Mar. 4, 6, 25, 27 ; Apr. 10.

NIHARENDU DUTT MAJUMDAR

v

THE KING EMPEROR

[SIR MAURICE GWYER, C. J., SIR SRINIVASA VARADACHARIAR AND SIR MUHAMMAD ZAFRULLA KHAN, JJ.]

Defence of India Act, 1939 (Central Act No. XXXV of 1939)—Rules under—Validity of Government of India Act, 1935, ss. 102, 316—Powers of existing Indian Legislature—Resolutions of Parliament—Proof of—Evidence Act, 1872 (Central Act No. I of 1872), s. 78—Sedition—Gist of Offence—Indian Penal Code, 1860 (Central Act No. XLV of 1860), s. 124-A—Duty of Courts in India.

The powers conferred by s. 102 of the Constitution Act are properly exercisable by the existing Indian Legislature, and therefore the Defence of India Act, 1939, is not *ultra vires* on the ground only that it was enacted by that Legislature.

The volumes of the official Parliamentary Debates, published under the authority and control of the Houses of Parliament, afford adequate proof of the passing of the resolutions approving the Proclamation of Emergency mentioned in s. 102 of the Constitution Act by the Houses of Parliament.

Though the question is one of the method of proving an event which occurred in England, the law applicable is the Indian and not the English law of evidence.

The proceedings of Parliament fall under either the second or the fourth of the categories in s. 78 of the Indian Evidence Act, 1872. The expression " Journals " in that section is not to be confined to the official Journals of the two Houses of Parliament but includes also the official Parliamentary Debates which are printed under the authority of Parliament.

Since the " prejudicial act " which is made an offence by Rule 34 (6) of the Defence of India Rules is defined in language similar to the definition of sedition in s. 124-A of the Indian Penal Code, the law relating to the latter is equally applicable to the former notwithstanding the difference in nomenclature.

The gist of the offence of sedition is the promotion of public disorder or the reasonable anticipation or likelihood that public disorder will be promoted. The acts or words complained of must either incite to disorder or must be such as to satisfy a reasonable man that that is their intention or tendency.

Held, on the facts of the case, that the speech which was the subject of the proceedings giving rise to the appeal did not exceed the legal limits of comment or criticism and therefore did not amount to sedition or to a prejudicial act within the meaning of Rule 34(6)(*e*) of the Defence of India Rules.

Observations on the offence of sedition generally.

APPEAL from the High Court at Calcutta.

In consequence of a speech made on April 13, 1941, at Calcutta, the appellant was convicted by the Additional Chief Presidency Magistrate at Calcutta on July 21, 1941, of offences under sub-paragraphs (*e*) and (*k*) of paragraph (6) of Rule 34 of the Defence of India Rules and was sentenced to be detained till the rising of the Court and to pay a fine of Rs. 500 and in default to undergo rigorous imprisonment for six months. This conviction and sentence was upheld, on appeal, by the

Calcutta High Court (Bartley and Lodge, JJ.) on November 29, 1941.

Aswini Kumar Ghose for the appellant. The Defence of India Act and the Rules made under that Act are *ultra vires* the present Indian Legislature. Section 316 of the Constitution Act does not in terms refer to s. 102 of the Act. Therefore the legislative powers conferred by s. 102 can only be exercised by the Federal Legislature and not by the existing Indian Legislature.

The Proclamation of Emergency issued by the Governor-General on September 3, 1939, was never approved by Parliament ; in any case the prosecution did not give any legal proof of such an approval. Even if Parliament had approved the Proclamation on the first occasion, a further Proclamation was required after the lapse of six months, see ss. 43, 89 and 93 of the Constitution Act.

Lastly it is submitted that the speech complained of did not amount to an offence under law and therefore the appellant has been wrongly convicted.

Sir Asoka Roy, A. G. of Bengal (*Hamidul Haq Chaudhuri* with him) for the respondent. There is no substance in the constitutional questions raised by the appellant. The real question in this appeal is whether the High Court was justified in proceeding on the basis that the Proclamation of Emergency had been approved by resolutions of both Houses of Parliament. It is submitted that the High Court was justified in so proceeding because (1) the High Court was entitled under s. 5 of the Indian Evidence Act, 1872, to take judicial notice of what had been done by Parliament in regard to the Proclamation of Emergency, and alternatively (2) there was sufficient proof of the fact of approval under s. 78 of the Evidence Act.

