SEDITIOUS OFFENCES

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WITH AN INTRODUCTORY NOTE BY
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INTRODUCTORY NOTE.

Socialism is above all a challenge to the existing system of property. If its theses are translated into facts, it is incompatible with the existing distribution of wealth, the existing industrial technique, and the existing leisure-class. Propaganda on its behalf, seemed, when the Fabian Society was founded, an amiable weakness to which no attention need be paid. There was little desire, because the existing order seemed so secure, in any serious way to molest its exponents. To-day the situation has changed. Socialism is the recognised alternative to Capitalism, and the latter system has now no sure prospect of survival for any long period outside the United States. It has been demonstrated in Russia that revolutionary communism may, at a heavy price, be imposed upon a people by force. Vistas such as these have aroused deep indignation. They threaten an existing order as Lincoln’s decision to relieve Fort Sumter threatened the security of the Southern slave-owners. The problem for those who live by the present system is to decide upon the means by which their defence is to be organised.

There is in the State a party, of which Sir William Joynson-Hicks seems the accredited representative, who insist that criticism of the existing order is tantamount to original sin. They are prepared to invoke against it the musty legal weapons of the panic induced by the French Revolution, and to imprison where they are unable to argue effectively. Englishmen in the past have held dearly their right to free discussion; and a long experience of its benefits has made them a little forgetful of the tenuous legal basis upon which it rests. It has seemed necessary to the Fabian Society to recall the character of the present law, and the points in which reforms seem essential. Since the Society stands for a freedom of opinion limited only by the duty of good manners to your neighbour, on the one hand, and the contingency of imminent disorder as a direct result of speech on the other, the tendencies which Sir William Joynson-Hicks embodies seem to it at once unfortunate and retrograde.

For they are the natural weapons of a panic, and they have not even the merit of originality. Every critical age of history has seen their resurrection, and their failure, just as the succeeding period of calm has invariably condemned their use. No one now
defends the policy against supposed sedition into which the ignorant rhetoric of Burke tempted his terrified generation. No one now supposes that the calculated oppression of Pobiedonostev was any answer to the grievances he disliked to hear. Bismarck’s gaols could never imprison the principles of Socialism. The House of Commons that expelled John Wilkes only announced its own degradation.

And this for the simplest of reasons. No social order is a final arrangement, and criticism is the only avenue of change. But in their terror, the party of inaction does not examine that sober-minded induction from experience. For them, to admit that grievances are real is to open the flood-gates of revolution. They do not believe in solution by discussion. For them dissent and disorder are corollaries. A spasmodic outbreak of violence, born of a sudden fit of a passing unwisdom, becomes for them the index to a deep and calculated resistance to authority; and, inevitably, they charge its presence to the political philosophy they happen to dislike. They do not remember, as Burke so wisely pointed out, that “the people have no interest in disorder.” They insist that the error of some is the crime of all. To yield to it at once becomes a weakness unworthy of a powerful nation. Every measure at all calculated to allay unrest becomes at once untimely. The fear of revolution is harped upon unceasingly. Every new plan is represented as its precursor, and the final assault on society is predicted if men stay to examine its substance. The theme and its temper are well suited to men devoid of ideas. They are thus enabled to divert attention from the realities of grievance to the fears of the unknown which the admission of grievance brings into perspective. They play upon these fears to use the oppressive instruments which, as they think, prevent the discussion of their own ineptitude.

It yet remains true that thought cannot be broken by fear and its instruments; the most they can do is to drive it underground. No one will believe in the existing order, save those who have an interest in maintaining it, unless it can answer by argument the criticism of its opponents. Otherwise, assuredly, it represents a *credo quia absurdum* which those only will accept whom it pays to do so. It is this, above all, which makes inexpedient the attempt legally to classify ideas as right and wrong. Every social order begins to court destruction exactly where it postulates its own infallibility. Legislation may drive the timid to acquiescence, but it drives the bold to desperation.

It does even more. For law involves the use of the Courts and its operation gives to ideas a currency they could rarely hope otherwise to attain. The folly of every intellectual censorship lies exactly in this, that it arouses in us the natural curiosity for the
forbidden. If the clergy had left Darwin alone, it would have been unnecessary for Huxley to purvey his doctrine in popular form. If Tsarism had not penalised the theory of constitutional government, it would not have led directly to the triumph of Lenin.

These are the maxims of elementary political prudence. But there is a wider case for their observance which, in the present temper of the time, may too easily escape our notice. What we fail consistently to realise is how much the overwhelming force of social habit weighs against novelty, however right or true. We live by our routines. We believe firmly in that to which we have grown accustomed long after it has been found to lack foundation in the logic of fact. It cannot be otherwise. The work of discussion is so slow that it can only transform piecemeal the habits of our social inheritance; it has to eat its way through an iron wall of prejudice and inertia. Yet few governments have the wisdom to allow their principles to be discussed; they feel, like General Cavaignac, that they are lost if they have to justify themselves. Yet that is to forget, in turn, that their principle cannot face discussion, and that discussion rarely turns to action unless it reflects some neglected human need.

The real argument, in fact, against the temper of Sir William Joynson-Hicks and his like, is that only a wide toleration can give us an accurate index to the desires of men. And, after all, at least in a democratic society, the test of wise government is responsiveness to those desires. If we allow that type of person to prevail in government, who has strong opinions, and finds the engines of the State the easiest means of propagating them, we either produce a tragic inertia or a violent revolution. In every society there are one-idea'd men who, posing as its saviours, develop a mania for persecution. If they make use of the power of the State, they either destroy the honesty of their opponents or feed higher the flames of vengeance. But they have nowhere produced conviction. Even, indeed, if their success could be assumed, it would be the success of intellectual starvation. It is the failure of such men, on the grand scale, which produced the Russian Revolution.

The only safeguard of social structure is, in short, its ability to admit criticism. We must cease to think that wisdom is permanently resident in any group of men or principles. That is the natural desire of little minds tired after a great effort of will, and terrified at the forces that effort has called into being. Truth, like Art, is a matter of dirt and sweat. It comes only from the clash of innumerable men and countless opinions. Some fragment may come from a West Indian orphan who finds his way to the staff of a revolutionary army; another from a half-starved German who
is driven like a hunted deer from the capitals of Europe. The vision is never whole, nor is it immediate. It never comes, even in the most inchoate form, save when the mind is free to play untrammed with the facts of life.

