

ORIGINAL CRIMINAL.

Before Mr. Justice Davar.

EMPEROR

v.

BAL GANGADHAR TILAK.

1908

July 22.

Indian Penal Code (Act XLV of 1860) Secs. 124A, 153A—Sedition—Intention—Attempt—Criminal Procedure Code (Act V of 1898), Secs. 233, 234, 235—Joinder of Charges—Special Jury, application for.

The essence of the crime of sedition consists in the intention with which the language is used. But this intention must be judged primarily by the language itself. Intention for this purpose is really no more than meaning. When a man is charged in respect of anything he has written or said, the meaning of what he said or wrote must be taken to be his meaning, and that meaning is what his language would be understood to mean by the people to whom it is addressed.

Exposition of s. 124A, Indian Penal Code, as laid down in *Q. E. v. Jogendra Chunder Bose* (1), *Q. E. v. Amba Prasad* (2), *Q. E. v. Laxman* (3), and *Q. E. v. Vinayek* (4) approved of and followed.

Explanations 2 and 3 to s. 124A, Indian Penal Code, are intended to protect criticism of Government measures, and of administrative and executive action of Government, and they give a perfect freedom to journalists, to publicists, to orators and public speakers, to discuss the measures and administrative acts of Government, to disapprove of them, to attack them, and to use forcible and strong language if necessary, and to do every thing legitimate and honest in bringing before the public or the Government the fact that their measures or their actions are disapproved by a section of the public or by that particular speaker or journalist. But no publicist, no journalist, no speaker has any right to attribute dishonest or immoral motives to Government. Criticism, though harsh and uncompromising, must be free from the taint of language which is likely to arouse or calculated to engender feelings of enmity, hatred, or disloyalty against Government.

A man is supposed to attempt some thing which would be the natural and reasonable consequences of his act. If he fails he does not fail because he did not attempt but he fails from other causes. Whether he fails or whether he succeeds, the law says no attempt should be made to excite feelings of hatred, contempt, or disaffection.

In judging articles which are charged as seditious, due allowance should be made for oriental modes of thought and expression, and for high flown or classical language.

Section 153A, Indian Penal Code, means that no subject of the Crown is entitled to write or say or do anything whereby the feelings of one

(1) (1891) I. L. R. 19 Cal. 35.

(3) (1899) 2 Bom. L. R. 286.

(2) (1897) I. L. R. 20 All. 55.

(4) (1899) 2 Bom. L. R. 304.

class of His Majesty's subjects will be inflamed against another class of his subjects. O. CR. J.

The accused was charged under s. 124A, Indian Penal Code, in respect of one article, and separately charged under ss. 124A and 153A, Indian Penal Code, in respect of another article, held that he could be tried at one trial on both the charges.

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THE accused, who was the editor, proprietor, and publisher of the *Kesari*, a weekly newspaper printed at Poona, was charged (1) under s. 124A of the Indian Penal Code for publishing an article entitled "The Country's Misfortune" in the issue of the *Kesari* dated the 12th May 1908; and (2) under ss. 124A and 153A of the Indian Penal Code for publishing another article, entitled "These remedies are not lasting," in the issue of the *Kesari*, dated the 9th June 1908. The Chief Presidency Magistrate, Mr. Aston, separately committed the accused to High Court on both the charges.

The following are the two articles above referred to:—

(Article of the 12th May 1908).

THE COUNTRY'S MISFORTUNE!!

No one will fail to feel uneasiness and sorrow on seeing that India, a country which by its very nature is mild and peace-loving, has begun to be in the condition of European Russia. Furthermore, it is indisputable that (the fact of) two innocent white ladies having fallen victims to a bomb at Muzzafferpore will specially inspire many with hatred against the people belonging to the party of rebels. That many occurrences of this kind have taken place in European Russia and are taking place even now, is a generally known historical fact. But we did not think that the political situation in India would, in such a short time, reach its present stage, at least that the obstinacy and perversity of the white official class (a) (bureaucracy) (a) of our country would (so soon) inspire with utter disappointment the young generation solicitous for the advancement of their country and impel them so soon to (follow) the rebellious path. But the dispensations of God are extraordinary (b). It does not appear from the statements of the persons arrested in connection with the bomb explosion case at Muzzafferpore, that the bomb was thrown through the hatred (felt) for some individual or simply owing to the action of some badmash (c) madcap. Even Khudiram, the bomb-thrower, himself feels sorry that two innocent ladies of Mr. Kennedy's family fell victims (to it) in place of Mr. Kingsford; what, then, should be said of others? It is plain from the statements of those identical young gentlemen, who took this work in hand by founding a secret society, that they were fully aware that it was not possible to cause British rule to disappear from this country, by such monstrous deeds. None of the arrested persons have stated that the mere establishment of a secret society at the present time would do away with the oppressive official class. Some of the Anglo-Indian journalists have cast ridicule on these young

[a]—[a] [Printed in English within parenthesis.]

[b] [Meaning, presumably, inscrutable].

[c] [Bad, wicked; a person leading a bad life.]

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men by inso'ently asking the question "Will the English rule disappear by the manufacture of a hundred muskets or ten or five bombs?" But we have to suggest to the said editors that this is not a subject for ridicule. The young Bengali gentlemen, who perpetrated those terrible things, do not belong to the class of thieves or badmashes (c); had that been so, they would not also have made statements frankly to the Police, as (they have done) now. Though the secret society of the young generation of Bengal may have been formed like (that of) the Russian rebels for the secret assassination of the authorities, it plainly appears from their statements that it has been formed not for the sake of self-interest but owing to the exasperation produced by the autocratic exercise of power by the unrestrained and powerful white official class. It is known to all that the mutinies and revolts of the nihilists, that frequently occur even in Russia, take place for this very reason; and, looking (at the matter) from this point of view, (one) is compelled to say that the same state of things, which has been brought about in Russia by the oppression of the official class composed of their own countrymen, has now been inaugurated in India in consequence of the oppression practised by alien officers. There is none who is not aware that the might of the British Government is as vast and unlimited as that of the Russian Government. But rulers who exercise unrestricted power must always remember that there is also a limit to the patience of humanity. Since the partition of Bengal, the minds of the Bengalis have become most exasperated, and all their efforts to get the said partition cancelled by lawful means (have) proved fruitless; and it is known to the world that even Pandit Morley, or now Lord Morley, has given a flat refusal to their (request). Under these circumstances, no one in the world, except the white officials, inebriated with the insolence of authority, will think that not even a very few of the people of Bengal should become turn-headed and (d) feel inclined (d) to commit excesses. Experience shows that even a cat shut up in a house rushes with vehemence upon the person who confines (it there) and tries to kill him. That being the case, the Bengalis, no matter however powerless they might be thought to be, are human beings: and should not the official class have remembered that, exactly like those of other men, the feelings of the Bengalis, (too) are liable to become fierce or mild as occasion demands? It is true that India having now been for many years under the sway of alien rulers the fire, spirit or vehemence natural to the Indian people have to a great extent cooled down; but under no circumstances can this vehemence or indignation descend to zero degree and freeze altogether. Old or experienced leaders can, so far as they themselves are concerned, keep this indignation permanently within certain prescribed limits with the help of (their) experience or (mature) thought; but it is impossible for all the people of the country thus to keep their spirit, indignation or irritability always within such bounds; nay, it may even be said without hesitation that the inhabitants of that country in which it is possible for this feeling of indignation to always remain thus within prescribed bounds, are destined to remain perpetually in slavery. It is not that our rulers are not aware of this principle. English statesmen have settled the lines of British policy, fully bearing in mind that British rule in this country is alien and of the people of a different religious faith. When one country rules over another, the principal aim of the rulers is self-interest alone; but the extent of such self-interest is bounded in such a

[c] [Bad, wicked; a person leading a bad life.]

[d]—[d]:[or] proceed to commit excesses.]

way that the subjects might not get exasperated. What is called statesmanship consists only in this ; and this very thing has been designated (a) enlightened self-interest (a) by some English authors. British rule in India has been carried on on this very principle, but the great mistake that is being committed in that (connection) is that the English official class does not at all take the advice or opinion of the subjects or their leaders in the matter of our administration. The whole contract of settling in what the welfare of the subjects consists and in what their loss consists has been taken by the white official class in their own hands. And they are vain enough to think in this wise.—‘Whatever thing we might do, or whatever policy we might decide upon in (the light of) our wisdom or enlightened self-interest, must alone be uncomplainingly accepted as beneficial to themselves by the people of India and they must invoke a blessing upon us (for the same).’ But owing to the spread of Western education, it is not now possible for this condition to last (any longer). However enlightened the self-interest of the rulers might be, India must still be a loser thereby ; and in order to prevent this loss the power in the hands of the white official class must gradually come into our hands; there is no other alternative; such is now the view of many people in India and it is gaining ground. Such an impression being ultimately injurious to the ruling official class, the white official class here has become eager to suppress completely the writings, speeches or other means which produce that impression; and if they had been able to drive the car of the entire administration solely according to their own views, many oppressive enactments like the Prevention of (Seditious) Meetings Act would by this time have been passed, and India would fully have become another Russia. But the experience gained from history, democratic public opinion in England and the awakening caused throughout the whole continent of Asia by the rise of an oriental nation like that of Japan have come in the way of the oppressive policy of our white official class and have imposed some restrictions on their imperial (autocratic) sway. However, the desire of the people gradually to obtain the rights of *Swarajya* (e) is growing stronger, and stronger, and if they do not get rights by degrees, as desired by them, then some people at least out of the subject population being filled with indignation or exasperation, will not fail to embark upon the commission of improper or horrible deeds recklessly. The Honourable Mr. Gokhale himself had, in the course of one of his speeches in the Supreme Legislative Council, given a hint of this very kind to our Government in the presence of the Viceroy ; and when Lala Lajpatrai was deported without trial and the proclamation (ordinance) about the prevention of meetings promulgated, other native editors or newspapers also had, like ourselves, plainly given the Government to understand that if they resorted in that manner to oppressive Russian methods (of administration), then the Indian subjects too, would be compelled to imitate, partially at least, (the methods of) the Russian subjects ! ‘As you sow, so you reap’ is a well-known maxim. For rulers to tell their subjects ‘We shall practise whatever oppression we like, deport any one we choose without trial, partition any province we like, stop any meeting we choose, or prosecute any one we like for sedition and send him to jail ; (but) you, on your part should silently endure all those things and should not allow your indignation, exasperation or vehemence to go beyond certain limits,’ is to show to the world that they do not know common human nature. Most of the Anglo-Indian newspaper editors have

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[a]—[a] [Printed in English within parenthesis.]

[e] (*Lit.* one's own rule or government ; self-government.)

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committed this very mistake when writing on the Muzzafarpore affair. They have brought a charge against the Indian leaders that it was by the very writings or speeches of the said leaders who passed severe comments on the high-handed or contumacious conduct of the English official class, that the present terrible situation was brought about; and they have next made a recommendation that Government should henceforth place greater restrictions upon the speeches, writings or movements of these leaders. In our opinion, this suggestion is most silly. Just as when a dam built across a river begins to give way owing to the flood caused by excessive rain, the blame for the (mishap) should be thrown on the rain, and not on the flood, even so, if in society there is any transgression of legal bounds in a few cases owing to the discontent or exasperation engendered by the oppressive acts of an irresponsible and unrestrained official class, the blame or the responsibility for it must be placed on the policy of the unrestricted official class alone. Take any man you like; it is true that he does not see his real state. The crores of people, revolving round the earth's axis along with the earth itself, think that (it is) the world (that) is revolving and not they themselves. But wise men should, instead of falling into such a delusion, find out the true reason of any particular thing and direct their attention to it. It is no use striking idly and continually a (piece of) rope after calling it a snake. The rule of the autocratic, unrestricted and irresponsible white official class in India is becoming more and more unbearable to the people. All thoughtful men in India are putting forth efforts in order that this rule or authority, instead of remaining with the said official class, should come into the hands of the representatives of the subject people. Some think that this thing can be accomplished by supplicating this intoxicated official class itself, or by petitioning the Government in England who exercise supervision over it. Some others think this improbable, and they have persuaded themselves into the notion that, in accordance with the maxim, 'the mouth does not open unless the nose is stopped,' unless a spoke is put somewhere into (the wheels of) the car (of the administration) of the present rulers, their desired object will not be accomplished. The opinion of this party is that whatever may be wanted (by them) should be plainly stated and it should be obtained by (following) the path of (passive) resistance. But to say that not even a single man out of the thirty crores (of people) in the country should go beyond these two paths in the paroxysm of the indignation or exasperation produced by this oppressive system of Government, is like saying that the indignation or exasperation of the thirty crores of the inhabitants of India must always necessarily remain below a certain degree. And it is impossible to fix such a limit for the whole country. Just as a man who cherishes a desire or makes an effort that when the sun in summer reaches the meridian the arid country in Marwar should remain as cool as Darjiling or Simla, must fail (to secure his object), similarly it is vain to entertain a desire or to make an effort that the indignation, exasperation or vehemence produced in the minds of the subjects by an unpopular system of administration should remain necessarily within a certain limit at all times and in all places. If there is any lesson to be learnt by our rulers from the Muzzafarpore bomb affair and from the statements of the young gentlemen implicated in it, it is this alone; and we humbly take permission to bring this very thing again and again to their notice. We are aware that our Government will, by assuming a stern aspect (and) by the adoption of harsh measures, be able to stop immediately outrages like the one that occurred at Muzzafarpore. But even if such means be necessary at the present