Under s. 57(1) of the Evidence Act it was the duty of the Court to take judicial notice of all Indian laws. The appellant was being prosecuted under the Defence of India Act and it having been contended that there was no such law as the Defence of India Act in operation at the material date, it became the duty of the Court to ascertain whether the necessary resolutions of Parliament had been passed or not for the purpose of noticing the law. A party is not required to produce any book or document in support of a fact of which the Court has to take judicial notice unless the Court requires him to do so. If the Court from its general knowledge was aware of the fact that resolutions had been passed by Parliament proving the Proclamation of Emergency it could take judicial notice of that fact. If the Court wished to resort for its aid to Hansard, the Court was entitled to do so. That Hansard is an appropriate book of reference cannot be disputed : see " *The Englishman* " *Ltd.* v. *Lajpat Rai*(1). If the resolutions of Parliament cannot be treated as a matter coming within the

(1) [1910] I. L. R. 37 Cal. 760, at p. 789.

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purview of item (1) of the *Explanation* in s. 57, the High Court was entitled to take judicial notice of what had been done by Parliament as a matter of great public notoriety or as a historical fact. A fact of such a public character as the resolutions of Parliament approving of the Proclamation of Emergency by the Governor-General is a matter of which the Court could and should take judicial notice. Section 57 of the Evidence Act gives a list of certain facts of which the Court shall take judicial notice. The list however is not exhaustive or complete. " *The Englishman* " *Ltd.* v. *Lajpat Rai ;* Woodroffe's Evidence, 9th Ed., p. 489 ; Sarkar's Evidence, 6th Ed., pp. 504-505, 514-515 ; Taylor on Evidence—Sections 4 to 21 ; Best on Evidence—Sections 253-254; Roscoe's Evidence, 20th Ed., Vol. I pp. 82—86 ; 13 Halsbury, Paras. 679 to 2695 ; and Phipson's Evidence, p. 19, were referred to.

As to how far a Judge can import his personal knowledge see Woodroffe's Evidence, 9th Ed., p. 485 ; Sarkar's Evidence, 6th Ed., p. 516; *Lakshmayya* v. *Sri Raja Varadaraja Ap-parow Bahadur*(1).

The resolutions of Parliament have been sufficiently proved under s. 78. Section 78(2) is the appropriate provision in this case and not s. 78(4), though for the purposes of the argument it would not make any substantial difference. The reasons for applying s. 78(2) in this case are : (1) s. 78 is to be read in the light of s. 74 which defines public documents ; (2) s. 74(1) (*iii*) shows that a foreign country is contra-distinguished from British India or any other part of His Majesty's Dominions ; (3) a comparison of ss. 78(3) and 78(4) will show that the Acts of the Executive of a foreign country would not include proclamations, orders etc., issued by the Executive of His Majesty's Government in the United Kingdom : (4) s. 86 (marginal notes) also gives some indication as to what is meant by ' foreign ' in the Evidence Act. Hansard comes within the words of s. 78(2)—" copies purporting to be printed by order of the Government concerned ". Hansard is printed by authority of His Majesty's Stationery Office and therefore by order of the Government concerned : see also Evidence Act, 1845, and Documentary Evidence Act, 1882. For the history of Hansard, see Gilbert Campion's " Introduction to the Procedure of the House of Commons ". The expression " Journals " in s. 78 should be given a broad meaning.

Regarding the argument that the Defence of India Rules go beyond the scope of the Act, it is submitted that there is no substance in that point. Section 2(1) is wide enough to cover the rules in question. *Emperor* v. *Meer Singh*(2) ; *Ramanuja Ayyangar, In re*(3) ; *Rex* v. *Halliday*(4) ; and *Hodge* v. *The Queen*(5) were referred to.

(1) [1912] I. L. R. 36 Mad. 168, at p. 178, 180-181, 183-184.
(2) I. L. R. [1941] All. 617.
(3) I. L. R. [1941] Mad. 169.
(4) [1917] A. C. 260.
(5) [1883] 9 App. Cas. 117.

On the merits of the appeal, the Courts below have held that the speech offends against the Defence of India Rules and it is for the appellant to satisfy the Court that the High Court was wrong in the view that it took. It is true that a portion of the speech is missing but the point for consideration is whether or not there is enough of the speech before the Court to come to a finding that it offends against the law. The law we are concerned with is not the Indian Penal Code, but the Defence of India Act and the Rules made thereunder. The question is whether the appellant by making the speech complained of was guilty of doing a " prejudicial act " within the meaning of the Defence of India Rules or in other words whether the appellant by making the speech did something which was intended or was likely to bring into hatred or contempt or to excite disaffection towards His Majesty or the Government established by law in British India. Taking the speech as a whole, it is submitted that the High Court was right in the view it took that the speech offended against the law.

