did not send chowkidars or a constable.] Ratneswari on arriving at the place of investigation, was made to stand in the sun for nearly a couple of hours. Babu Brijnundun, the other accused, was also summoned and made to stand in the sun. [The Magistrate stated that he merely directed them to wait their turn for examination.] Ratneswari and Brijnun dun were there examined, the questions having been put by the Magistrate and the answers recorded by the Head constable. On the 5th Feb. one Soudayar Ahir and four other servants of Ratneswari and Brijnundun were arrested and sent up by the Police before Mr. L. An application was now made for the transfer of the case from the file of Mr. L. to some other court, but this application was refused by the District Magistrate. Thereafter an application was made to Mr. L. for time to enable the accused persons to move the High Court, but this application was refused, although the Magistrate was bound by law to give time and the next day Mr. L. commenced the enquiry preliminary to commitment. On the 24th March the said enquiry was conducted and Soudayar Ahir and the four other persons were committed to take their trial in the Court of Sessions under secs. 304, 304/149, 380/109 and 148 I. P. C. On the 15th March Mr. L. issued warrants for the arrest of Ratneswari and Brijnundan to answer charges under secs. 304, 379, 147, 154, 155 I. P. C. On the 17th March the Magistrate issued written Proclamations requiring Ratneswari and Brijnundan to appear before him within 30 days under the provisions of sec. 87 of the Cr. P. C. [This Section applies to absconders] and on the 19th March he ordered attachment of tents, shamiana, elephants, palki, carriages, horses, chairs and other furniture belonging to the said two persons. On the 9th April Retneswari appeared and was released with two surities to the amount of Rs. 5,000. On the 26th April Brijnundan appeared and the Magistrate after recording the evidence of some witnesses in the case and after postponing the enquiry till 11th May examined the police

officer and sanctioned the prosecution of Brijnundan under sec. 124, I. P. C. and sent him in custody to the District Magistrate, who admitted him to bail with two surities of Rs. 5,000 each.

A Rule was obtained from the High Court calling upon the District Magistrate to show cause why the case should not be transferred from the file of Mr. L. to the court of some other Magistrate and proceedings were stayed pending the hearing of the Rule.

After the Rule was obtained from the High Court the Vakil for the petitioner sent a telegram to the Muktier in the court below informing him of the issue of the Rule and the stay of proceedings. This Muktier produced the telegram before the Magistrate and verbally applied for a postponement, but the Magistrate refused to look at the telegram and proceeded with the case. The same day the counsel in the case sent a telegram to the Muktier informing him of the Rule and the stay order. The next day a written application for a postponement was put in on the ground of the issue of the rule and the two telegrams were filed, but the Magistrate still proceeded with the case and nearly finished the enquiry.

The Rule was heard by Maclean, C. J. and Banerjea, J. who in making the Rule absolute observed that they were not very favourably impressed with the manner in which the petitioners were treated by the Magistrate. *They could not but feel that to some extent the zeal of the executive officer had outstripped the judicial impartiality of the Magistrate and that he had displayed at least some bias adverse to the applicants.*

As regards the refusal of the Magistrate to stay his hands after the aforesaid telegrams were produced before him the learned Judges observed as follows :—

"In acting as he did, in forcing on the case, as he obviously has, I think the Magistrate acted very injudiciously. He ought to have listened to the telegrams which, upon their face, bore the stamp of genuineness, and if he had any reason to doubt their authenticity, that doubt could readily have

been satisfied by a telegram to the Registrar of this court. It almost looks as if he wilfully shut his eyes, so as to avoid learning what this court had done. This haste to press the enquiry on, coupled with his action in the earlier investigation of the case, does, at least, suggest that his mind is not free from some bias in the matter, and that he does not approach the case with that judicial impartiality which is so essential to the true administration of justice I desire to state that it is of the most absolute importance, as regards the administration of justice in this province, that Magistrates should act with every loyalty towards the orders of the High Court, and if they are told that an order has been made by this court staying proceedings, they ought then and there to hold their hands, unless they have good ground for believing that the information given to them is false."