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time to maintain peace, still that will not completely remove the root of the disease, and so long as the disease in the body has not been rooted out, no one will be able to guarantee that if a boil in one part (of the body) is cut away, another will not develop again in some other part. It is the King's and the subjects' great misfortune that such times should befall a mild country like India which is naturally loyal and averse to horrible deeds. There is no difference of opinion that those who are responsible for the maintenance of peace in the country should immediately stop outrages of this kind on their coming to light, but the remedies that are to be adopted with a view to prevent the repetition of such horrible calamities should only be adopted with foresight and consideration. It is now plain that not only has the system of Government in India become unpopular but also that the prayer made many times by the people for the reform of that system having been refused, even some educated people forgetting themselves in the heat of indignation have begun to embark upon the perpetration of improper deeds. Men of equable temperament and of reason in the nation will not approve of such violence; nay, there is even a possibility that in consequence of such violence increased oppression will be practised upon the people for some time (to come) instead of its being stopped. But a glance at the recent history of Russia will show that such excesses or acts of violence are not at all stopped by subjecting the people to increased oppression. It is true that in order to acquire political rights efforts are required to be made for several successive generations and those efforts, too, are required to be made peacefully, steadily, persistently and constitutionally! But while such efforts are being made who will guarantee that no person whatever in society will go out of control? And as such guarantee cannot be given, how would it be reasonable to say that all persons who put forth efforts for acquiring political rights are seditious? This is what we do not understand. Just as it is difficult to lay down a restriction that not even a tear or two must fall from the eyes of a man while his heart has become sorely afflicted by sorrow in the same manner it is vain to expect that the unrestricted method of administration, under which India is being ruled over in a high-handed and reckless manner, should become only so far unbearable to the people that no one should become unduly exasperated and resort to excesses on that account. It may be said that, with the exception of some few individuals, the educated and uneducated classes in the country are not as yet prepared to transgress lawful or constitutional limits; nay, even such a desire has not risen in their minds. Under such circumstances to throw the responsibility of the horrible Muzzaferpore affair on that class is adding insult to injury. It cannot be that these things are not understood by a wise Government of the twentieth century, but the intoxication of unrestricted authority and the earnest desire to benefit one's own countrymen is so extraordinary that even wise men become blind thereby on certain occasions. The calamitous occasion which has befallen India at the present time is of this very kind. There is no possibility of the structure of British rule giving way in consequence of the murder of high white officers. If one passes away a second will come in his place, if the second passes away a third will succeed, there is no one whatever so foolish as not to understand this. But Government should take this lesson from the Muzzaferpore affair that the minds of some (persons) out of the young generation have begun to turn towards violence on seeing that all peaceful agitation for the acquisition of political rights has failed, just as a deer attacks a hunter, totally regardless of its own life, after all means of protection have been exhausted. No sensible man will approve of this excess or sinful deed. But it is impossible not only for the subjects but even for the King to avoid or to totally stop this traga

O. CR. J. (*f*) of desperation, and traga (*f*) really speaking is at all times the result only of a climax of exasperation and despair. True statemanship, it may be said, consists, indeed in not allowing these things to reach such an extreme or (critical) stage, and this is the very policy we are candidly and plainly suggesting to Government on the present occasion. We do not think that we have done the whole of our duty as subjects by humbly informing Government that the affair that occurred at Muzzaferpore was horrible and that we vehemently condemn or repudiate it. All heartily desire that such improper things should not take place and that none from amongst the subjects should have an occasion to resort to such extremes. But at such a time it must also be necessarily considered how far the ruling official class should, by utterly disregarding this desire of the subjects, try their patience to the uttermost; otherwise it will not be possible to maintain cordial relations between the rulers and the subjects and to carry on smoothly the business of either. We have already said above that the Muzzaferpore affair was not proper (and) that it was regrettable. But if the causes which give rise to it remain permanent in future exactly as they are at present, then in our opinion it is not possible that such terrible occurrences will stop altogether; and it is for this very reason that we have on this very occasion suggested to Government the measures which should be adopted in order to put a stop altogether to such undesirable occurrences. The time has, through our misfortune, arrived when the party of 'Nihilists', like that which has arisen in Russia, Germany, France and other countries will now rise here. To avoid this contingency, to prevent the growth of this poisonous tree is altogether in the hands of Government. These abscesses affecting the country will never be permanently cured by oppression or by harsh measures. Reform of the administration is the only medicine to be administered internally for this disease; and if the official class does not make use of that medicine at this time then it must be considered a great misfortune of all of us. The Government official class may perhaps dislike this writing of ours, but we cannot help it; for, as a poet has said, words both sweet and beneficial are hard to obtain. What we have said above is, in our opinion, true and reasonable and beneficial also to both the rulers and the subjects in the end. If in spite of this, our writing proves to be of no use, it must be considered a great misfortune of the country. What else? And when once a misfortune overtakes (one) who can tell what calamities will befall (him) in future? No one desires calamities or difficulties; but sometimes God does not leave it in our hands to avoid them. The present affair is becoming one of this sort; and if the Government official class do not recognize this fact, what can we do! Our duty extends to the giving of a hint; and we are discharging that duty, remembering God and Truth. It is our desire also that the state of the country should not become distressful; but at the same time, we must also exercise the right which we have of insisting that the present intolerable system of administration should be reformed as soon as possible. It is no use being bewildered for nothing. We are aware that the white official class or the Anglo-Indian journalists will most astutely utilize Muzzaferpore affair to lessen the vehemence of our efforts; nay, their self-interest also lies in this. But it is our duty to strongly condemn also this perversion of the true state of things by Anglo-Indians, while condemning the desperate and suicidal deed perpetrated at Muzzaferpore. Just as it is the duty of the subjects to assist in preventing the murder of ruling officials so also it is the duty of the rulers to admit (the voice of) public opinion into the administration (of the

[*f*] (Inflicting upon one's own person some injury in order to bring evil or blame upon another.)

country) according to the present times, instead of keeping it (*i. e.*, the administration) irresponsible. The scripture laying down the duties of kings is declaring at the top of its voice that it is not possible for the ruling individuals to forget this duty or to deliberately disregard it and to make the subject only discharge their duties punctiliously; nay, (it further says that this) will be beneficial to neither party. Where this duty is disregarded, there the occurrence of calamities, some time or other, like that at Muzzafferpore is inevitable. Therefore, if the rulers wish that these undesirable incidents should not come to pass, our suggestion to them is that they should in the first instance, impose restrictions upon their own system of administration itself, and it is only with that object in view that to-day's article has been written.

(Article of the 9th June 1908).

THESE REMEDIES ARE NOT LASTING.

From this week the Government of India have again entered upon a new policy of repression. The fiend of repression has possession of the body of the Government of India after (every) five or ten years. The present occasion, too, is of this very kind. The Prevention of Meetings Act was passed, certainly after Lord Morley had become Secretary of State for India and now an Act relating to newspapers has been passed. (The fact) that the fiends of repression should swarm everywhere while the Liberal party is in power and while a philosopher (and) an expounder of the principles of Liberalism like (Mr.) Morley is holding the reins of administration, will make it evident to (our) readers how the Mantrikas (*a*) themselves have (*b*) abjured their ideals (*b*). What does a policy of repression mean? Repression means not only stopping future growth but nipping off past growth also. To stop the future progress of those causes which have given birth to the nation in India, which have developed the nation and which have created the national fire for the rise of the nation, and to drag those (causes) backwards by pulling them by the leg is called a retrograde or repressive policy. Liberty of speech and liberty of the press give birth to a nation and nourish it. Seeing that these had begun to turn India into a nation, the official class had for many days entertained the desire to smash (*c*) both of them; and they have gratified their ardent desire by taking advantage of the bomb in Bengal. Now the question arises, will this repressive policy bring about that which is in the mind of the official? The first desire of the official class is that bombs should be stopped in India, and that the mind of no one should feel inclined towards the manufacture or the throwing of bombs. That the authorities should entertain such a desire is natural and also laudable. But just as he who has to go towards the North goes to the South, or, he who is bound for the East takes the way to the West, in the same manner the authorities have taken a path leading to the very opposite direction (of their goal). This is exactly what is called infatuation. This aberration of the intellect suggests coming destruction; and seeing that Government has adopted a repressive policy, (we) feel extremely grieved (to think) that more sorrowful days are henceforward (*d*) in store (*d*) for the subjects and the authorities. See how the under-

(a) (A Mantrika is a reciter of Vedic texts; judging from the context it presumably refers to Lord Morley as a philosopher expounding the principles of the art of Government.)

(b).....(*b*) (*Lit.*, fallen off from their vows, practices, principles or ideals)

(c) (*Lit.*, bring a cudgel against.)

(d)(*d*) (*Lit.*, to come.)

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standing of the Government has become fatuous. The authorities have spread the false report that bombs of the Bengalis are subversive of society. There is as wide a difference between the bombs in Europe desiring to destroy society and the bombs in Bengal as between the earth and heaven. There is an excess of patriotism at the root of the bombs in Bengal, while the bombs in Europe are the product of the hatred felt for selfish millionaires (e). The Bengalis are not anarchists but they have brought into use the weapon of the anarchists; that is all. The anarchist murdering the President in Paris simply because he is the President, is one man; while the madcap patriot of Portugal throwing a bomb at the King of Portugal because he suppresses the Parliament is a different (person). The anarchist who murders a millionaire in America for the only reason that he is a millionaire is one man, while the exasperated Russian patriot who throws a bomb in despair because the Czar's officers do not grant the rights of the Duma in Russia, is different. No one should forget that the bombs in Bengal do not belong to the first category but to the second. The bomb in Portugal effected a change in the system of government in Portugal and the ministry of the new boy-monarch had to abandon the previous repressive policy. The most mighty Czar of Russia, too, had perforce to bow down before the bomb, and, while making repeated attempts to break up the Duma, was at last obliged to establish it as a matter of course. That the bombs came to a stop in Portugal, or, that the series of bombs in Russia did not lengthen will not be set down by any one to the credit of the policy of repression. New desires and new ambitions have risen amongst the people and are gathering strength every day; such was the interpretation put upon bombs by the statesmen of both the aforesaid countries; and accordingly they changed the character of the administration in such a way that the desires and the ambitions of the people should at least be partially gratified and that they should not become utterly desperate and resort to violence.

The present repressive policy of Government is of two sorts. First, the very manufacture of bombs is to be made impossible, and, secondly, such measures are to be taken that the people should not feel inclined at all to manufacture and throw bombs. After the parrot is first put into the cage, the door is closed. Accordingly, Government first disarmed the people. In order that the caged parrot should feel delight only in remaining within the cage, people who are fond of pleasure and sport, make arrangements for (providing it therewith) sweet fruits and grain and water. But the Indian Government has not only closed the door of the cage, but it has also commenced to pluck the wings and break the leg (of the parrot) in order that it should not go out (of the cage)! Even the tyrannical rulers of Europe did not disarm their subjects; even a savage race like the Mussalmans did not disarm the Hindus while exercising their imperial sway over India. Then, why did the English do so? If common muskets and common swords be in the hands of the subjects, they can never equal the military strength (of Government). If there is nothing detrimental to the military strength (of Government) even in allowing the people to be with arms, then why did the English commit the great sin of castrating a nation? The answer to this question is that the manhood of the nation was slain by the Arms Act in order that the authority exercised even by petty officials from day to day should be unopposed and that the selfish administration might be carried on all right without any hitch (and

(e) (*Lit.*, rich men.)

without granting the subjects any of the rights of *swarajya*! The English have not got even as much generosity as the Moghuls and they have not even as much military strength as the Moghuls. As compared with the imperial sway of the Moghuls, the English Empire in India is extremely weak and wanting in vigour from the point of view of military strength. The Emperor Aurungzebe exercised tyranny of various kinds over the Hindus from the point of view of religion though not from the point of view of the distribution of wealth; and his ten or twenty lakhs of troops also perished completely during his Deccan campaigns of ten or twenty years. Still the Empire of Delhi lasted for a hundred and fifty years, albeit in a hobbling manner, after his death. If the English army in India were to be confronted by difficulties similar to those which Aurungzebe's forces encountered, then the English rule will not last in India even for quarter of a century after (that). The principal reason of this is that the English remain in India like temporary (*f*) tenants or mere (*g*) birds of passage (*g*). The residence of the English in India not being permanent, and the English authorities as well as the English merchants having a covert aim at enriching England, they are, quite naturally, not ready to give into the hands of the natives any portion of the ruling power after making a separate division (of the same). Had the Moghuls exercised (their) imperial sway over India, for the sake of the prosperity of the land of their original residence, by sending out officers like temporary tenants, then the Moghuls, too would have been obliged to be illiberal in dealing with Princes and Chiefs or village institutions, like the English themselves, and there would have been no other alternative but to disarm the subjects. Owing to the power given by Western science and the helplessness produced amongst the subjects in consequence of their being disarmed, the administration can be heedlessly carried on without any hitch (and) without even a consideration of the desires or the aspirations of the people. Owing to the bomb this state (of things) has not remained permanent. The subjects, armless; and the Government, admittedly powerful owing to the modern science of arms. Up to this time there was no means at all for Government to know (*h*) that the people, becoming disappointed owing to some acts of Government, get exasperated and become even turn-headed. How was Government at all to know that the tyranny of its acts has become unbearable to the subjects? What happened usually up to this time when Government did any act and the subjects disapproved of it? The people used to submit petitions, to prefer requests; the authorities used to say that it was temporary froth, that it would subside, in a short time, of itself. The people became despondent, the impatient fretted and fumed within themselves in exasperation, and the turn-headed, in their own violent emotion, burnt their bodies and in a fit of passion made an offering of themselves alone, without even any report of any kind reaching the ears of Government; such was the state (of things) up to this time. The turn-headed men destitute of arms became provided with arms in consequence of the bomb, and the bomb reduced the importance (*i*) of military strength. Unless a beginning be made to divide wealth and authority with the subject, with greater liberality than was shown by the Moghuls, England will not henceforward be able to carry on the administration, without any hitch, through officers

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(f) (*Lit.*, tenant or farmer having no right of occupancy.)(g).....(g) (*Lit.* Passengers upon the road wayfarers.)(h) (*Lit.*, estimate.)(i) (*Lit.*, awe.)

