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The life of the Hon'ble Kristo Das Pal Rai, Bahadur C. I. E. in English.

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HISTORY

OF CELEBRATED

CRIMINAL CASES AND RESOLUTIONS

RECORDED THEREON BY BOTH THE

PROVINCIAL AND SUPREME GOVERNMENTS.

EDITED BY

BABU RAMGOPAL SANYAL.

AUTHOR OF THE LIFE OF

KRISTO DASS PAL AND HURISH CHANDRA MUKERJIE.

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1888.

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THIS BOOK
IS DEDICATED
TO
BABU JADU NATH KHAN
AND
BABU JUGGERNATH KHAN.
ZEMINDARS AND TRADERS OF ULA,
AS A MARK OF MY AFFECTIONATE REGARDS
TO THEM.

CALCUTTA,
TALTOLAN,
23, Doctor's Lane. }
4th August, 1888.

RAMGOPAL SANYAL.

PREFACE.

My object in bringing out together, in a small volume, from newspaper and official sources, a number of criminal and other cases with the final Government Resolutions thereon, is to shew, how in India, a certain class of Civilian in the Executive line, have, at times, ridden rough-shod over the liberties of the people, in spite of the frequent admonitions and reprimands they received from the Heads of Provincial and Supreme Governments for their wrong-doings. Of late, both in the Press and in the "National Congress," the question of separating the judicial and executive functions of the District Magistrate has been largely discussed; and the most notable instances of wrong-doings arising from the combination of these two functions in the same Executive Officer, focussed into a short compass, as has been done in this book, will materially help those who take an interest in the discussion and solution of this important question. The Administration of Justice in a country affords a true index to the happiness of the people; and these pages, containing a summary of some criminal cases which, for the last decade, agitated the public mind, from time to time, will illustrate clearly, how detrimental has been the combination of the judicial and executive functions in the same officer to the liberties of the people.

Man's memory is so frail and forgetful that he hardly remembers with any amount of exactness what transpired in his past life. Such being the case, it is no wonder that the history of these cases is being fast forgotten. It has, therefore, been deemed advisable to publish a summary of these celebrated cases, now scattered over the pages of newspapers hardly accessible to the reading public, in the form of a book which may serve as a guide to those who take an interest in the criminal administration of this country.

IV.

The major portion of the cases I have cited here, was brought to public light, with all their ugly disclosures, by the forensic talents of that patriotic man—Mr. Manomohun Ghose of the Calcutta Bar, whose name will be handed down to posterity not only as a practical worker in the field of administrative reform, but as a patriot sympathising with such helpless men as Mulook Chand Chowkedar, and rescuing him from the gallows at considerable sacrifice of time and money.

The book, meagre as it is, has many imperfections for which I beg to apologize to my readers. For want of funds, I could not make it sufficiently bulky so as to include such well-known cases as the Weld case, Mr. Sullivan's case, Mr. Larpent's case, Mr. Webb's case, the Lokenathpore case *et hoc genus omne*. In the second part of the book, I intend publishing them, provided I receive sufficient encouragement from the public.

CALCUTTA, TALTOLAH

23 Doctor's Lane.

4th August 1888.

RAMGOPAL SANYAL

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THE
NUDDEA STUDENTS' CASE
IN THE COURT
OF THE
ASSISTANT MAGISTRATE
Krishnaghur.

(BEFORE P. H. O'BRIEN ESQR. C. S.)

Empress vs. Nagendra Nath Mozumdar and 25 others.

CHAPTER I.

In stating the facts of this case, we have to rely mainly upon the reports that appeared in the *Statesman* and the *Indian Mirror* news-papers of Calcutta. The case occurred in the month of July 1884, at Krishnaghur, which is the head-quarters of the Nuddea district. The facts of this case, as stated in an editorial on the subject, published in the *Indian Mirror* of August 23rd, are as follows:—

"On Friday the 11th, Saturday the 12th, and Sunday the 13th July 1884, a Jatra or (a public theatrical performance), got up by public subscription, in which the students of the town had also joined, was held with the sanction of Major Ramsay, the District Superintendent of Police at Krishnagar. On the first and second days, no allegation was or has been made that any indication of an attempt to interfere with, or obstruct the performance was apparent. It seems, however, that even on the third day things went on smoothly, till a bamboo-bench on which a number of students together with some town-people were seated, was cut down to provide space to spread mats upon, when the boys began to clap hands in disapproval of their summary, and perhaps unnecessarily rude ejection

from the seats whence they had witnessed the performance. In this demonstration, a few of the towns-people who had been similarly treated were shown to have joined. Whether this natural disapproval of the scurvy treatment the students and townspeople met with, had the effect of really breaking up the performance, or the performers themselves made it a pretext for shirking their engagement, it is difficult to ascertain."

The breaking up this *Jatra*, which was given on the occasion of a *Burawari Paja*, held at Goari (the northern portion of Krishnaghur) by the Bazar people, gave great umbrage to the District Superintendent of Police; and before any formal complaint was lodged by any one, Major Ramsay ordered the arrest of some of the boys while bathing in the local river called *Kareah*, or *Jelinghee*, and subsequently of some boys residing in the hostel, and kept them confined in the thanna for their identification. What the police afterwards did, will be apparent from the following extract from the *Indian Mirror*:—

"The Police received Major Ramsay's orders, express or implied, that the boys were to be kept under detention for 24 hours, or, as they said, till they were identified or not by the witnesses, whom the Police were busy in hunting up. It appears from the evidence that, in his instructions to the Police, Major Ramsay, even according to his own evasive answers, told them to shew "no civility, no kindness, no mercy to the boys," "that the innocent must suffer with the guilty," and that the boys who might not be flogged "should have their lives made a burden to them by being worried for a month." It is in evidence, given by the Police themselves, that they had refused bail, if not according to the letter, at any rate in conformity with the spirit of Major Ramsay's instructions. If it had not been for the intervention of Mr. Mann, the Principal of the Krishnaghur College, and his remonstrances with Major Ramsay, it is almost certain that the boys would have been retained in custody for the 24 hours he had previously ordered."

Mr. P. H. O'Brien before whom the trial took place, was the Magistrate of Major Ramsay's own selection. The trial protracted its course from day to day, and yet no specific charge was brought against the accused. On the 24th July, 1884, the trial commenced, it was resumed on the 26th, and postponed to the 2nd August, 1884; and after a further hearing

it was resumed on the 15th of that month, and on the 18th the case was dismissed.

No specific charge was laid against the students, no section of law under which a charge would lie, was defined and no witnesses to prove an offence were forthcoming. The original charge against the students was "mischief", but as no loss of property could be proved, that charge was abandoned for the charge "of an unlawful assembly". Even this charge was found untenable, but the "Magistrate thought that as the case had advanced so far, it was necessary that it should be proceeded with." Mr. Mano Mohun Ghose of the Calcutta Bar who defended the accused took objection to this unlawful procedure, but the Magistrate said that "it was commonly done in the Mafusil". The court moreover held that "*it should allow a postponement to give the police a chance to producing their witnesses*". Major Ramsay in his evidence admitted that "*the probability is that had there not been so much opposition to the case, there would not have been so much perseverance on our part to ascertain and maintain the authority of the law.*"

The District authorities viz, Major Ramsay, the District Superintendent of Police, Mr. W. V. G Taylor the District Magistrate, and Mr. O'Brien the Assistant Magistrate formed a kind of triumvirate to punish the students. The following dialogue between Mr. Manmohun Ghose, the counsel for the defence and Mr. O'Brien shows that the Assistant Magistrate was lost to all sense of duty and fairness in this case.

Mr. Ghose—Then I understand the case has taken another aspect? First, it was mischief; then, it was a breach of the peace, and thirdly, that it was criminal force; and a fourth aspect was suggested by Major Ramsay viz, that it was a nuisance. I do not know that you have any power to make a reference to the Magistrate.

Mr. O'Brien—I make it privately. I can ask for instructions on a point of law.

Mr. Ghose—Nothing can be done privately in a criminal trial. A good deal of that is done in the Mufussil, but I shall be no party to such a reference.

Mr. O'Brien—I won't make the reference as you object, and relying upon my own opinion I hold that the facts amount to criminal force. I do not see why are you talking in this way when I am doing my best to help you.

Mr. Ghose—I am naturally much surprised when you say now that you consider the accused committed an offence, after giving your opinion the other day that the evidence disclosed no offence. However, if you have the power to do so, I have no objection to your making a reference to the Magistrate.

When all the above charges fell to the ground, the presiding Magistrate Mr. O'Brien observed:—"It strikes me that clapping is such a sign of war"! So much for the judicial fairness of Mr. O'Brien. Impossible as it is for us to describe minutely what Major Ramsay did in this case, we remain content with making the following extract from Major Ramsay's evidence as reported in the *Indian Mirror* of August 22nd 1884.

Major Ramsay's cross-examination continued.—I told the Sub-Inspector that this case had better not be sent up till Mr. Tayler's return. My object in giving that order was that I might have the benefit of Mr. Tayler's advice.

Q.—Did you make any suggestion, however courteously, that the only course left to him was to make over the case to Mr. O'Brien?

A.—I asked him if he would be so good as to make over the case to Mr. O'Brien.

Q.—And what did he say?

A.—I do not think he said anything at the time; the matter was left an open question.

Q.—Had you any necessity for suggesting him (Mr. Tayler) before what Magistrate the case should go?

A.—No, no necessity. But I thought that it just as well to have a European Magistrate, instead of one of the Native Magistrates, who are always amongst the boys and might be biased.

Q.—Do you often make such suggestions privately in cases of which you are interested?

A.—Yes, I have occasionally done so. I have often said to Mr. Tayler I wish you would give me so-and-so for this case.

Q.—Have you talked about this case with any Magistrate besides Mr. Tayler?

A.—Yes, in a general way. I have joined in a conversation about this case. For instance, one evening, I remember talking about it with Mr. O'Brien. I think it was after the first hearing of the case.

Q.—Did you speak to him at all before the case was made over to him?

A.—I simply mentioned the case. I think I said to him "I am going to get you try that students' case and he said "All right."

For want of space, we cannot prolong our thread of narrative, and must cut short here. Mr. W. V. G. Tayler the District Magistrate was blamed for having allowed himself to be, to quote the famous expression of Major Rensay, hand in glove with the District Superintendent of Police who shewed an undue bias in this case. The case being over, Sir Augustus Rivers Thompson, the then Lieutenant-Governor of Bengal, recorded a very strong minute on the subject, which we transcribe below. We need hardly say that the Lieutenant-Governor thereby well earned the thanks of all right-thinking men.

FROM.—J. WARE EDGAR ESQR, C. S. I., Offg. Secretary to the Government of Bengal, Judicial, Political and Appointment Departments.

TO.—The Commissioner of the Presidency Division.

No. 3113 J. D.

Dated, Darjiling, the 7th October 1884.

JUDICIAL.

Sir, I am directed to acknowledge the receipt of your letter No. 120 J. G. of the 19th September, submitting, in reply to my letter of the 22nd August, the record of the Nuddea students' case, with an explanation from the Magistrate of the District, and a copy of a letter from the District Superintendent of Police to the Inspector-General, which had already

been submitted with a report from the latter officer, and to communicate to you the following observations and orders of the Lieutenant-Governor upon the case. •

2. It is difficult from the papers to frame an exactly accurate narrative of all the events connected with the case, but the following statement perhaps, contains a generally correct account of the occurrences, which led to the arrest and prosecution of the boys, and of the proceedings which ended in their final discharge. It is stated that in the year 1880, a disturbance was caused by some students of the Krishnaghur College at a *Jatra* or semi-religious musical performance, which has hitherto been annually held at the expense of the traders of the town, and that in consequence of this the performance had been discontinued, during the years 1881, 1882, and 1883. The District Superintendent of Police, Major Ramsay, states that some of the shop-keepers mentioned the fact to him verbally, this year, and asked for his protection during the performance which were to be held on the 11th, 12th, and 13th of July. He also mentions in his letter of explanation that he had been told of disturbances caused by the College students at these entertainments in three successive years previous to 1880, though the occurrence of the latter year was the only one investigated by the Police. Major Ramsay has acknowledged that he took no steps to verify these statements, or to ascertain the origin of what must have been, if his information were correct, a traditional feud between the shop-keepers and the College boys. He contented himself with assuring the shop-keepers that they had nothing to fear, as the place where the *Jatra* was to be held, was situated close to one of the out-posts of the town police. Nothing unusual happened on Friday and Saturday, the first two mornings of the performance. But on Saturday afternoon, the Sub-Inspector of the Sudder Station having observed a number of youths discussing some question of apparent interest in the grounds of the old College, deputed a constable in plain clothes to endeavour to find out what the discussion was about. The constable reported that the youths were planning a disturbance at the performance of the following morning. The Sub-Inspector gave notice of this to the officer in charge of the out-post, warning him to be on the watch for a disturbance, and directing him to depute an extra force to the performance next morning. It is not clear from the papers before the Lieutenant-Governor whether Major Ramsay was informed of this at the time. He merely states in his explanation that he was subsequently assured by the co-Chairman of the municipality that the boys were

consulting about a matter wholly unconnected with the *Jatra* and from other information elicited in the course of the enquiry, this fact seems to be placed beyond all doubt. The point is so far of importance that any substantive proof of a pre-conceived design among the students to commit an illegal act entirely vitiated the specific charge upon which they were arraigned before the Assistant Magistrate. It is only necessary to add, therefore, that if Major Ramsay was told on Saturday of there being reason to believe that the College boys meditated a disturbance of the performance on the following day, it is a matter of surprise to the Lieutenant-Governor that he did not communicate the information to the Principal of the College, and seek his aid in preventing such an occurrence, even if necessary by prohibiting the attendance of the boys at the entertainment. In any case, it would have been well to have informed the Principal of the statements made by the shop-keepers about the disturbances of previous years.

3. The actual sequence of events on the Sunday morning is not clearly traceable. But from a careful comparison of the various statements made, it would appear, that the performance began at 5 a. m., and that in a very short time all the seats provided were occupied by the spectators among whom were some College boys. Later on the place became densely crowded, a large number of people being unable to get inside the shed in which the performance was held, great confusion ensued, which was increased by benches and other seats being passed over the heads of the people who had obtained places. Some of the boys who had secured seats very early were asked to give them up to later comers. They complied with the request but expressed their dissatisfaction by clapping their hands and crying out in derision of the mismanagement which they thought had taken place. A little later, with a view to secure more accommodation, it was proposed to remove the benches altogether and to let the spectators sit on mats. The attempt to do this, naturally increased the confusion, which reached a climax when the managers cut down some tiers of seats made of bamboos, which apparently formed a sort of gallery on the side of the shed abutting on the road, and on which a number of the college boys and others were seated. The people from outside then apparently pressed in, and the dispossessed occupants of the seats which had been cut down gave loud vent to their annoyance, and the confusion and noise became so great that the conductors of the entertainment thought it advisable to put an end to the performance. Beyond this there is absolutely nothing disclosed in the

record of the case, which would constitute any kind of criminal offence ; and after considering all the statements that have been made, both in and out of court, the Lieutenant-Governor is of opinion that nothing more happened ; that no criminal offence was committed, however noisy, and unmanly the boys, and, perhaps, some of the older spectators may have been ; and that, while there can be scarcely any doubt that the occurrence was not premeditated, it was equally clear that the sudden outburst of dissatisfaction arose in consequence of the failure of proper arrangements to accommodate the crowd of would-be spectators. The imputation of *indecent* behaviour alleged against some of the accused, which is based on what the witness Ashutosh Mukherjee is said to have been told by two unknown men, the Lieutenant-Governor has no hesitation in rejecting as utterly groundless. It was in itself so improbable that it would only have been believed if supported by strong and precise evidence ; but as a matter of fact, there was no proof whatever that it happened ; and the Lieutenant-Governor is compelled to express his surprise and reject that this manifestly unfounded story, imported into the proceedings upon the vague and hearsay statements, and never pressed to a conclusion, should have been deemed worthy of serious notice not only in the explanations of the District Superintendent and the Magistrate, but in your report.

4. The performance came to an end about 9 A. M., on Sunday, and shortly afterwards the District Superintendent, who was in the bazar was informed by some boys that the college lads had broken it up, and this was repeated by some of the Police who had been present. Major Ramsay, apparently without making any enquiry into the actual facts, asked "Have you got hold of any of the culprits", and, when answered in the negative said-"then go and get hold of them." He then drove to the Police-station, but meeting on his way a Sub-Inspector, who was proceeding to make enquiry, he went to the Inspector's house and took the latter with him to the place at which the performance had been held. He states that on arriving there, he told both officers to set to work, and find out and arrest all persons concerned in breaking up the Jatra. He also directed them to get a complainant as no complaint had at the time been put on record. There appears to have been no sort of attempt to ascertain the actual facts upon which these very proceedings were based, and indeed there is evidence to shew as subsequently disclosed in the trial that neither of the Native officers present at the *Jatra* considered that any offence had been committed. The Lieutenant-Governor must emphatically

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condemns his proceedings. He fully recognizes that Major Ramsay was naturally annoyed at hearing that after he had promised protection to the shop-keepers, a disturbance had taken place at their Jatra, and that he was actuated by a praise-worthy desire to shield offending members of society from annoyance. But the goodness of his intention can not be held to justify him in ordering arrests to be made before he had ascertained that any offence cognizable by the Police had been actually committed, and even before he had made sure that any one felt aggrieved at what had happened. This was not a case in which a crime had been undoubtedly committed, and where danger existed of the suspected culprits being enabled by delay in their arrest to evade or arrest justice. As a matter of fact, it is perfectly clear from the explanation of Major Ramsay and of Mr. Tayler, as well as from the recorded evidence, that efforts made to identify and arrest the persons supposed to have been engaged in the occurrence of the 13th, diverted the attention of the Police from what ought to have been the preliminary work of ascertaining the actual facts, and in that way indirectly led to much of the discreditable proceedings which ensued.