Sir Brojendra Mitter, A.-G. of India (*H. R. Kazimi* with him). It has long been recognized that the list in s. 57 of the Indian Evidence Act, 1872, is not exhaustive. Section 57 (1) should be given a liberal interpretation and not confined to the text of an Act. Act means an Act in force. The old form of the section, which has been adapted into the present form, expressly said so. Therefore, the fact whether an Act is in force or not is well within the scope of judicial notice. The Court should know or inform itself whether an Act is in force. The prosecution called upon the Court to take judicial notice of the fact that Resolutions of Parliament kept the Defence of India Act alive, and the relevant volume of Hansard was produced. The Court was satisfied. This is quite enough for the case. That section 57(1) should be liberally interpreted can be illustrated by the recognition, without proof, of the Declaration that India was at war with Germany, of the Proclamation of Emergency, of Notification bringing an Act into force, of Rules made under the Defence of India Act, and so on. These are all matters outside the text of the Act. There is no reason, therefore, why Resolutions of Parliament, which prolonged the proclaimed emergency and kept the Defence of India Act in force should not be similarly recognized, provided appropriate books are produced. The Act purports to be in force for the duration of the war and for six months thereafter. On the raising of the issue whether the Act was in force, it was the business of the Court to know whether it was in force or had lapsed. It was entitled to get the information from Hansard.

Secondly, the facts that there was a declaration of war by the Governor-General, that a Proclamation of Emergency

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was issued, that, as a consequence, legislative power in India was centralized and the Defence of India Act was passed and that Parliament, by exercise of the statutory function under s. 102 of the Constitution Act, passed Resolutions approving the Proclamation, are all matters of public history which a future historian may record. Public history should not be limited to ancient history. Hence Courts should take judicial notice, under s. 57, of these matters of public history.

Thirdly, Government has, from time to time, been making Rules under the Defence of India Act. These are official acts and Courts should presume, under s. 114, Evidence Act, that such official Acts have been regularly performed. They could not be regularly performed if Parliament had not passed the Resolutions. In the absence of evidence to the contrary, the presumption stands. Hence no proof of the Resolution is necessary.

Aswini Kumar Ghose in reply.

Cur. adv. Vult

The Judgment of the Court was delivered by

GWYER C. J.—In this case the appellant was convicted by the Additional Chief Presidency Magistrate at Calcutta on the 21st of July, 1941, of offences under sub-paragraphs (*e*) and (k) of paragraph (6) of Rule 34 of the Defence of India Rules, and was sentenced to be detained till the rising of the Court and to pay a fine of Rs. 500, and in default to undergo six months' rigorous imprisonment. This conviction and sentence was upheld on appeal by the High Court, and the appellant now appeals to the Federal Court. He has taken a number of points in his appeal, but those argued before us were only three in number. There was first of all a constitutional point, secondly, a point on the law of evidence, and lastly, the point whether the speech which formed the basis of the charge against him justified a conviction at all. The last two matters would not ordinarily be within the competence of this Court to determine ; but, since a certificate has been given by the High Court under s. 205 (1) of the Constitution Act, the appellant is entitled with the leave of this Court to raise any point in his own defence.

The constitutional matter is of such minute dimensions as not to be readily discerned ; but, if we have been able to understand it, it is this. By s. 102 of the Constitution Act, if the Governor-General has issued a Proclamation declaring that a grave emergency exists, whereby the security of India is threatened, whether by war or internal disturbance, the Federal Legislature has power to make laws for a Province or any part thereof with respect to any of the matters enumerated in the Provincial Legislative List. Such a Proclamation was in fact issued by His Excellency on Sep-

tember 3rd, 1939, on receipt of information from His Majesty's Government in the United Kingdom that a state of war existed between His Majesty and Germany ; and on September 29th, 1939, the Defence of India Act, 1939(1), was enacted. Before that date however the Governor-General had promulgated the Defence of India Ordinance, 1939, under the powers given him by s. 72 of the former Government of India Act, one of the sections of the Act continued for the time being by s. 317 and the Ninth Schedule of the present Act. An Ordinance promulgated under this power ceases to operate at the expiration of six months from its promulgation ; but in the present case it was superseded by the Act to which reference has been made ; and s. 21 of that Act provided that any rules made in exercise of any power conferred by or under the Ordinance should be deemed to have been made in exercise of powers conferred by or under the Act, as if the Act had commenced on September 3rd, 1939. The Defence of India Rules therefore, though originally made under powers conferred by the Ordinance, have now been given statutory authority ; and it was under those Rules that the appellant was convicted.