O. CR. J. having (only) a temporary (interest in the country). The bomb is not a thing like muskets or guns. Muskets and guns may be taken away from the subjects by means of the Arms Act; and the manufacture, too, of guns and muskets without the permission of Government, may be stopped; but is it possible to stop or to do away with the bomb by means of laws or the supervision of officials or the busy swarming of the detective police? The bomb has more the form of knowledge, it is a (kind of) witchcraft, it is a charm, an amulet. It has not much the features of a visible object manufactured in a big factory. Big factories are necessary for the bombs required by the military forces of Government, but not much (in the way of) materials is necessary to prepare five or ten bombs required by violent, turn-headed persons. Virendra's big factory of bombs consisted (j) of one or two jars and five or ten bottles; and Government chemical experts are at present deposing that the factory was, from a scientific point of view, faultless like a Government bomb-factory. Should not Government pay attention to the true meaning of the accounts published in (the course of the case of Virendra's conspiracy? Judging from the accounts published of this case, the formula of the bomb does not at all appear to be a lengthy one and (its) process also is very short indeed. The power of keeping the knowledge of this formula a secret from one who is turn-headed, has not now been left in the laws of Government. This knowledge is not a secret in Europe, America, Japan and other countries. In India it is still a secret knowledge. But when the number of turn-headed (persons) increases owing to the stringent enforcement of the policy of repression, what time will it take for the magical practices, the magical lore of Bengal to spread throughout in India? The labour of acquiring this lore will not be as hard to those who are turn-headed as the labour of bringing their brains again to a normal condition; and even in putting this lore to a practical use there is very little possibility of the exasperation being even calmed down through a Magistrate, owing (to the plot) being frustrated by the skill and vigilance of the detective police. To speak in (the language of) hyperbole, this factory can be brought into existence in a trice and (also) broken up in a trice! Therefore, how can the nose-staig of the law be put on these turn-headed wizards of the bomb? When the Explosives (k) Act was passed in England (about) ten or fifteen years ago, the bomb had not attained such a form of knowledge (as at present). The bomb has not (then) become a (l) mere toy (l) of the Western sciences. At that time elaborate (m) appliances, too, were required; also special materials were required and the factory also used to be a big one. Such things can be prevented by law; but when science begins to exhibit wonders like the bomb in mere sport (and even) while walking, talking (and) sleeping, how can these simple sports of science be put a stop to? The Westerners propitiated the goddess of science for (securing) commercial progress and military strength. How will it do to accept only the gift of the blessing of the propitiated goddess and to refuse only those things which that very goddess may be doing in mere sport in order that no one may become intoxicated with the bestowal of the blessings? While the knowledge of the science of the Westerners is being thus easily obtained (by people) every day, and while new discoveries are being daily made that produce terrific powers in no time with a simple process from common chemicals themselves which are constantly required for trade and industries, how long will Government stop, by legal restrains, the current of the sport

(j) (Lit., was stored in.) (k) (Lit., Act about bombs.)
 (l).....(l) (Lit, the dirt of the body, as it were.) (m) (Lit., many.)

of scientific experts? In our opinion, Government are going to put themselves and the subjects to loss for nothing, by pursuing impossible things. If the perfect state to which scientific knowledge has attained in Europe and America be considered, (one) has to say that Government has been engaged in the vain attempt of making an impossibility a possibility. At such (a) time (as) this, chemists, persons engaged in industries and petty manufacturers cannot fail to be subjected to unjust compulsion for nothing. The object desired by Government cannot be accomplished by the Explosives Act, but, on the other hand, it will serve as an instrument in the hands of the police and the petty officials to persecute good men. This effort to impose (n) a Prohibition (n) upon the scientific knowledge about bombs and the materials (for making bombs) is vain. If bombs are to be stopped this is not the proper means (for it); Government should act in such a way that no turn-headed man should feel any necessity at all for (throwing) bombs. When do people who are engaged in political agitation become turn-headed? It is when young (political) agitators feel keen disappointment (by being convinced) that their faculties, their strength and their self-sacrifice cannot be of any use in bringing about the welfare of their country in any other way than by acts of turn-headedness, that they become turn-headed. Government should never allow keen disappointment (to take hold) of (the minds of) those intelligent persons who have been awakened (to the necessity of) securing the rights of *swarajya*. Government should not forget that when the desires and aspirations of the awakened intelligent people spread throughout the nation and begin rudely to awaken the whole nation, the disappointment instead of decreasing becomes all the more keen, if this process of awakening is stopped at such a time. Government has passed the new 'Newspapers' Act with a view to put a stop to the process of awakening; and, therefore, there is a possibility of the disappointment assuming a more terrible form and of turnheadedness being produced even amongst people of thoughtful and quiet disposition. The real and lasting means of stopping bombs consists in making a beginning to grant the important rights of *swarajya* (to the people). It is not possible for measures of repression to have a lasting (effect) in the present condition of the Western sciences and that of the people of India.

Before the commencement of the trial an application for a Special Jury was made on behalf of the Crown to Mr. Justice Davar.

The Hon. Mr. *Branson*, Advocate-General, instructed by the Government Solicitor, in support of the application.

Mr. *Baptista*, for the accused, opposed it.

DAVAR J.—Under s. 276 of the Criminal Procedure Code, a special Jury is necessarily summoned in all offences punishable with death and under the same section in any other case in which the judge of the High Court so directs a special Jury is summoned.

Now the settled practice of our Courts is that when there is an important case and the interests of the parties concerned re-

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quire that a Jury consisting of men who are selected from a higher sphere of life and consequently supposed to bring better intelligence to bear on the cases before the Court and one of the parties applies to the Court to hold the trial with a special Jury the Judge presiding at the sessions usually grants the application if he is satisfied that the interest of Justice will be better served by calling a special Jury.

There is no doubt whatever that the cases against Mr. Tilak are important cases from his own standpoint, and I feel in his own interests he should have the benefit of being tried by a Jury selected from the citizens of Bombay, who come from higher class and are men of higher culture. When a similar application was made to me in another case it was stated that in Special Juries as a rule, there is a majority of Europeans. Yesterday I had a murder case before me tried by a Special Jury in which the jury consisted of three Parsis, two Hindus and four Europeans. On the previous days I had common juries which on two occasions at least had European majority. The panel summons for a special jury is summons under certain regulations fixed by Sir Michael Westropp and ordinarily consists of a small majority of Europeans undoubtedly but the native community is fairly represented. In the panel that was originally fixed for these Sessions before the sedition cases were contemplated or came to this Court, twenty-seven Jurymen have been empanelled, out of whom there are four Parsees, five Hindus and two Mahomedans and Jews.

The rule under which a Special Jury is empanelled is rule 832 which says:—"The Sheriff on the receipt of the said precept shall summon out of the names contained in the said lists the requisite number of Special and Common Jurors, provided that one-half at least of those summoned shall be European British Subjects." So there is no question that the Sheriff has no option when he is fixing the panel of special Jury that he must have at least half the number of Europeans.

Having regard to the exigencies of the sedition cases and taking into consideration the probability of a large number of challenges, it does appear to me that the panel of twenty-seven out of which two or three have already sent in applications to be excused on grounds of illness, urgent business, etc. an additional panel of Jurymen will have to be summoned, because providing for full challenges on both sides the margin in the panel of twentyseven would be only two. We have now sixteen Euro-

peans and eleven natives. The Clerk of the Crown has already summoned eight more—four Europeans and four natives. When empanelling Jury the names are picked out from the Ballot Box without knowing whether the slip contains a native or European name. So the chances are, that there may be a fair representation of natives. But that is a matter which depends entirely as to how the names come up from the Ballot Box. You have the Jury list fixed and they are selected according to the rules obtaining in this Court for many years.

I hardly think that there is much substance in the arguments addressed as to the knowledge of the language. Of course if it comes to a conflict, then the Court must necessarily accept the translations of its authorized translators. At the same time if there is any glaring mistake or mistranslation and if it is pointed out by counsel for the accused, it is the bounden duty of the Judge presiding at the Sessions to see that the translation is correctly placed before the Jury and if there is a mistake or mistranslation, that ought to be corrected.

I promise to give my most careful attention to anything pointed out during the trial as mistranslations. As I have said I think it is a mistake to resist the application for a Special Jury, in cases of importance and so far there has been no precedent where in important cases, special Jury is asked for and refused, except on very special grounds.

I have very carefully considered Mr. Baptista's arguments addressed to me. I think on the whole the interests of Justice require that these cases should be tried by a special Jury. I am quite sure that any member of the special Jury who will come in and take his oath to administer justice, will leave out all prejudices, if he has any, and all extraneous circumstances entirely out of his consideration.

On Monday the 13th July the trial commenced.

Mr. *Inverarity*, with the Hon. Mr. *Branson*, Advocate-General and Mr. *Binning*, instructed by Mr. *Bowen*, the acting Government Solicitor, for the Crown.

Mr. Tilak conducted his own defence.

Mr. *Branson*.—I propose to put up the accused on both the charges at the same trial. Now in this case there have been two charges and two committals made by the Magistrate on the

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O. CR. J same day in respect of the article of the 12th May, 1908, and the
1908 article of the 9th June, 1908.

EMPEROR [DAVAR J.—Ought you not to make your application *after* the
accused has pleaded to the charge ?]

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any charge. The charges are perfectly good but I propose to
act under section 234 and subsequent sections of the Criminal
Procedure Code. Section 234 is the first section which is directly
applicable to the facts of the present case. The offences are
exactly the same. They are committed within three weeks of each
other and therefore under s. 234 the Crown is entitled to say
that the two cases should be tried together. It would be con-
venient to try both these cases together instead of trying each
before a separate Jury. Then look at s. 235 which has also an
intimate bearing upon the case. It is true that in *Emperor v.*
Fatta (1) it has been held that there must be a separate charge
for each offence. So there is. Therefore we are within the ruling
of the Allahabad High Court. Your Lordship sees that the two
sets of charges are under s. 124A and the cognate charge under
s. 153A. I submit we come exactly within the wording of s. 235.

[DAVAR J.—Section 235, clause, 1, refers to the “same transac-
tion”,]

Mr. *Branson*—That expression has been the subject of va-
rious rulings. Amongst others in *Q. E. v. Vajeram* (2); *Q. E.*
v. Pir Muhomed (3). The expression has been dealt with by the
Allahabad and Calcutta High Courts: see Prinsep’s Criminal Pro-
cedure Code, 12th ed., pp. 203, 204.

The articles impeached and the articles upon which we rely as
showing the intention of the accused begin from 12th May, 1908.
This paper has published a series of articles which form the sub-
ject matter of the charges, namely, the articles of the 12th
May and the 9th June and a series of intervening articles upon
which we rely as showing that they were all written as part and
parcel of one transaction intended for the purpose of producing
feelings of disaffection and disloyalty against the Government
established by law in British India.

[DAVAR J.—The objection to the applicability of s. 234 is that
if two cases were consolidated for one trial, there would be four
charges].

Mr. *Branson*.—No, my Lord. As regards one of the charges

(1) (1903) I. L. R. 26 All. 195.

(3) (1885) I. L. R. 10 Bom. 254.

(2) (1892) I. L. R. 16 Bom. 414.

under s. 153A I do not propose to put the accused up on that charge. I put him up on two sedition charges and one with reference to the second article under section 153A.

[DAVAR J.—With reference to the charge under s. 153A as to the first article you would not put him up?]

Mr. Branson.—I should proceed under section 333 of the Code, if there is any necessity to take any action at all at the present stage. Therefore in order to avoid the possibility of finding ourselves within the four corners of the ruling of the Calcutta and Allahabad High Courts and the Privy Council. in *Subrahmanya v. King-Emperor* (1) that would be the simplest method of escaping the possibility of it being contended that we have done something or proposed to do something which is opposed to the words of the Act.

Mr. Tilak—My lord, as regards the law, section 227 is the one applicable. Sections 233, 234 and 235 are the sections under which the charges are first framed by the Magistrate. Section 234 applies to the charge when the charge is first framed by the Magistrate and there is no provision in the Criminal Procedure Code by which the different charges can be amalgamated as it is proposed at present. That is my objection on the law point. Secondly, what I have to urge is that though the articles are in the course of the same transaction, yet they form different subjects altogether, and it would be more convenient for me to have each of them tried separately. The two articles refer to different subjects and if the trial is jointly carried on it will introduce a sort of confusion, if not in the mind of the learned counsel prosecuting, at least in my mind. I do not think I will be able to conduct the two charges if they are taken together. Sections 234 and 235 are permissive but s. 233 is imperative. There are separate articles dealing with separate aspects of the question. They do not form part of one transaction.

Mr. Branson.—I have pointed out that this is not a question of the amendment of charges at all. If your Lordship is inclined to treat it as such you will see what great powers the Court has under s. 226. As a matter of fact the two charges remain unaltered and I propose to try them both together. The only question is whether s. 234 applies under these circumstances. If your Lordship will look to the s. 227 you will find what great powers the Court has of adding or altering the charges at any time. That section has been held to justify the High Court first of all

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O. CB. J. in framing a charge and then withdrawing it: see *Dwarka Lal v. Mahadeo Rai* (1).

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[DAVAR J.—Have you given notice of this application to the accused?]

Mr. *Branson*.—Oh, yes. We have given him notice of every application we intended to make. I say this is not an application. I am entitled to put the charges before the Court and in reference to the possible difficulty of there being four charges I submit that s. 235 would dissipate that difficulty altogether. The charges under sections 124A and 153 A will be treated as being alternative charges or charges framed in order to meet possibly of one or the other set of facts, in which case either offence might or might not be proved. In that case there would be four charges. In order to avoid the possibility of there being any difficulty or doubt I propose to proceed under s. 333 and say that for the present at all events I will not proceed under s. 153 A on the first article and that will result in a stay of proceedings and discharge of the accused but not an acquittal.

DAVAR J.—In this case two separate informations were laid before the Magistrate and the Magistrate held two separate enquiries and made two separate commitments. The question now before me is whether these two cases can be taken together and tried at one trial. It would be extremely desirable from my point of view and also I think in the interest of the accused himself that there should be one trial if possible and the whole question should be before one Jury who tries him. The accused, under s. 233 of Criminal Procedure Code, is entitled to be tried separately unless the provisions of ss. 234, 235, 236 and 239 come into operation. I have grave doubts about s. 235 applying to this application. It seems to me that there would be some difficulty in holding that separate newspaper articles written week after week would come under the "same transaction"; but I have no difficulty whatever in ordering the same trial under s. 234 provided that the charges do not exceed three. In this instance the charges are four but the Advocate-General offers to make use of s. 333 to stay proceedings with reference to one of the four charges. I am quite willing to allow him to make use of that section and to allow him to withdraw any one of the four charges he chooses to withdraw. But I do not wish the Advocate General to be taken by surprise. I think it would be fair

to the accused if the Crown is not prepared to go on with any particular charge or for convenience wishes, or feels inclined, not to proceed with one of the charges that I should under the powers given to me under the same section order that the discharge of the accused should amount to an acquittal. It is not right that the accused should have that charge hanging over him indefinitely. I will order three charges in the two cases to be tried at one trial provided that there are three charges only and the fourth one is abandoned and not kept hanging on the accused's head. That would be for the Advocate-General to decide.

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Mr. Branson.—I have already said, my Lord, that I do not propose to proceed under s. 153A with regard to the article attached to the first charge.

[DAVAR J.—I am quite willing to meet your wishes in that respect. But I think it is only fair to the accused that the withdrawal of the charge should be in the nature of an acquittal].

Mr. Branson.—Perhaps your Lordship will reserve that question later on when the whole case is before you.

[DAVAR J.—I am dealing with the present application. You have got three charges and you can select three out of the four charges and proceed but if there is to be any stay of proceeding I think that stay should be final].

Mr. Branson.—That might raise a serious question whether your Lordship should direct that it should operate as an acquittal. It would open the door to the plea of *autrefois acquit*.

[DAVAR J.—As to that particular charge and that particular article? Whichever charge you choose to withdraw or stay proceedings in, he would be acquitted with reference to that particular charge and with reference to that particular article but that would not affect the question of charges under s. 124A or under s. 153A in respect of another article. With reference to the other charges that would not have any application whatever.]