A temper of persecution may delay for a moment the organisation of forces hostile to the present system; assuredly it rather guarantees than prevents their ultimate onset. It brings to the army of the discontented converts innumerable whom it might not otherwise win. It gives fame to obscurity and martyrdom to the undeserving. It is a blind weapon, which strikes without knowledge. Nor is that all. An oppressed cause always solicits support from men of undefined belief who yet care for freedom. Communism in England, for example, makes its way less because of what is said on its behalf than because Sir William Joynson-Hicks has no answer to its exponents save prison. The cultivation of openmindedness is the only way to temper by wise moderation the victory of extremes. An epoch of panic does not pass into the calm of co-operative endeavour by a blind refusal to admit the existence of wrong or by persecution of those who seek, however unwisely, solutions we think mistaken. Thought is the one weapon of tried utility in a difficult and complex world; without it, we are as sailors on an uncharted sea. But thought has no soul save where it has freedom. Its conquest and preservation are the central human task. We cannot abandon it to men who are ignorant of its meaning and careless of its possibilities.

Harold J. Laski.
SEDITIOUS OFFENCES

By E. J. C. Neep, Barrister-at-Law.

I.

It must be emphasised at the outset that the word Sedition as used and understood by the popular mind in connection with the matters to be discussed in this tract has no legal significance. The law knows nothing of Sedition. In the words of Mr. Justice Stephen (1): “As for Sedition itself, I do not think that any such offence is known to the English Law.” Instead, it prefers to classify those offences against internal tranquility which are not accompanied by, or which do not lead to, open violence, and which are loosely described as Sedition, as Seditious Offences. In this way the general heading is found to be divisible into three groups, namely:

Seditious Words,
Seditious Libels, and
Seditious Conspiracies,

according as to whether the Seditious Intent—the essential part of the crime—manifests itself by means of the spoken word, the written word, or simply by a conspiracy on the part of certain persons. But in each case it is presumed that dissatisfaction exists with the Government of the day, together with a desire to censure those responsible for its carrying on; and the actual offences consist in the display of such dissatisfaction through one of the above-mentioned channels.

The accepted legal definition as it at present stands in relation to these three heads and to the question of what is seditious intention is as follows:

(1) Seditious Words and Libels. (2)

“Everyone commits a misdemeanour who with a seditious intention speaks any words or publishes anything capable of being a libel. If the matter published consists of words spoken, the offence is called the speaking of Seditious Words. If the matter so published is contained in anything capable of being a libel,* the offence is called the publication of a Seditious Libel.”

(2) Stephen’s Digest of the Criminal Law, Article 96.

* The words, “capable of being a libel,” refer to the writing, caricature, &c., which in law is an essential ingredient of libel.
(2) **Seditious Conspiracy.**

"Everyone commits a misdemeanour who agrees with any other person or persons to do any act for the furtherance of any seditious intention common to both or all of them. Such an offence is called a Seditious Conspiracy."

(3) **Seditious Intention.**

"A Seditious Intention is an intention to bring into hatred or contempt, or to excite disaffection against the person of His Majesty, his heirs or successors, or the Government and Constitution of the United Kingdom, as by law established, or either House of Parliament, or the administration of justice, or to excite His Majesty’s subjects to attempt otherwise than by lawful means, the alteration of any matter in Church or State, by law established, or to incite any person to commit any crime in disturbance of the peace, or to raise discontent or disaffection amongst His Majesty’s subjects, or to promote feelings of ill-will and hostility between different classes of such subjects.

An intention to show that His Majesty has been misled or mistaken in his measures, or to point out errors or defects in the Government or constitution as by law established, with a view to their reformation, or to excite His Majesty’s subjects to attempt by lawful means the alteration of any matter in Church or State by law established, or to point out, in order to their removal, matters which are producing, or have a tendency to produce, feelings of hatred and ill-will between classes of His Majesty’s subjects, is not a Seditious Intention."

(4) **Presumption as to Intention.**

"In determining whether the intention with which any words were spoken, any document was published, or any agreement was made, was or was not seditious, every person must be deemed to intend the consequences which would naturally follow from his conduct at the time, and under the circumstances in which he so conducted himself."

This position of the law has only been reached as the result of an historical development extending over a long period of time and influenced by a variety of causes; and which, in its final analysis, has oscillated between two extreme points of view as to the proper relation of a ruler to his subjects. On the one hand there have been those who have regarded the ruler as being always, in every way, superior to, and above and beyond, his subjects. In which case, even in the event of a mistake made by him, the subject may at

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(1) Stephen’s *Digest of the Criminal Law*, Article 97.
(2) *Ibid* Article 98.
the most demonstrate such a lapse only with the utmost respect and with no censure aimed at lessening the existing authority. On the other hand, a rival school of thought has regarded the ruler simply as an agent or servant; presupposing, therefore, an inherent right of criticism; and reserving, by the very nature of the definition, a right to depose him or to remodel his household, i.e., the constitution, as and when it may be desirable. Clearly, in this latter case, there can be no such things as Seditious Offences in the sense in which the term is understood to-day.

In the result, the present state of the whole question represents a compromise between these two extremes, and a compromise which is typically English; but at the same time, as will be seen subsequently, it has not been reached without a vast expenditure of blood and tears, of oppression and cruelty, and of bitter and intense suffering. The very names in the reported cases—names like Paine, Cobbett, Burdett, Horne Tooke, or O'Connell—fill the mind with thoughts of some of the blackest days in this country's history, and speak still of the struggle which has taken place to obtain even the existing position; and with the memory of another case in our own time still fresh it must be obvious that the end, the position of final development, is not, and cannot be, yet.

II.

There is no date at which Seditious Offences came suddenly into being. Their origin is obscure; but it seems probable that they were developed in the first place by the extension of the then existing law along two separate lines, and that these two independent developments were subsequently blended into one. These two sources were Treason and Libel. Treason, from a very early date—certainly from the Statute 25 Edw. III. c. 2—was a statutory offence, and, in addition, required the proving by two witnesses of an overt act. As a consequence, a number of borderline cases began almost immediately to appear—generally where violent language was uttered against the king—which in spite of all the efforts of the lawyers could not be squared with the requirements of the statute. These cases were known as "Near Treason"; and to deal with possible contingencies of this nature it was commonly the practice in early days to make express statutory provision. For this reason many of the early cases of seditious words are found to be classed as "Near Treason," and convictions, as will be seen, were at first almost invariably obtained under special statutes. In this way the connection with Treason can be traced well into the 17th century.

The second line of development, namely Libel, occurred through the early subdivisions of libels into those uttered against ordinary persons and those uttered against great men and Magistrates.
This differentiation was well recognised by Coke and was subsequently acted upon by the Star Chamber. Only by the end of the 17th century were Seditious Offences, as we understand them to-day, a clearly defined class of crime; and only then can they be regarded as having shaken themselves free from the ordinary forms of libel on the one hand, and from those hybrid offences known as Near Treasons on the other.

