekly journal published by him, in the vernacular, at Poona and at other places, in respect of articles in that newspaper alleged to offend against section 124 A of the Indian Penal Code[1]. Tilak was committed for trial at the next sessions in Bombay,

*Present: THE LORD CHANCELLOR, LORD HOBHOUSE, LORD DAVEY and SIR R. COUCH.

(1) Section 124 A, Indian Penal Code, is as follows:—"Whoever by words, either spoken or intended to be read, or by signs, or by visible representation, or otherwise, excites, or attempts to excite, feelings of disaffection to the Government established by law in British India, shall be punished with transportation for life, or for any term, to which fine may be added, or with imprisonment for a term which may extend to three years, to which fine may be added, or with fine."

"*Explanation*:—Such a disapprobation of the measures of the Government as is compatible with a disposition to render obedience 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." (Act XXVII of 1870, S. 5.)

and was held to bail. He was tried before Strachey, J., and a special jury on the 8th September 1897 and the five following days, and was found guilty of having, on the 15th June 1897, attempted to excite feelings of disaffection to the Government by publishing in the *Kesari* the articles specified. That was the verdict of the majority of the jurors (six against three), and it was accepted by the Judge, who sentenced him to eighteen months' rigorous imprisonment.

The *Kesari* of the 15th June, 1897, contained a report of the proceedings at the Shivaji festival, then recently held at Poona. An historical lecture about the killing of Afzul Khan by Shivaji, was followed by speeches, of which one was delivered by Bal Gangadhar Tilak, who defended that act as justifiable, and alluded to other circumstances. The charge was based on the report, and also on a collection of Maráthi verses, published in the same issue of the *Kesari*, describing an imaginary awakening of the Mahárája from the sleep of centuries, and representing him as lamenting, in figurative language, over the decadence of Maháráshtra, as well as discoursing upon other matters in a strain of discontent.

The petition stated the above facts, and mentioned that the petitioner had been elected by the native community on the 23rd May, 1897, to represent them in the Legislative Council of the Governor of Bombay; and that his election had been accepted on the 24th June, 1897, by the Government.

The principal grounds on which the petition sought for leave to appeal from the verdict and sentence were:

(1) That the order, or authority, purporting to be under section 196 of the Criminal Procedure Code (X of 1882) in not stating, either expressly or by reference, the words on which the charge was to be based, was insufficient; and that this defect was not rendered immaterial by section 532 of the Criminal Procedure Code (X of 1882).

(2) That the Judge had misdirected the jury as to the meaning of section 124 A on a material point affecting the merits of the case and their finding, both as to the meaning of disaffection and in directing them to consider, in regard to the intention of the accused, a state of excitement among his readers, no such

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feeling having in fact been proved to exist by evidence given at the trial.

(3) That the Judge had not, as he should have done, drawn the attention of the jury to editorial notes in the *Kesari* of the 18th May, showing that the cause of excitement, arising in regard to the sanitary operations had, in consequence of the request on the part of the native community, been removed before the publication of the *Kesari* of the 15th June.

The petition set forth the Judge's charge: see *supra* pp. 133 to 144.

Asquith, Q. C., (with whom were *J. D. Mayne*, *Womesh Chandra Banerji*, and *G. A. Blair*,) for the petitioner, argued that the Judge had misdirected the jury as to the meaning and application of section 124 A. The ruling in *Reg.* v. *Bertrand* [1] would support this petition, which sought to raise a question of "great and general importance" as affecting the right of political discussion. The principal argument was that too wide a meaning had been given to the words of the section; and that, in fact, it would appear doubtful whether the petitioner had exceeded the bounds within which a writer might express opinions. The Judge had directed the jury that "disaffection" meant ill-will in any form to the Government, "disloyalty" being, perhaps, the best term, and had said that he agreed with the definition given in *Queen-Empress* v. *Jogendra Chunder Bose* [2], where the Chief Justice of Bengal had stated the word to mean the absence of affection. It was obvious that this might vary in degree from indifference to extreme hostility, and that the term was vague. The word "sedition" used in English law, explained as "disloyalty in action," was more clear. The question should not be tied to the one word, and it was submitted that the learned Judge's direction came to this, *viz.*, that if the evidence showed that the intention of the accused was to excite hatred of the Government in the minds of his readers, that alone would be sufficient to bring him within the scope of the section. The "explanation," in that section, had been treated by the Judge as if it formed by negation an exhaustive description of all that was not to fall within it. It was