Surja Narayan Singh's Case—1900

5, Calcutta Weekly Notes 110

On the 9th June, 1900 an information was lodged at the Madhepura Police Station, in the District of Bhagalpur, to the effect that Babu Surjanarayan, the manager of Babu Hansa Prasad, a wealthy and influential Zemindar of Bhagalpur, one Ram Jha, the Purohit (priest) of Babu Hansa Prasad and several others set fire to the house of the informant, a creature of a rival zamindar in bad terms with Babu Hansa Prasad, assaulted him and his brother and looted his moveable properties worth about Rs. 15 and thereby committed offences under sections 147, 380 and 436 of the I. P. C. The Police Inspector who investigated the case reported it to be false in B. Form. The said report being placed before the Sub-divisional Magistrate of Madhepura, the said officer passed an order upon it, viz. "I will hold a judicial enquiry on the 29th June, summon complainant and his witnesses for that day, issue notice to the accused to state their case if they so chose."

The enquiry however was held on the 25th instead of 29th and the Sub-divisional Magistrate examined four witnesses cited by the complainant and two others, of his own motion. On the 10th July the Sub-divisional Magistrate called for from the Police for an A Form (case true) and issued warrants against eight persons including Surjanarayan and Ram Jha and fixed 17th July for the hearing of the case. On the 19th July the accused persons appeared before the Magistrate who released them on bail of Rs. 100, each fixing 1st August for the case.

In the meantime the Sub-divisional Magistrate wrote to the District Magistrate asking for the appointment of the Government pleader to conduct the prosecution and according to the orders of the District Magistrate a pleader was actually engaged for the purpose.

The accused engaged two vakils practising at the District head-quarters who on the 28th July wired to the Sub-divisional Magistrate for the postponement of the case on the 6th August when they would be able to defend the accused. The Magistrate agreed to the postponement, provided the accused persons paid all costs incurred by the prosecution by reason of the postponement. In the result the Magistrate directed a sum of Rs. 65 to be paid by the accused as postponement cost. It may be mentioned that this sum is far in excess of what is usually paid to legal practitioner in Sub-divisions.

On the 6th August 8 witnesses for the prosecution were examined in chief, and the vakils for the defence asked for permission of the Court to reserve their cross-examination and were permitted to do so. Quite unaccountably the Magistrate without giving the defence pleaders an opportunity to cross-examine the prosecution witnesses or to call witnesses for the defence under section 208 of Cr. P. C. (to which they were entitled, there being an allegation of an offence under section 436 which was triable exclusively by a Court of Session) and without even examining all the

prosecution witnesses examined the accused persons (a procedure that has often been condemned) framed charges against them under sections 147, 379, 476 of the I. P. C. To this very unusual procedure the accused persons objected but in vain.

The accused persons applied for copies of the statements of the prosecution witnesses made during the Police investigation, but the Magistrate refused copies without assigning any reasons for his refusal.

On the next day *i.e.*, on the 7th August the defence pleaders repeated their objections to the illegal procedure in framing the charges, pointing out that the accussed persons had been deprived of their right of discharge under section 209 of the Cr. P. C., by the action of the Magistrate and applied for 3 weeks' time to move the High Court for a transfer of the case to some other Court. Directly this application was made, the Magistrate arbitrarily withdrew the order of bail and sent the accused persons to *Hazut* inspite of the representation of the defence that the circumstances of the case had not changed since the previous day when the accused were on bail.

Immediately after passing this order remanding the accused to Hazut the Magistrate left the court at about 12-30 P. M., and went to his private residence. A petition for bail was sent to the Magistrate at his residence but was promptly refused.

The accused persons then moved the Sessions Judge of Bhagalpur and were finally released on bail of Rs. 500 each on the 20th August.