The first mention in a vague kind of way of Seditious Libel is by Bracton (1) in a general enumeration of crimes and punishments at the beginning of his book De Corona, speaking of: "facia puniuntur . . . ut falsa et libelli famosi."

The next definite instance of a quasi—Seditious Offence is a provision of the Statute of Westminster(2):

"Forasmuch as there have been often times found in the country (devisers) of tales whereby discord or occasion of discord has many times arisen between the king and his people or great men of the realm, for the damage that hath or may therefore ensue, it is commanded that henceforth none be so hardy to cite or publish any false news or tales whereby discord or occasion of discord or slander may grow between the king and his people or the great men of the realm; and he that doth so shall be taken and left in prison until he hath brought him into the Court which was the first author of the tale."

There are no reports of any convictions under this Act.

The first reported case which is in any way a seditious offence is Udall’s case (3) in the reign of Elizabeth. Here, Udall, a Puritan, was indicted for "That he . . . did maliciously publish a slanderous and infamous libel against the Queen’s majesty, her Crown and dignity." He was tried under 23 Eliz. c 2 (1581), which made it a felony "to devise, write or print or set forth any book, &c., to the defamation of the Queen or the stirring or moving of any rebellion."

—A very typical example of the way in which Seditious Offences were at first based on particular statutes. The only question left to the jury to decide at the trial was the mere technical one as to whether publication had taken place or no; the judge telling them that the law was clear. Eventually they brought in a verdict of guilty, but only after repeated pressure from the judge. This is the first indication of the struggle which was afterwards to take place throughout the 18th century and right down to the passing of Fox’s Libel Act, as to the true scope and function of the jury in these cases; the judges continually contending for the sole right to decide questions of law. Not until the passing of Fox’s Act in

(2) (1275) 3 Edw. I. c. 34.
(3) 1 St. Tr. 1271.
1792 was the whole position made clear and given statutory definition, and only then was the right of juries to consider the whole question of intent in respect of Seditious Offences made absolute.

Some few years later, Coke, in his passage "de famosis libellis" (1) stated the law as it then stood in respect to libel with reference to its bearing on these particular offences. He there defined Libels as falling into two classes—against private persons, and against "Magistrates or public persons," and remarked "if it (the libel) be against a magistrate or other public person, it is a greater offence." He also pointed out that it was immaterial from the legal point of view whether the Libel was in fact true or false—in other words that truth was no defence.

It was upon this definition that the Star Chamber acted until its abolition, and the King's Bench during the late 17th and the whole of the 18th century; and in fact this is actually the only definition of a Seditious Libel until Fox's Libel Act of 1792.

In 1615, in St. John's Case (2), the Star Chamber imposed a fine of £5,000 for words spoken against the King. This is a good example of the connection between Seditious Words and Treason and the late date at which it is still traceable, for the words spoken, which concerned a benevolence, were expressly designated by the Court as being "Near to Treason."

It is to be noted that there was no jury in the Star Chamber; the Court decided both Law and Fact. The importance of this lies in the fact that when the Star Chamber was abolished and Seditious Offences were dealt with by the King's Bench Courts, it was this which fortified the judges in their insistence that in charges involving Seditious Offences the scope of the jury ought to be limited strictly to questions of fact.

During the Commonwealth and immediately after the Restoration trials for Seditious Offences continued to come before the Courts, but were based chiefly on particular Statutes. In R. v. Field (3) a distinct connection between seditious words under the modern definition and Treason is still discernable. Even at this late date Field was indicted under a Statute (as in Udall's Case) of 13 Car. 2 for using "treasonable words" in connection with religion. He was fined £500.

The functions of juries as interpreted by the Bench in these cases at the close of the 17th century are clearly stated in Barnardiston's Case. (4) In 1664 Sir Samuel Barnardiston was tried

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(1) Vol. iii., p. 254.
(2) Noy. 105.
(3) (1662) 1 Sid. 69.
(4) 9 St. Tr. 1334.
on an information filed by the Attorney General for publishing a
Seditious Libel in the form of four private letters dealing with
gossip and rumours of the day. Lord Chief Justice Jeffries who
tried the case told the jury that they had to deal simply with a
question of fact: “Were the letters written?” If so, they were
(in Jeffries’ opinion, which was not for the jury to question), “factious,
seditious and malicious.” He, therefore, scouted the question as
to whether it might not be necessary to prove Seditious Intent
(the line of argument so successfully developed by Erskine a cen-
tury later), and declared that the letters, “as it were, trod on or
near the borders of High Treason itself.” And this of four letters
which to-day would be dismissed as being inordinately dull! Finally,
the jury having returned a verdict of guilty, the defendant was
fined the immense sum of £10,000.

During the reign of William III. the judges took another
opportunity of consolidating their position. This arose out of the
case of R. v. Beere(1), where it was held that in a trial for Seditious
Libel, the words complained of must be set out in the indictment
“according to the tenour” and not with reference to their effect,
the reason being that under the former method they remained
matter for the consideration of the Court; while in the latter
event they would have to be left to the jury. A possible loophole
was thus effectively closed.

The existing position was again emphasised in 1704 in Tutchin’s
Case(2). Tutchin was convicted of a seditious libel published by
him in a political paper called the Observer attacking the Ministry
on the grounds of corruption and mismanagement. Lord Holt,
the presiding judge, directed the jury that as a matter of law the
paper was a libel, and that they were simply to find aye or nay on
the question of publication. This they did, and the direction was
never questioned. Tutchin, it might be mentioned in passing,
would seem to have been a singularly unfortunate person, for after
Monmouth’s Rebellion he had been sentenced by Jeffries—evidently
in a more violent mood than usual—to be imprisoned for
seven years and whipped every year through every market town
in Dorsetshire, which, in point of fact, meant a whipping every
fortnight for seven years.(3)

A curious and amusing trial took place in 1719.(4) Hendley,
the Vicar of Islington, and some Jacobite friends had taken a number
of school children—twenty boys and thirty girls—on tour in the
country as a kind of living background for a course of charity

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(1) 1698 12 Mod. 219.
(2) 14 St. Tr. 1005.
(4) R. v. Hendley, 11 Mod. 221.
sermons. An indictment was now preferred by the Crown alleging that the whole thing was a seditious and wicked attempt to extort taxation illegally! The two defendants were solemnly convicted and fined 6s. 8d., and the matter dropped. But the case has a certain significance as showing how easy it was then (and the same thing applies to-day although in a less measure) for an Executive, if it wished, to so twist and stretch the definition of Seditious Offences as to bring within the net cases which by no stretch of the imagination would be regarded in normal circumstances as containing any element of Seditious Intent at all.