It will be observed that s. 102 of the Constitution Act confers powers upon the " Federal Legislature ", which has not yet come into existence. Section 316 of the Act however provides that during the transitional period the powers conferred by the provisions of the Act for the time being in force on the Federal Legislature shall be exercisable by the " Indian Legislature ", and that accordingly references in those provisions to the Federal Legislature and Federal laws are to be construed as references to the Indian Legislature and laws of the Indian Legislature. The " Indian Legislature " thus referred to is the Indian Legislature constituted under the last Government of India Act, the provisions of which relating to the Indian Legislature are also among the provisions continued by s. 317 and the Ninth Schedule of the Constitution Act until the Federation of India contemplated by the Act comes into existence. The appellant, as we understand it, says that, since s. 316 does not in terms refer to s. 102 of the Constitution Act, and the powers conferred by s. 102 can only be enacted by the Federal Legislature, the Defence of India Act, 1939, and as a necessary consequence all rules made under it, are *ultra vires* the present Indian Legislature. We confess that we are totally unable to appreciate the appellant's contention, unless it be that the powers conferred by s. 102 are powers of a special kind, as indeed in a sense they are, to which the general provisions of s. 316 cannot be intended to apply ; or that the reference in s. 316 to the powers conferred by " the provisions of this Act for the time being in

(1) Cetrl Act No. XXXV of 1939.

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force " must be read as excluding powers which only come into existence after the issue of a Proclamation of Emergency ; but s. 316 is in our opinion quite unambiguous, and we have no doubt that the legislative powers conferred by s. 102 are properly exercisable by the existing Indian Legislature.

There was also a suggestion that, even if Parliament had approved the Proclamation on the first occasion, a further Proclamation was required after the lapse of another six months. Counsel for the appellant endeavoured to support this suggestion by references to ss. 43, 89 and 93 of the Act, which deal with a totally different subject-matter, and even by a reference to the provisions of the United Kingdom Defence of the Realm Act which relate to the date on which that Act comes to an end. There is no substance of any kind in the suggestion ; and the sections of the Act cited in support of it, and still more the United Kingdom Act, are utterly irrelevant.

The appellant's next contention involves a question of the law of evidence. A Proclamation of Emergency issued under s. 102 ceases to operate at the expiration of six months, unless before the expiration of that period it has been approved by Resolutions of both Houses of Parliament. The Proclamation was, as we have said, issued on September 3rd, 1939, and it would therefore have ceased to operate on March 3rd, 1940, unless before that date Parliament had approved it ; and, if that approval had been withheld, the result would have been that any law made by the Legislature which the Legislature would not have been competent to make but for the issue of the Proclamation, would have ceased to have effect on the expiration of a period of six months after the Proclamation had ceased to operate, that is to say, on September 3rd, 1940, except as respects things done or omitted to be done before the expiration of that period : s. 102 (4) . The appellant made the speech complained of on April 13th, 1941, long after the Defence of India Act would have ceased to have effect, if the Proclamation of Emergency had not in fact been approved by Parliament.

The appellant says that the Proclamation was never approved by Parliament, or, alternatively, that the prosecution never gave legal proof of that approval ; and that therefore he was wrongly convicted. It is, at any rate today, common knowledge that Parliament did approve the Proclamation ; but if legal proof of that approval was necessary at the time to establish that an offence had been committed, the appellant is of course entitled to complain of the omission to give it, and to assert that no proper proof of his guilt was ever tendered to the Court which convicted him.

The relevant volumes of the " Parliamentary Debates ", as they are called, the official report of the debates in Parlia-

ment, were in fact produced to the High Court and accepted by them as proof that Parliament had passed the necessary Resolutions ; but the appellant contends that this proof was not adequate, and that only copies of the official Journals of the two Houses will suffice. The Advocate-General of Bengal contends in the first place that the Court are entitled, and indeed ought, to take judicial notice of the fact that the Resolutions were passed ; and that in any event the volumes of the Parliamentary Debates were all that was necessary in the way of legal proof. This then is the question of law which we have now to consider.

It is to be observed that though the question is one of the proper method of proving an event which occurred in England, the law applicable is the Indian, and not the English, law of evidence. The Indian Evidence Act, 1872(1), is no doubt mainly based upon the English law ; but it is by no means an exact reproduction of it. The English law of evidence also has never been codified, and judicial decisions may well have developed or expanded some of its principles since 1872. Caution is therefore necessary in the application of English authorities on the subject in an Indian Court.