Mr. Branson.—It would apply to the article in respect of which we apply under s. 333 for a stay only of that charge. That cannot possibly affect the other charges. That is my reason in asking the Court not to pass such an order as that until you heard the case.

[DAVAR J.—You mean until I hear the case I should not pass a judgment?]

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Mr. *Branson*.—I do think so, My Lord.

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[DAVAR J.—As long as there are not more than three charges at one trial I see no objection to the course proposed. I order the trial of three charges at one trial. As to the other charge you will undertake, Mr. Advocate-General, to apply for a stay and I will be at liberty then to order that stay and discharge will amount to an acquittal.]

Mr. *Branson*.—I do not make an application nor undertake to apply for a stay but I simply state that I will not further prosecute. I am entitled to do that.

[DAVAR J.—You say that this is not an application?]

Mr. *Branson*.—Yes. When the case is finished on the three charges I shall inform the Court, as I have already adumbrated before the Court, that I do not intend to proceed upon the other charge under s. 153A then your Lordship can make what order it seems fit to your Lordship to make after you have heard the case.

DAVAR J.—The present order will be that the accused be tried at one trial in Case No. 16 on one charge under s. 124A and on two charges under ss. 124A and 153 A in Case No. 17.

Mr. *Inverarity*.—Section 124A allows comments on the acts of Government, but not such comments as make them vehicles of contempt. Seditious libel is defamation of Government, and the two articles are full of defamatory statements. What the Government complained of was that the whole of the first article was devoted to attack Government as a Government alleging that it carried on its administration in an unscrupulous and iniquitous way; that it had a strong desire to benefit its own country; that it sacrificed the interests of the natives to those of the Englishmen; that it was autocratic; and that it was of an oppressive and tyrannical character and had become unbearable to the people of India. The form of indictment for seditious libel given in Archbold's Pleading and Practice, 23rd edn., p. 997, clearly indicates what should come under the word 'disaffection.'

The second article pointed out that bomb-throwing had, in other countries, resulted in the people getting what they wanted, and that bomb-making could not be stopped by Government because bombs could be easily manufactured with very few chemicals. The writer suggested in a veiled manner that other countries had got advantages by the throwing of bombs and by foul murders, and that the same result could be achieved in India by the same means.

Matter written to stir up racial feelings between the white people and the natives of the country comes under s. 153A. The writer frequently alluded in the second article to alien rulers as being white. He intended to stir up racial feelings between Europeans and natives by saying that the 'white class' was acting in a manner which was directly hostile to the interests of the natives.

Accused has written several articles between the two offending articles, and these show his intention: see the Indian Evidence Act, s. 14, ill. (e); *Reg. v. Lambert and Perry* (1).

Mr. *Branson*, on the second day, put in a post card on which were written, in the handwriting of the accused, the names of four books on explosives. He said it was admissible as showing that it was in the accused's possession. It was also admissible because its contents were relevant to the present inquiry. He cited *Reg. v. Bernard* (2); East Pleas of the Crown, Vol. 1; Russell on Crimes (5th edn.), Vol. III, p. 386.

Mr. Tilak—I do not disown the possession of the post card. It was discovered behind my back; and its contents are not relevant.

DAVAR J.—The card is admissible as it was found in the possession of the accused during the execution of a search warrant.

After the close of the case for the prosecution the accused put in the following statement:—

I, Bal Gangadhar Tilak, accused in this case do hereby state as follows: I am editor, printer, publisher and proprietor of the "Kesari," a weekly Marathi journal, published at Poona every Tuesday and as such do admit all legal responsibility in respect of the articles forming the subject matter of the charges. Marathi terminology in the discussion of political subjects not being settled I have used the following Marathi expressions for the English equivalents put against them. (Here followed a list of Marathi words and their English equivalents.) There are some more words and phrases of a similar kind, but these are not inserted in this statement to save space. My views with regard to the political reforms required in India at the present day are as stated by me in March last in my evidence before the Decentralization Commission as follows:—"The mere shifting of the centre of power and authority from one official to another is not in my opinion calculated to restore the feelings of cordiality between officers and people prevailing in earlier days. English education has created new aspirations and ideals amongst the people, and so long as these natural aspirations remain unsatisfied, it is useless to expect that the hiatus between the officers and the people could be removed by any scheme of fiscal decentralization whatever its other effects may be. It is no remedy, not even a palliative, against the evil complained of, nor was it put forward by the people or other leaders. The fluctuating wave of decentralization may infuse more

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(1) (1810) 2 Camp. 398.

(2) (1858) 1. F. & F. 240.

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or less life in the individual members of the bureaucracy, but it cannot remove the growing estrangement between the rulers and the ruled, unless and until the people are allowed more and more effective voice in the management of their own affairs in an ever-expansive spirit of wise liberalisation and wide sympathy aiming at raising India to the level of the governing country." The charge articles are part of controversy in which I have endeavoured to maintain the above views. With reference to Exhibit K (the post-card), I have to explain that after the Explosives Act was passed, I wished to criticise it, and especially the definition of explosives in the same. For this purpose, it was necessary to collect materials, and the names of the two books on the card were taken down from a catalogue in my library, with a view to send for them in case they could not be found in any of the Poona or Bombay libraries. The article of the 9th June is intended to point out the futility of repressive measures alone in preventing the recurrence of bombs. In support of what is stated above I produce along with this statement papers as per list annexed. The charge articles embody my honest convictions and opinions. I state that I am not guilty of any of the charges brought against me, and pray that I may be acquitted.

Mr. Tilak.—In a case of sedition three points were to be considered: (1) the question of publication; (2) the question of insinuation and innuendoes; and (3) the question of intention.

As to publication he had taken upon himself the full responsibility for the articles complained of.

On the question of insinuations and innuendoes the inferences were drawn not from the original words used by him but from the translations of the incriminating articles.

As to the question of intention, the jury had to rely on the translations of the incriminating articles and of four other articles that had been put in by the prosecution to show his intention.

It was unsafe to convict a man merely because the tendency of the words as conceived by the jurors from the translations was, in their opinion, calculated to produce feelings of hatred or contempt against the Government. The jurors were not Marathi-knowing people; they knew very little about the community that read the *Kesari*; and yet they had to consider what effect the articles were likely to produce upon the minds of the readers of the *Kesari*. The position of the jury was something like this. They were asked to sit in judgment upon an article written in French in England, and to say what effect the French article, which was translated in English, would produce upon the French population in France. No evidence was tendered to show the effect produced by the articles. No sound conclusion could be drawn from the maxim every man is presumed to intend the natural consequences of his act. That maxim was exploded long ago in England so far as sedition cases were concerned. Juries in England now-a-days drew their conclusions not merely from

the character of the writing itself but from surrounding circumstances. See Erskine's speech in *The Dean of St. Asaph's case* (1); Stephen's History of Criminal Law of England. Vol. II, p. 360. In this case (i) the character of the writing; (ii) the state of society to which the writing was addressed; and (iii) the time at which it was addressed were to be taken into consideration. The prosecution had not proved any of these things: and it was unfair that the burden of showing such circumstances should be cast on him. The Marathi speaking people were all aware of the arguments used in the first article. There was nothing new in it to excite their feelings. The views expressed in it were views which he had constantly advocated for twenty-eight years. Every sentence in it could be corroborated by extracts from the congress party literature. It was written to give advice to Government at a time of unrest. The motive of the writer ought to be taken into consideration by the jury. At the time when the article was written a newspaper controversy was going on, and articles that appeared in the *Kesari* were merely replies to the attacks that appeared from time to time in Anglo-Indian Journals. The prosecution ought to have shown by substantial proof that he had exceeded the limits of fair criticism. The second article was written when the Government intended to pass the Explosives Act. If the intention was to reform Government, it was no sedition. The jury might not agree with his views. Different communities had different views; but the question before the jury was not one of views or approval or disapproval of those views, but it was a question of good or bad intention.

Section 124A divided itself into two parts: Whoever by words &c. (1) *brings*, or (2) attempts to bring in hatred etc; or (1) excites, or (2) attempts to excite, disaffection etc. Though he was charged under the whole section yet only the second part of it was to be considered as no evidence was tendered to show that the effect contemplated by the section was produced. Where such effect was produced, or an overt act was done, no proof of intention was necessary.

The charge then reduced itself to *attempt* to bring into hatred or contempt, or *attempt* to excite disaffection towards the Government. He was therefore entitled to an acquittal on the first part of the section. Attempt was defined as "an intentional preparatory action which fails in object—which so fails through circum-

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O. Cr. J. stances independent of the person who seeks its accomplishment": *Q. E. v. Luxman* (1); *Emperor v. Bhaskar* (2); Stephen's History of Criminal Law of England, Vol. II, p. 221. The prosecution had not shown that he had failed in the act through circumstances over which he had no control. No evidence was adduced to show how the attempt failed.

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Mayne in his Criminal Law, 3rd edn., p. 925, said that mere *intention* to commit a crime and *preparation* made for its committal are not punishable. The preparatory act can be carried to the last point: see *Nawab v. Arjan Das* (3). There must be a direct movement towards the commission of the crime in order to complete an attempt. The usual procedure adopted by the prosecution was to prove publication only in sedition cases. But mere publication of an article was not an attempt, and publication alone did not show the intention of the writer.

There were two kinds of attempts: (1) full attempt; (2) something less than a full attempt. In certain sections of the Code the penalties for an offence and also for an attempt to commit that offence were given, e. g., ss. 121, 124A etc. In such cases the attempt must be carried to the last stage. The meaning of 'attempt' in s. 124A was thus quite different from attempt under s. 511. In attempt under s. 124A it must be shown that the accused was prevented from carrying out his object by some external agency: see the definition of attempt given above.

R. v. Perry (4); *R. v. Reeves* (5); *R. v. John Binns* (6); *R. v. Lambert and Perry* (7); *R. v. Sullivan* (8); *R. v. Burns* (9); referred to in detail in tracing the development of the law of sedition in England.

The word 'excite' indicated that there must be some inflammation of feelings already in existence. The mere *reporting* of the existing feelings did not come under the section. The use of the word, 'disapprobation' in Explan. 2 and 3 suggested that certain amount of ill-feeling was allowed by the Government. If the intention was to reform the policy of the Government then the legal fiction of intention was not applicable.

The expression "the Government established by law in British India" did not mean either the executive officers or the judiciary. The expression denoted merely the abstract idea of government.

(1) (1899) 2 Bom. L. R. 286, 296.

(2) (1906) 8 Bom. L. R. 439.

(3) (1901) P. R. No. 13 of 1904.

(4) (1793) 22 St. Tr. 954, 985.

(5) (1796) 26 St. Tr. 530.

(6) (1797) 26 St. Tr. 596

(7) (1810) 31 St. Tr. 335.

(8) (1868) 11 Cox, 51.

(9) (1886) 16 Cox 355.

The word 'Government' was qualified by the phrase 'established by law in British India.' Bureaucracy was not Government. Bureaucracy was called the Services. It was not *sine qua non* of the British Empire in India. Advocating a change in the system of administration was not sedition.

In deciding the question of attempt lapse of time was a material consideration. As the articles did not produce any effect they should be construed in a fair spirit.

If the intention of the writer could not be gathered from the articles on which the charge was based, it should not be deduced from other articles: see Mayne's Criminal Law, p. 520.

Section 153 A required the proof of malicious intention on the part of the offender to promote feelings of enmity between different classes. No such proof was adduced. Unless malicious intention was expressly proved the case came within the explanation to that section. Publication alone was no proof of such intention. The second article was addressed to the Government and it referred to the passing of the Explosives Act and the Newspaper Act at the same sitting. It was written to controvert the views of those newspapers which advocated repressive measures. As the bomb outrage was the question of the day it was his duty as a journalist to press upon the attention of the Government the causes of it, irrespective of the question whether the times were disturbed ones. There was an opposition of interest between the pro-bureaucratic party and the Congress party, just as there was between the Conservatives and Liberals in England. It was a mistake to suppose that the controversy arose out of any racial differences.

The word 'classes' in s. 153 A could not be applied to political parties, members of which were ever changing. Bureaucracy could not be both a 'Government' and also a 'class' at the same time. That would be absurd and inconsistent. Moreover, the second article was not on bureaucracy at all; it was in reference to the Explosives Act. As to the meaning of 'promotes', see *Sundarlal v. Ram Singh* (1).

Again, the charge did not specify the classes of persons, viz. Hindus, Mahomedans, Parsis, or Europeans, between whom he was alleged to have attempted to promote feelings of enmity. The charge, being defective, must fail altogether.

Mr. Branson.—The jury had to consider three things only:

(1) Whether the accused printed and published the articles, and

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O. CR. J. if so, was he responsible for them? The accused having acknowledged his responsibility as the editor, proprietor and publisher of the *Kesari*, he was liable.

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(2) What was the meaning of those articles taken as whole. The jury had to find out what the articles meant after reading them and not to take into consideration the meaning put upon them by the accused. The accused was liable for what appeared in his paper: he was liable not for what he meant but for what he wrote.

(3) What was the intent of the writer? The intent was to be deduced from what the accused had written. The maxim every man intends the natural consequences of his act was not an exploded doctrine. That doctrine was supported by numerous authorities. Intention might not afford a safe guide and there might be other circumstances which would modify the maxim. The Jury had only to consider whether the words came within s. 124A or its explanations.

Accused quoted several English cases, but as held in *Q. E. v. Bal Gangadhar Tilak* (1), English law was not applicable to India when the Indian Penal Code was explicit on the point.

If the meaning of the words used came within the penal provisions of the section it was immaterial whether the effect had followed or not. It was ridiculous to urge that the prosecution must shew that the attempt in this case was unsuccessful owing to some cause over which the accused had no control. That was not the meaning attributed to 'attempt' by Sir Lawrence Jenkins in *Q. E. v. Lueman* (2). His Lordship merely discussed a successful and an unsuccessful attempt.

To show the intent of the accused other articles that appeared in the same newspaper were rightly put in: see *Bal Gangadhar Tilak* (3); *Jogendra Chander Bose* (4).

If the articles did not contain anything that was new how it was that not a single reader of the *Kesari* was called as a witness to show that he took a different view of the articles from the view which the prosecution was suggesting the accused took.

As to what was legitimate comment counsel read pages 134, 135 and 137 from *Q. E. v. Bal Gangadhar Tilak* (5).

The jury had to take into consideration several circumstances before arriving at a conclusion; namely, persons to whom the

(1) (1897) I. L. R. 22 Bom. p. 112.

(4) (1891) I. L. R. 19 Cal. 41.

(2) (1899) 2 Bom. L. R. 296.

(5) (1897) I. L. R. 22 Bom. 112.

(3) (1897) I. L. R. 22 Bom. 112.

articles were addressed, the position of the writer, the influence he exercised, the time at which the articles appeared, and other environments.