An interval of 12 years produced the Case of R. v. Francklin(1), a prosecution in respect of a newspaper known as the Craftsman published by the Opposition for the purpose of criticising Walpole. The article complained of was said to have been written by Bolingbroke and censured the Ministers in connection with the lately-concluded treaty with Spain—its whole tone being that of a moderately incensed leader in, say, the present-day Times. When the hearing came on the trial became a huge social event, and the Court was packed. Lord Raymond, C.J., who presided, ruled emphatically that the only question for the jury was the single one of publication. As he remarked: “then there is a third thing, to wit, whether these defamatory expressions amounted to a libel or not? That does not belong to the office of the Jury, but to the office of the Court . . . . so Gentlemen, if you are sensible that the defendant published the Craftsman of the 2nd January last . . . you ought to find the defendant guilty.” He was so found. Here, the principle for which the judges had contended so vigorously is quite clearly and unequivocally set out.

In 1752, Owen(2) a printer, was prosecuted for a libel on the House of Commons. His counsel took the line that as his publication had not been proved to be malicious or false the jury should acquit. Lord Chief Justice Lee, however, directed a conviction if the jury was satisfied that publication had been proved. This they refused to do in spite of repeated pressure from the Bench, and in the end their verdict of not guilty generally was accepted. Lord Mansfield, commenting on the case, says that it is the first occasion since the trial of the Seven Bishops where a jury had exercised their undoubted power to return a general verdict of not guilty in a case of Seditious Libel. It is also the first—sign—and this is infinitely more important although Lord Mansfield failed to notice it—that the Bench’s doctrine, in regard to Seditious Offences, was at last beginning to be definitely challenged.

(1) 1731 17 St. Tr. 626.
(2) 18 St. Tr. 1203.
In 1770 excitement again ran high over the trials in the matter of the Junius Letters. Three booksellers, who had sold the letters—Almon, Miller and Woodfall—were in turn charged on information before Lord Mansfield with having published Seditious Libels. The prosecutions were conducted with great vehemence by DeGray, the Attorney-General, assisted by a dazzling array of Crown Counsel. Almon was convicted, Miller acquitted, and Woodfall found guilty of publishing only. In the latter case a new trial was ordered on the ground of the inadequacy of the verdict, but the proceedings were afterwards dropped.

In Almon's case the Attorney-General submitted to the jury that he was obliged to satisfy them on two points, viz.:—

1. That the publication concerned the King; his administration of Government; the public affairs of the nation; the great officers concerned in Government; and the members of the House of Commons.

2. That publication had in fact taken place.

The Defence concerned itself solely with the question of publication.

Lord Mansfield told the jury that they had two matters to consider:—

1. Publication.

2. Whether the dots and dashes in the letters showed the interpretation sought to be put upon them (this referred to the practice common at that time of printing the first and last letters of names and substituting asterisks for the missing letters).

The jury returned a verdict of guilty.

In Miller's case the Solicitor-General, Thurlow, prosecuted with extreme bitterness, and Serjeant Glynn—the radical lawyer, who afterwards appeared for Wilkes—defended. The defence attacked Thurlow's interpretation of the letters as being seditious and malignant, and described them as containing manly, wholesome, and dutiful advice to the king.

Lord Mansfield again sought to confine the jury to the two questions of publication and innuendo; but this time they were less pliable than at the trial of Almon. As their fellows had done 18 years before in Owen's case, they refused to be limited in their consideration of the case, and under cover of a general verdict of not guilty showed very clearly that they were not prepared to accept the Judge's ruling. The verdict as found was perfectly sound, and to the great disgust of the Crown lawyers could not be upset.

(1) R. v. Almon, 20 St. Tr. 803.
R. v. Miller, 20 St. Tr. 879.
R. v. Woodfall, 20 St. Tr. 920.
The verdict in Woodfall’s case was guilty of publishing only—a kind of half-way position between that in Almon’s and Miller’s cases. An application for a new trial was granted, but the matter was not proceeded with.

All three cases produced a profound impression on the public mind, a great deal of attention being directed to the unsatisfactory state of the existing law under which the wide definition of Seditious Offences could be used by a designating Executive to inaugurate whenever they desired, a veritable reign of terror; while the protection which a jury might ordinarily be able to provide if public opinion was not prepared to back the Ministers was completely removed according to the judicial doctrine that publication and innuendo were the only matters for the jury’s consideration. The Judges, in other words, remained in actual fact the sole deciding body as to the merits or otherwise of a particular case once proceedings for Seditious Offences had been launched.

Shortly after the prosecutions had been concluded Lord Mansfield’s directions to the juries were severely attacked in both Houses of Parliament. By way of defending his position he had left with the Clerk of the House of Lords a memorandum entitled a “Copy of the unanimous opinion of the Court of King’s Bench in the case of R. v. Woodfall,” which showed that his action was thoroughly supported by his brother judges. In connection with this document, Lord Camden, in the Lords, propounded a series of questions expressing the popular view of the law in this connection as it was in process of being administered, and seeking to show the great hardship which such a practice entailed. These were:—

(1) Does the opinion mean to declare, that upon the general issue of not guilty in the case of a Seditious Libel, the jury have no right by law to examine the innocence or criminality of the paper if they think fit, and to form their verdict upon such examination?

(2) Does the opinion mean to declare in the case above-mentioned, where the jury have delivered in their verdict guilty, their verdict has found the fact only and not the law?

(3) Is it to be understood by this opinion that, if the jury come to the bar and say that they find the printing and publishing but that the paper is no libel, the jury are to be taken to have found the defendant guilty generally, and the verdict must be entered up?

(4) Whether the opinion means to say that, if the judge, after giving his opinion of the innocence or criminality of the paper, should leave the consideration of that matter together with the printing and publishing, to the jury, such a direction would be contrary to law?
The whole position was thus stripped of its covering and mercilessly laid bare. Lord Mansfield, however, refused to answer. —There was nothing to be said.

In the meantime matters remained unaltered, until in 1784 the Dean of St. Asaph was prosecuted for publishing a seditious pamphlet entitled "A Dialogue between a Gentleman and a Farmer." This was the celebrated case of R. v. Shipley.(1) Erskine defended, and used the case as a means of expounding as fully as he was able the criticism of the existing state of the law.

The trial was at Shrewsbury Assizes before Buller, Erskine travelling down by coach in great pomp and state in order to conduct the defence in person. The line taken was that the pamphlet was innocent; and that it was the jury's province to decide as to its innocence or guilt. In his summing up the Judge gave the jury the usual directions:—that their concern was with publication and innuendo only. Their verdict was: "Guilty of publishing only"; and then followed the famous scene in Court between Erskine and the Judge as to what the words actually meant. After a long and excited discussion the jury said that the verdict intended to say "Guilty of publishing, but whether it was a libel or not they did not know."