In our opinion the volumes of the official Parliamentary Debates afforded adequate legal proof of the passing of the two Resolutions by the Houses of Parliament. Section 78 of the Indian Evidence Act sets out certain categories of public documents and the manner in which they may be proved. The first four categories (as amended by the Adaptation of Indian Laws Order, 1937) are these :— " (1) Acts, orders or notifications of the Central Government in any of its departments, or of any Provincial Government or any department of any Provincial Government " ; " (2) proceedings of the Legislatures ", which may be proved ' by the journals of those bodies respectively, or by published Acts or abstracts, or by copies, purporting to be printed by order of the Government concerned " ; " (3) Proclamations, orders or regulations issued by Her Majesty or by the Privy Council, or by any department of Her Majesty's Government "; " (4) The Acts of the Executive or the proceedings of the Legislature of a foreign country ", which may be proved " by journals published by their authority, or commonly received in that country as such ", and in certain other ways not here material. In our opinion the proceedings of Parliament fall under either the second or fourth of the categories set out above. It may be said that the reference in the second category to proceedings of " the Legislatures ", following immediately upon the first category which is confined to acts, orders or notifications of Governments in British India, is to be taken as a reference to the Legislatures of British India

(1) Central Act No. I of 1872.

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only. We find it difficult however to believe that s. 78 excludes any reference whatsoever to the proceedings of Parliament, especially when the executive acts of the Government of the United Kingdom are given a category to themselves, and we should find ourselves compelled, if we adopted that construction, to hold that proceedings in Parliament fell into the fourth category, that is to say, " the proceedings of the Legislature of a foreign country "; but it would perhaps be even more difficult to suppose that Parliament can have been so described by the Indian Legislature in 1872. The explanation may be that " the legislatures " to which the second category refers are intended to include all the legislatures which have the power to make laws for British India or for any part thereof ; but we have no doubt that the present case must fall within either the one category or the other.

The official Parliamentary Debates are not the Journals of the two Houses of Parliament in the narrower sense of that expression. Each House publishes its own Journals, which contain a formal record of the business done and may be described as the minutes of their proceedings ; and these Journals may in an English Court be proved by copies thereof purporting to be printed by the printers to the Crown or by printers to either House of Parliament: Evidence Act, 1845(1), s. 3 (the Documentary Evidence Act, 1882(2), puts documents purporting to be printed under the superintendence or authority of His Majesty's Stationery Office on the same footing as documents purporting to be printed by the Government printer, or the King's printer, or the printer authorized by His Majesty, or otherwise under His Majesty's authority). The expression " journals " however in s. 78 of the Indian Act is plainly to be given a broad and general meaning, since it is not confined to the Journals of the Houses of Parliament, but includes journals of other legislatures also ; and we see no reason therefore why, in its application to Parliament, it should necessarily be confined to the particular kind of journals of which we have spoken above, if it can be shown that the Houses have authorized the publication of other official records of their proceedings and that these records are printed " by order of Government ". We cannot doubt that the official Parliamentary Debates are such a record. Up to 1909 the publication of the debates in Parliament was the private venture of one Hansard (though assisted in later years by a Government grant) ; but in 1909 it was taken over from the original Hansard or his successors in title, and the volumes have ever since been published under the authority of the two Houses and are printed at the present day by His Majesty's Stationery Office. An account of the

(1) 8 & 9 Vict. C 113. (2) 45 and 46 Vict. C. 9.

matter will be found in " An Introduction to the Procedure of the House of Commons ", by Sir Gilbert Campion, the present Clerk of the House, at pp. 72-3. There is, so far as we can ascertain, nothing, or practically nothing, in the Journals of each House which does not appear in the Parliamentary Debates, the difference between the two being that the latter include the text of the speeches made by members of the Houses. We have ascertained by inquiry from the Legislative Department of the Government of India that the Official Reports of the Council of State and of the Legislative Assembly, which follow very closely the form and manner of presentation of the official Parliamentary Debates in England, are the only record of the proceedings of the two Houses, no other record similar to that of the Journals of the two Houses of Parliament in England being made. The proceedings of the Indian Legislature could clearly be proved by tendering in evidence copies of these Official Reports ; and we can see no reason why the proceedings of Parliament cannot be proved by an exactly similar English publication, issued with a similar authority.

Having regard to the view which we take on this point, we need not consider the other contention urged by the Advocate-General of Bengal, that the passing of the two Resolutions by Parliament was a matter of which the Court were entitled to take judicial notice. In " *The Englishman* " *Ltd.* v. *Lajpat Rai*(1) the question at issue was concerned with the proof of debates or speeches in the House of Commons, not with proof of resolutions passed by the House itself, and Hansard was still an unofficial publication, which had not yet been taken over by Parliament. Reference was made to this case in the course of the argument before us ; but in the circumstances it is not necessary to discuss it, though we are not to be taken as necessarily agreeing with all the observations in the judgments of the learned Judges who decided it.