On the 22nd August before the record of the case came back from the Court of the Sessions Judge, Bhagalpur, where it had been sent in connection with the above named application for bail the Magistrate wanted to proceed with the case and on being asked for two weeks' further time he gave only 8 days' time fixing 30th August for the case.

The accused persons moved the High Court on the 28th of August and got a rule calling upon the District Magistrate of Bhagalpur to show cause why the case should not be transferred from the court of the Sub-divisional Magistrate to some other competent Court. Pending the hearing of the rule the High Court directed all further proceedings in the Court of Sub-divisional Magistrate to be stayed.

On the 30th of August the Muktear of the accused persons filed a petition before the Sub-divisional Magistrate informing him of the grant of the rule and stay of proceedings by the High Court and to this petition he attached the telegram which had been sent to him from Calcutta informing him about the issue of the rule and the stay of proceedings. The Magistrate took no notice of this petition and on the same day, in the absence of Babu Surjanarayan, one of the accused persons, examined another witness for the prosecution and committed all the accused persons to take their trial in the Sessions Court of Bhagalpur. This commitment order also was made in the absence of the accused. The Magistrate attempted to explain their commitment by suggesting that this course was directed by the Sessions Judge.

The High Court issued another rule calling upon the District Magistrate of Bhagalpur to show cause why the commitment should not be quashed. This rule along with the rule for transfer was heard by Prinsep and Handley, J.J. who observed as follows:—"We have no hesitation in saying that both the rules should be made absolute. There is practically no cause shown as regards the first rule (the rule for transfer). With reference to the second rule the Deputy Magistrate was clearly wrong in committing Surjanarayn in his absence and he is under a complete misapprehension in saying that the Sessions Judge had ordered a commitment. It is illegal to examine an additional witness in the absence of the accused. A postponement should certainly have been granted on the 30th of August in order

that the accused might have an opportunity of cross-examining the prosecution witnesses, with a view to obtaining, if possible, a cancellation of the charges and that the Magistrate might receive the orders of this court respecting the application for transfer. It was most injudicious of the Magistrate to proceed with the case after he had been credibly informed that a rule had been issued by this court. His precipitate action indicates still further his bias against the accused."

The commitment of the accused to the Sessions Court was quashed and the case was transferred from the court of the Deputy Magistrate.

The Hooghly Assault Case—1905

The facts of this case created much sensation in the town and district of Hooghly as the complainant in the case was Babu Jotindra Mohan Nundy, a zemindar belonging to the respectable Nundy family of Shahgunge in the town of Hooghly.

The accused in the case was Mr. C., the then Magistrate and Collector of Hooghly. The facts were that on the 22nd of February 1905, the above named zemindar, while walking from his house at Shahgunge to the house of Babu Raj Mohun Chatterjea, a medical practitioner in the town of Hooghly, had to cross a bamboo-bridge at the Kalitola burning ghat, and just when he was on the bridge he was suddenly accosted and struck by a European (who, he afterwards came to know, was the District Magistrate himself). On being struck he ran away, whereupon the said Mr. C. gave chase and dealt another blow with his stick on the left side of his neck.

The above named zemindar filed a petition of complaint under secs. 352 and 323, I. P. C. in the court of Mr. D., Joint Magistrate of Hooghly against the said Mr. C., Magistrate of Hooghly on the very day of the assault. The Joint Magistrate after examining the complainant on solemn

affirmation, recorded the following order in the order-sheet "Complainant to prove his case on the 6th March, 1905."

That on the very same day, namely, the 22nd of February, 1905, the said Mr. C., the District Magistrate, who was himself the accused in the above case, recorded the following order in the order-sheet of the above case:

"I made the annexed note of the occurrence immediately after it occurred."