5. After Major Ramsay had left, the Sub-Inspector apparently went to the managers of the performance who, at his request, deputed one Nobin Day to be a complainant, and then taking Nobin with him, he went to the hostel, at which many of the college students resided in order to ascertain whether Nobin could recognize any of them as having participated in the occurrence at the Jatra. When he arrived there the manager of the hostel objected to allow him ingress without an order from his superior, the Principal of the Krishnaghur College. On this being reported to Major Ramsay, he wrote to the Sub-Inspector that if the manager did not, on receipt of the letter, give every facility to the Police, he was to be arrested and charged with obstructing the Police in the execution of their duty. He at the same time wrote to Mr. Mann, the Principal of the College, asking him to bring the Manager to the College where Major Ramsay would meet them. Ultimately Major Ramsay met the Principal and the Manager of the Hostel, where he arrested eight boys and ordered their removal for the purposes of the enquiry which, he remarks, had not up to then been allowed to be started. 'Twenty-eight arrests seem to have been subsequently made.' The Lieutenant-Governor has already expressed his disapprobation of the action of the Police in making arrests before beginning the enquiry, and it is not necessary to say more on the subject here. From the evidence

it appears that Major Ramsay was understood to give distinct orders to the Sub-Inspector to keep the youths who were arrested in custody at the Police station for twenty-four hours. In his explanation he states that he said he should have to consider whether it would not be necessary to keep the accused for twenty-four hours, and if so, he could assure them that the Police station had not been replete with every comfort. It appears that this was merely a threat, and that even when made, Major Ramsay had no intention of enforcing it. The Lieutenant-Governor, however, must express his strong disapprobation of the use of such a threat under the circumstances. It was also alleged by one of the witnesses that Major Ramsay ordered the Sub-Inspector to show the boys "no civility, no kindness, no mercy." Major Ramsay in his cross-examination did not positively deny the use of these words, though he states that he believes he did not use them. Only one witness was positive that he heard them. Mr. Mann, who was present at the time, alleged that they were used and the Sub-Inspector to whom they were said to have been addressed could not swear that they were used. The boys were in the course of the afternoon released on bail or on their own recognizance, and Major Ramsay instructed his subordinates to proceed in a leisurely way with the enquiry, in order that he might have the benefit of consulting the District Magistrate, Mr. Tayler, who was absent in Calcutta at the Divisional Tenancy Bill Conference, and who was not expected back till the 19th. There is nothing on the record or in the explanation to show what was done in the meantime, but it appears from a communication to the Director of Public Instruction from the principal of the College that the latter understood from Major Ramsay that the matter would not improbably be dropped, and the boys not proceeded against, on their engaging not to lend themselves to any kind of disturbance in future.

6. Mr. Tayler returned on Saturday, the 19th. At that time no final report had been submitted by the Police, and on the 21st an attempt was made to dispose of the case by a departmental enquiry. While negotiations were going on about this case, Mr. Taylor states that the Government pleader went to him in a hurried manner, and stating that there was no complainant present, asked to have the case dropped. Upon this Mr. Tayler, suspecting the motives upon which the representation was made, thought it necessary to summon the shop-keepers, and ascertain whether it was really their wish that the case should be dropped. Major Ramsay states that they were then away at Ranaghat

but that on their return, he sent for them and urged upon them to go on with the case, telling them that as he had done so much for them they must not leave him in the lurch. Major Ramsay believes that his appeal to the shop-keepers was unnecessary, and that they were eager to go on with the case. Accordingly they informed the Magistrate that they did not wish to let it drop, and upon this Mr. Tayler considered that he had no option but to let the case proceed. He allowed the Police to send up a report, dated 21st July 1882, under section 173 of the C. P. C., and at the request of Major Ramsay, made over the case to Mr. O'Brien, an Assistant Magistrate who at that time was of less than 21 months' standing. The Lieutenant-Governor regrets deeply the necessity of having to pass a severe censure on all these proceedings. The Police report shows that the charge on which the case was sent up was one of unlawful assembly under section 143 of the Penal Code. It is surprising that a perusal of the papers should not have shown an Officer of Mr. Tayler's standing that such a charge could never hold good, and if he made the enquires which he ought to have made, into the circumstances of the case and the manner in which the Police investigation had been conducted, it is scarcely possible to believe that he would not have seen that the case should not be proceeded with. He has acknowledged in his evidence that he made no such enquiry. He further committed the grave error of allowing Major Ramsay to suggest to him that a particular officer should be selected to try the case. It is no defence or palliation of this indiscretion to assert as Mr. Tayler asserts, that other complainants have made similar applications to him, because Major Ramsay, in his position of District Superintendent of Police, was not an ordinary complainant and the very least acquaintance with the circumstances of the case must have shewn that he was pressing this prosecution with an amount of an eagerness and pertinacity which only some great State trial would have justified. The reasons, too, on which Major Ramsay urged his application were justifiable; and if Major Ramsay's extremely improper attempt to induce the shop-keepers to press the case had come to his knowledge, the Magistrate should have taken immediate and serious notice of it. He states that he knew nothing about the men having been sent for. But one of the worst features in the whole case is that a prosecution commenced without any legal justification, has been pressed forward in a peremptory and injudicious manner without any real control from the Magistrate of the District, and practically at the will and dictation of the Superintendent of the Police.

The Lieutenant-Governor is certain that not in many districts of Bengal could such a perversion of authority have been tolerated, and here, in his opinion, it was clearly the duty of the Magistrate to instruct the Police to abandon the case, and, if he considered it necessary to take any further notice of the turbulent conduct of the boys, he should have called the attention of the Education Department to the matter. It is quite clear from the communication addressed to the Director of Public Instruction by the Principal of the Krishnaghur College that the latter was prepared to deal in an adequate manner with any misconduct not amounting to a criminal offence, of which the students might have been guilty.

7. It is not necessary to dwell at length on the subsequent proceedings. The Lieutenant-Governor has read with surprise and regret the evidence of both Mr. Tayler and Major Ramsay. He observes that they urge that several of their recorded statements require explanation or correction but they have not supplied this defect in their explanation or correction. Mr. Rivers Thomson must express his strong reprobation of the endeavour, made by Major Ramsay in private conversation, to persuade the Assistant Magistrate to take his view of the legal aspects of the case, and the attempt made on the 15th August to obtain a conviction for nuisance under section 290, Penal Code, when it was clearly apparent that the charge of unlawful assembly under Section 199, Penal Code, would not stand, seems to have been injudicious and vexatious. The complaints now made by Mr. Tayler and Major Ramsay of the inefficient way in which the prosecution was conducted are unintelligible. Major Ramsay stated in his evidence that he considered himself *de facto* prosecutor and Mr. Tayler stated that he had discussed the case daily with Major Ramsay as to its legal aspects, that he had suggested the sections, and that he had instructed the Inspector who conducted the prosecution to press for a conviction. If, therefore, the prosecution was mismanaged, these two officers must on their own showing, be held responsible, for its defect. But the Lieutenant-Governor is unable to accept the suggestion that if the case had been differently conducted in Court the result would have been different. It seems clear to him that if Mr. O'Brien had more experience in Judicial work, and if he had been an officer of greater standing, he would probably have seen his way to dispose of the case at a very early stage of the proceedings. He possibly made some mistakes in procedure, notably in not reading over to Mr. Tayler and Major Ramsay the evidence given by them. But the decision

come to by him was undoubtedly correct and, having regard to the official pressure exerted for a conviction, even only with the idea of a nominal penalty, it is clear that the right result of the case does much credit to his impartiality and fairness.

8. Upon the whole case, the Lieutenant-Governor regrets to be constrained to record that he has never come across proceedings which betrayed a greater want of sense and judgment than those which he has now been obliged to criticize and condemn. The precaution of half-an-hour's temperate enquiry in the first instance must have satisfied the District authorities, not only that no penal offence had been committed, but that, taking the occurrences in their most objectionable light, they exhibited a sudden out-break on the part of a parcel of school-boys to express a not unreasonable dissatisfaction at the treatment they had received at the *Jatra*. To magnify this into a criminal offence, to haul the culprits to the Police lock-up, to threaten them with long detention under custody, and to commence and to carry on a prosecution against them in the Court with the express view of causing harassment and annoyance, are acts which are as unjustifiable as they are discreditable to the administration. This want of judgement and discretion on the part both of Mr. Tayler and Major Ramsay is aggravated by the fact that overtures for conciliation on what appears to the Lieutenant-Governor to be very reasonable terms, were summarily rejected, and that among the reasons assigned by Mr. Tayler for pressing for conviction under the Penal Code are the extraordinary ones that there had been "obstructions, threats, newspaper writings and subscription from outsiders", and that he wished to court an enquiry into the good faith of himself and the District Superintendent. Mr. Rivers Thompson finds it difficult to understand how officers in their position would have allowed themselves to be influenced in pushing forward a criminal prosecution by considerations such as these, and he would have rejected the imputation of these motives, as incredible, if based on evidence less convincing than the admissions made in Court, and in the explanation now received. It is not by a mere expression of censure that the Lieutenant-Governor can meet such a case, and his sentence must be that Mr. Tayler should be degraded to the second grade of Magistrates for six months, and Major Ramsay, now in the second grade, should be reduced to the third grade of District Superintendents of Police, and be debarred from promotion for one year. Both officers will be transferred from a district in which by these recent proceedings, they have lost all influence for good. It is with extreme

regret that the Lieutenant-Governor finds himself obliged to come to this decision because he is not unaware of the good services which Major Ramsay has rendered in the Police Department.

9. Mr. Rivers Thompson is sorry to have to notice an apparent want of vigilant and effective control over your subordinate officers in this case. Had such been exercised it is scarcely possible that their proceedings should not have come under your notice at an early stage, and been immediately stayed by you. It is the duty of officers in the high and responsible position of Commissioners of Divisions to keep a careful watch over all departments of the administration of the Districts entrusted to their charge especially over matters connected with the Police—and to check, or, if necessary, bring to the notice of the Government, all executive action of an illegal and oppressive character. In the absence of such watchfulness, it must be frequently impossible for the Government to prevent the occurrence of such abuses of authority as are dealt with in this letter. In the present case, Mr. Rivers Thompson was for a long time under the impression that the prosecution was a purely private one, and when he learnt, on enquiry, the part taken in the proceedings by the local officials, the trial had already advanced to a stage at which his interference would have been useless and inexpedient. There has been some delay, too, in the submission of your (Mr. Smith, the Commissioner) report which was called for on the 22nd August, and not received till the 21st of September, and the Lieutenant-Governor is compelled to remark that it deals very inadequately with the administrative aspects of the case and with the grave faults committed by Mr. Tayler and Major Ramsay.

10. In the 12th paragraph of your letter, you suggest the advisability of introducing into the rules of discipline of our educational institutions; some provisions to take cognizance of unruly conduct out of doors on the part of the young men of our schools and colleges. You observe that such provision should supplement, not supersede, the criminal law; that complaints to the Courts, when cases were cognizable by them, would not be barred, but that minor acts of misconduct might be dwelt with by the authorities of schools and colleges, cognizance being also taken of the judicial decisions in some serious cases. I am desired by the Lieutenant-Governor to express his concurrence with these remarks, and to inform you that the matter is already being considered by him in the Education Department. He takes it that school-boys, like other private persons, are equally amenable to the law for offences against the

law, but it is a stupid policy which would aggravate every act of misconduct on the part of a school-boy into a criminal offence to be dealt with by the Police and the Law Courts. Where, as in a notorious case, which occurred last year in another district, school-boys violently assaulted the Police when attempting to prevent their obstructing a procession, and severely injured one man, or, where, as in another case, which happened a few days after, in the same station, another set of school-boys made a wanton and cruel attack on two unoffending way-farers, magisterial authority was necessarily invoked, and rightly exercised. But the circumstances of the present case were entirely different. The presiding officer at the trial has decided, and the Lieutenant-Governor has already stated his concurrence in the finding, that no criminal offence had been committed ; and even if the misbehaviour of the boys had amounted to a technical offence under the Penal Code Mr. Rivers Thompson is satisfied that the Principal of the College was able and willing to accept the responsibility of dealing with the affair, and he has no doubt whatever that it ought to have been left in the hands of the latter.

* II. The record of the trial is returned herewith.

I have &c.,

J. WARE-EDGAR.

Offg. Secy. to the Govt. of Bengal.

LORD LYTTON'S FULLER MINUTE.

CHAPTER II.

As a succinct history of this case will be found in the body of the Resolution, we refrain from recapitulating it here. Suffice it to say that by recording this celebrated Resolution, Lord Lytton, who was otherwise very unpopular with the Natives of this country, for his Gagging Act and other repressive measures, succeeded in winning a temporary gratitude from our fellow-countrymen. From the time of Vasco de Gama to the present time, numerous instances have occurred in which wanton outrages have been perpetrated upon the helpless Natives of this country, and in vindication of the honor of British Justice, this famous Resolution was recorded.

GOVERNMENT OF INDIA,

HOME GOVERNMENT.

REGINA VS. FULLER.

ASSAULT ON A SERVANT RESULTING IN HIS DEATH.

From Arthur Howell, Esq., Officiating Secretary to the Government of India, to the Secretary to the Government of the North-Western Provinces.—No. 1098 J, Simla, the 7th July 1876.

I am directed to acknowledge your letter No. 313, dated the 18th May last, forwarding at the request of the Government of India, a copy of the judgment of Mr. Leeds, Joint Magistrate of Agra, in the case of the crown vs. R. A. Fuller, together with a letter from the High Court of the North-Western Provinces, expressing the Courts' opinion on the sentence inflicted on Mr. Fuller by the Joint Magistrate.

2. The facts of this case are as follows:—One Sunday morning, Mr. Fuller an English pleader at Agra, was about to drive to church with his family. When the carriage was brought to the door, the syce failed to be in attendance, but made his appearance when sent in. For this cause Mr. Fuller struck the syce with his opened hand on the head and

face and pulled him by his hair, so as to cause him to fall down. Mr. Fuller and his family drove on to church; the syce got up, went into an adjoining compound and there died almost immediately.

3. The Joint Magistrate of Agra before whom Mr. Fuller was placed to take his trial framed the indictment under section 323 of the I. P. Code for "causing hurt to one Katwaree his syce" and it appeared from the evidence of the Medical officer who had conducted the post mortem examination that the man had died from rupture of the spleen which very slight violence, either from a blow or a fall, would be sufficient to cause, in consequence of the morbid enlargement of that organ. The evidence in the case does not shew any other assault; at least the Joint Magistrate disbelieved (apparently on good grounds) all that portion of the evidence which referred to any other assault. The Joint Magistrate found Mr. Fuller guilty of "voluntarily causing what distinctly amounts to hurt," and sentenced him to pay a fine of Rs. 30, or in default to undergo fifteen days' simple imprisonment; directing the amount of the fine to be made over to the widow of the deceased. At the request of the Local Government, the High Court expressed an opinion on the case, which was to the effect that the sentence though perhaps higher than the High Court would have been disposed to inflict under the circumstances, was not specially open to objection.

4. The Governor-General in Council can not but regret that the High Court should have considered that its duties and responsibilities in this matter were adequately fulfilled by the expression of such an opinion. He also regrets that the Local Government should have made no enquiry, until directed to do so by the Government of India, into the circumstances of a case so injurious to the honour of British rule, and so damaging to the reputation of British Justice in this country.

5. The Governor-General in Council cannot doubt that the death of Katware was the direct result of the violence used towards him by Mr. Fuller. He observes that the High Court assumes the connexion between the two events as being clear. Yet on reading Mr. Leed's judgment, he does not find that that gentleman ever considered the effect or even the existence of this connexion. Mr. Leeds did, indeed, consider whether Mr. Fuller ought not to be subjected to a more serious charge, but only because there was evidence given of further violence used by him, which evidence Mr. Leeds rejected, on grounds which are here assumed to have been sufficient. He seems, however

to have viewed an assault resulting in the death of the injured man in just the same light as if it had been attended by so such result."

6. The class of misconduct out of which this crime has arisen, is believed to be dying out; but the Governor-General in Council would take this opportunity of expressing his abhorrence of the practice, instances of which occasionally come to light, of European masters threatening their Native servants in a manner in which they would not treat men of their own race. This practice is all the more cowardly, because those who are least able to retaliate injury or insult, have the strongest claim upon the forbearance and protection of their employers. But bad as it is from every point of view, it is made worse by the fact, known to all residents in India that Asiatics are subject to internal disease which often renders fatal to life even a slight external shock. The Governor-General in Council considers that the habit of resorting to blows on a very trifling provocation, should be visited by adequate legal penalties, and those who indulge it should reflect that they may be put in jeopardy for a serious crime.

7. The Governor-General in Council cannot say whether Mr. Fuller would have been convicted of a more serious offence, such as that of causing serious hurt, or that of culpable homicide, had he been charged with it. But this he can say with confidence, that in consequence of Mr. Fuller's illegal violence his servant died, and that it was the plain duty of the Magistrate to have sent Mr. Fuller for trial for the more serious offence, a course which would not have prevented him from being punished (indeed he could thus have been more adequately punished) for the lesser offence, if that alone had been proved.

8. But besides his error of judgment in trying this case himself, the Governor-General in Council thinks that Mr. Leeds has evinced a most inadequate sense of the magnitude of the offence of which Mr. Fuller was found guilty. The offence was that of "voluntarily causing hurt." That is an offence which varies infinitely in degree, from one which is little more than nominal, to one which is so great that the Penal Code assigns to it the heavy punishment of imprisonment for a year and a fine of Rs. 100,0. The amount of hurt and the amount of provocation are material elements in determining the sentence for such an offence.