The last question we have to determine is whether the appellant committed an offence at all. By Rule 38 (1) (*a*) of the Defence of India Rules " no person shall without lawful authority or excuse do any prejudicial act ". These acts are defined in Rule 34 (6) of the Defence of India Rules, and the prejudicial acts which the appellant is said to have done are those described in sub-paragraphs (e) and (k), that is to say, acts which are intended or are likely—

> "(*e*) to bring into hatred or contempt, or to excite disaffection towards, His Majesty or the Crown Representative or the Government established by law in British India or in any other part of His Majesty's dominions ", or
>
> " (*k*) to influence the conduct or attitude of the public or of any section of the public in a manner likely to be prejudicial to the defence of British India or the efficient prosecution of war ".

(1) [1912] I. L. R. 37 Cal. 760.

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It will be observed that the first of these acts is described in precisely the same language as is used to describe the offence of sedition in s. 124A of the Indian Penal Code (1). We were invited to say that an offence described merely as a " prejudicial act " in the Defence of India Rules ought to be regarded differently from an offence described as " sedition " in the Code, even though the language describing the two things is the same. We cannot accept this argument. Sedition is none the less sedition because it is described by a less offensive name ; and in our opinion the law relating to the offence of sedition as defined in the Code is equally applicable to the prejudicial act defined in the Defence of India Rules. We do not think that the omission in the Rules of the three " Explanations " appended to the section of the Code affects the matter. These are added to remove any doubt as to the true meaning of the Legislature ; they do not add to or subtract from the section itself ; and the words used in the Rules ought to be interpreted as if they had been explained in the same way.

" The words, as well as the acts, which tend to endanger society ", it has been observed, " differ from time to time in proportion as society is stable or insecure in fact, or is believed by its reasonable members to be open to assault. In the present day meetings and processions are held lawful which 150 years ago would have been deemed seditious, and this is not because the law is weaker or has changed, but because, the times having changed, society is stronger than before " (Lord Summer in *Bowman* v. *Secular Society, Ltd.*(2). The right of every organized society to protect itself against attempts to overthrow it cannot be denied ; but the attempts which have seemed grave to one age may be the subject of ridicule in another. Lord Holt was a wise man and a great Judge ; but he saw nothing absurd in saying that no Government could subsist, if men could not be called to account for possessing the people with an ill opinion of the Government ; since it was necessary for every Government that the people should have a good opinion of it *The Queen* v. *John Tutchin*(3). Hence many judicial decisions in particular cases which were no doubt correct at the time when they were given may well be inapplicable to the circumstances of today. The time is long past when the mere criticism of governments was sufficient to constitute sedition, for it is recognized that the right to utter honest and reasonable criticism is a source of strength to a community rather than a weakness. Criticism of an existing system of government is not excluded, nor even the expression of a desire for a different system altogether. The language of s. 124A of the Penal Code, if read literally, even with the

(1) Central Act No. LXV 1860. (2) [1917] A. C., 406, at p. 466.
(3) [1704] 14 How. St. Tr. 1905.

explanations attached to it, would suffice to make a surprising number of persons in this country guilty of sedition ; but no one supposes that it is to be read in this literal sense. The language itself has been adopted from English law, but it is to be remembered that in England the good sense of jurymen can always correct extravagant interpretations sought to be given by the executive government or even by Judges themselves ; and if in this country that check is absent, or practically absent, it becomes all the more necessary for the Courts, when a case of this kind comes before them, to put themselves so far as possible in the place of a jury, and to take a broad view, without refining overmuch, in applying the general principles which underlie the law of sedition to the particular facts and circumstances brought to their notice.

What then are these general principles ? We are content to adopt the words of a learned Judge, which are to be found in every book dealing with this branch of the criminal law : " Sedition...embraces all those practices, whether by word, deed or writing, which are calculated to disturb the tranquillity of the State and lead ignorant persons to subvert the Government. The objects of sedition generally are to induce discontent and insurrection, to stir up opposition to the Government, and to bring the administration of justice into contempt ; and the very tendency of sedition is to incite the people to insurrection and rebellion. Sedition has been described as disloyalty in action, and the law considers as sedition all those practices which have for their object to excite discontent or disaffection, to create public disturbance, or to lead to civil war ; to bring into hatred or contempt the sovereign or Government, the laws or the constitution of the realm and generally all endeavours to promote public disorder " : Fitzgerald J. in R. *v. Sullivan*(1). It is possible to criticize one or two words or phrases in this passage : "loyalty " and " disloyalty ", for example, have a non-legal connotation also, and it is very desirable that there should be no confusion between this and the sense in which the words are used in a legal context ; but, generally speaking, we think that the passage accurately states the law as it is to be gathered from an examination of a great number of judicial pronouncements.