"I consider that it is *entirely unreasonable of the complainant to complain of an assault which he provoked and I plead that under Sec. 95 no offence has been committed.* The Joint Magistrate will make such inquiry as he thinks fit and can, if he desires, summon my servant, Golam Hyder, who was present *and if he thinks that the case should come to trial, will send it to the nearest J. P. having jurisdiction, if in doubt, consult Government Pleader as to jurisdiction?*"

The High Court was thereafter moved by the complainant abovenamed for a transfer of the above case from the file of the Joint Magistrate of Hooghly to the file of any Magistrate in the District of the 24-Perganas and the Hon'ble High Court was pleased to issue a Rule. After the said Rule was issued Mr. C. compromised the case with the complainant.

Comment on the above case is superfluous.

Akhileswar Singh's Case—1905

10, Calcutta Weekly Notes 246

One Dharma Das Singh Rai, during his life time, made a gift of all his properties to his sister's son Akhileswar by a registered deed of gift and put him in possession of the properties. Subsequently the said Dharma Das tried to oust Akhileswar from the said properties. With this view he made an application to the Sub-Divisional Magistrate of Serampore praying that Akhileswar and some other persons might be bound down under sec. 107, Cr. P. C. and that a notice

under sec. 144, Cr. P. C. may issue against these persons restraining and prohibiting them from interfering in any way with the possession of the said Dharma Das. An *ex parte* order was thereupon passed under sec. 144, Cr. P. C. on the 22nd September, 1905. Thereupon Akhileswar made an application to the Sub-Divisional Magistrate asking him to rescind the order upon which the following order was passed: "Police to report under sec. 145, Cr. P. C." Subsequently the Sub-Divisional Magistrate passed the following order: "Takid report, under sec. 145, Cr. P. C. I will hold a local enquiry in my cold weather tour." Proceedings being drawn up against Akhileswar under sec. 145, Cr. P. C. he was called upon to put in his written statement as required by law. In the meantime Dharma Das, who practically got the Magistrate to initiate proceedings against Akhileswar, died (22nd Nov. 1905) and on the 1st December Akhileswar put in a petition before the Magistrate stating that Dharma Das was dead, that there had been no breach of peace, there was none at that time with whom there could be a breach of the peace and that it was not possible to have any occasion of the breach of the peace with a dead man. He therefore prayed that the proceedings might be dropped or at least a month's time should be given to him to file his written statement. On this application no order was passed. Akhileswar now went to Charpore to the house where Dharma Das lived before his death (this was a subject-matter of the gift) and performed the *Sradh* ceremony of Dharma Das without any disturbance by any one. On the 7th December, 1905 the Sub-Divisional Magistrate of Serampore went to Charpore and wished that Akhileswar should remove from the house immediately. Akhileswar remonstrated and asked for a written order of the Magistrate who said his verbal order was quite sufficient. The Magistrate the n ordered Akhileswar to remove immediately. Akhileswar was obliged to remove with his family from the house which was then entered into by the Magistrate and some police officers who put a lock *on*

its door. It was breakfast time when Akhileswar was compelled to remove from the house; he and his family had to eat their breakfast in an adjoining hut after vacating the house. Soon after Akhileswar brought it to the notice of the Magistrate that there were family idols in the house and that he was performing the *pujas* every day. The Magistrate paid no heed to this representation.

The Magistrate then made over (inspite of the remonstrances of Akhileswar) two out of the four milch cows left by Dharma Das to one Kamini, a mistress of Dharma Das and ordered her to occupy the house and also made over to her certain utensils which she identified as her own, although Akhileswar protested that they were the subject-matter of the deed of gift. The Magistrate next prohibited all the tenants of the Bhagjote from paying the produce rent to Akhileswar. It is to be noted that the Magistrate did all this by verbal orders and no written orders were passed.

In revision the High Court held that there was no justification for the orders in question and therefore set them aside.