In the following term Erskine—whom it was said had received a record retainer—moved for a new trial in a speech which is still outstanding both for its clarity and for the admirable closeness of its reasoning. In essence his argument amounted to this: intent was an integral part of Seditious Libel and speech; and the question as to whether the words complained of came within the definition as laid down by the Court was one of fact for the jury.

Lord Mansfield, in an elaborate summing up of the effect of the decisions from the Revolution onward, held to the old point of view and said: "Such a judicial practice in the precise point from the Revolution, as I think, down to the present day, is not to be shaken by arguments of general theory or popular declamation." The application was refused.

Legally, and according to precedent, the Court was perfectly right; the limited scope of the jury to consider fact and innuendo only, and not intent, was amply supported by the cases; there was no question of straining the law to support the Judge's view. What had happened was that in the course of years the Bench had developed a particular doctrine as to the function of the jury in cases of this character which had become stereotyped and fixed; in the meantime popular opinion for a variety of reasons—chiefly through the growth of Liberal thought—had come to reject this view and to demand its modification. The result was a deadlock.

(1) 21 St. Tr. 1043.
Even had they so wished, the Judges, from the very nature of the position which they had created, were powerless to intervene. It had become a part of the very fabric of the law; the only method of removal was by an operation which they themselves were unable to perform. Legislation could alone cope with the matter. Eight years after the case of R. 8 Shipley this knife was used; the tangle of cases and precedents was cut sharply across, and the huge tumour of reactionery pedantry removed. With Fox's Libel Act there ended a phase which had begun at least as far back as the days of Elizabeth, which had extended through the times of the Star Chamber, and which had covered almost the whole of the 18th century. The year 1792 thus marks very clearly a turning point in the history of Seditious Offences, and from now onward there begins what may be called the modern period of development.

III.

From the part Fox played in the agitation which brought it about, the Libel Act of 1792(1) has been known ever since by the title of Fox's Libel Act. It is quite short, its relevant portions being as follows:—

"... on the trial of an indictment or information for the making or publishing any libel ... on the plea of not guilty ... it shall be competent to the jury ... to give their verdict of guilty or not guilty upon the whole matters put in issue ... and they shall not be directed by the Court or Judge ... to find the defendant or defendants guilty merely on the proof of publication of the paper charged to be a libel ...

"Provided: that the Court or Judge ... shall according to his or their discretion give their or his opinion and directions to the jury on the matter in issue ... in like manner as in other criminal cases."

The effect of this was to establish the principle contended for by Erskine. In regard to the proviso, the general opinion of the judges immediately after the passing of the Act was that a judge at a trial of a Seditious Offence was bound to direct the jury. Now, however, the view prevails that his position is the same as in any other criminal case, i.e., if he thinks that the accused should be acquitted, it is his duty to say so.

It should be noticed that the Act is silent as to proving the truth of a Libel. Its real significance, though, lies in this: before its passing, the Law as regards trials for Seditious Offences had been fixed and determined by the judges in such a way as to leave grave doubts in many minds as to whether, as matters stood, real justice could be administered in trials of this nature. In favour of the

(1) 32 Geo. III., C. 60.
modification of the existing law there arose a popular clamour. Erskine, in the cases which he fought, and particularly in R. v. Shipley, had sought to clothe this popular feeling with legal habiliments. In the end the weight of public opinion prevailed. The Libel Act of 1792 is, therefore, nothing less than a recognition of the straining and distortion which had taken place in the existing law, and is the means whereby that law was brought back into a nearer line with the feeling and wishes of the country as a whole.

For what was the proper definition of a Seditious Libel at the end of the 18th century, before the passing of this Act? In plain language it amounted to this: Written censure upon public men for their conduct as such, or upon the laws, or upon the institutions of the country. This is the substance of Coke's "De Libellis Famosis": the definition acted upon by the Star Chamber and later by the Courts of King's Bench. It had never been altered by any Act. In practice this meant that any political discussion whatever, of whatever kind, could be visited, if it was so desired, with a prosecution: the meshes of the net were marvellously small. But in spite of this the ultimate check of the jury remained. So long as juries were independent and fearless no Executive could obtain convictions merely upon trivial and unnecessary charges. So much to the good. Except that the judges had interposed. Building up their proposition by precedent upon precedent they had succeeded in withdrawing from the jury's consideration the very substance of the case. Under cover of the general proposition, "fact for the jury; law for the Court," they had arrogated to themselves the sole right of deciding (once publication and innuendo had been proved) as to the guilt or otherwise of the accused—and this on a matter which more than any other demanded the consideration of a panel of ordinary citizens and not that of a cloistered and possibly politically minded, recluse.

Erskine had challenged this doctrine by saying that intent was essential to Seditious Offences, and that on such a question juries were clearly entitled to find—in effect, arguing that the whole question of guilt or not was for the jury. This was a perfectly sound argument. It never was the law of England that a man committed the offence of publishing a Seditious Libel by accidentally dropping it out of his pocket. Publication must have been intentional for there to have been a crime committed.

The result of the Libel Act was to embody in the definition of Seditious Offences some kind of bad intention on the part of the offender. This is not said in so many words, but the whole matter is merely left to the jury's consideration, and this is its actual effect, and in such wise the law has been administered ever since. Thus, after the passing of the Act, a general definition of a Seditious Offence is: "blame of public men, laws or institutions,
published with an illegal intention on the part of the publisher.” How
great an advance this represents on the previous position must be
obvious even to a layman.

From now onwards, as the cases clearly show, juries become
the deciding factor in trials of this nature; public opinion, for this
very reason, is more nearly reflected in the acquittals and the con-
victions: and brilliant advocates like Erskine find the scope of their
defences suddenly widened. The effect of this fundamental change
can be definitely traced from this time forward until the present
day. This short, insignificant looking Act in reality revolutionised
the existing situation; for it brought back into these cases the full
power of the jury and of public opinion, and that in itself was no
small thing.

IV.

The four years after 1792 were particularly stormy ones in the
history of nearly every European nation, and not least in England.
As was only to be expected, trials for political libels and seditious
words became frequent; for the Executive were definitely taking
a strong line. For 1792 and 1793 no less than twelve cases of this
nature are reported in the State Trials, and these, it must be re-
membered, were merely typical ones. The number reported in
these two years is only one less than the total number reported for
the whole period from 1704—1789. One thing clearly emerges:
the Libel Act did not have the effect of making convictions less
frequent; on the contrary they tended to increase after its passage.
As an example of the feeling of the time, Duffin and Lloyd,(1) two
prisoners in the King’s Bench prison, were convicted of “Seditiously
devising, contriving, and intending, to excite and stir up divers
prisoners to escape, by publishing an infamous, wicked and Seditious
Libel” in the shape of a placard bearing the words: “This House
(meaning the prison) to let. Peaceable possession will be given by
present tenants on or before 1st January, 1793, being the commence-
ment of the first year of liberty in Great Britain.”