The first and most fundamental duty of every Government is the preservation of order, since order is the condition precedent to all civilization and the advance of human happiness. This duty has no doubt been sometimes performed in such a way as to make the remedy worse than the disease ; but it does not cease to be a matter of obligation because some on whom the duty rests have performed it ill. It is to this aspect of the functions of government that in our opinion the offence of sedition stands related. It is the answer of the

(1) (1868) 11 Cox. C. C. 44, at p. 45.

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State to those who, for the purpose of attacking or subverting it, seek (to borrow from the passage cited above) to disturb its tranquillity, to create public disturbance and to promote disorder, or who incite others to do so. Words, deeds or writings constitute sedition, if they have this intention or this tendency; and it is easy to see why they may also constitute sedition, if they seek as the phrase is, to bring Government into contempt. This is not made an offence in order to minister to the wounded vanity of Governments, but because where Government and the law cease to be obeyed because no respect is felt any longer for them, only anarchy can follow. Public disorder, or the reasonable anticipation or likelihood of public disorder, is thus the gist of the offence. The acts or words complained of must, either incite to disorder or must be such as to satisfy reasonable men that that is their intention or tendency.

Such appear to us to be the broad principles underlying the conception of sedition as an offence against the State; and it is obvious that occasions may arise when it will not be easy to draw a distinction between certain aspects even of a constitutional agitation and acts which are admittedly seditious. The Courts however know no such thing as a political offence, as it is sometimes called, and must administer the law as they find it. There will always be borderline cases where the line between what is lawful and what is unlawful is hard to define; but we believe that, if the essential principles which we have sought to enunciate above are borne in mind, and if the Courts, as we have suggested, assume in part the functions of jurymen when they hear these cases, they will generally be able to come to a decision not only in harmony with the true principles of the law, but also not obnoxious to commonsense and the circumstances of the time. And in holding the scales evenly between Government and citizen they will be forgetful neither of the obligations of the one towards the public at large nor of the individual and private rights of the other; for the preservation of order is a thing in which all citizens have an interest no less than in the maintenance of freedom of speech and the right to criticise all matters of public interest.

Having thus stated what we conceive to be the principles of law applicable to the case, we turn now to the speech itself on which the appellant's conviction was based. It was delivered at a meeting held to commemorate an unhappy incident which occurred 23 years ago, and which was referred to in a manner not uncommon in utterances of this kind. But it is plain that the occasion was used by the speaker not so much to commemorate the incident in question as to launch an attack upon the then Fazlul Huq Ministry and the Governor of Bengal for their acts or omissions in the mattsr of the Dacca

riots. This was the main theme of the speech, which upbraided the Ministry for their alleged use or misuse of the Police forces, and the Governor himself for his alleged disregard of the special responsibility for the maintenance of law and order in the Province imposed upon him by the Constitution Act; and which demanded that Ministry and Governor should pay compensation to the sufferers at Dacca out of their own pockets. The High Court were impressed by a passage in which they say that the appellant "suggested to his audience that the Governor of Bengal in person and the Ministers of the Bengal Government were encouraging communal disturbances and were discouraging all persons who sought to put an end to communal disturbances" but, though we have searched diligently, we cannot find this passage. The appellant's complaint, as we read the speech, is that the Government took no steps, or took inadequate steps, because they were an inefficient Government, not because they were anxious for some reason or other themselves to promote communal riots and disturbances. It is true that in the course of his observations the appellant indulged in a good deal of violent language and seems to have worked himself up to such a state of excitement that the sequence of his argument is in places very difficult to follow. The speech was, we feel bound to observe, a frothy and irresponsible performance, such as one would not have expected from a member of the Bengal Legislature; but in our opinion to describe it as an act of sedition is to do it too great honour.

There is an English saying that hard words break no bones; and the wisdom of the common law has long refused to regard as actionable any words which, though strictly and literally defamatory, would be regarded by all reasonable men as no more than mere vulgar abuse. Abusive language, even when used about a Government, is not necessarily seditious, and there are certain words and phrases which have so long become the stock in trade of the demagogue as almost to have lost all real meaning. The speech now before us is full of them, and, if we hesitate to indicate those which we have in mind, it is only because we are unwilling to increase further the circulation of a debased or counterfeit currency. But we cannot regard the speech, taken as a whole, as inciting those who heard it, even though they cried "shame, shame" at intervals, to attempt by violence or by public disorder to subvert the Government for the time being established by law in Bengal or elsewhere in India. That the appellant expressed his opinion about that system of government is true, but he was entitled to do so; and his references to it were, we might almost say, both commonplace and in common form, and unlikely to cause any Government in India a moment's uneasiness. His more violent outbursts were directed against the then Ministry in

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Bengal and against the Governor in Bengal in his political capacity, but we do not feel able to say that his speech, whatever may be thought of the form in which it was expressed, exceeded the legal limits of comment or criticism.