As to the meaning of 'Government' see the judgment of the Full Bench in *Q. E. v. Bal Gangadhar Tilak* (1).

If the articles came under s. 124A the accused could not escape liability by urging that they were merely replies to the articles that appeared in some Anglo-Indian journals. It was no defence that the subject-matter of the articles was a matter of controversy.

Even assuming that the articles impugned showed that the Government had been acting improperly and that reforms were necessary, still that was beside the mark. The whole point before the jury was whether they believed that the wording of the articles came within the provisions of s. 124A.

The onus of proving that the articles came within the explanations to s. 124A was not wrongly thrown on the accused. Section 105 of the Evidence Act was a clear authority.

The accused said that his motive was to advise the Government to bring about administrative reforms. But 'motive' had no place in the Indian Penal Code. Even if a person wrote articles with the best and highest motives that would not help him. It might affect severity of punishment. A criminal act was never excused because it was done with the best motive: see *Reg. v. Dudley* (2); Mayne's Criminal Law, 4th edn., p. 244.

It was no argument to urge by way of self-defence that because third parties abused the accused he was entitled to bring the Government into hatred and contempt.

As to s. 153A, it would apply even to a party such as bureaucrats or pro-bureaucrats.

DAVAR J.—Gentlemen of the Jury, I am afraid, gentlemen, your patience has been sorely taxed during the eight days which this trial has taken. I do not propose to tax your patience at any great length in the case because the case on both the sides has been very clearly and fully put before you. I now ask your earnest attention to what I am going to say and before I say anything else I think it is right to realise that it would be the merest and the idlest of pretences to say that you have not heard of this case before or have not heard of the accused before. I have no

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(1) (1899) I. L. R. 22 Bom. 112. (2) (1884) 14 Q. B. D. 273,

O. CR. J. doubt that this case has been discussed before this by your friends, and by yourselves and I think the accused must often have been spoken of in your hearing by your friends and others. But need I tell you—I feel that I need not tell you—that it is your duty to confine the consideration of the questions that are submitted to you in this case entirely to what you have heard and read within the four corners of this room. For once, gentlemen, dissociate your mind from everything that you may have heard about the accused or about this case or about this prosecution. I have no doubt you will set aside from your mind and will not allow any passion or prejudice or any outside information to influence you in the least in coming to a decision in this case. I have heard with great satisfaction that the accused trusts in you and trusts in your judgment and has appealed to you in a long and lengthy address. I ask you, gentlemen, to regard him standing before you merely as one of your fellow subjects. Give sympathetic consideration to all that he has urged and after having done so come to a verdict without fear or favour. One thing also I would like to guard you against and that is not to give any undue preference or undue consideration to the fact that the Crown prosecutes. There is nothing in that fact either to prejudice you against the accused or against the prosecution. The Crown is the legitimate prosecutor in all cases that come before the High Court Sessions. In this very Sessions the Crown was the prosecutor before me in a murder case and the Crown was the prosecutor in an old offender's case who had stolen Rs. 2. So that there is nothing that ought to influence you or weigh with you in the fact that the Crown prosecutes. It is the duty of the Crown to prosecute when its responsible officers consider that the law is transgressed. All that the Crown does is to come before you and say "This is the law. This is the act of the accused by which we say he has transgressed the law." And then it leaves the Judge and the Jury to decide whether the law is transgressed and whether there has been a breach of the law or not. The offences charged against the accused are offences of a public or political nature; and in order to guard against frivolous or vexatious prosecutions started by irresponsible parties under this section the law guards and protects journalists, publicists, and public speakers from such frivolous or vexatious prosecutions by providing that no such prosecution shall be undertaken except with the sanction of Government. That is the only reason why sanction is required for a prosecu-

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tion to be started under these two sections. Gentlemen, we have heard the accused state that "lower officials consider that a sanction is a mandate." I don't think he intended this to be a suggestion applicable to this Court or to you. It would be most improper for any one to suggest that there is any body anywhere who can send a mandate to you or to me which we are bound to obey. We are here to perform our respective duties and the only mandate that I shall obey and the only mandate that you are bound to obey is the mandate of our conscience. My one desire, gentlemen, has been to give the accused a perfectly fair trial. He has entered into every kind of discussion from every point of view and it is possible that there may be somethings that he has said that may not have been permitted, somethings that he has urged may not have been relevant; but nevertheless we lose nothing by giving the accused person absolute freedom to unburden his mind before you and to give you from his point of view the explanation of his conduct and his writings and of the sentiments to which he has given publication.

Gentlemen, before I proceed I think it would be as well for you to have a perfectly clear idea of what your duties are and what my duties are. The duties of a Judge are defined under the Criminal Procedure Code. I will not take you through all those duties but some of the things he has to do are to decide all questions of law, all questions of admissibility and relevancy of the evidence that is tendered and he has to decide whether any particular question is for his decision or for the decision of the Jury and upon this point his decision shall be binding upon the Jury. So that it is for the Judge to decide what are the points for his decision and what are the points for the jury's decision, and the Judge's decision is binding upon the jury. Then again if the Judge thinks proper he can in the course of his summing up express his opinion on any question of fact or any question of mixed law and fact. Then comes, gentlemen, the duty of the jury defined in the next section and the duty of the jury is to decide which view of facts is true and then to return the verdict which under such view ought according to the directions of the Judge to be returned. You have heard the view of the prosecution and you have heard the view of the accused. Both have addressed you fully, and I am entitled to express an opinion—I am entitled to give you directions; but, gentlemen, the accused has expressed his confidence in you and

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O. CR. J. I am going to add to your responsibilities by leaving the consideration of the whole case entirely in your hands. From my point of view the case presents no difficulties. The law is there.

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It is a very well settled law now. During the last ten years cases have come before the Courts and those cases have been most carefully considered and every word in the sedition section that required expounding has been the subject of legal discussion. I do not propose to give you any law that is not settled before. I do not propose to give you my own view of the law but I will give you the views of eminent judges who had the consideration of the law before them and you will be bound to follow those views. The learned Advocate General has read to you largely from the summing up of Mr. Justice Strachey. With a small slip which does not matter for our present purposes that summing up has got the approbation in that case of the Full Bench of our Court presided over by the late Sir Charles Farran and has got the approbation of the Privy Council. That statement of the law has been followed in other cases by other High Courts and has been referred to with approval. Quotations from that case have been largely read to you and therefore, gentlemen, I will not traverse over the same ground again. But before we proceed further you ought to have a clear idea of the three charges on which you are trying the accused. He is charged in the first instance under s. 124A with reference to the Article of 12th May 1908 which is Exhibit C in the case. That is the first charge: that is the charge of sedition: and that is the only charge so far as the first article is concerned. The next charge is again the charge of sedition with reference to the article of 9th June 1908 and the third charge is a charge under section 153A with reference to the same article. So that you will remember, gentlemen, that there are three charges against the accused based on two articles which are before you and which are Exhibits C and D in the case. The sections of the Indian Penal Code have been read to you over and over again and I believe they are before you in print. Follow the wording of those sections and when you follow the wording of those sections you will find that a great many difficulties which are supposed to be difficulties or a great many considerations which have been urged by one side or the other will disappear. First of all you have to notice that s. 124A is intended to be a safe-guard and a check against any one either by speech or by writing or by visible means doing or attempting

to do certain things and what are they? He must not bring or attempt to bring into hatred or contempt or excite or attempt to excite disaffection against the Government established by law in British India. There is no question now that the Government established by law and referred to here is the British Government or the English Government, which rules over this country and a man must not excite or attempt to excite disaffection towards that Government or bring or attempt to bring that Government into hatred or contempt. Does "contempt" require definition? Does "hatred" require definition? We are human beings. We all have our weaknesses and our passions and none of us can say that there was no time in our life when we had not felt hatred or contempt for somebody or something. As to the word disaffection which was the subject of much discussion the first explanation makes that clear. Disaffection is a peculiar word. You do not use the word disaffection when you are talking with one person or in connection with another person. A person does not bear disaffection towards another person but disaffection is always used more in the sense of being applied between the subject and the Ruler and the first Explanation leaves you in no difficulty. The expression disaffection includes "disloyalty and all feelings of enmity" so that you will have to read "or excites or attempts to excite disloyalty or feelings of enmity against Government". It includes those. Then of course there are two other Explanations, which you must always keep before your mind. They are Explanations intended to protect criticism of Government measures, and of administrative and executive action of Government and they give perfect freedom to journalists, to publicists, to orators and public speakers,—perfect freedom to discuss the measures of Government, to discuss the administrative acts of Government, to disapprove of them, to attack them and to use forcible language if necessary and do every thing legitimate and honest in bringing before the public or in bringing before the Government the fact that their measures or their actions are disapproved by a section of the public or by that particular speaker or by that particular journalist. He is entitled to urge every reason he can. He is entitled to urge all this in forcible language and to use strong language in asserting such views with reference to those administrative or executive acts of Government. But, gentlemen, remember that no publicist, no journalist, no speaker has any right to attribute dishonest or immoral motives to Government. Freedom of the press,

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O. CR. J. I have no doubt, is a most valuable right. You would be as
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anxious to protect freedom of the press as I would be. You will give effect to all that the accused had urged in favour of freedom of the press. The law says, however, that that freedom of the press should not be used for the purpose of bringing or attempting to bring Government into hatred or contempt or exciting or inciting feelings of disloyalty or enmity towards that Government. Barring that, the liberty of the press must be protected. The press and public speakers are entitled to protection against any prosecution that may savour of persecution and every subject of the Crown is entitled to come before the jury and say, "I have not transgressed the legitimate rights of a journalist." It is for you, gentlemen, entirely to judge whether that statement is correct or not. Section 153A is again a simple section. You find that "whoever promotes or attempts to promote feelings of enmity or hatred between different classes of Her Majesty's Subjects" shall be punished in a particular way. It only means that no subject of the Crown is entitled to write or say or do anything whereby the feelings of one class of His Majesty's subjects should be inflamed against another class of His Majesty's subjects. I take it, gentlemen, it is a salutary provision of the law for the purpose of preserving order and amity between the various subjects of the Crown.

Then turning from the sections I draw your attention shortly to two or three cases decided by the different High Courts in India with a view to show what is meant by those two sections. The first of the cases that I am referring to is the case referred to by the Advocate-General and also by the accused and known as the *Bangobasi case* (1) tried by Sir Comer Petheram, the late Chief Justice of Bengal. In the course of his summing up he says: "Disaffection means a feeling contrary to affection, in other words, dislike or hatred. Disapprobation means simply disapproval. It is quite possible to disapprove of a man's sentiments or action and yet to like him. The meaning of the two words is so distinct that I feel it hardly necessary to tell you that the contention of Mr. Jackson cannot be sustained. If a person uses either spoken or written words calculated to create in the minds of the persons to whom they are addressed a disposition not to obey lawful authority of the Government, or to subvert or resist that authority, if and when occasion should arise, and if he does so with

(1) (1891) I, L. R. 19 Cal. 35,44.

the intention of creating such a disposition in his hearers or readers, he will be guilty of the offence of attempting to excite disaffection within the meaning of the section, though no disturbance is brought about by his words or any feeling of disaffection, in fact, produced by them". The last sentence is the most important because that has been the settled law and that is "though no disturbance is brought about by his words or any feeling of disaffection, in fact produced by them. It is sufficient for the purposes of the section that the words used are calculated to excite feelings of ill-will against the Government and to hold it up to the hatred and contempt of the people, and that they were used with the intention to create such feeling". Further he says: "The evidence of the intent can only be gathered from the articles. The ultimate object of the writer may be one thing, but if, in attaining that object, he uses as the means the exciting of disaffection against the Government then he would be guilty under s. 124A". Then he gives directions to the jury, directions which I press upon your mind: "You must not look to single sentences or isolated expressions, but take the articles as a whole, and give them a full, free and generous consideration as Lord Fitzgerald has said; and even allowing the accused the benefit of a doubt, you will have to say whether the articles are fair comments and merely expressions of disapprobation or whether they disclose an attempt to excite enmity against the Government".

This, gentlemen, was the case decided in 1891. It was followed by a case in the Allahabad High Court in 1898: *Queen-Empress v. Amba Prasad* (1). That is a Judgment delivered by Sir John Edge and Messrs. Justices Blair and Burkitt. There Sir John Edge, after referring to Mr. Justice Strachey's summing up, goes on to say: "In our opinion any one who, by any of the means referred to in s. 124A of the Indian Penal Code, excites or attempts to excite feelings of hatred, dislike, ill-will, enmity or hostility towards the Government established by law in British India, excites or attempts to excite, as the case may be, feelings of 'disaffection' as that term is used in s. 124A no matter how guardedly he may attempt to conceal his real object. It is obvious that feelings of hatred, dislike, ill-will, enmity, or hostility towards the Government must be inconsistent with and incompatible with a disposition to render obedience to the lawful authority of the Government."

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(1) (1897) I. L. R. 20 All. 55, 68.

O. CR. J. The learned Chief Justice goes on: "The intention of the speaker, writer, or publisher may be inferred from the particular speech, article or letter, or it may be proved from that speech, article or letter considered in conjunction with what such speaker, writer or publisher has said, written or published on another or other occasions. Where it is ascertained that the intention of the speaker writer or publisher was to excite feelings of disaffection to the Government established by law in British India, it is immaterial whether or not the words spoken written or published could have the effect of exciting such feelings of disaffection and it is immaterial whether the words were true or were false". Then, gentlemen, there were two other cases that came before Sir Lawrence Jenkins when he was presiding in the Sessions in 1900—*Queen-Empress v. Luxman* (1); *Queen-Empress v. Vinayek* (2)—and I will tax your patience by reading one or two passages from his summing up which clear up the position most completely and give you the idea of what the law of sedition is. He says: "These, gentlemen, are the main provisions of the section and you will see, therefore, that the section is directed against those practices which are calculated to call into existence certain hostile feelings towards the Government as established by law. These hostile feelings are three in number. They are "hatred", "contempt", and "disaffection." That is to say, it is directed against those acts which may result in or aim at bringing the Government into hatred or contempt, exciting disaffection against the Government. Now the words "hatred" and "contempt" require no explanation: their meaning must be plain to you all. But there still remains the word "disaffection," which in the past has been the subject of much discussion and controversy: happily, however, you sitting here are free from the necessity of entering on this field of controversy, because the first explanation to the section indicates clearly to you what is meant by "disaffection." Then he reads the first explanation and says: "Thus, the subject is entitled to criticise and comment upon all acts of the Government in all its departments, legislative, administrative or executive. But it is subject to this qualification. That those criticisms and comments must be within those limits to which I shall later allude, and that will be very important qualification for you to bear in mind in connection with all the arguments which have been addressed to you on behalf of the accused."