The following day (18th December, 1792), Tom Paine(2) was
prosecuted for publishing the “Rights of Man.” He was found
guilty by the jury without hearing the Attorney-General’s reply
to the speech for the defence. At the trial Erskine delivered his
first important speech on this subject since the passing of the Act.
His argument in substance was that:—

1. The Libel Act defines libel as publishing certain kinds of
written blame with a bad intention, i.e., from a bad motive.

2. A man who publishes what he really believes to be true in
order to benefit mankind cannot be acting from a bad motive.

3. Therefore no opinions when published are criminal unless
the publisher wishes to injure mankind.

(1) 22 St. Tr. 318.
(2) 22 St. Tr. 357—471.
If this were applied in practice it would result in no prosecutions for Seditious Libel being commenced, or, if commenced succeeding, unless the matter complained of obviously tended to incite people to commit some crime, or unless it definitely attacked an individual’s character.

Indeed, this is the very direction in which the public mind is to-day tending to move; but the time taken to bring such a change about has been appallingly slow. For many years after the passing of the Libel Act juries absolutely refused to think along these lines at all; and even now, nearly a hundred and fifty years later, the proposition is by no means universally accepted. The right to prosecute politically is clung to by a nervous dominant class as firmly in the days of George V. as it was in those of George III. Now, as then, they will probably fight bitterly to retain it.

Acquittals at this time were rare. The most famous, however, were those of Lambert, Perry, and Gray(1), the proprietors of the Morning Chronicle. They had published a tract calling attention to the heaviness of taxation and the frequency of war, talking of “Cruel and impolitic Wars,” and condemning the existing criminal code.

Erskine repeated the same arguments he had used on former occasions. The proposition of the Crown was that taking into account the character of the times, the defendant’s object must, necessarily, have been a bad one. The judge, Lord Kenyon, summed up heavily against the defendants; but the jury, after considering their verdict from two in the afternoon until five o’clock the next morning, acquitted.

As instancing a judge’s typical summing up one can consider Cobbett’s trial in 1804.(2) Cobbett had been prosecuted for a seditious libel on account of his criticism of the Irish Administration. He was found guilty but was never sentenced. Lord Ellenborough is reported as saying: “On the three following points you have to exercise your judgment: first the preliminary allegations and innuendos; next, the fact of publication; and thirdly, the quality and sense of the thing published. This is the matter at issue.”

“Upon the subject of libel, it may be as well for me to observe that, by the law of England, there is no impunity to any person publishing anything that is prejudicial to the general interests of the State. . . . It is no new doctrine that if a publication be calculated to alienate the affections of the people by bringing the government into disesteem . . . . the person so conducting himself is exposed to the infliction of the law. It is a crime.”

(1) 22 St. Tr. 1008.
(2) 29 St. Tr. 1.
The severity of the Executive's persecution was shown in the case of Hart and White. (1) This was an information in respect of a libel published in the Independent Whig commenting on the action of the Court and Jury in acquitting Bennett and Chapman, two notorious characters, who had been tried for the murder of an able seaman and a cabin boy in circumstances as it was alleged of the most fiendish cruelty. The Crown alleged that the article complained of criticised and attacked the jury system and was therefore seditious. A jury of merchants complacently returned a verdict of guilty and a savage sentence of eighteen months' imprisonment was thereupon inflicted.

In 1819, (2) Seditious Libel for the first time received statutory definition. The Act in question enacted that upon a conviction for a blasphemous or seditious libel, the Courts should have power to order all copies of the libel in the possession of the person convicted to be seized, and for this purpose defined seditious libel as being:

"Any seditious libel tending to bring into hatred or contempt the person of His Majesty, his heirs or successors, or the Regent, or the Government and Constitution of the United Kingdom as by law established, or either House of Parliament, or to excite His Majesty's subjects to attempt the alteration of any matter in Church or State as by law established otherwise than by lawful means."

Practically this is the same thing as saying that a seditious libel is any libel which has any of these tendencies. This definition, it will be seen, forms the major portion of the definition as drafted by Mr. Justice Stephen, which is at present accepted by the Courts as representing the existing law as regards the offences here being considered.

Next year occurred the important trial of R. v. Burdett. (3) Sir Francis Burdett was fined £2,000 and imprisoned for three months for a letter written on the subject of the dispersion of a meeting at St. Peter's Field, Manchester, by the Yeomanry.

On a subsequent motion for a new trial a most important discussion took place on the Libel Act of 1792, constituting the fullest possible enquiry into the nature and offence of libel. The most important ground for a new trial was that the judge—Best—had exceeded his duty, as defined by the Libel Act, in charging the jury. On this point his own statement was to this effect:

"I told the jury that the question whether it was published with the intention alleged in the information was peculiarly for their consideration; but I added that this intention was to

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(1) (1809) 30 St. Tr. 1168.
(2) 60 Geo. III. and 1 Geo. IV., C. 8.
(3) (1820) 1 St. Tr. (N.S.) 1.
There now ensues a gap during which no cases of any outstanding importance appeared until 1886. In that year John Burns(1) and three other defendants were indicted for uttering seditious words concerning Her Majesty’s Government with intent to cause a riot, and to cause ill-will between different classes of Her Majesty’s subjects. The occasion was an unemployed demonstration of 20,000 people held in Trafalgar Square on the 8th of February, 1886, which was followed by a certain amount of rioting among the Clubs in the West End.

Mr. Justice Cave, who tried the case, delivered an elaborate summing up. After mentioning that Mr. Justice Stephen’s definition of Seditious Offences undoubtedly represented the unanimous view of the judges, he said that in the present case two seditious intentions were alleged by the Crown, viz.:

1. An incitement to alter some matter in Church or State otherwise than by lawful means.
2. To promote feelings of hostility between different classes.

Dealing with the second of these he said:—

"This is necessarily somewhat vague . . . I should prefer to say that the intention to promote feelings of ill-will and hostility between different classes . . . may be a Seditious intention according to circumstances, and of those circumstances the jury are the judges . . . taking into consideration the whole of the circumstances of the case."