We do not wish it to be supposed that we treat lightly the offence of sedition in the sense in which we have endeavoured to define it. It is a grave offence, a prosecution for which is a formidable weapon in the hands of a Government; but for that very reason it is all the more necessary to remember that opinions, and even the violent expression of opinions, do not necessarily fall within it. No doubt the occasion and circumstances of a speech are to be taken into consideration; a speech addressed to excitable and perhaps ignorant men may have results which would not follow in the case of an educated audience. We think that the appellant, as a member of an important Legislature, was under the greater obligation to choose his words with discretion, and though we do not think that his speech amounted to sedition, we do not say that it may not have been open to criticism on other grounds. Nor, we hope, are we exceeding our functions, if we observe that in grave times like the present, with the enemy at the gate, language which might not attract attention at other times may to-day or to-morrow bear a very different significance.

It only remains to say a few words about the alternative charge under sub-paragraph (*k*) of Rule 34 (6) of the Defence of India Rules. In the Judgment of the High Court there is no separate reference to this charge, or to that portion of the speech which can at all be said to fall under sub-paragraph (*k*), as distinguished from sub-paragraph (*e*), and the finding is limited to the offence under sub-paragraph (*e*). We are not able to say whether it is to be inferred from this omission that the learned Judges thought that the charge under sub-paragraph (*k*) was not sustainable or that they felt it unnecessary to deal with this part of the case in view of their confirmation of the conviction under sub-paragraph (*e*). As there was no conviction of the appellant by the High Court under sub-paragraph (*k*), the appellant's counsel did not deal with it when he opened the appeal before us. The Advocate-General of Bengal could of course have pressed the charge under this sub-paragraph as an alternative to the charge under sub-paragraph (*e*), but he too made no reference to it and did not invite us to convict the appellant under sub-paragraph (*k*). The Additional Chief Presidency Magistrate seems to have devoted his attention mainly to the question of "bringing upon the Government the hatred and contempt of the audience" and it is only towards the end of his Judgment that he mentions the passage in the speech which refers to the possibility of Germany and Japan dropping bombs on India. Even this

passage the Magistrate only interprets as further accentuating the feeling of hatred against the Government established by law and regards it as 'a language of disaffection'. It is difficult to read his judgment as discussing the charge under sub-paragraph (*k*) independently of the charge under sub-paragraph (*e*), or as recording a conviction of the appellant under sub-paragraph (*k*), apart from the conviction under sub-paragraph (*e*). In these circumstances we do not think it necessary or proper to deal with the charge under sub-paragraph (*k*).

Accordingly, having regard to the conclusion at which we have arrived with regard to the conviction under sub-paragraph (*e*), we are of opinion that the appeal should be allowed and the appellant acquitted.

Appeal allowed.

Agent for Appellant: *Ganpat Rai.*
Agent for Respondent: *B. Banerji.*
Agent for the Government of India: *K. Y. Bhandarkar.*

MEGH RAJ AND ANOTHER

v.

ALLAH RAKHIA AND OTHERS.

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MEGH RAJ AND OTHERS

v.

BAHADUR AND OTHERS.

[SIR MAURICE GWYER, C. J., SIR SRINIVASA VARADACHARIAR AND SIR MUHAMMAD ZAFRULLA KHAN, JJ.]

Punjab Restitution of Mortgaged Lands Act, 1938 (Punjab Act No. IV of 1938)—Validity and operation of—Interpretation of entry No. 21 in List II of the Seventh Schedule to the Government of India Act, 1935, and entries Nos. 7, 8 and 10 in List III—Costs of intervener.

Punjab Act IV of 1938 sets aside the normal procedure for redemption in the case of mortgages of land with possession effected before 8th June, 1901, and subsisting at the date of the Act, and authorizes the mortgagor or his representatives to apply to the Collector for restitution of possession of the mortgaged land. The Collector is empowered to extinguish the mortgage and to direct restitution of possession, if he finds that the mortgagee has while in possession enjoyed benefits equalling or exceeding in value twice the amount of the sum originally advanced under the mortgage. Where the value of the benefits enjoyed is found to be less than twice the sum advanced, possession is to be returned on payment of compensation to the mortgagee according to a scale fixed in the Act. The Act debars the civil court from entertaining any claim to enforce any right under a mortgage declared extinguished under the Act or to question the validity of any proceedings under the Act.

Certain mortgagors having presented petitions to the Collector under the Act, the mortgagees sued for a declaration of their right to continue in possession and for an injunction restraining the mortgagors from prosecuting their petitions before the Collector, the main ground urged in the plaint being that Punjab Act IV of 1938 was *ultra vires* the Provincial Legislature: