him; so the question of its being secondary evidence of an original letter does not bar its admission.

As to the question whether a letter in accordance with this document was actually sent to Mr. Horniman: this is a distinct question on which it is open to counsel to argue before the Court or to adduce evidence; but I do not agree with Mr. Talyarkhan that it is necessary for the prosecution to prove that such a letter was sent, before this document can be admitted.

Document admitted, subject to evidence as to the signature being accused's or the typewriting being from the machine, Ex. I.

S.J. *Document admitted.*

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## A. I. R. 1928 Bombay 78

FAWCETT, J.

*Emperor.*

v.

*Phillip Spratt (No. 3).*

Fifth Criminal Sessions No. 1 of 1927, Decided on 23rd November 1927.

*Evidence Act, S. 14—Intention of accused charged under S. 124-A, I.P. C.—Writing made by him and found with him is relevant on the question of intention.*

Primarily, anything that an accused tried under S. 124-A, I. P. C., has written is, if it comes within the general words of S. 14, relevant and admissible. At the same time, of course, the writing should be within a reasonable time of the particular occurrence, i. e., the particular article or other document, in respect of which he is being charged. [P 79 C 2]

*Kanga, O'Gorman*—for the Crown.

*F. S. Talyarkhan, Gupte, Ambedkar* and *Ratanlal Ranchhoddas*—for Accused.

**Judgment.**— I deferred my ruling yesterday about the admissibility of the document (Ex. K in the Magistrate's Court) until I had time to read it and consider the arguments addressed to me. I have carefully read it. This is not the proper stage at which to discuss it in detail; and I think it suffices to say that, in my opinion, some of its contents are such that the prosecution can reasonably rely on them as evidence of intention regarding the charge against the accused. The fact of this document being, according to evidence in Court, in the handwriting of the accused and found in his possession on 9th September 1927—if it does contain evidence of intention such as I have mentioned—is undoubtedly a fact which shows the existence of a state of mind, viz., the accused's intention, within the meaning of S. 14, Evidence Act. That is going primarily upon the plain wording of the section, but I will consider the objections that have been fairly put before me by Mr. Talyarkhan.

He says, first of all, that there is no connexion shown between this document and the pamphlet (Ex. F). But it is not, in my opinion, necessary to show that there is a definite connexion between a writing that may be evidence of intention, and the particular writing, which is the subject-matter of the charge. The main question is whether the writing that is sought to be put in as evidence of intention does, in fact, contain matter which supports the contention that such intention is thereby shown. Take, for instance, the precedent in this Court of the post card that was found in the accused's possession in the second Tilak trial before Mr. Justice Davar; that is, the case of *Emperor* v. *Bal Gangadahr Tilak* (1). In that case Mr. Justice Davar admitted the post-card as admissible evidence although there was no direct connexion between the contents of that post card and the subject-matter of the charge, except in the sense, that it might be contended that the post card contained evidence of his intention in regard to the writing about which the charge was made. At the same time, I do not mean to say I am deciding as to the weight to be attached to this document in this case. It is, of course, open to the defence to argue, if they can, that in the circumstances of the case and having regarded to its other contents and so on, no weight should be attached to it, and that it does not really constitute evidence of the alleged intention of the accused. Thus, in regard to the particular post-card that I have already mentioned, I see from the report at p. 898 that Mr. Justice Davar told the gentlemen of the jury that, in his opinion, it was not a piece of evidence which should affect their minds. That is, of course, a different question. I am only deciding in favour of its admissibility as a piece of evidence which can be shown to the jury and arguments based upon it.

Then, the second objection raised was based on Ill. (e), S. 14, Evidence Act,

(1) [1908] 10 Bom. L. R. 848.

which is the one most nearly allied to the particular case that I am considering. It refers to "previous publications" as being relevant in a libel case, whereas this particular document was not published but was merely found in the possession of the accused. Similarly, I may refer also to Ill. (j) which runs:

*A* is charged with sending threatening letters to *B*. Threatening letters previously sent by *A* to *C* may be proved, as showing the intention of the letters.

On the other hand, Ill. (m) does not insist on any such priority. It runs as follows:

The question is, what was the state of *A*'s health at the time an assurance on his life was effected.

Statements made by *A* as to the state of his health at or near the time in question or relevant facts.

There, the test is merely proximity of time, and not priority. The ordinary rule is that illustrations cannot control the general words of a section, and, certainly, there is nothing in the section itself to show that the statements relied upon should have been made previously and cannot ever be put in evidence, if they are made after the particular occurrence, that is, the subject-matter of the charge. In fact, I find that subsequent statements have been admitted in similar cases. Thus in *Queen-Empress* v. *Jogendra Chunder Bose* (2), which was one of the earliest sedition trials in Bengal and where the accused was charged in regard to some articles he had published, the Court allowed other subsequent articles to be put in evidence. The point has been discussed in another sedition case from Madras, viz., *Chidambaram Pillai* v. *Emperor* (3), and there it will be found that even a statement that the accused had made after he had been placed before the committing Magistrate was considered to be admissible evidence of intention under this S. 14. When the accused in that case was before the Magistrate he, first of all, said that he did not wish to make any statement, but on the following day he made a statement to the Superintendent of the District Jail and asked that it might be placed on record. That statement was forwarded to the Magistrate and a question was raised whether that was admissible as evidence of intention relevant to a charge under S. 124A, I. P. C. The Court considered the various cases on the subject and held that it was admissible. Similarly, in the Allahabad case in *Queen-Empress* v. *Amba Prasad* (4) the passage, in which Sir John Edge has referred to this point, certainly makes no limitation in regard to this point of time or as to publication. He says, p. 69:

The intention of a speaker, writer or publisher may be inferred from the particular speech, article or letter, or it may be proved from that speech, article or letter considered in conjunction with what such speaker, writer or publisher has said, written or published on another or other occasions.

There the case of "writer" and "written" is opposed to a case where they may have been something spoken or something published. If this were a trial of the printer or publisher, and something were tendered in evidence as to what that printer or publisher had written, then it might be a good objection that it had not been printed or published. But, here, the actual writer of the pamphlet is being tried and the question of publication is not of such materiality. Primarily, anything he has written is, if it comes within the general words of S. 14, relevant and admissible. At the same time, of course, the writing should be within a reasonable time of the particular occurrence, i. e., the particular article or other document in respect of which he is being charged. In this case the accused is shown to have come to Bombay in December 1926. The publication of the pamphlet took place some time in June 1927 and this document was found in accused's possesson in the beginning of September 1927. There is in my opinion, clear scope for saying that this document must have been written within a few months of the publication, and, therefore, that there is no bar due to the time at which this document came into existence. Accordingly, in my opinion, these objections are not sufficient, and I allow the document to be put in evidence.

S.J. *Document admitted.*

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(2) [1891] 19 Cal. 35.

(3) [1909] 32 Mad. 3=1 I. C. 36=5 M.L.T. 16.

(4) [1898] 20 All. 55=(1898) A.W.N. 1 (F.B.).