In Mr. Fuller's case, where the provocation was exceedingly small, the hurt was death. For this Mr. Leeds, while saying that he intends to inflict a punishment something more than nominal, inflicts only a fine

of Rs. 30. The Governor-General in Council considers that with reference either to the public interests, or to the compensation due to Katwari's family from a person in Mr. Fuller's position (and it does not appear from the papers that Mr. Fuller has made any other compensation) such a sentence is wholly insufficient. He considers that Mr. Leeds has treated the offence as a merely nominal punishment; and that to treat such offences with practical impunity is a very bad example and likely rather to encourage than repress them.

9. For these reasons, the Governor-General Council views Mr. Leeds's conduct in this case with grave dissatisfaction. He should be so informed, and should be severely reprimanded for his great want of judgment and judicial capacity. In the opinion of the Governor-General in Council, Mr. Leeds should not be entrusted even temporarily with the independent charge of a district, until he has given proof of better judgment and a more correct appreciation of the duties and responsibilities of magisterial officers for at least a year.

ARTHUR HOWELL.

Offg. Secy. to the Govt. of India

The High Court of the North-Western Provinces remonstrated against this Resolution, but the Secretary of State for India upheld the power and decision of the Governor-General in Council.

MR. JOHN BEAMES' CASE

AND

CENSURE PASSED FOR HIS LOAN TRANSACTION.

CHAPTER III.

The *Amrita Bazar Patrika* in its issue of the 21st April 1887, first brought to public notice the following facts in regard to the loan transactions of Mr. John Beames which we transcribe below :—

"Mr. Beames has had to borrow monies from Roy Dhunput Shing and the late Roy Luchmeput Shing, zemindars and bankers of Purnea and Moorshedabad. And at one time when he ceased to have any official connexion with Beugal and Behar, that is when he was the District Magistrate of Cuttuck and Offg. Commissioner of the Orissa Division, he did not feel himself restrained by any considerations of delicacy and honor, from applying for a loan of Rupees thirty thousand to the late Raja Digambar Mitter of Calcutta who owned the valuable zemindari of Patamundi in Orissa. Raja Digambar very wisely did not choose to lend the money himself, but got a relative of his, a Hindu lady to advance the sum of rupees thirty thousand to Mr. Beames."

Mr. Beames being a Covenanted Officer, he is prohibited under Regulation VII of 1823 to contract a loan from a person residing within the jurisdiction of a Civil Servant.

Section 3 of the Regulation runs as follows :— *

"All Judges of Zillah Courts, all Magistrates, Joint Magistrates Registrars and Assistants to Magistrates, all Collectors and Deputy Collectors of the land revenue, all Assistants to such Collectors or other officers, exercising the power of such Collectors, are prohibited, on pain of dismissal from office, from borrowing money from, or in any way incurring debt to, any zemindar, talukdar, raiyat, or other person possessing real property, or residing in, or having a commercial establishment within the city, district or division, to which their authority may extend."

Section 6 of the same Regulation runs as follows :—

"In like manner, if any covenanted servant, who may be hereafter appointed to any office, shall, at the time of such appointment, be

indebted to any person with whom it would be illegal for him to contract a loan, while holding such office, it shall be incumbent on such servant, before entering on the duties of the office, to make known the circumstance to the Governor-General in Council, and failing to do so, he shall be subject to the same penalty as if the debts had been contracted subsequently to his being appointed to the said office."

Then again under rule 29 of the Rules published by the Government of India for the Junior Civilians, it has been laid down :—

"The contracting of debt by Civil Servants of Her Majesty is prohibited. Those who enter the public service under pecuniary embarrassment, implying the contraction of habits of prodigality, will be held to be disqualified for employment of trust and confidence so long as those habits and embarrassments continue."

M. Beames was charged thus :—We quote the *Amrita Bazar* again :—

"Mr. Beames borrows money of a Hoogly Zemindar, say, (for instance) of a Mondol of Chinsurah. If these Mondols have properties in Balasore, and Mr. Beames borrows the money of them when Magistrate of that district he commits a breach of the Rules. Suppose, again, Mr. Beames borrows money of the same Mondols when he is a Commissioner of the Budwan Division and the Mondols belong to Chinsurah which is a town within his jurisdiction, he commits a breach."

"Take another instance. Mr. Beames was Commissioner of the Chittagong Division from 1st March 1878 to 15th November 1879. While there, he, say, for instance, borrows money of a Dacca Zemindar."

"If these Zemindars did not own any property in the Chittagong Division Mr. Beames perhaps does not commit a breach of the letter of the rules, though he breaks their spirit. But Mr. Beames subsequently served as Commissioner of the Dacca Division from July 1880 to November 1880. When he took charge of the Division, does he notify to Government of his liabilities to the Dacca Zemindar?"

From these extracts it would appear that Mr. Beames acted against these rules and the Government of Lord Dufferin, recorded the following Resolution which we transcribe below. We need hardly say that this Resolution is one of the *redeeming* features of Lord Dufferin's Indian Administration.

MR. JOHN BEAMES' CASE.

No. 1569, dated Simla, the 14th July 1887.

A. P. MacDonnell, Esq., Secretary to the Government of India,
Home Department,

To—The Chief Secretary to the Government of Bengal.

In your letter No. 2081J, dated 6th May last, you submitted an explanation by Mr. John Beames of the Bengal Civil Service, an Officiating Member of the Board of Revenue, Lower Provinces, regarding certain debts which he incurred while Collector of Chumpan in 1867 and Collector of Cuttack in 1876, respectively. In both of these instances, Mr. Beames borrowed money from persons not resident within the limits of his official jurisdiction. The debts have since been liquidated, and Sir Stuart Bayley expressed the opinion that the loans were contracted in an open way, and as an ordinary matter of business, and that they called for no further notice from Government. Although the Government of India considered it matter for regret that a member of the Covenanted Civil Service should have incurred debts to natives even in circumstances not prohibited by rule, the Governor-General in Council agreed with His Honor in thinking that no further action was called for.

2. You now in our letter No. 118J—D, dated 22nd June, have brought to the notice of the Government of India that in two other cases, Mr. Beames has infringed the provisions of Section 6 of Regulation VII of 1823, which imposed upon a member of the Covenanted Service the obligation of disclosing to the Governor-General in Council the fact of his indebtedness to any person residing within a District to the charge of or employment in which he may be appointed, subsequent to the contraction of the debt. It appears that Mr. Beames, while Officiating Commissioner of the Dacca Division, borrowed money from a Native gentleman, named Umesli Chunder Mundal, resident in Hughly. After the loan had been contracted, Mr. Beames was appointed to officiate as Collector of the Hughly District, and failed to comply with the requirements of the Regulation above mentioned by reporting the fact of his indebtedness.

In the second case Mr. Beames borrowed money from Messrs, Srinath Roy and Company of Calcutta, who, it appears, possess property in Dacca, a District in the Division to the charge of which Mr. Beames was, after contracting the loan, appointed for three months. It does not appear that Mr. Beames at the time of his appointment as Officiating

Commissioner of the Dacca Division knew that Messrs. Sri Nath Roy and Company owned property in Dacca, but he became aware of this fact a short time before the expiry of his acting appointment. In this case also Mr. Beames omitted to report to Government the fact of his indebtedness to a person resident or possessing property within his jurisdiction.

3. In your letter under notice, His Honor the Lieutenant-Governor, while stating that Mr. Beames has violated the spirit and letter of the Regulation, expresses the opinion that there is not a shadow of suspicion as to his official honesty, and that no suggestion has ever been made that his official action has been in any way influenced by his pecuniary obligations. Sir Stuart Bayley recognizes, the necessity for visiting with punishment the breach of a regulation upon the observance of which it is so essential for Government to insist, but at the same time, he brings to notice the fact that Mr. Beames has always borne "the highest character for zeal, straight-forwardness, and efficiency," and adds that the difficulties which led to his contracting these loans, have not been the result of personal extravagance.

4. In the circumstances as above described, the Governor-General in Council has come to the conclusion that the breach of rule of which Mr. Beames has been guilty, is not so aggravated as to call for the imposition of the extreme penalty authorized by the Regulation. Further it is willingly admitted that Mr. Beames' personal character and his public services, to which the Lieutenant-Governor bears emphatic tribute, should be considered in mitigation of the consequence of his transgression. On the other hand, His Excellency in Council is unable to regard in other than a serious light disobedience of the Regulations imposed by the Government on the servants of the State in regard to borrowing. It is essential to the maintenance of discipline and of the high character which should obtain among Covenanters Civilian that they should be free from any imputation of reproach in such matters, and that the provisions of the Regulation should both in the letter and the spirit be strictly observed. The Governor-General in Council, therefore, requests that His Honor the Lieutenant-Governor will convey to Mr. Beames a formal expression of censure from the Government of India for the breach of the Regulation which has been committed by him. His Excellency in Council has further come, with great regret, to the conclusion that the period of Mr. Beames' present officiating appointment in the Board of Revenue must be at once terminated, and that he should

be transferred to a suitable appointment within the jurisdiction of which no Native creditor of his resides, or has an estate or commercial establishment.

5. I am to add that should His Honor think it desirable, His Excellency in Council has no objection to this letter being made public.

CHAPTER IV,

BABU LAL CHAND CHOWDRY A RESPECTABLE ZEMINDAR
AND A MUNICIPAL COMMISSIONER OF CHITTAGONG
APPOINTED SPECIAL CONSTABLE TO GUARD A MUNICIPAL
PRIVY BY MR. T. M. KIRKWOOD, MAGISTRATE
AND COLLECTOR OF THE DISTRICT.

The secret Resolution of the Bengal Government which we append below, first saw the light of publicity in the columns of the *Hindoo Patriot* of August 28th of 1876. The late lamented Honourable Kristo Das Pal, its renowned and talented Editor got a copy of this Resolution, which Sir Richard Temple, the then Lieutenant-Governor of Bengal did not choose to make public, perhaps from fear of wounding the *amour propre* of the Civilians, from a third party and published it in his paper. The Resolution speaks for itself, and the few misstatements of facts that crept therein, we shall correct in the words of the great journalist to whom the credit of throwing public light upon this secret document is mainly due. It runs as follows :—

Resolution 7th July 1876.

Public attention having been drawn to the proceedings of Mr. Kirkwood, the Officiating Magistrate of Chittagong, in connexion with a criminal prosecution instituted by him against Bubu Lal Chand Chowdry a Municipal Commissioner of the town of Chittagong and an Honorary Magistrate and a wealthy merchant and Zemindar of that district, the Lieutenant-Governor has deemed it necessary to hold a full enquiry into the matter.

2. From the papers which have been received, it appears, that on the 24th April last, a meeting was held by the Municipal Commissioners of Chittagong to give effect to certain Bye-laws, which had been sanctioned by the Government under Section 84 of Act III., B.C. 1864, for the better sanitation and conservancy of the town. As the provisions of these bye-laws were distasteful to the people generally, a large number of them assembled at the Municipal Office to watch the result of the discussion, but though certain matters connected with the introduction of the bye-laws were approved by the majority of the Commissioners, the people raised no question or disturbance, while the Magistrate was present, nor did they address him when he passed through their midst on leaving the office.

On the same night, however, two of the public latrines in the town were burnt down, and the Magistrate was informed on the following day by anonymous communications that the town-people were greatly incensed at the action which had been taken by the Municipal Commissioners, and that they had determined upon destroying all the remaining latrines in a similar manner. On the 26th and 27th of April, several more latrines were burnt down, and on the latter date, the Magistrate, in order to assist the police, enrolled certain of the respectable inhabitants as special constables. This step appears to have the desired effect, as no further fires or disturbances occurred.

On the first of May, another meeting was called of the Municipal Commissioners to consider some question of finance, and on this occasion while the Commissioners having assembled were waiting for Babu Lal Chand, the Magistrate was informed by Mr. Fuller, one of the Municipal Commissioners, (apparently in an informal and conversational way) that at the close of the previous meeting of the 24th of April, there had been a discreditable scene; that Babu Lal Chand Chowdry who had opposed the introduction of the bye-laws, had delivered an inflammatory address to the crowd outside the office, which had excited them to lay hands on Babu Komola Kant Sen, another Commissioner, who had voted for the introduction of the bye-laws, and that he, Mr. Fuller, have been obliged to go to the rescue of Babu Komola Kant Sen and to take him away in his carriage after driving off the crowd with his stick. The statement thus made by Mr. Fuller is reported to have been confirmed by Babu Komola Kant Sen, who was also present at the meeting. At this time Babu Lal Chand Chowdry was not present, but on his entering the room shortly afterwards, Mr. Kirkwood, instead of requesting Mr

Fuller and Babu Komola Kant Sen to report their statement, and hearing what explanations the Babu might have to offer on the subject, which would have been obviously the proper course to follow, immediately ordered the Babu to leave the room and repeated that order till it was obeyed. The Assistant Magistrate Mr. Badcock in a note which he subsequently drew up of what occurred at the meeting states that on a remonstrance being made by Mr. Fuller against Magistrate's proceedings on the ground that Babu Lal Chand would consider it as an insult, Mr. Kirkwood replied—"yes, I intended it as an insult." But Mr. Kirkwood denies that he used these precise words, though he admits that he did say and mean something of the sort. On the whole, the Lieutenant-Governor finds that Mr. Kirkwood treated Lal Chand on this occasion in a manner which ought not to have been adopted by the head of the district towards a Municipal Commissioner. It is not to be expected that native gentlemen of position would serve as Municipal Commissioners if such instances were to become common; and the Lieutenant-Governor hopes that they are very rare.

After this proceeding without affording the Babu an opportunity of offering any explanations in regard to the charges which had been brought against him in his absence, and also apparently without holding any further enquiries or recording any formal complaint, Mr. Kirkwood on the following day, the second of May, issued a warrant for the arrest of the Babu on seven different charges.

On the third of May, the Babu attended Mr. Kirkwood's Court and witnesses were examined for the prosecution. Mr. Kirkwood at the same time declined to accede to the petitions made by the Babu that the hearing of the case should be postponed, pending the arrival of Counsel from Calcutta, and that the trial should be held by another Officer, who was not himself the prosecutor, notwithstanding that on a subsequent application made to the Judge, that officer had advised Mr. Kirkwood to comply with the request which had been made.

On the tenth of May, after the close of the case for the prosecution, Mr. Kirkwood framed three charges against the Babu—(1) for abetting an unlawful assembly, (2) for abetting the offence, (3) criminal intimidation and called upon the Babu to enter upon his defence.

The Babu then moved the Judge to call for the records of the case, and to forward it to the High Court with a view to the proceedings being quashed, on the ground that the proceedings were unlawful, as there was no evidence whatever to support any of the charges to which he

the Babu, had been called upon to plead. After reviewing the proceedings and hearing Counsel on the part of the Babu, the Judge, on the 15th May, recorded a judgment to the effect that having gone carefully through the case he had failed to find any evidence in support of the charges framed, or to perceive how the evidence could be held to bear any construction favourable to the case for prosecution, which had been constituted and carried on by Mr. Kirkwood in person, and that it appeared to him, the Judge, "that framing charges which are entirely unsupported by evidence, and calling on a defendant to answer to them was unlawful." The Judge then added that he felt bound under the above circumstances to report the case to the High Court, but that before doing so, he would give Mr. Kirkwood an opportunity of allowing the case to drop. A similar communication was also made to Mr. Kirkwood, who at first questioned the propriety of the proceedings taken by the Judge and the Commissioner, but subsequently on the 19th of May, after having himself heard Counsel on behalf of the Babu, Mr. Kirkwood recorded a formal order acquitting the Babu of all the charges which had been framed against him.

On careful review of these proceedings, and apart from the consideration which was due to Babu Lal Chand Chowdry, with reference to his position as a Municipal Commissioner and Honorary Magistrate, the Lieutenant-Governor is constrained to hold that Mr. Kirkwood's proceedings were hasty and ill-judged, and shewed great want of proper discretion and reasonable care in the exercise of the extensive powers which have been conferred upon him by law. Nor does, the Lieutenant-Governor consider that Mr. Kirkwood's explanatory letter of the 5th ultimo, tends in any way to place the matter in a more favourable light. It is true that under the provisions of Section 142 of the C. P. C., the Magistrate of the district may, without any complaint, or prior record of the deposition, take cognizance of any offence which he suspects to have been committed and may issue process to compel the appearance before him of persons whom he suspects to have committed any such offence. These, however, are extraordinary powers which should at all times be exercised with the greatest discretion and have been obviously framed to enable Magistrates to vindicate justice and to punish offenders, notwithstanding that the persons individually aggrieved are unwilling or unable to prosecute, but in the case under notice there was no necessity whatever for the exercise of these extraordinary powers. A specific complaint has been made and such being the case, Mr. Kirk-

~~He~~ should have followed the procedure laid down in Section 144 of C. P. C., before putting the machinery of the law into motion. Had he done so, and had he calmly and dispassionately considered the evidence before taking further proceedings, it is clear that the Babu ~~would~~ have been saved from the trouble and annoyance of appearing as a prisoner at the bar of the Criminal Court.

Again the Lieutenant-Governor must hold that there is nothing in Mr. Kirkwood's explanation to extenuate a similar want of judgment and discretion on his part in framing charges against the Babu, and calling upon him to plead to them, when there was no sufficient evidence to support these charges.

The Lieutenant-Governor is willing to admit that the occasion was one of some difficulty owing to the excitement which existed at the time, among the towns-people and which resulted in several acts of incendiarism. But seeing this, it was all the more necessary for the Magistrate to proceed with caution and to make sure of his ground before taking any actions, which, if unsuccessful, could only tend to increase the local excitement and to weaken or compromise his own authority.