Thakur Persad Singh's Case—1905

10, Calcutta Weekly Notes 775

There is a bazar called the Girwana Sonepurma in the district of Palamow. Of this the Government was said to be a 2 as. proprietor, in respect apparently of some khasmehal estate. Thakur Persad and his brother had a 2 as. share and Tirbani Singh had a 2 as. 17 gundas share and Amar Singh, whose estate had been taken over by Government under the Chota-Nagpur Encumbered Estates Act, and other co-sharers had the remaining share. The Collector of Palamow, therefore, as representing the Court of Wards, had an interest therefore in certain shares in the bazar.

The bazar had been leased out to Chamroo Shahoo for one year from 30th September, 1905 to 1st October, 1906 and

apparently a lease setting out the rates at which he was entitled to realise tolls was given to him.

On the 3rd December 1905 Mr. L., the Deputy Commissioner of Palamow acting in his capacity of District Magistrate, had Chamroo brought before him and took from him his lease and took down a statement made by him.

On the 13th December the same officer apparently examined Dhanuk Dhari Sahoo and took from him what purported to be a copy of the lease for the current year granted to Chamroo and also examined Shew Sankar Lall and took from him what purported to be a copy of the lease granted for the previous year, one Dost Mahammad being the lessee of the bazar for the said year.

The Deputy Commissioner then passed an order that the case should be put up before him on the 18th December with a copy of the lease granted to Chamroo. On the 19th December he recorded the following order:—"It appears that no copy had been kept in the office. In spite of this, from information received, it would appear that there are ample *prima facie* grounds for believing that an offence under secs. 465 and 468, I. P. C. (Forgery and Forgery for the purpose of cheating) has been committed by Chamroo Shahoo and that he has been abetted therein by Thakur Singh, Tirbani Singh and Dost Mahammed and other actual shareholders of the Girwana bazar. I hereby order that a warrant on a bail of Rs. 1,000 each issue against each of the above named men for their production on the 6th January and that meantime, the Sub-Inspector file a list of witnesses for the Crown. A search-warrant for the production of the bazar chowkidar's book should be issued."

Apparently the case against Chamroo was that he had made two additions in his lease adding Hindi figure 1/4 after 3 seers in the case of the tolls leviable for ghee and grain, in two places in the lease.

Counsel for the accused persons requested the Deputy Commissioner to give them copies of the information on

which he had acted in issuing warrants against them. This was refused apparently because no such information existed.

Two rules were issued by the High Court calling upon the Deputy Commissioner to shew cause why the proceedings instituted against the accused persons under Secs. 465 and 458/109 I. P. C. should not be quashed as there were no sufficient reasons to justify such a prosecution, or in the alternative why the case should not be transferred to some other competent Court.

The Magistrat e Mr. L. in his explanation stated that the law nowhere laid down that he was bound to disclose the sources of his information before the trial began, he submitted that the reason for this rule was that the District Magistrate held a position that warranted the presumption that his action was well judged and warranted.

Their Lordships of the High Court held that they could not agree with the Magistrate that the law relieved him from at least recording the information on which he acted though it might not compel him to disclose the sources of that information. Their Lordships regretted that the tone of the Magistrate's explanation was wanting in respect both to the High Court and to himself.

Their Lordships further held that the Deputy Commissioner as Collector and as representing the Court of Wards which was a part proprietor in the bazar and in that capacity being a party to the lease granted to Chamroo, was directly interested in the prosecution. There was nothing in the record to show that the information, whatever it might have been, which he received, was not lodged to him as Collector, and if that were so, it was open to him as Magistrate to act on that information and proceed to issue warrants against the accused persons. Practically by *acting in such a way he was making himself a judge of his own case*, for the case, seemed to be that he with other co-proprietors granted a lease on certain terms to Chamroo and that Chamroo had tampered with that lease.

There being not sufficient evidence on the record to warrant a prosecution of the accused persons, the proceedings were quashed by the High Court.

In conclusion their Lordships suggested that if the Deputy Commissioner as representing the Court of Wards desired to proceed with the prosecution against any of the accused persons, he should follow the ordinary procedure and should have a proper complaint lodged stating the information and the grounds upon which it was desired to proceed and this might be filed on his behalf by the Government pleader or by some other officer subordinate to him as Collector.