(1) (1867) L. R., I. P. C., 520. (2) (1891) I. L. R., 19 Cal., 35.

submitted that this was not its true construction. The word "measures" used in the "explanation" was not the governing word; and comments upon measures should be understood as comprehending comments upon the whole course of Government without their being limited, as the Judge had limited them. The protection afforded to comments had been unduly restricted by the Judge's construction; and the protection should have been extended to comments such as had been made in this case, where the feelings, attempted to be excited, were such as to be "compatible with the disposition to render obedience to the lawful authority of the Government, and to support that authority against unlawful attempts to subvert it." The protection was applicable in a more general sense than that to which the Judge has limited it. The criticism of a Government generally took the form of criticizing some, or one, of its measures. The learned Judge should have told the jury to keep in mind the question—was the spirit, which the words were alleged to have been designed to engender, compatible or incompatible with the disposition to obey lawful authority? The contention now was that the articles, and the rhetorical verses, were merely intended as comments upon the course of Government, and upon the change in social habits and institutions which had been brought about since the days of Marátha rule; and that there was nothing to be found in the words used which necessarily tended to excite a disposition not to render obedience to lawful authority. The dividing line would have been passed if it had been shown that the feeling sought to be excited was incompatible with the disposition to render such obedience. Thus it appeared that the learned Judge had not suggested that construction of the section which was the true one. Further, he had, at various stages, referred to a state of disquiet or unrest as existing in the minds of those to whom the words of excitement were addressed, without evidence having been put before the jury of the existence of that state of agitation. This had been spoken of as requiring, if found to exist, a more severe construction of the language used than the latter might have called for at another time, or in another place. Thus a case of misdirection had, it was submitted, been made out. It had been said that a mere ordinary misdirec-

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tion to a jury would not be sufficient ground for such an application as this, should no grave injustice be shown. Misdirection, leading to results of serious importance, might, on a consideration of circumstances and consequences, be the occasion of their Lordships' recommending the grant of special leave to appeal. Here, if no such leave were granted, this case, as it stood, must form a precedent guiding other Courts in future; and its importance would appear for this reason. Reference was made to *Reg.* v. *Bertrand*(1), where the opinions in *Re Ames* (2), in *The Queen* v. *Joykishen Mookerjee*(3) and in *The Falkland Islands Company* v. *The Queen*(4) were cited.

Cohen, Q. C., with whom was *J. H. A. Branson*, only mentioned *Ex parte Carew*(5) in which the rule laid down in *Re Dillet* (6) was stated as follows :—"Her Majesty will not review, or interfere with, the course of criminal proceedings unless it is shown that by a disregard of the forms of legal process, or by some violation of the principles of natural justice, or otherwise, substantial and grave injustice has been done."

Their Lordships' judgment was delivered by the Lord Chancellor

LORD HALSBURY :—Their Lordships are of opinion, taking a view of the whole of the summing-up, which is of very great length, that there is nothing in that summing-up which calls upon them to indicate any dissent from it or necessity to correct what is therein contained, looking at the summing-up as a whole, and looking at each part of what was said by the light of what else was said. Speaking generally of the argument which has been presented to their Lordships, they are of opinion that no case has been made out consistently with the rules by which their advice to Her Majesty has been hitherto guided in giving leave to appeal in criminal cases; and, therefore, they will humbly advise Her Majesty that this is not a case in which leave should be granted.

Solicitors for the petitioner :—Messrs. *Payne and Lattey.*

Solicitor for the objector :—*The Solicitor, India Office.*

(1) (1867) L. R., 1 P. C., 520.
(2) (1841) 3 Moore, P. C. Ca., 409.
(3) (1862) 1 Moore, P. C. Ca. (N. S.), 272.
(4) (1863) 1 Moore, P. C. Ca. (N. S.), 299.
(5) (1897) Ap. Ca., 719, at p. 721.
(6) (1887) 12 Ap. Ca., 459, at p. 467.