From the information which Mr. Kirkwood had received of Babu Lal Chand Chowdry's proceedings after he (Mr. Kirkwood) had left the Municipal meeting on the 24th of April, and of the conduct of the crowd which had collected outside the office, there were apparently good and sufficient reasons for holding a full and careful enquiry into the whole matter, and if this had been done, Mr. Kirkwood would have been in a proper position to decide, whether, with reference to the evidence before him, sufficient grounds existed for the issue of process, and for placing any of the members of the crowd or any other persons on their trial. As it was, however, no such enquiry appears to have been held and the precipitate action of the Magistrate, in issuing a warrant for the arrest of Babu Lal Chand Chowdry on a number of different charges, regarding which no depositions had been recorded and his subsequent proceedings in bringing the Babu to trial on charges which were not supported by the evidence, have resulted in the opinion of the Lieutenant-Governor in a grave scandal, and in an apparent failure of justice, so far as relates to the proceedings of the crowds.

The Lieutenant-Governor must also take exception to the proceedings under which Babu Lal Chand Chowdry was directed by specific order to guard two Municipal privies. The action of Mr. Kirkwood appointing special constables under the circumstance appears to have been perfectly

legitimate and proper, but he should have known, if he was not indeed aware of it, that the written order directing the Babu to guard two latrines, was eminently calculated to give needless and great offence to a Hindu gentleman. Again, although Babu Lal Chand Chowdry's proceedings in the Committee-room on the 24th April may have been somewhat indiscreet, it appears to the Lieutenant-Governor that the opposition taken by the Babu to the bye-laws was perfectly justifiable and legitimate and conducted in good faith. The Lieutenant-Governor must say this much without at all affirming the correctness of the Babu's views. If the Babu disliked the bye-laws he had a right, as one of the Municipal Commissioners, to oppose them, and this is irrespective of the question, whether the bye-laws were in themselves right or not. On the other hand the Lieutenant-Governor has entire confidence in the good faith with which Mr. Kirkwood however mistaken, was acting, still the Lieutenant-Governor cannot avoid the apprehension that Mr. Kirkwood in his zeal for the adoption of the bye-laws in itself a legitimate object, allowed his temper and feelings of impatience at meeting with opposition, to overcome his good judgment, and that thus his proceedings throughout become hasty, indiscreet and improper. Having repeatedly considered the subject, the Lieutenant-Governor is obliged reluctantly to hold that Mr. Kirkwood is amenable to grave censure, and has been found so far in the wrong as to render it necessary to remove him from the charge of the Chittagong District. It will be impossible to maintain municipal discipline which has been so much weakened by those proceedings without ordering a change in the administration of the district. Orders will accordingly issue immediately for the removal of Mr. Kirkwood from the office of Magistrate and Collector of Chittagong, and for his appointment to some other office in Bengal.

Ordered that a copy of the above Resolution be forwarded to the Commissioner of Chittagong for information, and for communication to Mr. Kirkwood, and also to the Appointment Department for the issue of the necessary orders.

Also that a letter be written to Babu Lal Chand acknowledging the receipt of a memorial and informing him that after a careful consideration of the fact of the case, the Lieutenant-Governor has been pleased to issue such orders as appeared to him to be necessary.

By order,

(Sd.) R. L. MANGLES,

Offg. Secretary to the Government of Bengal

The Honourable Kristodas Pal in commenting upon this Resolution wrote as follows:—

*“Having regard to his finding, we cannot help saying that the sentence he has passed is totally inadequate. There are also some “incorrect statements”, in the statement of facts, for which we believe he is not responsible, but which we will take the liberty to correct. In the first place the Lieutenant-Governor remarks that Babu Lal Chand had delivered an inflammatory address to the crowd, which excited them to lay their hands upon Babu Komalakant Sen. Now, neither Mr. Fuller nor Babu Komalakant made any such allegation, and we are therefore curious to know where did His Honor get this fact from. In the second place His Honor says that “a specific complaint had been made,” we presume against Babu Lal Chand, but there is nothing on the records to shew that such a complaint had been made against him by any person except by Mr. Kirkwood himself. Thus Mr. Kirkwood was the prosecutor, and as Magistrate, he issued the warrant of arrest against him when His Honor admits there was “no sufficient evidence to support the charges,” and “no depositions had been recorded,” and &c., &c. The proceedings of the Magistrate “have resulted in the opinion of the Lieutenant-Governor in a grave scandal,” and yet His Honor says he has “entire confidence in the good faith” of Mr. Kirkwood. Now, we doubt, whether when His Honor wrote this, he remembered the definition of “good faith” in the Penal Code. His Honor himself says that “he is constrained to hold that Mr. Kirkwood’s proceedings were hasty and ill-judged and shewed great want of proper discretion and reasonable care in the exercise of the extensive powers, which have been conferred upon him by law.” And section 52 of I. P. C. declares “nothing is said to be done or believed in “good faith,” which is done or believed without due care and attention.” How then could it be said that Mr. Kirkwood had acted in “good faith”? Again, His Honor notices that Mr. Kirkwood’s zeal in the adoption of the bye-laws in itself a legitimate object,” but seems to have forgotten that His Honor has recorded in another letter that the obnoxious bye-laws “cannot be enforced without the consent of the inhabitants themselves.” Now this consent had not been taken by Mr. Kirkwood, which had caused so much dissatisfaction, and yet “his zeal for the adoption of the bye-laws” is considered “legitimate.” With regard to the bye-laws we may say on the authority of local European testimony that the location of the latrines on the top of the hills, which might be washed down by a slight shower, would make the nuisance greater

and so the plea of sanitation does not hold water. Not content with enforcing the bye-laws illegally, not to say unnecessarily, Mr. Kirkwood appointed the elite of the town as special constables to guard the latrines, but the Lieutenant-Governor says that the appointment of special constables was "perfectly legitimate and proper." His Honor only regrets that Mr. Kirkwood should have appointed a man of Babu Lal Chand's position as a special constable. Babu Lal Chand was not the only gentleman who was thus distinguished by Mr. Kirkwood; there were about sixty other native gentleman who were similarly honoured."

The extract is long but will amply pay perusal. It shews clearly how Kristodas criticized Governmental Resolutions and measures with great scrutiny, carefulness and due respect to the authorities. But let that pass. Babu Lal Chand's case is not the only solitary instance in which some Magistrates, whether Native or European, who wield vast influence over the people in the Muffasil, have applied the law of appointing special constables to the great harassment of the people. Instances might be cited by scores to prove our assertion that some of the Muffasil Civilians and Native Deputy Magistrates have misused their power in a way quite undreamt of by the Legislature to the infinite sufferings of the innocent people.

CHAPTER V.

THE RUNGPORE DEER CASE.

Rungpore Deputy Magistrate's Court.—October 14th., 1886.

(Before Babu Chundi Churn Bose.)

The Empress vs. Prosunna Moyi Dashee.)

From what a "trivial cause a dire offence arises" in this ill-fated country. Like the Nuddea students' case, the Rungpore deer case affords a striking illustration of the dangerous use of the powers invested in the Police and the Magistrary. whenever any Police officer, especially of European filiation, does anything wrong, it pretty often happens in this country,

~~that~~ the Magistrate as the head of the Police, supports him at the sacrifice of law and justice. So much by way of preface. Now let us come to the history of the case.

The shooting down of a deer belonging to a zemindar by Mr. A. E. Shuttleworth, Assistant Superintendent of Police, on the 16th September 1886, gave birth to a series of shameful criminal prosecutions, the facts of which we glean from the editorial written on this subject by the *Indian Mirror* of October 31st, 1886.

"Babu Annoda Prosad Sen, a wealthy zemindar of the District, and a well-known resident of the station of Rungpore, owned a pet deer, which he kept under the care of a special servant in a secure enclosure, within the grounds attached to his dwelling-house. The animal has previously escaped from restraint, but it had never been known to do the slightest harm on any occasion. During the absence of Babu Annoda Prosad from the station, the deer seems to have broken bounds on the 6th September, when it was wantonly shot down by Mr. Shuttleworth."

Before we describe what ensued afterwards, it is necessary, we believe, to state here, that previous to the killing of this deer, a bad blood was engendered between this Zemindar and Mr. Shuttleworth, on account of the former having failed to provide the latter with an elephant for a shooting excursion. The elephant being ill was not sent according to promise and this circumstance might have incensed Mr. Shuttleworth against Annoda Babu. He wreaked his vengeance upon the zemindar by shooting down his deer, and what followed we shall state in the words of the *Indian Mirror*.

"After the deer had been killed, the pleader of Babu Annoda Prosad informed Mr. Shuttleworth that proceedings would be instituted against him for shooting it; and subsequently, the zemindar's servants took its carcass to Mr. Newberry, the District Magistrate of Rungpore for the purpose of lodging a verbal complaint against Mr. Shuttleworth."

Mr. Shuttleworth, thereupon, hit upon a capital idea of taking the wind out of the sail of the enemy; and as is usually done in the dark muffusil, an insignificant Mahomedan, named Ainnuddin was "induced by the Police evidently, indeed, 'transparently,'" at his instance to prosecute Babu Peary Mohun Bose, the Dewan of the zemindar for criminal neglect to take proper precautions that the deer should do no harm to human life or limb under section 289 I. P. C. The case was heard by

Babu Chandli Churn and the accused was acquitted on the 11th September. Thus foiled in the attempt to wreak vengeance on the zemindar, on the 15th of the month, one Kishi Mohun Sen, Court Sub-Inspector, presented a petition to the Deputy Magistrate for the issue of a summons under section 289 I. P. C. against Prosunna Moyee Dashee, aunt of Annoda Prosad, who, it was proved, was the mistress of the deer which caused so much mischief. The Deputy Magistrate who at first disapproved of this petition, ostensibly from official pressure from the Magistrate, gave his sanction on the 21st instant, after taking full 5 days to consider over the matter. He consulted with Mr. H. J. Newberry, the Magistrate, who, along with Mr. Stack, the District Superintendent of Police, and Mr. Shuttleworth formed a clique to get the zemindar punished. At this stage of the proceedings, Mr. Mono Mohun Ghose, of the Calcutta Bar, appeared for the defence, laid bare the manipulations and tricks of the officials concerned. The case against Prosunna Moyee was dismissed and Sir Rivers Thompson the then Lieutenant-Governor recorded the following Resolution on the subject which we transcribe below.

THE RUNGPORE DEER CASE—ORDERS
OF THE GOVERNMENT.

No. 95 J.

From—Colman Macaulay, Esq., Officiating Chief Secretary to the Government of Bengal.

To—The Commissioner of Rajshahye Division.

Calcutta, the 1st March, 1887.

JUDICIAL.

Sir,—I am directed to communicate to you the following observation with reference to your Report No. 587 (J. Ct.) dated 17th December, submitting the papers in connection with the Rungpore Deer case.

2. The Lieutenant-Governor has perused these papers with much regret, and he entirely concurs in the opinion expressed by you that if the Rungpore officials had wished to afford an opportunity for misrepresentation, they could not have effected their object more thoroughly than by their proceedings in this case. From first to last they exhibited a want of the sense of responsibility in the discharge of public duty, of judicial accuracy and firmness and of discretion in control and direction.

3. The case of which a very clear and full history is given in Mr. Collier's report, appears to be divided into five stages, in all of which

mistakes were made: (a) The Proceedings connected with the shooting of the deer. (b) The institution of the prosecution. (c) The disposal of the case against the Dewan, Peary Mohun Bose. (d) The issue of process against Srinutty Poonjee Moje Dassi. (e) The disposal of the case against the lady.

4. As regards the first stage, it appears that Mr. Shuttleworth was moved to take action in the matter on the representations of one Ainuddin and three others, who apparently without any intention of laying a criminal complaint had asked for Mr. Shuttleworth's intervention to secure them protection from a deer belonging to Babu Annoda Prosad Sen, which was said to be dangerous, and regarding the proper custody of which the Babu's servants were indifferent. Mr. Shuttleworth rightly proceeded to enquire into the matter, and believing the story as to the savage character of the animal, he took as a precaution his rifle with him. On arriving at the house of Babu Annada Prosad Sen, the owner of the deer, he had an altercation with the Dewan and others, which was originated by one of the servants saying that in threatening a prosecution, Mr. Shuttleworth was actuated by spite because the Babu had refused to lend him an elephant. Mr. Shuttleworth admits that he was, on one occasion, disappointed by the Babu in regard to the loan of an elephant, but as to the general nature of the conversation on the occasion, the Lieutenant-Governor has, no doubt, that Mr. Shuttleworth's version of it is the correct one. After this, there was a brief enquiry as to the damage done by the animal, which certainly was not very serious, and then Mr. Shuttleworth went off to look for the deer. The animal was found lying down by a tank. Some of the Babu's servants then came with sticks to drive it into the paddock, and it went into a rice field. On being pursued there, it became irritated and threatened the man. It then went of its own accord into the Babu's compound, and could have been secured into the enclosure, of which the door had been opened for the purpose. At this stage, Mr. Shuttleworth had no excuse whatever for further interference. He proceeded, however, to the gateway, and sent his orderly across the compound to call the Dewan, thus again attracting the attention of the animal already excited by the attempts to drive it in. The deer charged the orderly, and they, after a pause, advanced towards Mr. Shuttleworth, who shot it dead with rifle he was carrying. Mr. Collier attributes Mr. Shuttleworth's proceeding to the circumstances that he had formed an exaggerated estimate of the animal's fierceness, and also that, being somewhat irritated by the conversation with the Dewan, he was unable to consider the matter in a calm and dispassionate manner. It is no doubt pos-

sible that Mr. Shuttleworth originally went to the spot, armed with a rifle in consequence of the exaggerated account given to him by his informants. But his proceedings, after the dispute with the Dewan, were entirely uncalled for, and it is quite clear that he should have retired from the scene when he found that the reports regarding the animal were extravagantly wide of the truth, and that the servants of the Babu were in a position to secure it.

5. The proceedings in the next stage were more serious. It appears that Mr. Shuttleworth at once reported the circumstances to the superior officer, the District Superintendent, Mr. Stack, and the result of their conference was that Mr. Shuttleworth sent a constable for the man Ainuddin, who had originally reported to him that the deer was doing mischief, and told him that, as injury had been done to him, he should complain. Without such instigation, there is no reason to suppose that the man would have moved in the matter. Thereupon, Ainuddin laid a charge at the Police station against the Dewan Peary Mohun Bose, and the Police sent the case up for trial. It appears that the matter also came to the notice of Mr. Newberry, the Magistrate and Collector of the District, and that he was cognizant of these proceedings, and approved of the action of the District and Assistant Superintendents. The question for the Lieutenant-Governor to consider is whether Mr. Stack and Mr. Shuttleworth acted in good faith in causing this prosecution to be instituted. They both argue that the fact that some people went to Mr. Shuttleworth, and asked him to take measures to have an animal, which was loose and doing mischief tied up, constituted the laying of a charge under section 289 of the Indian Penal Code before a Police officer, and that the Police were bound to proceed with the charge. This explanation does little credit to those by whom it is advanced. All the proceedings show that the prosecution, was a Police prosecution, and the Police authorities should not have put forward a complainant to endeavour to invest it with any other appearance. Mr. Shuttleworth himself, in his evidence on oath said "I then told the Dewan that I should prosecute him for not taking proper care of a savage animal in his charge." But it is quite evident that the circumstances did not justify a Police prosecution. The animal was not shown to have been dangerous, and the events of the night on which it got loose were not sufficient to make its owner or keeper criminally liable, because it succeeded in escaping from its enclosure. Moreover, the animal was then dead; and Ainuddin or any of the other persons who had been frightened should certainly have been left to their own remedy. Looking to all the circumstances, the Lieutenant-Governor must hold that

Mr. Stack and Mr. Shuttleworth were actuated by other motives than those of public duty in proceeding with the case, whether these motives were, on Mr. Shuttleworth's part irritation at the action, or words of Babu Annoda Prosad Sen or his adherents, or at the threat of a civil action, or on Mr. Stack's part, a desire to support his subordinate, cannot be determined. But that a Police prosecution was instituted for some other objects than the protection of the public interests is the only inference to be drawn from the facts. Mr. Newberry appears, at least, passively to have acquiesced in this abuse of official power.

6. In the course of the trial before the Deputy Magistrate Babu Chundi Churn Bose, no proof was adduced of the habitual fierceness or dangerous character of the deer. The complainant stated generally that it was in the habit of injuring people, but no witness supported this statement, and one directly denied it. The Dewan admitted that on one occasion, when its keeper had put his arms round the animal's neck, it had shaken him off, and in doing so hurt him with its horns and that its horns had been cut down in consequence. The statement was supported by the production of the animal's head in the court. This fact itself showed that measures had been taken to prevent the animal from doing harm. At any rate, the case for the prosecution entirely failed. Yet the Deputy Magistrate, instead of directly finding this, dismissed the case on the ground that the Dewan was not the person in the charge of the deer. This error of judgment laid the basis of the unfortunate proceedings which followed.

On its coming to Mr. Stack's knowledge that the case had been dismissed on the ground, he directed the Court Sub-Inspector to apply for a summons against Babu Annoda Prosad Sen's aunt Srimutty Prosono Moye. This was a serious aggravation of the previous impropriety of pressing the prosecution at all, and it brings into strong relief the actions of Messrs. Stack and Shuttleworth in instigating Ainuddin to lay his formal complaint in the first instance. It indicates a reckless determination to cause trouble and annoyance to those against whom the Police had once directed their exertions. The Deputy Magistrate instead of peremptorily refusing to issue summons, referred the case to Mr. Newberry giving his reasons for thinking that summons should not be issued. Thereupon Mr. Newberry recorded the foolish order sanctioning the issue of summons. It is probable, as you observed, that he never looked at the record, but, in any case, it is clear that he absolutely failed in his duty as chief controlling authority and Executive head of the District. The deer, which was the cause of the offence, was dead; the first

prosecution had failed, and an officer in his position with any claim to judgement, would have been glad of the opportunity of staying further proceedings. That he should encourage the continuance of this scandal by allowing action to be taken against a lady, and thus, instead of suppressing it, giving it the sanction and support of his authority makes it manifest that he is wanting in ordinary discretion.