(1) (1899) 2 Bom. L. R. 286.

(2) (1899) 2 Bom. L. R. 304.

Then, gentlemen, you have the definition of the word attempt. Sir Lawrence Jenkins says: "An attempt is an intentional preparatory action which fails in object—which so fails through circumstance independent of the person who seeks its accomplishment." With reference to the word attempt, gentlemen, you have to take it in the ordinary meaning which attaches to the word attempt. A man is supposed to attempt something which would be the natural and reasonable consequences of his act. If he fails he does not fail because he did not attempt but he fails from other causes. Whether he fails or whether he succeeds the law says no attempt should be made to excite feelings of disaffection, contempt or hatred against Government. As to whether any particular act of an accused is an attempt or not it is for you to judge from his actions. There are the articles placed before you by the prosecution. The prosecution says that these articles amount to an attempt to excite feelings of contempt and hatred against Government. I leave you entirely to judge the effect of those articles and to say whether the prosecution is right or whether the accused is right. In doing so there are several considerations which must be present before your minds and to which I shall presently refer. Sir Lawrence Jenkins again says on this point: "For the purpose of determining whether in this case there has been an attempt, you will be entitled to approach the question in this way. It will, first of all, be for you to look at these articles and determine what is their true meaning, what is the *innuendo* they convey, what is the covert meaning, if any, they have. Having reached that point, you must decide in your minds what is the probable or natural effect of these words. Are they calculated to bring into hatred or contempt the Government or excite against it feelings of disloyalty or enmity? And if you come to the conclusion that they do, then you will consider whether that was not the intention with which the words were used or published. For the purpose of determining whether or not that was the intention, you will be entitled to act according to that very universal principle that a man must be taken *prima facie* to intend that which is the natural result of his acts under the circumstances and in the particular case in which that act has taken place or occurs. So that if you come to the conclusion that these words are calculated to produce the mischief against which the section is directed, you will be entitled to say that they were intended to produce that mischief."

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O. CR. J. While judging of the articles from the articles themselves you
 1908 will remember, gentlemen, that the accused has pressed you to
 take his explanation into consideration and the circumstances
 EMPEROR under which those articles were written. By all means do so.
 v. Take all the surrounding circumstances into your consideration.
 B. G. TILAK We shall consider some of the circumstances later on. Give
 Davar J. the fullest effect to the surrounding circumstances and to all the
 explanations that he has given and then ask yourselves whether
 the articles written are seditious and come within the purview
 of the law, or whether they come within any of the explanations
 which the law provides for—whether the circumstances urged by
 the accused form any justification for his saying that he is not
 within the purview of the law.

Before I pass on to other questions I think it is just as well to refer to a case with reference to the word attempt which was referred to by the accused: *Jivan Das v. King Emperor* (1). The accused only read a part of the head note. The case was not fully before you. It says: "Where the acts committed by the accused consisted only in running after the complainant with an axe in his hand and raising it to the shoulder when about four *kadams* from the complainant, but before there was time to do anything further in pursuance of his purpose, the axe was snatched out of the accused's hands; held, that the accused was not guilty of an attempt to commit murder as neither of his acts could *per se* have caused death." So far it was read to you but the conclusion of the case was not before you. It is this: "But he was guilty of an attempt to cause grievous hurt punishable under s. 511 read with s. 326 of the Indian Penal Code". I have looked at that case. The case merely comes to this. A man runs after another with an axe. When about four feet from his intended victim he is stopped by some other person. He is charged with an attempt to murder. The Court says supposing he had hurt the man with an axe how can we say he would have killed him. It is possible that he would have only caused hurt to him. And it may be that the person hurt may not have died and therefore we will not convict him of attempting to murder but we will convict him of attempting to cause grievous hurt. That is the case referred to. A man who runs after another man with an axe does not do it for fun. If he is not guilty of murder he is guilty of something else. Then, gentlemen, there were a great many ancient cases referred to, cases

(1) (1904) P. R. No. 30 of 1904.

centuries old, cases that took place in other countries, under other circumstances, where the surrounding circumstances were very different, the times were different, occasions were different and where there was no statutory provision against sedition. You have had numerous citations from counsel's speeches from the speeches of Mr. Erskine, afterwards Lord Erskine, and you have had numerous decisions quoted—*The Dean of St. Asaph's case*,⁽¹⁾ and *R. v. Lambert & Perry*⁽²⁾ in the eighteenth and nineteenth centuries. All those cases or some of them I find collected in a small book on sedition written by J. Chaudhuri. I say take those cases into consideration, take also everything that you are told about the liberty of the press into your consideration, protect the liberty of the press. I go further and say let the jury stand, as the accused has asked you to stand, between him and the prosecution, as the protectors of the liberty of the native press. Judge of the native press with greater consideration than you do of the English press. It is an younger institution, and, therefore, probably more enthusiastic, and I say extend all indulgence to the press, protect it. Take the articles, read them, see what effect they produce on your minds and if you think these are the articles that are legitimate articles that a journalist can write without transgressing the provisions of s. 124A by all means return a verdict of not guilty in favour of the accused. What do these English cases lay down. They lay down this: "Merely to represent that an erroneous system of Government exists under Her Majesty's reign, I am not prepared to say, exceeds the freedom of discussion on political subjects which the law permits; if it imputes nothing but honest error without moral blame, I am not prepared to say that it is a libel."⁽³⁾ Then in another case another judge says: "My opinion of the liberty of the press is that every man ought to be permitted to instruct his fellow-subjects; that every man may fearlessly advance any new doctrines, provided he does so with proper respect to the Government and religion of the country; that he may point out errors in the measures of public men, but he must not impute criminal conduct to them. The liberty of the press cannot be carried to this extent without violating another equally sacred right, namely, the right of character. The right can only be attacked in a Court of justice, where the party attacked has a fair opportunity of

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(1) (1783) 21 St. Tr. 847.

(2) (1810) 31 St Tr. 335.

(3) *R. v. Lambert and Perry*, (1810) 2 Camp. 398.

O. CR. J. defending himself. Where vituperation begins, the liberty
 1908 of the press ends." (1) In another case again it is said:
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 EMPEROR "You should recollect that there is no sedition in censuring  
 v. the servants of the Crown or in just criticism on the  
 B. G. TILAK administration of the law or in seeking redress of grievances".  
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 Davar J. "You should recollect that to public political attacks great
 latitude is given. Dealing as they do with the public affairs of
 the day, such articles, if written in a fair spirit and *bona fide*,
 often result in the production of great public good". (2). Test
 the articles by these principles laid down by great English
 Judges. Let this be present to your mind—the passage in
 the address of Lord Fitzgerald to the jury where he says:
 "You are the guardians of the freedom of the press, and whilst
 you will check its abuse, you will preserve its freedom" (2).

If you think the liberty of the press is abused, and you can only think so when you can clearly come to the conclusion that the provisions of the law are transgressed, then it will be your duty to return your verdict according to that view. If you think that the articles that are before you are articles that are not calculated or are not intended to give rise to a feeling of hatred and contempt, disloyalty, ill-will, and enmity against Government then the accused is entitled to the benefit of that conclusion at your hands. If, on the other hand, you think that the articles impute dishonest and immoral motives to Government, if you think that the articles tend to create feelings of disaffection or excite feelings of disloyalty, if you think, as the prosecution has put it, that these articles are calculated to convey to the minds of the readers the impression that murders, political murders, murders from political motives are approved of by the writer, then you will have to consider what effect that would have on the minds of the readers and return your verdict according to the view you take. I join with the accused in asking you not to be led by stray words, stray expressions, stray idioms in his writing. Give all the weight that he asks you to give to the fact that Marathi language is a language in which certain expressions are wanting, that he has to coin them when he is writing in high flown Marathi. Judge of the articles taken as a whole. Judge of the impressions produced on your minds after reading not a stray sentence here, not a stray sentence there, but after reading the whole of the articles, and having read the arti-

(1) *R. v. Burdett*, (1820) 4 B & A. 132. (2) *R. v. Sullivan*, (1868) 11 Cox 44.

cles ask yourselves what is the effect that is produced on your minds. If the two articles which are called the incriminating articles and which are put in as Exs. C and D, one of the 12th of May and the other of the 9th of June—if these two articles in themselves contain sufficient materials for you to decide whether what is written there amounts to an attempt to excite feelings of disaffection and feelings of hatred and contempt, then you need not go further. If you have any doubts, if you find that the articles do not by themselves convey the meaning which the prosecution asks you to put upon them, then you are entitled to look to the other articles which are admissible and relevant under the law to enable you to judge of the intention of the accused. You must give to the articles, to the expressions, to the sentiments, their ordinary natural meaning—the ordinary meaning which is attributed to that particular form of language.

Gentlemen, the accused's main complaint was about the translations. Mr. Joshi was submitted to cross-examination in this box. It is for you to judge what impressions he has produced. It seems to me that he was a man who gave his evidence without any bias or animus whatever against the accused and he went through his examination of the knowledge of Marathi with, I think, credit to himself as a Marathi scholar. He was prepared to give translations of words, he had his dictionary at his elbow, and he seemed to have expended a good deal of time over the expressions in the articles. You must, however, remember that the translations of the articles before you are not Mr. Joshi's translations. The articles are translated by a responsible translator of this Court and he would not be a translator and interpreter of this Court unless he was an efficient man and a man capable of translating correctly. The ordinary rule in this Court is that where a document in the vernacular language is officially translated by a High Court Translator it is accepted by the Court as a correct translation. The accused does not attribute to the High Court Translator any animus against him. Then why does he call these translations distortions? It may be that in the translations the spirit of the articles may be lost in some places but you have heard the accused take Mr. Joshi through a long cross-examination. He has explained to you where the mistranslations according to him come in. I think the fairest thing to do under the circumstances is to accept his translations and his corrections in every instance and in every particular. As I say though parties are bound by the trans-

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lations that are placed before this Court by the Official Translator of this Court still a man is liable to err, and it may be that the Translators sometimes err. It is quite open to the accused to place before the Court his views and bring those errors to the Court's notice. He can do that in various ways. He can do that by submitting to cross-examination any one of the witnesses for the prosecution as he did with Mr. Joshi. Mr. Joshi was placed in the box for the purpose of proving Mr. Quin's signature to the sanction and counsel for the prosecution asked a question which, I think, was perfectly unnecessary and that was whether the translations were correct. They are assumed to be correct, and the Court is bound to accept them as correct unless some error is pointed out to the Court. Whether that question led to it or not, the fact remains that the accused took advantage of Mr. Joshi being in the box and subjected him to a very prolonged cross-examination and in that cross-examination Mr. Joshi has given you what he considers to be right and what he considers to be an error. The accused has told you to accept his translation of certain words and expressions and I say, accept, for the purposes of this case, all his corrections. I have taken down a great many of them. For instance, for 'sorrow' say, 'pain,' for 'white' say 'English,' for 'perversity' say 'stubbornness,' for 'extraordinary' say 'strange,' for 'madeap' say 'fanatic,' for "जुलमी अधिकारीवर्ग", say, 'oppressive official class' and so on.

Well, I say, gentlemen accept those corrections. It may be that in the reading of the articles it may affect your minds differently. If it does by all means give the benefit of that to the accused. But when we read a book or an article are we guided by the mere expressions used in the book or article or are we guided by the effect that is produced, by the sentiments that are expressed? Look to the sentiments. If you think that the translation is, as the accused says, distorted, if you think the translation is unfair, substitute his translations and then consider whether the meaning of the sentiments that are expressed in those articles, as translated by the Court translator, is different from the meaning of the sentiments that is conveyed to you with the substituted expressions as suggested by the accused in those translations. Then again, gentlemen, in judging of those articles you must take into consideration, as the accused pointed out, all the surrounding circumstances and you must also take into consideration his audience—his readers. The

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accused has told you that he has a very large circulation, the largest circulation he says so far as any vernacular or Anglo-vernacular paper is concerned. All that he has written would be read by his many thousand subscribers—would be read by, I suppose, learned men, Marathi scholars, and by people who are not learned, by people who are not very intelligent, and by people who are not very sensible and able to weigh one thing against another. Possibly it is read by a great many people who have no conception of what the political parties or what the divisions amongst the various parties mean. You have to consider what effect these writings would produce upon the accused's readers and then judge what effect those articles read by a large and promiscuous body of readers would produce on their minds. You must remember that the readers of these articles have not had the advantage of twenty-one hours and ten minutes' explanation which the accused has offered you with reference to these articles. These are published and circulated broad-cast. They are read by the people to whom they go and you may if you like assume that these people knew the purposes for which they were written as explained to you by the accused here. A great deal was said by both the sides as to motives and intention guiding the acts of various people—the law with reference to that intention and with reference to whether the facts are true or not true is crystalized here. "It will be observed that both in the explanation of s. 124A, and in the language quoted above, the essence of the crime consists in the intention with which the language is used. But this intention must be judged primarily by the language itself. Intention for this purpose is really no more than meaning. When a man is charged in respect of anything he has written or said, the meaning of what he said or wrote must be taken to be his meaning, and that meaning is what his language would be understood to mean by the people to whom it is addressed." (Mayne's Criminal Law of India, 3rd edn., p. 520.)

Well, gentlemen, how are we sitting here as Judge and Jury to decide whether the writing of the accused has excited or is calculated to excite feelings of hatred, contempt, ill-will, enmity and disloyalty against Government. Is it possible to prove that by evidence? If you call 100 men belonging to one side friendly to the accused, they would say "we have read these articles and we don't consider that they produce any such feelings in our minds—none of contempt, none of hatred to

O. CR. J. Government." You produce another 100 men of other views who will tell you that the feelings produced in their minds were the other way. It is impossible for the prosecution in a case of this kind to prove by actual evidence as to whether if the seed is sown it has fructified or not. Therefore, the true test that you have to apply is to look at the various articles that are placed before you and judge of them as a whole and judge what effect they produce on your minds in the first instance, judge whether they are calculated to produce feelings of hatred, contempt, disloyalty, enmity towards the Government in the mind of the readers of those articles, and judge for yourselves whether language like this used by accused is or is not likely to inflame the Hindus against the Europeans or the Europeans against the Hindus; judge of human nature as human nature is; judge by your ordinary sound common sense and then return a verdict.