On the other point he remarked:—

"If from any sinister motive . . . they desired to bring the people into conflict with the authorities, or to incite the malicious and disorderly to damage the property of unoffending citizens you ought necessarily to find them guilty. On the other hand, if you come to the conclusion that they were actuated by an honest desire to alleviate the misery of the unemployed . . . you should not be swift to mark any hasty or ill-considered expression which they might utter in the excitement of the moment."

In conclusion he said:—

"I have already told you that you must take a broad and even a generous view of the whole of the case presented to you. You must not attach too much importance to isolated phrases, but you must look at the general gist of the matter."

The jury, after deliberating for some time, brought in a verdict of Not Guilty.

It is, perhaps, not uninteresting to note that in 1906 the chief defendant became President of the Local Government Board and a Privy Councillor.

(1) 16 Cox C.C. 355.
In 1909 one Aldred(1) was indicted for publishing a seditious libel concerning India and the Indian administration. The Crown was only concerned with the proof of one point, viz.: Whether the defendant had used language implying that it was lawful and commendable to employ physical force in any manner against the King’s Government.

On this Lord Coleridge, the judge, said:—

"Nothing is clearer than the law on this head, namely, that whoever by language, either written or spoken, incites or encourages others to use physical force or violence in some public matter connected with the State, is guilty of publishing a seditious libel. . . . . The test is not either the truth of the language or the innocence of the motive with which he published it, but the test is this: was the language used calculated, or was it not, to promote public disorder or physical force or violence in a matter of State?"

The defendant had contended that he was entitled to freedom of abstract academic opinion—in other words, what is commonly called free speech.

Referring to this Lord Coleridge said:—

"A man may lawfully express his opinion on any public matter. . . . . Matters of State, matters of policy . . . . are open to him. . . . . For instance, if he thinks that either a despotism, or an oligarchy, or a republic, or even no Government at all is the best way of conducting human affairs he is at perfect liberty to say so. He may assail politicians, he may attack Governments. . . . . He may seek to show that rebellions, insurrections, outrages, assassinations, and such like, are the natural, the deplorable, the inevitable outcome of the policy which he is combating. . . . . But on the other hand, if he made use of language calculated to advocate or to incite others to public disorders . . . . of any physical force or violence . . . . then . . . . whatever his intentions, there would be evidence on which . . . . a jury would decide that he was guilty of seditious publication."

Aldred was found guilty and sentenced to 12 months’ imprisonment.

For sixteen years after this no case of this character came before the Courts, until, on the 18th November, 1925, the Executive of the Communist Party of Great Britain were prosecuted at the Old Bailey on a charge of:

(1) Conspiracy to publish seditious words and libels.
(2) Incitement to breaches of the Mutiny Act, 1797.
(3) Endeavouring to seduce persons serving in the Forces of the Crown.

(1) 22 Cox C.C. 1.
Sir Henry Slesser, who had been Solicitor-General in the Labour Government of 1924-25, defended, and the Attorney-General of the day conducted the case for the prosecution in person.

Legally, the trial was of no great interest except for the distinction drawn by the defence between a charge of Seditious Conspiracy (the way in which the case had been opened to the jury by Sir Douglas Hogg), and that of conspiring to publish Seditious Libels. In the end the interpretation put forward by the defence was accepted by the judge and in that form left to the jury. The distinction thus insisted upon was no idle one; for a charge of Seditious Conspiracy, if it had really appeared in the indictment, would have permitted the admission of a mass of evidence directed to showing that the Communist Party of Great Britain was an illegal society, and that it was part of a world-wide organisation with illegal aims; whereas the charge of conspiring to publish Seditious Libels reduced the matters under consideration to the two comparatively simple and narrow questions:

1. Were the alleged publications seditious?
2. Were they published by the defendants acting in concert?

Apart from this no new legal issue was raised, the defence confining itself, under this head, to showing that no direct incitement to disorder and violence had been made.

After a long but somewhat unemotional hearing—considering the deep interest which the trial had aroused in the country generally—the defendants were found guilty and were sentenced by Mr. Justice Swift to various terms of imprisonment varying from six months to a year.

There the long line of cases stretching back to the Tudors, or possibly further still, comes to an end; twelve more political prisoners have been placed in gaol; the line of Seditious Succession—if one may coin the phrase—has been kept intact.

V.

There remain Seditious Conspiracies. Commonly, this charge is made in connection with Seditious Language, a conspiracy being first proved to exist and then evidence of violent language being given as proof of an overt act.

This application of the charge of Seditious Conspiracy is comparatively modern, the first instance being the trial of Redhead Yorke(1) in 1795. He was charged with two other defendants that they "unlawfully, maliciously and seditiously, did combine, conspire and confederate . . . . . to traduce, vilify and defame, the Commons House of Parliament, and the Government by this realm . . . . ."

(1) 25 St. Tr. 1003.
The Judge, in his charge to the jury, said:—"If he (Redhead Yorke) has in your opinion been guilty of addressing a public meeting . . . when your own observation must furnish you with what the state of the country was . . . and that language has a tendency . . . to vilify, traduce and defame the House of Commons: if you think . . . he and Gales conspired together, you will find him guilty."

After considering for twenty minutes the jury found a verdict of guilty, and Yorke was accordingly fined £200, ordered to find security for his good behaviour for seven years, and imprisoned for two years. Some years afterwards the Masters of the Bench of the Honourable Society of the Inner Temple called him to the Bar.

Many well-known trials followed in after years. In 1820(1) Hunt and others were tried for a Seditious Conspiracy of which the overt Act was the holding of a meeting dispersed at Manchester in 1819. In 1839 Vincent(2) and others were tried for a Seditious Conspiracy in connection with the Chartist agitation. The most memorable of all these cases, however, was the O’Connell(3) case in 1844. Here O’Connell and eight other defendants were tried for a Seditious Conspiracy of which the overt acts were meetings, and speeches made at the meetings, agitating for the repeal of the Union.

Commenting on these trials, Mr. Justice Stephen remarks(4):—

“These prosecutions and others which might be referred to all proceed on principles very similar to those on which Seditious Libels are tried. The charge commonly is that the defendants conspired together to effect some purpose inconsistent with the peace and good government of the country, and that they manifested that intention by speeches made, and meetings held, in concert. The proof commonly is that some sort of organisation was formed in which the defendants took part, and that things were written and said in consequence which were calculated to effect the objects in question.”

O’Connell and his friends were tried on eleven Counts. They were found guilty. Subsequently the House of Lords held nine of the counts to be good and two bad on account of vagueness. The nine good counts variously charged the defendants with conspiracy to raise discontent and disaffection; to stir up jealousy and ill-will between different classes; to diminish the confidence of the Crown’s Irish subjects in the general administration of law; and to bring about changes in the law by meetings held to hear Seditious speeches.