8. The second prosecution, as might have been expected, failed like the first. One incident occurred, however, in the course of it, which gave Messrs. Stack and Shuttleworth a further opportunity of showing their inability to realise their responsibility to the public and to the Government. Mr. Shuttleworth, who had appeared as a witness for the prosecution in the first case, was not put forward as a witness in the second. The reasons given for this are, as you have shown, quite futile. Mr. Shuttleworth was cited as a witness for the defence, and it was then made evident that the Counsel for the defence wished to have an opportunity of examining him; when it was found that the case would be dismissed without any witnesses for the defence being called, an attempt was made to induce Mr. Stack to allow him to appear as a witness for the prosecution, in order that he might be cross-examined. Mr. Stack refused to do so, and the Deputy Magistrate did not exercise his power of calling him as a witness and, Mr. Shuttleworth did not offer himself. Mr. Stack's explanation on this, as on other points shows an inability to realise the position of a Police officer in the matter. It was not a matter of the fighting out of the personal issues between Mr. Shuttleworth and Babu Monmohun Ghose. It was a matter of clearing Mr. Shuttleworth, and through him Mr. Stack himself, of animus in instituting or promoting the prosecution. If no such animus existed, the Police Officers should have been ready to the opportunity of disproving it. That they declined the opportunity, affords the strongest ground for assuming that they feared the result of the ordeal. Without rejecting Mr. Shuttleworth's statement, as regards the altercation between him and the Babu's adherents, the Lieutenant-Governor must hold that there was something in those proceedings, or in the antecedent or subsequent proceedings, which he was unwilling to subject to public scrutiny.

9. The whole case exhibits a course of arbitrary and oppressive action on the part of Messrs. Shuttleworth, Stack, and Newberry, which the Government cannot tolerate. Such proceedings can only bring the administration into contempt and disrepute, and enhance the difficulties of officers, who are really anxious to administer their charges with

fairness. Babu Chundi Churn Bose displayed a want of judicial accuracy in the first case and of judicial firmness in the second but beyond this, his conduct does not call for unfavorable comment. Mr. Shuttleworth has already been transferred to the Chittagong Hill Tracts. He is an officer of only a year's standing, and was acting in a greater part of these proceedings in a subordinate position. He is a third grade Assistant Superintendent officiating in the 2nd grade. He will be deprived of his officiating promotion for six months, and the Commissioner of Chittagong in communicating to him an expression of the strong displeasure of Government, will inform him that his restoration to promotion will be dependent on the nature of the report received from his departmental superiors. Mr. Stack has already been deprived of his officiating charge as District Superintendent, and transferred to another District in the capacity of Assistant Superintendent. The Inspector-General will convey to him the severe censure of Government, and inform him that he will not be appointed to the charge of a District for at least one year, and until he is reported to have shown a better appreciation of his duty and responsibilities. Mr. Newberry has applied to resign the service; but having regard to the part he took in the case, and considering that it was to him as the Chief Officer of the District that Government had to look for the repression of the irregularities of his subordinate, the Lieutenant-Governor is constrained to mark his dissatisfaction by directing that from the 1st March, Mr. Newberry shall be reduced to the 2nd Grade of Magistrates and Collectors.

CHAPTER VI.

THE MEHERPORE CASE.

Meherpur forms a part of the district of Nuddea. Ever since the creation of this Sub-division, a European Junior Civilian has been invariably placed in charge of it, as there are several Indigo Planters having Indigo Factories and landed properties therein. The presence of these Indigo Planters is one of the reasons which induces the Bengal Government to make it a

training-ground for boy Civilian. Before we describe what Mr. Luson, the boy Civilian did in this scandalous case, we may be permitted to mention that sometime about the year 1867, Mr. A. P. Macdonnel, then a Junior Civilian in charge of this Sub-division was charged with having committed rape on a woman of low-caste—a charge which was afterwards found to be untrue;—and the woman was committed to the Sessions Court of Nuddea, then presided over by Judge Macdonald V. C (who afterwards became a Judge of the Calcutta High Court). The poor woman was defended by Mr. W. C. Banerjee, Barrister-at-law, who was then unknown to fame, and it was in this sensational case Mr. Banerjee conducted it with such a marked ability that not only the poor woman was acquitted but the presiding Judge congratulated him on the forensic ability Mr. Banerjee exhibited in the course of the trial of this poor woman. We allude to this fact, simply to shew that Mr. Luson was not the only boy Magistrate who came to grief in this Sub-Division. Now let us come to pass in review the scandalous part played by Mr. Luson in this Meherpur case. Mr. Luson being a Junior Civilian scarcely yet out of his teens, knew not the custom of the country. In his profound ignorance of the people of this country, he, on the 1st of Bysak (the New Year's day of Bengal) in 1887, brought some sixty eight fishermen before his Court and sentenced 45 of them, after a summary trial to receive 20 strokes each, and the rest to imprisonment. And what was the graveman of their fault? They simply, on that sacred,—sacred not only to fishermen, but to every class of Hindoos, whether high or low—amused themselves, according to their own crude notion of recreation, by catching fish in a local *bil*. On the sacred day of the 1st of Bysak, every Hindoo, in the Mufussil, offers gifts of fruits and earthen-pots filled with the sacred water of the Ganges to Brahmins, feeds the poor and passes the day in great enjoyment, each according to his means. The fishermen, and the agriculturists do not cultivate

nor sow nor do any kind of manual labour but pass their days in merriment by catching fish or by pursuing other kinds of amusements. The ^{boy} magistrate turned the day of rejoicings into a day of imprisonment. Saying this much we transcribe below the Resolution on this case recorded by Sir Stewart Bayley, the Lieutenant-Governor of Bengal.

No. 3043J.

FROM—J. Ware Edgar, Esq., C. S. I., Officiating Chief Secretary to the Government of Bengal,

To—The Commissioner of the Presidency Division.

Dated Calcutta, the 20th July 1887.

JUDICIAL.

Sir,—I am directed to acknowledge the receipt of your No. 57JJ, dated the 14th instant, submitting the report and records called for in connection with the Meherpore fishing case, together with the explanation of the Sub-Divisional Officer, Mr. Luson. The Lieutenant-Governor notices with satisfaction that, before the receipt of the orders of this Government, you had already taken action and called for a report of the facts.

2. It appears from the reports and records now submitted that there is a large *bil* (or enclosed piece of water) in the Meherpore Sub-Division, the property of Babu Nofur Chunder Pal Chowdhry, and that Government revenue is assessed in respect of the *julkar* (fishery) rights in this *bil*. In 1885 and 1886 these rights were leased to one Umesh Parui, who, in the latter year, a few days before the 1st Baisack (the New Year's day of Bengal), filed a petition before Mr. Luson, the Sub-Divisional Magistrate, stating that a number of persons would probably attempt to fish on that day against his will, and asking that measures might be taken to protect his rights. Mr. Luson directed the Police to watch the *bil*, but in spite of this precaution, a large crowd of people went there and caught fish, and a certain number of them were arrested by the Police, and sent up for trial. The Magistrate recorded in his decision in that case that he was aware of the existence of a custom in the Sub-Division, by which both Hindus and Mussulmans were accustomed to fish in open waters on the Bengali New Year's day, but he considered that the custom did not extend to private *bils*, and remarked

that in a few cases, where fishing had so taken place in private *bills*, the trespassers had subsequently to pay compensation to the owners. He also alludes to the fact of there being a tendency on the part of Zemindars to close *bills* formerly open, and to cultivate fish or let out the fisheries, and in such cases he was of opinion that any attempt to exercise the old custom would be an invasion of private rights and amount to theft. He, therefore, convicted of theft and unlawful assembly, ten of the men alleged to have fished, and sentenced one to a fine, four to three weeks' rigorous imprisonment, and five to be whipped. In this case the accused did not plead either custom or right to fish, and their Pleader appears to have admitted that the private rights of complainant ought to be protected. The only question was one of identity, two of the accused pleading guilty, while the remainder pleaded *alibis*. Mr. Lusson mentions that there had been several cases of a similar nature, and that he had always dealt leniently with them. His decision ends with the following words :—"These light punishments are given in view of the remarks previously made, with the warning that, if the offence is repeated next year, it will be severely dealt with." The case went before the High Court, and Mr. Lusson's decision was reversed by Justices Litter and Grant. The conviction under Section 143 was reversed on the ground that the accused had acted independently, and had not acted in concert so as to have one common object; while the conviction under Section 379 was reversed on the ground that there was no evidence to show the actual removal of any fish from the *bill*. Mr. Lusson may well have assumed from the decision that had there been such evidence, the conviction for theft would have been upheld. There is no suggestion made in the decision, or, indeed, throughout the record, that the fish could not be the subject of theft; and it happens that the Hon'ble Judges neither commented on the impropriety of whipping, nor did they refer to Mr. Lusson's recorded determination to inflict a severer penalty on a repetition of the offence. The fundamental errors, therefore, which were at the root of Mr. Lusson's action in 1886 remained absolutely uncorrected by this decision which, if it had indicated the view of the law now taken by the Divisional Bench of the High Court, might have saved Mr. Lusson from further mistake.

3. In the present year, the *bill* was leased to one Gopal Biswas, who again, before New Year's Day, applied to the Magistrate for protection. It is in evidence that this man had held a lease of the *bill* at intervals ever since 1858; that a criminal case, similar to the present one, had been instituted some ten or twelve years ago; and that from that time to 1886

there had been no attempts to fish in opposition to the will of the owner. A Sub-Inspector and some Constables were sent to the spot, and, as a further precaution, the neighbouring *punchayets* were directed to instruct their Chowkidars not to allow any fishing against the will of the lessee. The Sub-Inspector relates in his evidence how he found about 3,000 persons at the *bil* prepared to fish, and how they fished in spite of his prohibitions. Sixty-eight of these men were arrested, and the fishing implements and the fish taken on them were produced in Court. The trial was held summarily by Mr. Luson on the next day but one, and not a few hours after the occurrence, as has been stated. The record is not very full, but it seems clear from it that the accused were asserting an old custom, and that their conduct was orderly. Mr. Luson in his decision allows that the custom undoubtedly existed, but adds "the custom is an immoral one, and cannot be supported; it is not alien upon the right of property of the Zemindar; it is clear theft." Upon this he convicted forty of the accused of theft, and the remainder of attempt and abetment. The sentence was that all those between 16 and 45

In this case some sixty-eight persons have been convicted of stealing under these circumstances. It appears that in the neighbourhood where this transaction took place there is a large *bil*. The land surrounding this *bil* belongs to one person, and he has let the right of fishing in it to the complainant in this case for the sum of Rs. 500 a year. There is nothing to show that this *bil* is anything in the nature of tank in which fish are caught and stored in any sense, but it is a natural reservoir of water, which has come there without human agency, and in which fish would naturally be.

That being the state of things, it appears that on a particular day in the year it is the practice of the inhabitants of the neighbouring towns and villages to go to this *bil*, and catch what fish they can, and for doing that these 68 persons have been convicted of stealing fish and punished in an extraordinary manner. A large number of them were whipped there and then, or at any rate a few hours after, and a large number of them have been sentenced to two months' rigorous imprisonment.

should receive 20 strokes each, all under 16 years, 12 strokes in the way of school discipline, and all over 45 were to be rigorously imprisoned for two months. Subsequently, six of those sentenced to be whipped were declared unfit by the Hospital Assistant, and were sentenced to imprisonment. The case was brought before the notice of the District Magistrate under Section 438 of the Code of Criminal Procedure, but he refused to interfere, remarking, however, that the whipping was an unsuitable punishment, and under the circumstances unnecessarily severe. Here the Lieutenant-Governor is compelled to record his regret that Mr. Waller did not go more thoroughly into this important case, and deal with it in a more

Under these circumstances, no crime has, in our opinion, been committed. It is perfectly clear that the offence of theft could not have been committed, because the fish said to have been stolen were not the subject of any one's property. They were wild fish in a natural lake, and until they were reduced to possession by being caught, no property could be acquired in them by any one, so that there could be an offence of theft committed by another person, and it seems to us, therefore, that these persons did not commit any theft, and that, so far as the offence of which they have been convicted is concerned, it is quite clear that on that ground alone the conviction cannot be sustained.

vigorous and comprehensive manner. Subsequently in an application for revision of judgment made to the High Court the conviction was reversed by a Divisional Bench composed of the Hon'ble the Chief Justice and Mr. Justice Ghose. A portion of their decision is quoted in the margin, and a severe censure was also conveyed to Mr. Lusson for having sentenced the men to the punishment of whipping.

4. The two errors of which Mr. Lusson appears from this judgment of the High Court to have been guilty are (1) that he found the accused guilty of theft; (2) that he sentenced them to whipping. As regards the first point, it seems to the Lieutenant-Governor quite apparent that Mr. Lusson never from the beginning entertained any doubt that the removal of fish from the *bill* against the will of the farmer amounted to theft. There was nothing in the proceedings of 1886 to cause him to alter his opinion on this point, and having regard to the facts and opinions referred to by you in paragraph 10 of your letter, and to the undoubted fact that catching fish in such *bills* against the will of the owner or lessee had heretofore been regarded and treated by the Courts as theft, Mr. Lusson may be excused for taking what is now laid down to be an erroneous view of the law, and for dealing with the present case as one of theft, though even on this view of the general law he should have had regard to the fact that the existence of a custom had been pleaded and in a manner admitted. Sir Stuart Bayley must, therefore, entirely acquit him of any intention to set himself up against the High Court, or to ignore, their decision, and considers that on this technical point he was guilty at the most of a pardonable error of judgment, and his action so far is not open to serious censure.

5. It remains, then, to deal with Mr. Lusson's action in rejecting the plea of custom, and in sentencing the accused to whipping and imprisonment, and on these points, Sir Stuart Bayley is compelled to observe that Mr. Lusson showed a want of appreciation of the proper way of

dealing with such a case, and that the punishment was unreasonably severe. The case was not an ordinary one, as the accused asserted a custom of fishing in this *bil* on the first day of Baisak in each year. It seems, therefore, to the Lieutenant-Governor that Mr. Luson should have considered how far this plea of custom availed the accused, and even if he did not consider himself justified in referring the lessee on this account to the Civil Court, and was constrained to decide that an offence had been committed, he should certainly have had regard to the admitted custom in awarding punishment and from this point of view, in the Lieutenant-Governor's opinion, a small fine would have sufficiently marked the illegality of the act. Neither imprisonment nor whipping was called for, and the latter punishment was in a case of this kind quite unjustifiable.

6. In deciding how he should deal with Mr. Luson, the Lieutenant-Governor has given due consideration to what is stated in paragraphs 15 and 16 of your letter. He does not doubt that Mr. Luson acted in perfect good faith believing that he was bound to protect private rights from what he considered to be a criminal invasion, and that a deterrent punishment was needed. He feels also the necessity of bearing in mind the position of a young Sub-Divisional Officer, who may at any moment be called upon to deal with unlawful assemblies and other critical matters, in which presence of mind and a willingness to assume responsibility are absolutely necessary. On the other hand, it is impossible to overlook the insensibility to the customs and habits of the people, the misapprehension of the nature of the offence, and the excessive deference to claims made under cover of the right of private property, which are conspicuous in this case. Sir Stuart Bayley has no doubt that Mr. Luson feels most acutely the censure which has been publicly recorded by the Chief Justice; but it is further necessary that, where grave errors of judgment are brought to the notice of the Lieutenant-Governor, some punishment should be meted out as a substantial mark of his displeasure. Under all the circumstances, Sir Stuart Bayley has determined to remove Mr. Luson from the Sub-Division of Meherpore, and to send him to a Sudder Station. He further directs that he be deprived of his summary powers, and of his powers under the Whipping Act, for a period of six months.

7. In paragraph 10 of your letter you raise a question as to the position in which Zomindars possessed of *jalkar* or exclusive rights of fishery would be placed, should it be found that, following the decision in the present case, they are unable to invoke the aid of the criminal law in defence of their rights even when such rights are undisputed or finally

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established by Civil Courts.' I am to say that the question, in the Lieutenant-Governor's opinion, does not call for any immediate decision in connection with the facts of the present case. No doubt fishery rights, which have been assessed under the Permanent Settlement, or included in the assets of permanently-settled estates, are extremely valuable and require adequate protection ; and if it should appear that, according to the present state of the law, adequate protection is not given to the Zemindars in the enjoyment of these particular rights, it may be a question for the legislature, upon the representation of the Zemindars to deal with the matter after full inquiry and on better information about the remedies open and the current of decisions than can be collected from the papers now before the Lieutenant-Governor.

I have the honor to be, Sir, your most obedient servant,

J. WARE EDGAR,

Offg. Chief Secy. to the Govt. of Bengal.

CHAPTER VII.

THE JAMALPUR MELA CASE.

Jamalpur is a Sub-Division of the district of Mymenshin. Like the Rungpur Deer case, the Nuddoa Students' case, and other cases whose outlines we have sketched in previous chapters, the Jamalpur case illustrates the mischief which results from investing executive officers in India with judicial powers in criminal cases. The Native Deputy Magistrate in charge of the Sub-Division Babu Shyama Charn Das is one of those typical *Ghutiram* Deputies who, in the discharge of their onerous duties, sacrifice their conscience and blindly follow the dictates of their official superiors. Their proneness to be so dictated to by the Civilian Magistrates is a phenomenon which has its origin in the absolutism and terrorism that some of these civilians exercise over their subordinates.