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One thing you must keep carefully before your minds. Violence, disorders, murders, cannot take place by the hand of the man who does not entertain feelings of contempt, hatred, disloyalty and violent enmity towards those that are responsible for the order and good Government of the country. If you have disorders, if you have violence, if you have murders, they are the acts of people who bear hatred towards the ruling class and entertain feelings of contempt for those whose duty it is to preserve peace and order in the land. If they had proper respect for Government, if they had proper feelings for the people responsible for the safety of property and life and limbs of the subjects, if they had those feelings in them there would be no disorder, there would be no violence, no trouble, and no bomb throwing. I have told you, I think, that the law does not require that an attempt should be successful. The law does not require that the attempt should be to incite rebellion or mutiny or violence. The law is much stricter than that. The accused addressing you said: "The law may be rigid: the law may be harsh. Stand between me and the law and protect me because I represent the liberty of the press." Gentlemen, you have to decide cases as they come before the jury according to the law as it stands. It is not for me, or for you, to judge whether the law is harsh or whether the law is severe or rigid. The law is there. It is the law of the land. I am here to administer it. You are here to tell me whether the accused has transgressed that law. That law is plain and according to your verdict I am to administer that law here. We are not the judges of the law. We

are not here to judge whether the law is harsh or not. It is the bounden duty of the subject of the Crown to obey that law implicitly and no motives, no amount of honest intention, nothing can justify the breach of the law of the land in which we live. Of course, in doing an act a man, if he is a human being, is always actuated by some motive. It may be a proper motive, or it may be an improper motive. There may be some cases in which those motives may be in doubt and when there are protestations of honest motives before you, it may be interesting to look at the writings or the speeches and then to say whether those writings are consistent with proper or honest motives.

You, gentlemen, are not, however, concerned with motives. You are not further concerned with the truth or otherwise of the allegations or charges. Sometimes a true statement may be so perverted that it conveys far more powerful poison to the minds of the readers than if the whole thing was an invention. Truth may be perverted. Whether the statements in the articles are true or not it is not for you to judge. You may look at the articles, and see for yourselves how far the statements in them are true but what you have to do for the purposes of this case is to read the articles and to say whether these articles amount to an attempt to excite hatred and contempt against the Government established by law, whether they are an attempt to excite disaffection. If you think that these articles now before you are calculated to arouse and give birth in the minds of the readers to feelings of hatred and contempt against the Government, if you feel that these articles are likely to engender feelings of disloyalty and enmity against Government, if you think that these articles are likely to lead to disorders and violence in consequence of such feelings, then it will be your duty to consider whether that is not a transgression of the law.

In reading the articles, gentlemen, make all allowances for oriental modes of thought, for oriental modes of expression and for highflown or classical language. Your first duty ought to be in fairness to the accused to try and put an innocent construction upon these articles if you can. If you can conscientiously say that these articles are articles which are capable of an innocent construction and that they are not transgressions of the law, it will be your first duty to test them in that way and say so. If you think that there are no transgressions of the law, if you feel any reasonable or substantial doubt as to whether the

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O. CR. J. accused has committed a breach of the law, by all means give
 1908 him the benefit of that doubt. He is entitled to it. It is his
 — right. It is his right to have a construction placed on his articles
 EMPEROR that is most favourable to him. It is only when you are driven
 v. to say that these are articles which you cannot conscientiously
 B. G. TILAK say do not transgress the provisions of the law, then it is your
 — duty to return a verdict in accordance with that conclusion. You
 Davar J. must remember that mere protestation of disapproval or dis-
 approbation of crimes or violence may be a veil for the purpose
 of emphasizing the real object of the articles. You must not,
 therefore, be merely guided by a stray sentence which you
 may take to be an incitement to violence and you must not
 be guided by another sentence which may be construed as
 expressing disapprobation of the crimes that may be under dis-
 cussion. You must read each article as a whole and then judge.

Gentlemen, the Crown prosecutes; the Crown has as much
 right as a private individual to say:—"Protect the Government
 from attacks or from libels which are likely to lead the people
 to entertain feelings of enmity and disloyalty against the
 Government". You must make all allowances for fair and free
 discussion. Government, we heard lately, is "fair game"; and by
 all means let Government measures, administrative, executive,
 legislative, be subjected to as harsh and as uncompromising
 criticism as you like. Freedom of the press must be protected
 and if Government complains we shall not listen to those com-
 plaints; but that criticism must be conceived in a spirit of
 honesty and must be free from all imputations of dishonesty or
 immoral motives and those discussions must be free from the
 taint of language which is likely to arouse or calculated to
 engender feelings of enmity, hatred, disloyalty against the
 Government. You must, gentlemen, again in judging of the
 accused remember this that the Government has no right to
 say "our subjects shall love us or shall regard us with
 affection." A man is not bound to entertain any affection
 for Government. They do not claim it; they do not ask for it;
 they have no right to ask for it. So far as the law is concerned
 a man may entertain feelings of hatred against the Government
 and bear feelings of enmity towards the Government; he may
 entertain what feelings he likes but he must not write them; he
 must not speak them out in a manner that may be calculated
 to give rise in the minds of others to similar feelings. He may
 if he likes write libellous or seditious manuscripts and keep

them in his table drawers or carry them about in his pocket but he cannot publish them. He may entertain hostile feelings: he is not bound to feel any affection for Government. He is not asked to make any protestations of loyalty. If he cannot or does not really entertain feelings of loyalty he is welcome to entertain any other feelings he likes. All that the law requires is you shall not publish such sentiments or do such acts as will engender feelings of enmity, contempt or hatred towards Government. Of course, gentlemen, you must remember that the accused owes no duty to anybody except to himself. He is entitled to defend himself in any manner he likes, he is not under any obligation to prove anything. The prosecution must prove their case against him. The prosecution have placed before you certain articles and they say: "These are the articles we complain of". The accused says: "I am a journalist. I have two hundred papers lying on my table week after week. I have to digest and weigh them and read and write on the spur of the moment". This is his statement which you must take into consideration. If a man on the spur of the moment, in haste, or by inadvertence, writes a para which may be construed into a para coming within the section you would make allowances for it. The jury, as men of common sense, would say: "Oh no, we are not going to punish this man because, on the spur of the moment, without consideration, without thought, he has transgressed the law by writing this". Give the amplest consideration to the argument that is urged by the accused. If you think that he has written these articles on the spur of the moment, take that into consideration. The spur of the moment commences on the 12th May, the bomb outrage took place at the end of April; twelve days after that outrage commenced a series of articles and they go on for the next four weeks. If you think that these articles written nearly a fortnight after the occurrence, reiterated for four weeks after the first article was published, could be said to be writings on the spur of the moment, you are entitled to take that into consideration if it recommends itself to you. Then you are told, gentlemen, "I did this in self-defence". I can understand self-defence if somebody pulls your nose and you box his ears; I can understand it and make allowance for it. But if one man pulls your nose and you box another man's ear how would that be self-defence? Because, the *Pioneer* attacked the native editors and agitators and said something very unjustifiable, why do you turn round against the Government?

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O. CB. J. What is there to show that what was written by the *Pioneer* was incited by the Government, and that the *Pioneer* is a Government organ as alleged before you? What is there to show that because
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 Davar J. a newspaper said: "Have these agitators whipped by sweepers and shoot them down", that the Government were going to do it? It is for you to consider, these matters, gentlemen, I am only expressing views that present themselves to me as some of the aspects of this case. I leave you free, gentlemen, to accept any of the views that I am giving expression to or to reject them. Anything that I am saying which does not recommend itself to you, by all means reject. Judge for yourselves. I do not wish to press my views on you at all. All I say is, these are the aspects of the case which present themselves to me. You are the sole judges of what the articles mean, what their effect is and ought to be. It is on your verdict that I will act. It is for you to say whether the accused is guilty or innocent. I beg of you not to be influenced by the views I am placing before you. If your views coincide with anything that I say, well and good. If not by all means give preference to your own views in the matter.

As the case has been a long one and as many considerations have been urged before you, it is, I think, but fair that some of considerations should be the discussed before you.

A great many quotations from articles and books were read before you by the accused. Some of them must have struck you as very objectionable, you must not allow yourselves to be prejudiced against the accused by this. It may be that appearing as he does in person it was indiscreet of him to have identified himself with some of those articles and extracts which he read before you. It is not any excuse for a man to say: "I wrote the seditious articles because somebody else has been writing seditious articles for a long time". That is no excuse: that could not be and ought not to influence your minds. I do not say the accused says so. The accused merely says "I wrote in a strain similar to what other people are writing." It is not for us to judge why other people are not prosecuted. And whether they are liable to be prosecuted and whether they are guilty of sedition, it is not our duty to inquire. Your duty lies in reading these articles and telling me then whether in your opinion they transgress the law as it stands. The accused has told you that he carries on an open constitutional fight. He says that he has a God-sent mission, his cause is a sacred cause of righteousness. If you

think those articles are written in furtherance of an open constitutional fight, if you think those articles are written in furtherance of a God-sent mission, in furtherance of a sacred cause of righteousness, then you are entitled to give all the benefit of that consideration to the accused.

Gentlemen, what is the theme? What is the subject of those articles—the advent of bomb. One needs no telling that in the case of a bomb the atrocity of the crime can only be equalled by its cowardice. That is the subject which is being discussed. A murderer kills one man, a bomb may kill dozens. It is a subject which every right minded man ought to regard with feelings of horror. That theme is the subject of discussion before you in the articles that are before you. If you feel convinced that that subject is argued in a proper manner by all means acquit the accused. Are you prepared to accept, is the accused prepared to argue that the bomb is a legitimate means of political agitation? Do these articles convey to you the meaning that bomb throwing is one of the legitimate means of political agitation. In that case you will have to judge what the effect of the articles would be on the minds of the readers. Accused says that the agitators were falsely charged as being responsible for bomb throwing and therefore he got provocation and he wrote these articles. It is not for us to judge whether agitators were or were not responsible for what happened, but one thing, gentlemen, is perfectly certain. When feelings of hatred, contempt, disloyalty, enmity against the Government are engendered in the minds of men, and when these feelings reach a most acute stage then alone they find vent in those deeds of violence. The whole matter has been discussed before you and the contentions of both sides are before you. "The cult of the bomb" and "The secret of the bomb" and "The double hint" are all before you. It is for you to judge whether those articles contain or not in them expressions of approval, of approbation at the advent of the bomb in India.

You have the "bomb party" discussed just as you have the Reform party or the Nationalist party or the Liberal party. One of the parties openly and freely discussed is the bomb party. Mr. Joshi told us of certain political parties existing. We did not hear of bomb parties. We however hear of them in these articles where the existence of such a party is taken for granted. It is for you to say, gentlemen, whether that repeated reference to a bomb party, whether the reference to the bomb in the

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O. CR. J. manner in which it is made, is or is not calculated to bring
 1908 Government into hatred and contempt. It is for you to say,
 — gentlemen, whether those articles that are before you are the
 EMPEROR lucubrations of a man who merely discusses political problems
 and resents an attack.

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You were again told, gentlemen, a great deal about : "I shall be charged with having used *innuendoes* and with making veiled attacks." Look at the articles, gentlemen, do you think there are in them mere *innuendoes* or much veiling? Whatever you can say of the articles one thing is quite clear : there is a great deal of plain speaking. Whether that plain speaking is justified or not, it is for you to judge. Whether it is a transgression of the law, it is for you to decide. Whether the effect of the articles is to make you believe that the accused believes that bomb throwing is a legitimate weapon of political agitation or for obtaining greater rights and privileges, it is for you to say. I would like to say that you must not judge of the articles merely because some of it may be written in what may be called bad taste. Every journalist may write as he likes. He is not bound to observe good taste; he is not bound to observe any consideration except that he must not transgress the law. Consistently with that he is entitled to discuss all questions in the manner that best recommends itself to him. Now the article of the 12th May has been read to you only recently by the Advocate-General and at this hour I do not propose to read much from this article. Take for instance, gentlemen, the first article. At the bottom of page 2 you find : " However, the desire of the people gradually to obtain the rights of *swarajya* is growing stronger and stronger, and if they do not get rights by degrees as desired by them, then some people at least out of the subject population being filled with indignation or exasperation will not fail to embark upon the mission of improper or horrible deeds recklessly." Now just judge of the effect produced on Marathi readers by this sentence. We want *swarajya* ; if you do not give it, some people will get so horribly annoyed that they will resort to improper and horrible deeds recklessly. The only improper or horrible deed discussed here is that which occurred at Muzaffapore where a boy threw a bomb killing two innocent ladies. And we are told *swarajya* must be given, if *swarajya* is not given some turn headed men will become violent and commit horrible deeds.

Then again you have this : " Some think that this thing can be

accomplished by supplicating this intoxicated official class itself, or by petitioning the Government in England who exercise supervision over it. Some others think this improbable and they have persuaded themselves into the notions that in accordance with the maxim 'the mouth does not open unless the nose is stopped' unless a spoke is put some where into the wheels of the car of the administration of the present rulers, their desired object will not be accomplished". What is the spoke within the wheel? What is the spoke in the car of administration? The bomb, which is discussed in this article or anything else?

Then again at p. 4 you have: "But while such efforts are being made who will guarantee that no person whatever in society will go out of control". I am bound to point out that on the 5th page and the latter half of 4th page there are some sentiments that appear to be perfectly proper. If you wish to know what the intention of the accused was and what he was writing you have to turn to Ex. E, which are Editorial Notes or stray thoughts of the Editor published on the 12th May in the same issue of the *Kesari* in which the article appears. Take the first stray thought of the editor and take the latter half of it: "When secret plots of a very similar kind were discovered in Ireland, the statesman Mr. Gladstone instead of making use of the *Tarkatashastra*, made use of the genuine *Tarka-shastra*, and made efforts to grant 'Home rule' that is *swarajya* to that country. Some people pay attention to the evil attacks of a vice, firmly establishing the body, only when that vice begins to inflict trouble upon the body, in the shape of a terrible abscess: and an effort is then made to remove the vice. The terrible murders that took place in Ireland spontaneously rivetted England's attention to the grievances of that country and then Home-rule or *swarajya* for Ireland began to be discussed. Such usefulness of one sort of these murders has been indirectly described by Lord Morley in one place. Will the terrible occurrence at Muzaffapore rivet Lord Morley's attention to the grievance about the partition of Bengal." Mark the words, gentlemen, "such usefulness of one sort," "murders are useful sometimes in order to rivet the attention of the authorities to the grievances," and here we have murders of two ladies discussed and they are useful for the purpose of rivetting the attention and getting *swarajya* just as Ireland got or attempts to get Home Rule.

Take the second stray thought and look at the lines just at the bottom: "It is only when rulers wished in their minds to wipe

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O. CR. J. out of existence any society, any group of people or any nation,
 1908 that in the first instance repressive laws, and afterwards laws
 EMPEROR that would partially wipe them out of existence, are brought into
 v. force. But mankind has never benefitted through such national
 B. G. TILAK assassination". The suggestion here is that Rulers wish in their
 Davor J. minds to wipe out the existence of some society or some group
 of people or some nation. These writings may be capable of explanation. The accused has attempted to give explanations and it is for you to say whether his explanation is sufficient to convince you that he has not transgressed the law contained in the sections under which the accused is charged.