(1) R. v. Hunt, 1st Tr. N.S. 1.
(2) 9 C. and P. 91.
(3) S. St. Tr. (N.S.) 6.
The importance of the House of Lords decision in holding these counts to be good lies in the wideness which has in consequence been given to the definition of Seditious Conspiracy. Apparently any attempt by violent language, either spoken or written, or by a show of force calculated to produce fear, to effect any public object of an evil character, can be dealt with in this way—providing the existence of a conspiracy be first proved. And inasmuch as the question of what objects are, and what are not, regarded as evil has never been definitely laid down, there still remains tremendous scope along this line for an attack upon any organisation of a political nature whose views are not those of the government of the day. How important a charge of Seditious Conspiracy of this nature might be, was shown in the recent Communist trial by the great efforts made by the defence to show that, possibly through a flaw in the drafting of the indictment, but certainly in fact, no such charge was upon the record in that particular case. The objection was there upheld; but there is no guarantee that on future occasions this weapon may not be used to the full.

VI.

Such then, broadly speaking, is the position to-day. The crimes classed as Seditious Offences require as an essential ingredient of their proof the establishment by the prosecution of a certain element of intent; and the existence or otherwise of this intent is now, thanks to Fox's Act, a matter wholly for the determination of the jury. As to what is and what is not Seditious Intent the Courts look to Mr. Justice Stephen's definition as formulated during the latter half of the last century, which he in his turn had slightly expanded from the definition contained in 60 Geo. III. and 1 Geo. IV. c. 8, and which was itself evolved from the practice of the Courts of King's Bench and Star Chamber working in the first place on the more remote and least clearly defined fringes of Libel and High Treason. But that is not all; for just as during the time from Coke's definition "de libellis famosis" down to the Stephen definition of approximately 70 years ago, the cases actually coming before the Courts moulded and transformed the current conception of Seditious Offences in such a way that it is possible, looking through them, to note a gradual but nevertheless definite modification of the harshness of the early view even after allowing for periods of abnormal strain and crisis like that following the outbreak of the French Revolution; so, since Mr. Justice Stephen's codification, similar changes have been at work and the same process is to be observed still continuing this development as a definitely dynamic thing.

From this point of view the most obvious respect is in connection with that portion of his definition which declares it to be a seditious intent "to promote feelings of ill-will and hostility between different classes of His Majesty's subjects." On the face of it this
is clearly fantastically wide if considered in the light of its present-day implications. Practically any public utterance of every prominent Labour leader could, if it were so desired, be brought within its scope. Apart from politics it would cover a huge area in connection with the present-day industrial relations between employer and employees. A Tower Hill orator urging workers to boycott capitalists guilty of sweating labour would, presumably under the definition, be uttering Seditious Words; and so also probably, would a member of the F.B.I. were he to launch an attack on conditions in a so-called sheltered industry with the object of awaking employers to the wages they were paying.

This was recognised as long ago as R. v. Burns, when Mr. Justice Cave, commenting on this particular limb of the definition, said:—

"I should rather prefer to say that the intention to promote feelings of ill-will and hostility between different classes of His Majesty's subjects may be a seditious intention according to circumstances, and of those circumstances the jury are the judges; and I put this question to the Attorney-General in the course of the case: 'Suppose a man were to write a letter to the papers attacking bakers and butchers generally with reference to the high prices of bread or meat, and imputing to them that they were in a conspiracy to keep up high prices—would that be a seditious libel, being written and not spoken? To which the Attorney-General gave me the only answer which it was clearly possible to give under the circumstances: 'That must depend upon the circumstances.' I, sitting here as a judge, cannot go nearer than that.""

Since that case the question has never been raised in any of the other trials which have taken place, and it would seem that this whole portion of the definition is well recognised to-day as being obsolete. In reality it is redundant, as the only possible cases which can be conceived to which it applies would be more than covered by the remaining body of the definition. It would seem, therefore, highly desirable that this relic of 18th-century thought—for it is nothing more or less than a statement of the frame of mind which inaugurated prosecutions like that of Tom Paine—should be effectively obliterated, and a contingent danger to rights which must be considered of primary importance in any real democracy removed.

In addition, a change has taken place in what may be called the more general aspect of these changes. It is this to which Mr Justice Stephen is alluding when he writes (4): "In one word, nothing short of direct incitement to disorder and violence is a seditious libel." Burns' case and Aldred's case each confirm this. The judges in both these cases, as has been pointed out, sought to implant in the minds of the jury a connection between a direct

incitement to violence and a verdict of guilty. Pausing there for a moment, it is possible to recognize what a great step forward has been made by the acceptance of this doctrine, which is nothing more or less than that contended for by Erskine in 1792. According to this view, words are only capable of bearing a seditious intent if the reasonable direct result of their publication is, or would be, an outbreak of violence; and thus the whole scope of charges for Seditious Offences is in one stroke narrowed to limits which—
granted that juries are intelligent and will act sanely—cannot but be considered as reasonable. The free expression of mere academic opinions—as was unequivocally stated by Lord Coleridge in Aldred's case—is, therefore, allowed; and more than that, it must be remembered that it is for the Crown to show, if a prosecution is inaugurated in any particular case, that the words complained of are likely to promote, or have promoted, violence.

But although this principle is clearly discernible in the more recent cases, it does not follow as a matter of course that any judge trying a case which might arise in the future would arrive of necessity at such a view of the law. There are reactionary-minded judges just as there are liberal-minded ones. As the law at present stands it is quite conceivable that the interpretation just referred to might not be put before the jury at all. In which event, it might be argued, the Court of Appeal could intervene. But this is really an insufficient answer; for in the meantime an incalculable amount of harm might have been done in the minds of the nation at large.

What is needed, it is suggested, is a short Act providing that in every trial of this nature the jury shall be asked the direct question as to whether the words complained of are reasonably likely in their opinion to promote actual violence; and that their verdict shall depend upon their answer to this question. At the same time provision might be made for the giving of statutory effect to the definition of what is seditious intent, from which the obsolete clause already referred to might be omitted.

In this way, by the removal of the last vestige of the shadow of Treason which has for so long overshadowed them, Seditious Offences would be placed upon a plain and perfectly straightforward footing. The word sedition would thenceforward lose its sinister associations in the ordinary mind; and political prosecutions, it is to be hoped, would definitely become things of the past. Much has been done already in the course of time to bring such a state of affairs about. To-day it only remains to take the final step. The arguments in favour of following such a course as has been here indicated are overwhelming and unanswerable; but it may nevertheless be interesting to the cynically-minded to compute what time will elapse, given the present political situation, before this change, necessary and desirable as it is, is actually carried out.
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