The least show of independence on the part of a Deputy Magistrate is often times disliked by his official superior; and it pretty often happens that a man like Babu Shyama Churn Das, or a Deputy Magistrate like Babu Chandli Charn Bose, becomes the cats paw of Mr. Glazier or of Mr. Newberry. Any Deputy Magistrate who dares acting up to his own conscience, against the wishes of his civilian superior officer is put down as a naughty subordinate and his promotions and prospects of life are blasted for ever unless he mends his ways and becomes completely subservient to his superior officer. In making these remarks, we do not mean to cast a general reflection on the entire body of the Subordinate Executive service. No doubt, there are good men and true in that service. Saying this much by way of preface, we transcribe below the Resolution of the Lieutenant-Governor (Sir Stuart Bayley) which contains a summary of the case.

I. - This case first came to the notice of Government on the 15th February last, when a telegram was received from the Chairman of the Jamalpur Municipality, complaining of the alleged interference of the Sub-Divisional Officer with the arrangements made for the celebration of the Jubilee at that place. A second telegram was received from the Chairman, on the 16th February, complaining of various oppressive acts said to have been committed by the Deputy Magistrate and the Police, in connection with what was described as the Jubilee *Mela*; and on the 22nd February the Commissioner, in a letter which was marked, "urgent," was ordered to enquire into and report on these allegations. On the 30th March, the Commissioner was again asked to report upon a notice of the proceedings of the Mymensingh authorities regarding a fair at Jamalpur which had appeared in the *Indian Mirror* of the 24th March. The Commissioner of the Division, Mr. Larminie, however, did not report till the 8th May, and then did not send up the reports which he had received from the Magistrate of Mymensingh. These were asked for on the 3rd June and were received on the 17th of that month. It was then thought necessary to wait for the decision of the High Court, where applications had been made for quashing the proceedings in one of the principal cases which had arisen out of the affair, and for setting aside the convictions in two others. The High Court's decision appeared in the *Statesman* of

the 1st July, and on the 2nd, the Commissioner was asked demi-officially for his opinion on the whole case and for explanation of the fact commented on in the High Court, that no one had appeared on behalf of Government. His reply was received on the 9th, but it was then found that the case was incomplete, owing to the failure of the Magistrate of Mymensingh to submit full information regarding the *mela* which had been established in 1883. The Magistrate was telegraphed to for any documents on the subject which might be in his office, and some of these papers have now been submitted by him with his letters of the 15th and 18th August. Even now some important papers are wanting, but the Lieutenant-Governor is unable to put off any longer the disposal of the case.

II. Sir Stuart Bayley is compelled to express his grave dissatisfaction at the length of time that has taken in submitting the information asked for by Government in a case like the present one, where the executive action of local officers had been called in question. Such delay deprives the Lieutenant-Governor of the power to interfere, in order to check mistaken action, before it has grown into a cause of scandal, and seriously impairs the usefulness of the orders which he may pass in the final disposal of the case. It was the duty of the Commissioner, when his attention was first called to the case, to go into the matter thoroughly, to get together all papers and submit a complete report to Government. As it is, the information has been supplied in dribblets, on repeated calls, and the facts thus ascertained show grounds for considerable modification of the view first taken by the Commissioner.

III. The following are the facts of the case as far as they can be gathered from the papers before the Lieutenant-Governor :—A meeting was held in 1883 by the Sub-Divisional Officer of Jamalpur, Babu Nanda Krishna Bose, of some of the residents of the Sub-Division, at which it was decided to open a *mela* to be held annually about February or March on some Government land, permission to use which was given by the District Magistrate. A Committee, of which Sub-Divisional Officer was Chairman, was formed for the management of the *mela*. From a list of the original Committee, furnished to the Magistrate of the District by the Sub-Divisional Officer in 1886, it appears that, besides the President, there were 14 members, of whom 8 members were Zemindars and pleaders and 6 officials. It is stated that subscriptions were raised during this and the following years, but no details can be found of the amount of the subscriptions or names of subscribers. Shop-keepers attending the *mela*, were also charged rents for the sheds occupied by them and fees were realized from the buyers of cattle. This *mela* proved very successful

during the years 1884 to 1886. In 1885 there was a balance of Rs. 946 in favor of the fund, and the surplus of 1886 is said to have amounted to Rs. 700. Babu Nanda Krishna Bose was transferred in the beginning of 1886 and Babu Shyama Churn Das appointed to have charge of the Jamalpur Sub-Division. There seems to have been about this time a rumour to the effect that Government proposed to take over the management and the profits of the *mela*; for the headmaster of the Jamalpur School wrote in April on the subject to Babu Nanda Krishna Bose, who replied that the *mela* was a public institution and not Government property, and that there was a Committee of management. It is alleged that subsequently several pleaders, headed by the Chairman of the Municipality, asked Mr. Marindin, the Magistrate of the District, on tour at Jamalpur, to make over to them the management of the *mela*, but that Mr. Marindin refused. In October or November Mr. Glazier, the District Magistrate, while visiting Jamalpur, found a hut in which there was an image of Kali, which had been worshipped during the *mela* time, still on the ground. He ordered the hut and image to be removed. He also, in a letter dated the 8th October, which had not been submitted, seems to have called upon the Sub-Divisional Officer for information on various points connected with the *mela*, for Babu Shyama Churn Das, in a report of the 3rd November, in which he refers to that letter, gave a brief report of its origin and constitution, stating that from the outset provision had been made by the Committee for religious worship and amusements among other things, and that this had been reported to and approved by the Collector in 1885. In the last paragraph of his report the Sub-Divisional Officer wrote: "I may add here that it is usual to start *melas* and fairs with some religious elements and amusements to ensure their success. The *mela* is now in its infancy, and if, at the present stage, extravagance is stopped and economy is observed, I am afraid it will prove unpopular, which will seriously injure its further progress. The object of the Committee is to reduce the expenditure gradually, *i. e.*, when its stability becomes certain. I would therefore request the favor of your allowing the matter to stand as it is for a few years more."

On the 18th December the Magistrate recorded the following order:—
 "The extract of receipt and expenditure shows that there was a sum over Rs. 900 in hand and that nearly Rs. 3,000 were collected in respect of cattle fees, house rent and sale of old materials, making a total receipt of Rs. 3,928-8-6. What may be called the legitimate expenses, amounted to Rs. 579-14-9 only, and the large sum of Rs. 2,647-13-3 was expended

in most objectionable ways, in dancing and amusements of various kinds. Among these items, I find a charge for the Assistant Magistrate's tiffin. This state of things is most discreditable to the Assistant Magistrate, Nanda Krishna Bose, the late Sub-Divisional Officer. Any illegitimate expense of the kind is distinctly forbidden in future. The money (Rs 700) now in hand is quite sufficient to start the next fair in a suitable way, and I must insist on the present Sub-Divisional Officer carrying it through in a decent and respectable manner, and he must report his proceedings at the close, giving a statement of receipts and expenditure. I leave it for his consideration, whether he might not reduce the fee on selling cattle materially, as these items gave a large sum last year and so much will not be required for the legitimate expenses of the fair." ^m

IV. Mr. Glazier seems to have treated the *mela* from the beginning as a Government institution, and instead of as one started by private persons, and with which, except in the matter of the land on which it was held, the Government had no concern. The order for the removal of the hut and image of *Kali* was unnecessary and unwise, and that of the 8th December was equally mistaken and improper. If Mr. Glazier considered that the funds of the *mela* were wasted or diverted to improper uses, he might have communicated his views to the Committee and asked them to discontinue the expenditure objected to by him. If they refused to do this, he might have refused to allow the use of the Government land for the *mela*, and directed the Sub-Divisional Officer to have no further connection with it in his official capacity. The Lieutenant-Governor does not think that even such interference was called for in the present case, and beyond it the Magistrate had no authority to act. His orders addressed to the Sub-Divisional Officer in that capacity, were also entirely without warrant. They amounted to the supersession of the Committee and to the assumption of the directed management of the *mela* by the Government, and without doubt they have led to all the trouble which has arisen.

V. On the 25th December a meeting of what is described as the *Mela* Committee, was held. Nine gentlemen attended, four of whom were members of the original Committee and another claimed to act for an original member. It does not appear on what grounds the remaining gentlemen claimed to belong to the Committee. At the meeting Babu Gobind Prasad Neogy, the Chairman of the Municipality, was elected President of the *Mela* Committee for the current year in the place of the Sub-Divisional Officer who, it was said, had no time to attend to the duties of the post, and who had neglected to take action on a letter which

had been sent to him, requesting him to call a meeting to arrange for the *mela*. It was also agreed that the Sub-Divisional Officer should be asked to make over to the newly elected President all papers, accounts, furniture, &c., belonging to the Committee, and that the *mela* should no longer be held on Government land, as it was understood that Mr. Glazier, the Magistrate, objected to any religious ceremonies being performed or amusements provided for the people attending the *mela*. The newly elected President sent a copy of these resolutions to the Sub-Divisional Officer who submitted them to the Magistrate, with a letter stating that he had made arrangements for starting the next *mela* on the Government land, and that shops were being erected for the shop-keepers. Upon this the Magistrate wrote: "You will make nothing over to any one else. The regulation of the *mela* is to remain in your hands as Sub-Divisional Officer, assisted by the Committee." Mr. Glazier has throughout ignored the fact that the gentlemen who composed the meeting of the 25th December claimed to be "the *Mela* Committee," and that several of them were undoubtedly members of the original Committee. Notwithstanding the great delay that has occurred in the submission of the papers of this case and the repeated calls that have been made for information, the Lieutenant-Governor has not before him even now all the materials which must be available for a decision on this and some other points. But from the papers there can be no doubt the meeting of the 25th December purported to be a meeting of the *Mela* Committee, and it was clearly Mr. Glazier's duty, if he interfered in the matter at all, to ascertain how far their action was supported by the original members of the Committee, and either to let them have their way, or put the whole question of the management before a meeting with a view to its proper settlement. Instead of doing this, he ignored the real point altogether, refusing even to examine the claims put forward for the management of the affairs of the *mela*, ordering Babu Shyanta Churn Das to retain the management of the *mela* in his own hands as Sub-Divisional Officer, thus virtually superseding the Committee. The remark that the Sub-Divisional Officer was to be assisted by the Committee, only makes the matter worse, when it is considered that it was made in the proceedings of a body claiming to be the Committee and acting in direct opposition to the Sub-Divisional Officer. It may have been the case that the opposition of the members of the *Mela* Committee attending the meeting of the 25th December was ill-judged and not approved of by the other members; but if this were the case it would not justify the Magistrate in virtually superseding the Committee by the exercise of authority which did not belong to him.

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As a matter of fact, the petition presented to the Magistrate praying that the *mela* should continue to be managed by the Sub-Divisional Officer as heretofore, came from the cultivators and tenants of the Government estate where the fair had hitherto been held, and which was managed by the Sub-Divisional Officer. If any people, not under the immediate influence of the Sub-Divisional Officer, had disapproved of the action of the *Mela* Committee, they would probably have joined in the petition.

VI. The Lieutenant-Governor has dealt at some length on these matters, because he considers action like that taken by Mr. Glazier to be mischievous. It is manifestly impossible to expect native gentlemen to co-operate with a Government officer in voluntary works of public utility if they know that they are liable to be overridden and thrust aside as the *Mela* Committee has been in the present case, and the effects of such injudicious action as that under comment extends far beyond the particular case concerned, for it tends to create a breach between the most active members of the local public and Government officials, which cannot fail greatly to limit the influence and capacity for usefulness of the latter class.

VII. When the *Mela* Committee found that they were not to get the property claimed by them, they resolved to hold the *mela* without it, and fixed upon a site at a place called Khatlakuri and on the 16th of February the day appointed for the celebration of the Queen's Jubilee, as the date of opening. On the 3rd January the Sub-Divisional Officer reported to the Magistrate that it had been his intention to open his *mela* on the 16th February, but that some of the Zemindar's amla and pleaders had, during his absence on tour, made preparations to start a rival *mela*. He stated his apprehension that this might lead to a breach of the peace and to an outbreak of disease, and asked for authority, under section 144 Criminal Procedure Code, to prevent the opening of the rival *mela*. Upon this the Magistrate wrote: "I see no occasion to stop the other *mela*; you can surely take measures to prevent a breach of the peace. As you will be on the spot, if you see cause you can drop your *mela*, as there is no object in keeping it up if the people do not want it. Report more fully." These suggestions were sensible, and it is a pity they were not acted on. The report called for in these orders was not submitted until the 19th February; meanwhile, on the 13th or 14th February, probably the latter, the Deputy Magistrate, as he relates in his reports on the 3rd March, obtained information that some fishermen had been taken by force to Khatlakuri, where a market was apparently held in anticipation of the formal opening of the *mela*. He went to the spot to enquire, accompanied by a

Sub-Inspector. The fishermen denied that they had been taken to the place by force, and the matter seems to have been dropped. But the Sub-Inspector arrested some traders, found on the ground, on a charge of using false weights, apparently without any complaint having been made to him. It is stated that the Sub-Inspector was not acting under the orders of the Deputy Magistrate, but the latter was present on the spot and was clearly responsible. All the traders were finally acquitted either by the Magistrate who tried the case or by the Sessions Judge on appeal.

On the 14th February, a drummer who had been employed to proclaim the *mela*, was arrested by the Police and brought before the Deputy Magistrate, who released him on the ground that it was "a trifling matter." The importance, however, of this case, taken in connection with the raid on the weights, is that it shows how thoroughly the police were imbued with the notion that it was their business to stop the rival *mela*, properly or improperly, and quite explains their subsequent action in preventing people from being "taken" to the rival *mela*. The Deputy Magistrate states that, learning on the 15th or 16th February that the Chairman of the *Mela* Committee and his party intended to force people to their *mela*, he stationed constables all about the place to prevent it. Nowhere, however, is the slightest hint given how the Deputy Magistrate was assured of this intention or what was the evidence of it; nor is there any attempt made to show that this intention was at any time carried into action. The attempt to show this in the case of the fishermen had broken down, and there is nothing else of a tangible kind to be found in the papers. The presence of the police, however, gave rise to some petty disturbances on the 15th February, some of the constables accused the Vice-Chairman of the Jamalpur Municipality and other members of the *Mela* Committee with having forcibly taken some traders to the *mela*. The Deputy Magistrate examined the constable, and is said to have recorded a proceeding for the purpose of binding down some of the supporters of the *mela* to keep the peace: but no further steps were taken in the matter. It is stated that on the 19th some of the constables assaulted and wrongfully confined for some time, a trader named Chandra Kant Shaha. It has also been alleged that on the 21st February two vegetable sellers were beaten by the police, and a school boy was also beaten for having remonstrated with the police. The matter having been brought to the notice of the Sub-Divisional Officer, the men were directed to prefer written complaints.

VIII. On the 19th February the Sub-Divisional Officer submitted the following report to the Magistrate of the District :—

"With reference to your letter No. 189, dated 31st ultimo, I beg to state that some of the Pleaders of the local Moonsiffi, headed by Gobind Prasad Neogy, Chairman of the Jamalpur Municipality, who is also a Pleader, had petitioned to me after your last visit to this Sub-Division, to make over to them furniture of the Jamalpur public *mela* as well as the amount held in credit of the *mela*. After that petition was submitted to you for orders, the public protested against the unjust prayer of Gobind Prasad Neogy and their petition was therefore rejected, and you were pleased to direct me to keep the control of the *mela* in my hand assisted by the Committee. Since then Gobind Prasad Neogy and the men of his party were taking all measures to break the public *mela*. They issued printed notices dated 22nd January last (a copy of which I send herewith) inviting traders and shop-keepers to go to their *mela* which was to commence from the 26th January last and end on the 1st April next. Their invitation not being responded to by any class of traders or shop-keepers, their original place of starting the *mela* on the date fixed was changed, and they were seeking for a fair opportunity on this account. They then found the occasion of the Jubilee to be the fittest opportunity to make their place successful, and they therefore named it after the Jubilee "The Jubilee Mela," and tried to start it on the 16th instant, the day of the Jubilee. They separated themselves from the public and proposed to celebrate the Jubilee by opening their *mela*. They were under the impression that in celebrating the Jubilee they would have the privilege of using force upon the traders and shop-keepers in order to take them to their *mela*. The 15th instant was a market day. It having come to my notice that, Gobind Prasad Neogy, Municipal Chairman, assisted by Hari Charan Guba, Government Pleader, with a few followers, were preparing to take the traders to their *mela* by force, I stationed Police Constables in different parts of the town, which frustrated their attempts. They then sent complaints against me by telegrams to the Government of Bengal and the Commissioner and by written petition to you, which I return herewith."

"2. To-day was also a market day, Gobind Prasad Neogy and his men again attempted to take away the traders by force and our constables resisted them. I send herewith the copy of depositions of the constable and of the Naib of Maharani Braja Sundari Debi, the owner of the land for your perusal***"

"(4). The Jamalpur public *mela* was founded from a subscription raised mostly from the Zemindars; their ryots derive immense benefit from the *mela*, as they get cattle to buy near their homes. Formerly

they had to go to *Chilmey mela* in Rungpur District for buying cattle. The Zemindars are therefore much in favor of this *mela*."

On the 22nd the Deputy Magistrate again wrote to the Magistrate as follows:—

"In continuation of this office No. 82, bearing date 19th instant, I have the honor to state that Gobind Prasad Aleogy, Municipal Chairman, and the men of his party being unable to succeed in their attempts to establish their *mela* by force, combined themselves with students of the local school, who last evening attacked our constables; they abused as far as the police station."

"2. I beg to suggest that their *mela* be stopped at once. If you do not feel disposed to pass such an order, I request the favor of you deputing the District Superintendent or the Assistant Superintendent of Police for some days here."

"3. It was proposed to open our *mela* on the 16th instant, but owing to all these disturbances the date has been changed to 9th March next. More than Rs. 600 have been spent in the preparation and erection of the huts for the *mela*."