Then, gentlemen, we come to the consideration of the second article of the 9th of June. It is very difficult to comment on this article. It has been read to you—I would rather leave it to you to judge for yourselves what the effect of that article is. What is the article? What does it contemplate? What does it preach?—under the heading "these remedies are not lasting." The accused says here that repressive measures are not effective and will not do away with the bomb from India. He goes on discussing the bomb and makes comparisons between various people who used bombs. "The authorities have spread the false reports that the bombs of the Bengalis are subversive of society. There is as wide a difference between the bombs in Europe desiring to disperse society and the bombs in Bengal as between the earth and heaven. There is an excess of patriotism at the root of the bombs in Bengal". If one talks of patriotism in connection with bombs, bombs that effect murders, you are judges of the question whether such a discussion tends or does not tend to bring Government established by law in India into hatred or contempt in the minds of the readers. Take the top of the 2nd page, "the most mighty Czar of Russia too had per force to bow down before the bomb and while making repeated attempts to break up the Duma, was at last obliged to establish it as a matter of course." Mark the words "bow down to the bombs." Then there is a simile of a parrot whose wings are plucked and the legs broken. I suppose it is intended for the Indian Nation. Then there is a comparison between the Aurangzeb's sway and the sway of the English nation. Then you have some sentences which may or may not affect your minds with reference to the third charge under this article. You have then a whole page which I have no doubt you have read and which it is unnecessary for me to discuss. You have similes, you have the

effects of bombs in various ways and its usefulness. "Unless a beginning be made to divide wealth and authority with the subject, with greater liberality than was shown by the Moguls, England will not henceforward be able to carry on the administration, without any hitch, through officers having only a temporary interest in the country. The bomb is not a thing like muskets or guns. Muskets and guns may be taken away from the subjects by means of the Arms Act and the manufacture of guns and muskets without the permission of Government may be stopped, but is it possible to stop or to do away with the bomb by means of laws or the supervision of officials or the busy swarming of the detective police? The bomb has more the form of knowledge, *it is a kind of witchcraft, it is a charm, an amulet, &c.*" Those of you who can read Marathi will be able to read it as the accused has written these passages. The accused has given you an explanation of his meaning of many things. Has he explained what this means? I have had portions of the original article read to me written out for me in correct and legible caligraphy and the words used are "It is a witchcraft. It is a magic, spell or amulet, i. e., a remedy for disease." It is for you to say whether the accused has satisfactorily explained these passages.

When an accused person is charged with an attempt to excite feelings of disaffection, of hatred against Government, and other articles are put in for the purpose of showing the intention, one never is desirous of rivetting one's attention to the articles that do not form the subject-matter of the charge but there may be something in them which may throw light on the question as to whether they are calculated to raise feelings of disaffection. For instance in Ex. G (at p. 2 in the middle) you find: "The Bengalis persistently agitated against the partition of Bengal in a constitutional manner but they did not get redress. Well, it did not matter if there was no redress, thinking that they would improve their condition by resorting to *swadeshi*, boycott, national education, and other approved methods of self-reliance, they betook themselves to the path of national regeneration." Perfectly legitimate sentence: you could not find fault with it. He complains as a journalist that the Bengalis dissatisfied by partition agitated by constitutional means to have it set aside. Failing that they resorted to the path of national regeneration. "Thereupon," he says, "some of the authorities caused their own heads to turn by this patriotism of Bengal and letting

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O. CR. J. loose some Mussalman *gundas* upon the Bengalis caused damage
 1908 to their property and to the honour of their women." It says
 EMPEROR that when the Bengalis were resorting to perfectly proper and
 v. legitimate means for their national regeneration the Govern-
 B. G. TILAK ment became turn-headed by this patriotism of the Bengalis
 Davar J. and letting loose some Mussalmans caused damage to their pro-
 perty and to the honour of their women. Is it or is it not a
 charge against Government of inciting Mahomedans for the
 most improper of purposes to attack the Bengalis, to loot their
 property and defile their women? It is for you to say if anybody
 after reading this could entertain feelings of respect for Govern-
 ment or whether feelings of hatred, contempt, enmity and dis-
 loyalty would not be engendered in the mind of the reader.
 As I said before these articles have been before you a
 long time. It would take me a great deal of time to
 to discuss the effects of all these articles. I repeat again judge
 of the articles for yourselves. Do not let what I have said while
 drawing your attention to passages in these articles unduly in-
 fluence you one way or the other. Anything that I have told you
 if it commends itself to you accept it. If it does not reject it
 without any hesitation.

There is one other small subject that is to be discussed and
 that is the post-card (Ex. A.). Well, gentlemen, you are the best
 judges of what effect to give to it. To my mind it is not a piece
 of evidence which ought to affect your minds. The post-card is
 there; it contains the names of two books on explosives. Of course,
 the production of catalogue to show that the books were mention-
 ed in the catalogue means nothing. When we want books of
 a particular kind we look into the catalogue for the purpose
 of finding what books are published on that particular subject.
 The accused has given his explanation that it was his intention
 to study the books with a view to criticize the Explosives Act. It
 may be true. We do not know whether these books are books
 which treat of the *manufacture* of explosives; because I should
 have thought that if they merely refer to the *manufacture* of
 explosives they could not help in the discussion of the Act.
 However, it is a piece of evidence which ought not I think in
 your minds to weigh against the accused. We have his version
 that he wanted to send for those books. It may be perfectly
 correct. He has discussed the bombs and he may be desirous of
 discussing the Explosives Act in some form or another in his
 newspaper.

Gentlemen, I am afraid, I have detained you longer than I intended to do. The case is one, which as I have said, it is entirely for you to decide. The accused has appealed to you or to some of you to differ amongst yourselves in your verdict at least one or two and he says it would be a great consolation if you differ. I do not know what he meant, or what his object was in asking you to differ. I should ask you to make an effort, if an effort is necessary, to be unanimous. If you think that the accused is not guilty by all means without fear or favour acquit him. If you think that he is guilty it will be your duty to return a verdict accordingly. If, however, any single one of you feel you cannot conscientiously agree with others you are entitled to say so. Let each of you, gentlemen, judge of this case for yourselves in the way that your conscience dictates and if after giving your full consideration to what the accused has stated, after giving your sympathetic consideration to everything that the accused has urged in his defence, if you feel that you have reasonable and substantial doubts as to the guilt of the accused, by all means, as I said, acquit him. If, on the other hand, you feel that he has transgressed the law and that his writings amount to an attempt to bring Government into hatred, or contempt and raise feelings of disloyalty and enmity against Government, then it would be your duty to return a verdict accordingly.

I do not think, gentlemen, I can usefully say anything more to detain you. I ask you again to judge of the accused by what is before you, by what you have heard in this room, and by what you have read of his writings that are before you. Put away from your mind everything that you may have heard outside of this Court room and while in the jury box. Apply your minds entirely to the articles that are before you, and tell me, gentlemen, what is your verdict on the three charges. There are three charges as I explained to you. You are at liberty to acquit or convict him on all the three charges. You are at liberty to acquit or convict him on any one or two of those charges. They are separately formulated before you. One charge is with reference to the article of the 12th May under s. 124A, and two charges under ss. 124A and 153A with reference to the articles of the 9th, June. Consider each charge separately and return a verdict on each one of the charges separately; and I ask you, gentlemen, if possible to return a unanimous verdict one way or the other. Whatever your verdict will be it will be my duty to administer the law in accordance therewith. I ask you, gentlemen,

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O. CR. J. to consider your verdict most anxiously. It is a case of great importance to the accused. It means a great deal to him. If you feel that he has transgressed the law it will be your duty to say so. As I said before if you feel any reasonable doubt as to his guilt give him the benefit of that doubt. I ask you, gentlemen, to consider your verdict.

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The jury returned after considering their verdict at 9-20 P. M.

The Clerk of the Crown.—Are you agreed upon your verdict?

The Foreman.—We are.

The Clerk of the Crown.—Are you unanimous?

The Foreman.—No.

The Clerk of the Crown.—I don't want you to tell which way you are but you should give your numbers.

The Foreman.—7 to 2.

The Clerk of the Crown.—Are you agreed on all the charges by 7 to 2?

The Foreman.—Yes.

The Clerk of the Crown.—On the first charge which has been referred to under s. 124A in respect of the Article of 12th May 1908 what is the verdict of the majority?

The Foreman.—Guilty 7 to 2.

The Clerk of the Crown.—On the second charge?

The Foreman.—Guilty 7 to 2.

The Clerk of the Crown.—With regard to the third charge?

The Foreman.—Guilty 7 to 2.

DAVAR J.—Mr. Foreman. Is there no chance of your being unanimous?

The Foreman.—I am sorry to say, my Lord, there is no chance of our being unanimous.

DAVAR J.—Under s. 305 of the Criminal Procedure Code if the jury is divided by as many as six to three a judge is bound to state whether he agrees with the majority or not and the law requires that if the judge agrees with them the judge shall give judgment in accordance with such opinion. I am afraid I have no option but to say that I agree with the verdict of the majority and I must accept the verdict of the majority.

Mr. Branson.—Before the Court passes sentence on the accused I propose to prefer another charge.

Mr. Tilak—My Lord, I want your Lordship to reserve certain points for the Full Bench.

DAVAR J.—What are the points? You seem to have them written out; will you read them? O. CR. J.

[Accused read his application.]

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DAVAR J.—With reference to this application almost every one of those points that are mentioned here have arisen in the course of the hearing and have been discussed and there is no single point, I assure the accused, in this application which I have not most anxiously considered. If I had the smallest doubt in my mind and if I thought that any one of these points is worth reserving or worth discussing I would have been most willing to reserve all or some of them for the consideration of the Full Bench but every time I passed orders I have carefully considered every argument, and every contention of the accused. Most of these points are covered by authorities and the other points are so elementary that they hardly admit of any argument. If I felt that there was the least use or that it could do the least possible good to the accused to reserve these points or any one of these points I would have been very willing to do so. It seems to me that none of these points has any substance in it and therefore I must decline to accede to this application.

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Mr. Branson.—I now desire to have accused put up upon another charge of previous conviction. He will have to plead to it, yes or no, and the jury will have to decide.

The Clerk of the Crown. [Reads the charge.]—In this charge you plead guilty or claim to be tried.

Mr. Tilak.—I do not know how the question arises under s. 75 of the Indian Penal Code. Besides it is not stated in the charge.

DAVAR J.—It is not under s. 75 of the Indian Penal Code; but, I presume, it is under ss. 221 (7) and 310 of the Criminal Procedure Code.

Mr. Branson.—It is under ss. 227 and 310, and if he denies it I will prove it under s. 511.

DAVAR J.—This is not a proceeding under s. 75 of the Indian Penal Code but this is a proceeding under the Criminal Procedure Code and you have to plead to the charge. The charge is whether you were convicted on a previous occasion.

Mr. Tilak.—It is not stated in the charge.

DAVAR J.—It is a charge which after the verdict of the jury is properly made against you. You have to plead to the charge.

Mr. Tilak.—But it does not become relevant except for the

O. CR. J. purpose of enhancing the punishment.

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DAVAR J.—That may be. Whatever the purpose is, you have to plead to the charge. That is a correct procedure.

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Mr. Tilak.—May I take it that your Lordship holds that it is rightly put in now.

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DAVAR J.—At the present stage it is rightly put in.

Mr. Tilak.—In that case I admit.

Mr. Branson.—That amounts to a plea of guilty.

DAVAR J.—Yes, I have taken that down; the accused pleads guilty to the charge.

DAVAR J.—(addressing to the accused)—Do you wish to say anything more?

Mr. Tilak.—All that I wish to say is that in spite of the verdict of the Jury I still maintain that I am innocent. There are higher powers that rule the destinies of men and nations and I think it may be the will of Providence that the cause I represent may be benefitted more by my suffering than by my pen and tongue.

His Lordship in passing the sentence on the accused said:—

Bal Gangadhar Tilak.—It is my painful duty now to pass sentence on you. I cannot tell you how painful it is to me to see you in this position. You are a man of undoubted talents and of great power and influence. Had those talents and that influence been used for the good of your country you would have been instrumental in bringing about a great deal of happiness for those very people whose cause you espouse. Ten years ago you were convicted. The Court dealt most leniently with you then and the Crown dealt still more leniently with you. After you had undergone your imprisonment for a year, six months of it was remitted on conditions which you accepted.

It seems to me that it must be a diseased mind, a most perverted mind, that can think that the articles that you have written are legitimate articles to write in political agitation. They are seething with sedition: they preach violence: they speak of murders with approval: and the cowardly and atrocious act of committing murders by bomb not only seem to meet with your approval but you hail the advent of bomb in India as if something had come to India for its good. As I said it would only be a diseased and a perverted mind that could consider that bombs are the legitimate instruments in political agitation and it would be a diseased mind that could ever have thought that the articles that you have written could be legitimately written.

Your hatred of the ruling class has not disappeared during these ten years and these articles deliberately and defiantly written week after week,—not written as you say on the spur of the moment but a fortnight after the cruel and cowardly outrages committed on English women—persistently and defiantly refer to a bomb as if it was one of the instruments of political warfare. I say such journalism is a curse to the country. I feel much sorrow in sentencing you. I have done nothing but considered and considered most anxiously in the eventuality of a verdict of guilty being returned against you what sentence to pass on you.

I have decided to pass a sentence which I consider will be stigmatized as an instance of what is called misplaced leniency. I do not think I could pass consistently with my duty and consistently with the offence of which you have been found guilty a lighter sentence than that I am going to give you. But I think for a man of your position and circumstances that sentence will be sufficient to vindicate the law and meet the ends of justice. You are liable under the first two charges to be transported for life. I have considered whether I should give you a sentence of imprisonment or a sentence of transportation. Having regard to your age and other circumstances I think it is most desirable in the interests of peace and order and in the interests of the country which you profess to love that you should be out of it for some little time. Under s. 124A I am entitled to pass sentence of transportation for any of the first two charges and on each of the first two charges I sentence you to three years' transportation. You will thus have six years' transportation. On the third charge, which is not punishable by transportation but is only punishable by imprisonment or fine, I do not think I will add to your troubles by sentencing you to an additional period of imprisonment. On the third charge, I sentence you to a fine of Rs. 1000.

On the Advocate General's application the fourth charge was withdrawn under s. 333 of the Criminal Procedure Code, and his Lordship directed that such withdrawal be tantamount to an acquittal.

O. CR. J.

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