In answer to the above letters the Magistrate wrote the following memorandum—

"Your No. 33, dated 22nd instant. As I have told you I object to any interference with the liberty of persons in opening any new fair or market, and if you have to interfere with this one, I am afraid it will not redound to the credit of your administration. At the same time, I leave you free to take action under section 144, Criminal Procedure Code, if you think necessary, but if you deem proper to stop the new fair for the prevention of a breach of the peace, you should also abstain from holding any fair on the Government ground during the pendency of that order. You do not appear to have taken proper and suitable action in the matter. If the Chairman of the Municipality, the Government Pleader, and the Sub-Inspector of Schools or others have been inciting a breach of the peace or doing wrongful acts which may endanger the peace, you should have at once taken measures to bind them down. You should now do so if necessary, and the case can be transferred for decision elsewhere if they make suitable application. Mr. Stack, Assistant Superintendent of Police, has been deputed to Jamalpur to see that the Police do not interfere unnecessarily, but to ensure that the people are allowed to go or to abstain from going to the new fair as they may wish. You are requested to act in concert with him, and to take all needful measures to prevent any breach of the peace." Almost imme-

diately after the date of the letter, the Magistrate dismissed the Government Pleader and Sub-Inspector of Schools. The reasons assigned in both cases were that subscriptions promised by these officers to the local Dispensary and School had been in arrears for some years and had not been paid up even when ordered by the Magistrate. The Lieutenant-Governor has no doubt that the real cause of the proceedings taken against them was their support of the Khatiakuri *Mela*, and the action of the Magistrate in this respect illustrates the attitude taken by him towards Babu Gobind Prasad Neogy and his party. The dismissal of the Government Pleader was subsequently cancelled under pressure very properly brought to bear on Mr. Glazier by Mr. Worsley when Commissioner, and the Magistrate's order in the Sub-Inspector's case has been reversed by the Lieutenant-Governor.

IX. The disturbances referred to in the preceding paragraph were followed by a crop of cross cases. On the 22nd February two vegetable sellers charged the Police with having committed offences under sections 352 and 342 of the Penal Code. A complaint was also made on the same date by Kailash Chandra Bose charging the Police, under the same sections, with assault and wrongful confinement. On the afternoon of the 22nd, a counter-charge was brought against the two vegetable sellers by the Police of obstructing a constable in the discharge of his duties. On the 25th February the Police charged Babu Dwarka Nath Sen, a pleader, and Vice-Chairman of Jamalpur Municipality, with having been a member of an unlawful assembly. On the 27th February a cattle-seller charged one Sarat Chandra Bhoomik and one Gazi Sheikh, who were employed in superintending the *mela* at Khatiakuri, with wrongful restraint, having prevented his cattle from going to the *mela* on the Government land. On the 28th February a shop-keeper charged a constable with assault and wrongful restraint. All of these cases were ultimately dismissed by the Magistrate, the Judge, and the High Court. One of the latter requires detailed notice. It seems that towards the end of February the Deputy Magistrate opened his *mela* on the old site, and on the 27th, as stated above, a cattle seller complained against one Sarat Chandra Bhoomik and another for wrongful restraint in having prevented his cattle from going to the *mela*. One of the accused asked the Magistrate of the District to transfer the cases to some other file, and orders to that effect were passed by the Magistrate on the 8th March; but this had not been received by the Deputy Magistrate on the 11th March when the case came up for hearing. On that day, a mookhtear named Iswar Chandra Guha drafted a petition to the Deputy Magistrate asking him not to try

the case on the ground that he was practically the prosecutor, and the petition was supported by an affidavit of Sarat Chandra Bhoomik declaring his belief that the police had started the case with the assistance and under the direction of the Deputy Magistrate, and that the charge was false. There appeared to have been some obscure proceeding in this case before Babu Akhoy Kumar Bose, Deputy Magistrate, at the Sudder Station of Maimensing to where the case was transferred, but the Lieutenant-Governor has not the record before him, and it is sufficient to state here that the accused were acquitted on the 6th April. On the 25th April Babu Shama Charan Das applied to the Magistrate of the District for permission to prosecute Iswar Chandra Guha and Sarat Chandra Bhoomik under Section 193 of the Penal Code for false evidence in a stage of a judicial proceeding, the alleged false statement being contained in the so-called affidavit filed in the Deputy Magistrate's Court on the 11th March. On the 29th April Mr. Glazier gave his sanction to the prosecution "under section 193 or any other section that may appear to be necessary" and directed that the case should be tried by Moulvi Mahomed, a Deputy Magistrate at the Sudder Station. The proceedings under this order were quashed by the High Court and the prosecution stayed.

X. In the opinion of the Lieutenant-Governor these proceedings involved a grave misuse of judicial authority. Sir Stuart Bayley does not see the slightest reason to suppose that there would have been a breach of the peace if the police had not interfered and by their action brought on a semblance of disturbance which was made the excuse for a harassing series of criminal cases, all of which can be traced to the fact that the Magistrate of the District disapproved of the way in which a *mela* was being managed by an independent Committee and superseded them without authority. The whole case is a striking illustration of the danger and inconvenience of the union of executive and judicial functions in the same officer when that officer happens to be indiscreet and intolerant, but as this union is for the present essential, the practical lesson to be drawn from it is the necessity for extreme vigilance on the part of controlling and supervising officials and the magnitude of the evils attendant on failure in this respect. It is clear to the Lieutenant-Governor that years of patient and careful working on proper lines can scarcely undo the mischief and remove the prejudice against the existing system produced by a single case like the present one where the indiscreet and improper proceedings of the local officers are left unchecked by the Commissioner, whose special duty it is to supervise their action.

XI. Much prominence has been given in the correspondence, to what Babu Gobind Prasad is said to have been guilty. The facts are briefly these :—In the first instance the Babu was elected President of the Jubilee Committee on the proposition of the Sub-Divisional Officer, and it was settled that the Municipality would subscribe Rs. 200 for the celebration. Subsequently Babu Gobind Prasad Neogy held a meeting of the Municipal Commissioners at which Rs. 500 was allotted for the celebration, and this was spent on the *mela* ground while the general subscriptions were spent by the Sub-Divisional Officer on the School house. Subsequently the sum of Rs. 500 was refunded by the Chairman under the orders of Mr. Larminie, the Commissioner. Apparently the action of the Chairman in getting the sum of Rs. 500 voted by an irregular meeting was censured by a majority of the Commissioners. If the real facts were as represented, there can be little doubt that improper use had been made of Municipal funds, and *prima facie* Mr. Larminie's order was quite correct; but an application for a revision of this order was made on the 3rd May, the result of which does not appear among the papers now before the Government. There are several points connected with this matter which cannot be conveniently dealt with by the Lieutenant-Governor in this Department, and this part of the case will be made over to the Municipal department for disposal.

XII. On a review of all these unfortunate proceedings it is impossible to acquit the District Officer, Mr. Glazier, who must be held mainly responsible for them, of grave errors of judgment, of want of temper and arbitrary conduct. The same remarks apply, though in a less degree, to the Sub-Divisional Officer, while the failure of Mr. Larminie adequately to grasp the responsibilities of his position as Commissioner is disappointing. The Lieutenant-Governor sees nothing to find fault with in the conduct of the Sub-Divisional Officer at the outset. His report to the Magistrate of the 4th November shews that he clearly understood the character of the *mela* and the position of the Committee, and he then gave sound and judicious advice to the Magistrate which, if followed, would have prevented all the mischief which has occurred. The Magistrate having rejected his recommendation in his ill-considered order of the 18th December, the Deputy Magistrate did not offer any advice when forwarding the proceedings of the *Mela* Committee meeting on the 25th December, after he had received the order to carry on the *mela* himself as Sub-Divisional Officer, with the assistance of a Committee who were overridden by that very order. He seems to have identified himself completely with Mr. Glazier's policy, and to have fought the Committee

with all available weapons. His conduct, from this time, was a long series of blunders and perverse acts, while much of his reports to Mr. Glazier amounted to distortion of the actual facts. He had an opportunity of retreating from his false position by acting on the suggestion made by Mr. Glazier in reply to his letter of 5th January, but failed to avail himself of it. It is obvious however that he believed himself throughout to be acting in harmony with the Magistrate's views, and there was only too much to satisfy such a belief on his part. His Honor is satisfied of the Babu's unfitness for the place he occupies, and an arrangement will be made for his early removal.

XIII. The task of reviewing Mr. Glazier's action throughout this case is a difficult and unpleasant one. He is an experienced Officer who has hitherto borne a fair reputation, and the Lieutenant-Governor has anxiously tried to take the most favourable view of his conduct which the facts will allow. He is however compelled to remark that some points have left a painful impression on his mind. Among these are Mr. Glazier's silence on the subject of removal of the image and hut of *Kali* till attention had been called to it in the press, although the matter was more than once referred to in papers which came before him. His remark that the Sub-Divisional Officer was to be assisted by the Committee in carrying on the *mela*, the order being passed on the proceedings of a body claiming to be the Committee which had removed the Sub-Divisional Officer from the post of Chairman; the misleading remark on the report to the Commissioner on the 7th March that there had been a local dispute about some rival fairs at Jamalpur, and the ambiguous orders given to the Sub-Divisional Officer regarding the *mela* started on the new site. Assuming that these omissions and ambiguities were the results of heedlessness, there still remains the fact that nothing but Mr. Glazier's indiscreet interference with the Committee's method of celebrating the *mela* led to the decision to have an unofficial Chairman, and to sever themselves from the Deputy Magistrate's management. Mr. Glazier next refused to accept this decision or even to enquire into the representation made to him, and insisted on the Deputy Magistrate continuing to manage the *mela* and retain the funds and property of the institution, with which, save in the matter of withholding the use of the Government land, he had no longer any claim to be consulted. Then when the rival *mela* was started, and the Police, acting under the supervision of the Deputy Magistrate, began a series of arbitrary arrests to obstruct it, the District Magistrate, instead of at once putting a stop to the prosecution and staying the arbitrary pro-

ceedings of his subordinate, allowed the case to proceed, passed the weak and injudicious order to the Deputy Magistrate about proceedings under section 144 of the Criminal Procedure Code, arbitrarily dismissed the Government Pleader and suspended the Sub-Inspector of Schools almost avowedly for the part they had taken in support of the *mela*, sanctioned what he ought clearly to have seen was an unjustifiable prosecution by the Deputy Magistrate under section 197 of the Indian Penal Code, and so thorough his mismanagement and remissness, caused what before was a trivial and unjustifiable exhibition of local feeling, to grow into a grave public scandal rendering necessary the intervention of the High Court to prevent further injustice. Sir Stuart Bayley has anxiously considered whether he is justified in allowing Mr. Glazier to continue in the first grade of Magistrates and Collectors. He has decided, though with much doubt, that the general good service rendered in the past by Mr. Glazier, may now be counted in his favor, and that the Government may be spared the pain of degrading him, especially as after the present case he must forego all hope of further promotion. But his Honor considers that it is no longer safe to entrust to him a District so important and difficult to manage as Maimensing, and arrangements must be made as soon as possible for his removal to a lighter charge.

XIV. The action of Mr. Larminie also calls for unfavourable notice. He was called on by Government to enquire into and report on this case in the letter of 2nd February and again on the 31st March. He received a report from the Magistrate dated the 25th February, in which that officer mentioned that he had dismissed the Government Pleader and suspended the Sub-Inspector of Schools. This surely ought to have roused his attention even if he had not gathered from the rest of the letter and its enclosures that the executive authority of the local officers was being strained and local feeling at Jamalpur much excited. However he seems to have taken no notice. On the 7th the Magistrate again reported strongly against the Municipal Chairman and sent a report from the Sub-Divisional Officer which the Commissioner ought not to have overlooked. Again on the 16th April, the Magistrate reported on the subject to the Commissioner in a letter which only made more clear the necessity for looking into the state of affairs at Jamalpur. On the 17th the Magistrate reported the circumstances of the Municipal expenditure of Rs. 500 which the Commissioners disallowed but apparently made no further enquiry. On the 29th April, a reminder was sent to the Commissioner for the report called for on the 22nd February, and on the 3rd May he reported that there were several cases pending on both sides, and as the

Magistrate and Judge seemed to take a different view of what had occurred, he wished to await the decision of all the cases before submitting the report called for. Notwithstanding all these indications Mr. Larminie had received of the real nature of this case, he stated to the Government in his report that the matter did not appear to be of any great importance. A few days later he received from the Magistrate the record of the case of giving false evidence against Iswar Chandra and Sarat Chandra. Apparently he took no notice of this, but on the 8th submitted a report which the Lieutenant-Governor is obliged to consider inadequate and incomplete. No sufficient enquiry was made, the origin of the *mela* dispute was left unexamined, and the subsequent facts are not fully stated and apparently were imperfectly understood. No mention is made of the case against Iswar Chandra among other omissions. Mr. Larminie has moreover failed to apprehend that one of the duties of a Commissioner is to exercise his power of supervision in such a way as to prevent petty squabbles growing into public scandals, and in the whole series of petty squabbles and public scandals he has never from the beginning exercised any supervision or control at all. For the unchecked mismanagement of his subordinates, of which he had ample opportunity of informing himself, the Government cannot hold him blameless. When he says the Magistrate of the District failed to act as promptly as he might have done in putting a stop to prosecutions which were certainly ill-advised, he takes a correct view, so far as it goes, of the Magistrate's failure. He does not see that the words are scarcely less applicable to his own. The Lieutenant-Governor has already expressed his serious dissatisfaction at the delay which has occurred in laying this case before Government, and for this he must hold Mr. Larminie in the first instance and chiefly responsible.

XV. The Officiating Commissioner, Mr. Worsley, acted most properly in the case of the Government Pleader, and took a right view of the result to be aimed at in the case of Iswar Chandra Guba, though in the Lieutenant-Governor's opinion he took a wrong method of obtaining it, when he refused Mr. Glazier's application to instruct the Legal Remembrancer to appear on behalf of Government in the High Court. The Legal Remembrancer should have appeared to put the facts correctly before the High Court and to correct mis-statements, and then should have consented on the part of the Government to the cases being quashed. On the whole, however, the Lieutenant-Governor considers Mr. Worsley's action in the case to have been praiseworthy, and he generally agrees with the views expressed in the conclusion contained in his letter upon it.

XVI. This case, and some others which have recently come before the Lieutenant-Governor, seem to indicate the necessity of correcting a misapprehension as to the duty of a Commissioner in matters connected with the judicial action of Magistrates of all classes. At present Commissioners seem too frequently to consider the statement that 'criminal cases' are pending a sufficient excuse for delaying enquiry and report when called for by Government; and of course they are still more inclined to consider it a sufficient reason for not taking up a case on their own initiative. This is unquestionably wrong. Whenever criminal cases, on which public feeling is excited, arise out of or are connected with the exercise of the executive authority of Magistrate or of Police action under the orders of the Magistrate, the Commissioner should exercise the utmost watchfulness over them, and when necessary should promptly take the advice of the law officer or refer the matter to Government.

By order of the Lieutenant-Governor of Bengal.

(Sd.) J. WARE EDGAR,
Offg. Chief Secretary to the Govt. of Bengal.

Extract from a Resolution of the Government of Bengal, dated the 29th January, 1888, on a report of J. PRATT, ESQ., Sessions Judge of Maimensing, dated the 29th September, 1887, bringing to the notice of Government the conduct of BABU AKHOY KUMAR BOSE, Deputy Magistrate, as disclosed in six cases tried by him.

* * * *

3. As regards the prosecutions for using false weights, it is to be noted that the severe sentences were inflicted with the object of punishing men who in the matter of the *mela* had taken up an attitude of hostility to the Sub-Divisional Officer of Jamalpur; but even putting the most charitable construction on the motives of the Deputy Magistrate, Sir Steuart Bayley cannot but come to the conclusion that the gross carelessness and want of judgment in this and the other cases cannot be adequately punished by the most severe reprimand.

4. His Honor therefore directs that Babu Akhoy Kumar Bose be degraded to the bottom of the 6th grade of the Subordinate Executive Service, and that he be deprived of his first class powers. He will remain at the bottom of the 6th grade, until satisfactory reports are received from his superior officers regarding his work and industry. On

CRIMINAL CASES AND RESOLUTIONS.

the receipt of such reports, the Lieutenant-Governor will then consider the question of restoring to him first class powers, and moving him to the top of the sixth grade in order that he may become eligible for promotion to the fifth grade. The Deputy Magistrate will also be transferred to the head-quarters of the District of Dinagepur.

By order of the Lieutenant-Governor of Bengal,

(Sd.) J. WARE EDGAR,

Chief Secretary to the Government of Bengal.

Mr. Glazier appealed to the Government of India against this decision of the Bengal Government and the former passed the following resolution which we transcribe from the "East" of Dacca.

No. 2848.

From—A. P. Macdonnell, Esq., Secretary to the Government of India,
To—The Chief Secretary to the Government of Bengal.

Calcutta, the 19th December 1887.

Home Department, Public.

Sir,—I am desired to acknowledge the receipt of your letter No. 360 J., dated the 29th October, 1887, forwarding, with connected papers a letter from Mr. E. G. Glazier, Officiating Magistrate of Pubna, in which he appeals against the orders of the Lieutenant-Governor, contained in a resolution, dated the 31st August, 1887, directing his transfer from the District of Mymensingh and declaring that he must forego all hope of further promotion. The papers forwarded with your subsequent letter No. 4820 J., Dated 24th November, 1887, in connection with Mr. Glazier's appeal, have also been received and laid before the Government of India.

2. In reply, I am to say that, after a careful consideration of the circumstances of the case as disclosed in the papers submitted, the Governor-General in Council sees no reason to differ from the conclusion at which His Honor the Lieutenant-Governor has arrived, that Mr. Glazier acted injudiciously throughout the proceedings connected with the management of the *Mela* at Jamalpore.

Having regard to Mr. Glazier's own proceedings and to the defective supervision exercised by him over the action of his subordinates the Governor-General in Council considers that the Local Government was justified in transferring Mr. Glazier from the Mymensingh District. The case, however, does not appear to the Government of India to be

one of intrinsically serious character, and for this reason as well as because Mr. Glazier is described by His Honor the Lieutenant-Governor as "an experienced officer" who has hitherto borne a fair reputation and as having rendered "general good service" in the past. His Excellency in Council thinks that if Mr. Glazier is in the Lieutenant-Governor's opinion otherwise qualified for higher posts in the public service, the errors committed by him in the proceedings now under notice, were not of so grave a nature as to call for an order debarring him from all hope of future promotion.

3. I am to request that a copy of these orders may be communicated to Mr. Glazier.

The original papers received with your letter of the 29th October are herewith returned.

I have, &c.,
(Sd.) A. P. MACDONNELL
Secy. to the Govt. of India.

CHAPTER VIII.

THE RAJSHAYE DOG CASE.

As in the Nuddea Students' Case, it was clapping of hands on the part of some College students at a *jatra* party that gave birth to a harassing criminal prosecutions; then again in the Rungpore Deer Case, refusal to lend an elephant incensed the local executive authorities and caused a scandalous parody of British Justice; and so, in this Rajshaye Case, a urban boy was imprisoned for weeks together for no other fault than that he had attempted to rescue a goat from the grasp of a dog belonging to a high Civilian. The dog was out, of course in charge of a keeper, to take an evening constitutional on the broad road facing the mighty Pudma that washes the shores of the old historic town of Rajshaye, and chanced to rush on a goat to rescue which a poor village boy used his stick, and the dog was accidentally killed. This offence was considered tantamount to a

high treason, and the entire local civilian body banded together, as if the whole district under their charge was in danger, to put the boy in jail. In the absence of the Government Resolution, we transcribe below the Calcutta High Court's judgment in this case which serves the purpose of a Resolution on the part of the Government.

In the *Statesman* of July 12th 1876 appears the Judgment of the High Court in the Rajshaye Dog Case.

Before Justices the Hon'ble A. G. Macpherson and the Hon'ble G. G. Morris.

Gopal Mehter on the part of Mr. W. H. D'Oyly, Magistrate and Collector of Rajshaye

versus

Raj Chunder Dass.

Reference from the Officiating Session Judge of Rajshaye dated 6th June 1876 under Section 296 of C. C. P.

The order of Mr. W. Clay, Officiating Joint Magistrate of Rajshaye dated 3rd June 1876 convicting the accused Raj Chunder Das under Section 426 of I. P. C. of "mischief" and sentenced him to 3 weeks' rigorous imprisonment.

REMARKS BY THE HIGH COURT.

This conviction cannot stand, because there is an entire absence of evidence that the accused committed the criminal offence of "mischief" within the meaning of the Section 425 of the I. P. C.

The case for the prosecution according to the witnesses called in support of it (to whose story the Joint-Magistrate gives credence in preference to that of the witnesses called for the defence) is simply this :— Five dogs, belonging to Mr. D'Oyly the Magistrate and Collector of Rajshaye were out for exercise in charge of his servant, a mehter. Seeing a goat on the road they rushed at it and commenced worrying it. The mehter tried to get the dogs off the goats, but unsuccessfully, when the accused who was accidentally present, seized a stick from a hedge at hand, and with it struck the smallest dog of the lot, which had hold of the goat by the throat, a blow which killed it. For this the accused, who the Joint-Magistrate says "is a youngman of about 17, not long arrived here, with a view of entering the High School, and therefore a person of some education" has been sentenced to rigorous imprisonment for 3 weeks under Section 426 of I. P. C.

We fail to find any evidence that the accused struck the dog "with intent to cause or knowing that he was likely to cause wrongful loss or damage," to Mr. D'Oyly or to any one else. It is clear that his only object was to save the goat which had been savagely attacked and was on the point of being killed by Mr. D'Oyly's dogs, while ~~some~~ women to whom the goat belonged were screaming close by. What the accused did was neither more or less than what very many properly right-minded people, under similiar circumstances, would have done. And even if it be considered that in the confusion he may not have acted specially judiciously, that is no reason for holding that he intentionally committed the criminal offence "mischief". There is in truth far more evidence of the intent to cause wrongful loss &c. i. e. of "mischief" against those who allowed their dogs to attack the goat, than there is against the accused. That there was no intention to cause wrong to any body or to do any harm at all is patent on the face of the depositions of the witnesses for the prosecution. & &

(Then follows some extracts from the depositions which we, for want of space, omit here.)

As we have already said, the evidence in the present case does not with reasonable certainty prove any criminal intent. On the contrary we think it conclusively proved that there was no criminal intent and consequently that no offence under the Penal Code was committed. The conviction and sentence are reversed, and judgment of acquittal must be recorded.

The prosecution is one which ought never to have been instituted; and if instituted the complaint ought to have been dismissed by the Joint-Magistrate at once.

The Sessions Judge seems to us to have shewed but little appreciation of the true nature of this case, as is shewn by the objectless discussions upon which he enters. It is most unfortunate when he found he was unable to release the prisoner on bail, he should not have called the High Court's attention to the matter in order that this Court might exercise its powers of releasing him (under section 297). The Judge having neglected to indicate that the case was one of special inquiry, it has only now come before us in ordinary rotation, when it is probably too late to save the accused from the imprisonment to which he has in our opinion been very improperly sentenced.

CHAPTER IX.

PLEADER'S EAR—PULLING CASE
IN SYLHET.

The space at our disposal being short, we now beg to close this book with a few editorials written by the veteran Journalist Mr. Robert Knight, editor of the *Calcutta Statesman*, on this and other cognate subjects. Mr. Knight is so well-known to our readers that we need not dwell here upon the valuable service he has rendered and is still rendering to us. The late Babu Kristo Das Pal used to say that Mr. Knight's writings were immensely valuable to us, and we therefore transcribe here some of his leading articles written in 1877 on the criminal administration of this country.

—————

The *Statesman*, December 16th 1877.

"We stated our conviction some weeks ago that the high-handed proceedings of Civilian magistrates in the Mofussil, are doing more at this moment to alienate the people from our rule, than all other causes put together. And we are satisfied that it is really so. We now hear of a Mr. Damant, district judge of Sylhet, ordering a chaprassi of his court to "take one of the native pleaders by the ear," and turn him out of the Court.

"Two pleaders, witnesses for the plaintiff deposed among other things that they informed Mr. Damant before the plaintiff had actually being pulled by the ear by the chaprassi, that he belonged to their profession, but to no purpose. The chaprassi, who was a witness for the defence, affirmed that having been ordered by the defendant, he took the plaintiff by the ear and turned him out of the court room. It was also proved by res-

respectable witnesses, that it was not the plaintiff who was making a noise on the occasion. 'The noise was made outside the court room, and the plaintiff was in no way connected with it. The only fault he committed was that he whispered to a brother pleader at the time.'

Such an insult to an educated man, was of course as gross as it well could be, and a decree of Rs. 500 damages has been given against Mr. Damant in the case. The *Mirror* complains of the insufficiency of the fine, and that the court did not award costs which of themselves amount to Rs. 500. But the worst part of the case, is the interference of the local Government therein. Colonel Keatinge is declared to have gone out of his way, to help Mr. Damant through "by all available means in the case." Does not every one see that if Colonel Keatinge interfered at all, it should have been to remind the courts under him of the indecency of such proceedings, and their fatal effects upon the administration of justice. What educated man with any proper self-respect will appear before any judge, who is ready upon the smallest provocation to direct his chaprassies to assault the pleader. Our Civilian magistrates seem unable to understand the revolution that our educational system is everywhere effecting in India. An ignorant and craven boor may submit to have his ears pulled by a chaprassi at the order of the hakim, but the Civilian who could deliberately inflict so intolerable an insult upon an educated pleader, ought clearly to be removed from the Bench altogether. Scandals of this order are becoming so disgracefully frequent in these Lower Provinces, that a very sharp remedy will have to be applied to them. If the British Indian Association were wise, it would send the record of all these cases to Lord Lytton, and failing adequate notice of them at his hands, to the Secretary of State. Such proceedings must be stopped at all hazards, if they are not to become the objects of national hatred to the people. It is ridiculous to talk of the railway navy outraging the people.

The real "navvies" we have to deal with is a coarse minority of men who have got into the service through competition, who have neither the self-control, nor the manners, nor the instincts of gentlemen; and there is but one remedy, which is to remove them from the service as they reveal themselves. For the Government to be throwing its shield over offenders of this class, is simply monstrous, and is a grievous wrong to the great body of Civilians in the country, who whatever their failings, are "gentlemen," and have a just respect for the feelings of others."

THE FENUAH CASE

Statesman 14th March 1877.

It is frequently found desirable by the journalist, who would leave a vivid impression of his own conviction upon the public mind, in cases which have been long protracted, and on which side issues have been raised with the effect of diverting attention from their leading facts, to recast the story in its simplest form, and to state his own reading of it throughout. We shall now attempt to tell the story of the Fenuah Cases in this way, and then dismiss the subject for the present from our columns.

In February of last year then, Mr. Webster was manager of the Fenuah Tea Gardens in the Chittagong district. Near his gardens a *bund* had been erected by the ryots in the preceding month across a *khal*, or rivulet, for the purpose of irrigating their crops, as they had been accustomed to do from time immemorial, when the rains failed them. The *bund* rendered an adjacent ford impassable, and so interfered with a road leading to the tea gardens. Careless altogether of the villagers' necessities, and of the ruin of their crops, Mr. Webster simply determined that the *bund* was a nuisance to himself,

And that it should be removed. The Police had refused to interfere, when he at once took the law into his own hands, and accompanied by three Europeans, provided with firearms, and a large body of *lattials*, marched upon the *bund* to destroy it. The villagers made a show of defending themselves, but were of course easily disposed of. Both bullets and small shot were ~~flung~~ upon them, and eight or ten of their number were wounded. Now, we were unhappily familiar with such outrages formerly ; but it is difficult in these days to imagine a more open or grave offence against the law. The villagers had the full right to construct the *bund*. It was put up simply to save themselves and their children from great distress, if not starvation. It was in no way intended to injure or incommode or annoy Mr. Webster ; and these poor villagers even went the length of offering to reconstruct for his convenience a bridge which had fallen into disrepair. But Mr. Webster is a man of bad type, of intemperate habits we are told, and violent passions. Who were these poor villagers that they should dare to interfere with him and his garden, still less dictate to him how he was to cross the *khal*? Let it be understood that we mean to speak plainly throughout this article, and to leave no doubt as to the true reading of this story, the more so that three of Her Majesty's Judges of the High Court, have found it impossible to form a judgment of its real merits. Now this amiable and unselfish fellow, happened to be hand in glove with some of the chief civilians in the district. The Magistrate (Kirkwood) was his frequent guest, the Commissioner (Mr. Lewis) his partner in a tea-garden elsewhere. Mr. Kirkwood was away at the moment, and Mr. Rattray's police proved so inconveniently on the alert, that Webster and his following were brought up on a charge of riot, and sentenced to a series of very mild fines by the Joint-Magistrate, before he had even heard of the riot, or could interfere for the protection of his friends. The moment this excellent man hears of their disaster, he is in a towering passion with the police for having presumed to charge Mr. Webster with any offence at all, and with the unhappy villagers for venturing to appear against him in the courts. How dared they give evidence against his friend, and the very partner of Mr. Lewis, the Commissioner? What will become of British rule in India if Englishmen are not allowed to shoot the ryot when his impertinence reaches the length of presuming to object to men in Webster's position destroying their crops! Let no one think that we are bearing too hardly on this man Kirkwood. The record of the case shews clearly, al-

though our Civilian Judges were unable to see it, that such was the exact temper of mind in which this unprincipled man called for the police proceedings and reversed them. Mr. Webster was not to blame, he declares, in any way; but had been grossly insulted by Mr. Rattray and his police. If any riot ~~had~~ been committed at all, it was the ryots who had been guilty of it, for not allowing Mr. Webster to destroy their *bund*. He could not remit the fine, but he would be even with the ryots. And so, without a shadow of pretence for believing that these poor creatures had acted badly in the matter, he declared them to have committed perjury, because some of them gave evidence that Mr. Webster was one of the men who had fired upon them; the man himself confessing at a later stage of the case that he *had* carried a gun on the occasion. This miserable Magistrate could not see that his friends had been let off far too lightly for their cowardly crime, but proceeded to dress their wounds with the salve of his own dishonour and corruptness as a Magistrate. He directs the unhappy ryots to be tried for *felony* when his own friends, the only guilty parties had been mildly punished but for misdemeanour; and when finally he finds the Judge, Mr. Sarson, before whom he sent them, about to acquit them, he impudently removes the case from his court, and sends it before a man upon whom he could rely, and who accordingly duly sentences them to rigorous imprisonment for six months in the Chittagong jail, while their wives and children are left to starve. Now the whole of these proceedings were clearly illegal; but when an appeal is made, by the charity of some non-official gentlemen, on behalf of the victims to the High Court, Calcutta, we have another Civilian, acting as Legal Remembrancer, rising to assure the Judges that for his part, he sees no illegality in what this man had done, and nothing to censure in his proceedings. Nay; our legal Remembrancer—against his own brief and instructions—all but openly pleads before Her Majesty's Judges in behalf of this respectable crew of Webster, Kirkwood, and Co; and then passionately attempts to discredit the report of the scandals he has so heavily aggravated. The final shame remains to be told that a Bench of Judges, in which the Civilian element is most improperly allowed to predominate, deliberately evades its duty, and professes to be unable to say whether these cruel and disgraceful proceedings were or were not illegal. The only fitting reply would be their removal from the Bench for incompetency; the more so as the passion imported into the case at a very early stage of the hearing by Mr. Justice Ainslie,

THE FENUAH CASE.

showed that he, at all events, ought not to be there. We feel the deeper indignation at this conduct of the High Court because it is the only institution in the country that stands between the people and an irresponsible executive, careless almost to defiance of public opinion upon its course.

In briefly recalling the facts of this case, we have not colored it in the very least. We see a corrupt Magistrate deliberately misusing his power to oppress the poor whom it is the special glory of his office to protect, and deliberately pandering to the conduct of the oppressor because he was his friend. We see his course marked by illegality throughout, and the victims of that illegality imprisoned on an infamous charge concocted against them by himself. We see his brother Civilian, acting as the Queen's Proctor, bringing disgrace upon the Bar by all but openly pleading against the side on which he was engaged; and a Civilian Bench at last exposing itself to the contempt of the country, by declining to pronounce a judgment upon proceedings upon which public attention had been fixed for a whole year. It is in a conjunction of circumstances like these that we see what the rule of the country would become, but for an unshackled Press, and we should despise ourselves if we allowed either the strength of the Civilian element in the Government, or the exalted position of Her Majesty's Judges of the High Court, to deter us from saying plainly what we think of it. They cannot charge us with contempt of Court; it is the Court that has contemned itself. We tell Messrs. Markby, Ainslie, and Morris, they have brought a stain upon the ermine. Called to administer justice on Her Majesty's behalf without respect of persons, they have had the whole record of this case before them for months, and at the end of it profess not to be able to use their position for the public good. They are in doubt to this hour, it seems, whether Mr. Kirkwood's intrusion of himself into the case, simply to prevent justice, called for their notice or not. They cannot make up their minds whether Mr. Rattray's police deserved or did not deserve the corrupt censure of this man for interfering with his friends; or what his motives were when he sent the ryots to trial on a charge of felony, and then impudently transferred the case from the Judge who was about to acquit them, to a more facile court. Not one word, moreover, have these Judges to say on the conduct of the Legal Remembrancer whose every appearance in the case has been a scandal for its patent insincerity! But what were any of these matters to our Civilian Bench? If ever there was a case in which it was the duty of Her Majesty's Judges to review closely the

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proceedings of all parties thereto, it was this case; and it is sheer affectation to conceal to what the miserable *fiasco* is attributable. We pointed out as delicately, but as plainly as we could, months ago, the impropriety of Messrs. Ainslie and Agnew's hearing the case at all; while the association of Mr. Markby with them, as a concession to public feeling, was freely commented upon in the profession at the time as the device of weakness itself. Not that Mr. Markby is not a lawyer or a man of strict impartiality, but that he is *weak as water* in presence of resolute colleagues. The Chief Justice should himself have heard the case, with colleagues like Mr. Pontifex, Mr. Macpherson, Mr. Lewis Jackson, or Mr. Kemp. Had the bench been but thus composed, full confidence would have been felt therein from the first. As it was, the issue of the hearing was confidently predicted in private from the ~~very~~ first. Every one knew that Mr. Markby would yield to his colleagues if they were of one mind and were resolute; and if we assert a right of speaking with less reserve on these proceedings, than we are accustomed from our profound respect for the High Court to show, it is that the only tribunal to which we can appeal against this discreditable *fiasco* is—the public. As the sentence falls from our pen, we remember that there is another tribunal left that can yet speak influentially upon the matter. Is Mr. Eden, then, equal to the occasion? It is happily rare that the Executive Government is ever appealed to against Her Majesty's High Court; but appeal legitimately lies thereto in this case, and if Mr. Eden should adequately mark the sense entertained by himself of the scandals that have attended this case throughout, he will be supported by the strongest public approval of his course. There is no room for two readings of this story at any stage of it. It is simply a story of an unprincipled Magistrate grossly abusing his power to persecute the weak, and protect their oppressor; and of his superiors countenancing or excusing his conduct for no other reason than that he is a—Civilian.

FINISH.

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