Acting upon this suggestion the Government pleader of Palamow presented a petition purporting to be one under Sec. 200, Cr. P. C. against all the aforesaid accused persons against whom summons issued under secs. 465 and 468/109 I. P. C. Government pleader was examined in support of his petition.

The High Court in revision again set aside the proceedings against the accused persons on the ground that the complainant in the case, *viz.* the Government pleader had no personal knowledge and as none else was examined in support of the petition, there was nothing to show that there was any case for issuing summons against the accused persons and that in such circumstances the Court should satisfy himself upon proper materials that a case for issuing summons had been made out.

The Government pleader now applied to the Deputy Magistrate of Palamow in whose court the case against the remaining accused persons, *viz.*, Chamroo Shahoo and another was pending, that in view of the observations of their Lordships of the High Court set forth above (10 C. W. N. 1090) before any further action was taken in the matter, the Deputy Magistrate might be pleased to order a judicial inquiry into the complaint of the Government pleader so as to afford him an opportunity of producing such supplementary evidence as had been indicated by their Lordships.

Thereupon the case was made over to a Junior Deputy Magistrate for inquiry under Sec. 202 Cr. P. C. and report and this Magistrate having reported that Chamroo was guilty of forging table of rates summons again issued against him.

Chamroo moved the High Court and got a rule calling upon the Deputy Commissioner to show cause why the proceedings in the prosecution of the petitioner should not be quashed and why in the alternative the case should not be transferred to some Magistrate of an adjoining districts as the petition er was not likely to get a fair and impartial trial at Palamow.

This rule was subsequently made absolute by their Lordships of the High Court and the proceedings against Chamroo were quashed.

Their Lordships observed, "The proceedings were commenced on the complaint of the Government Pleader and he had no personal knowledge of the affair. The judicial inquiry resulted in a finding to the effect that Chamroo was guilty of forging the table of rates. But there are no materials on which the judicial inquiry is based so far as we can gather. Apart from this there was no complaint under Sec. 200 Cr. P. C. properly so called on which a judicial inquiry could be directed. The proceedings were illegal and we therefore set them aside."

Surendra Nath Banerjee's Case—1906

10, Calcutta Weekly Notes 1062

On the 14th and 15th April, 1906 the Bengal Provincial Conference was to have held its sittings at Barisal and in order to attend its meetings a large number of educated and influential gentlemen went as delegates from all parts of Bengal to Barisal. One of these was Babu Surendra Nath Banerjee who is well known throughout India. It may be mentioned for the benefit of our European readers that Babu Surendra Nath is the editor of the *Bengalee*, (a leading daily English newspaper published in Calcutta),

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Chairman of the north Barrackpore Municipality, Secretary to the Indian Association and was for several years an elected member of the Bengal Legislative Council and was president of the Indian National Congress more than once. Mr. A. Rasul, M. A., B. C. L. (Oxon), the well-known Mahomedan Barrister of the Calcutta High Court, was the President of the Conference. The President was also accompanied by his wife, an well-educated European lady.

In order to conduct the President of the Conference to the pandal where the Conference was to be held, with the ceremony usual on such occasions Babu Surendra Nath and many other delegates assembled at a private compound known as Raja Bahadur's Haveli at Barisal on the afternoon of the 14th April. From there the President accompanied by his wife started in a carriage for the Conference pandal and Babu Surendra Nath and other delegates followed the carriage on foot in rows of two or three. After they had proceeded about 100 yards, one of the delegates came running up to Babu Surendra Nath and informed him that the police were indiscriminately assaulting with lathis the delegates who were some way behind. Babu Surendra Nath went back to find that the information was true and on meeting Mr. K., the District Superintendent of Police on the spot, told him "Why are you beating these men. They have done nothing wrong. If you think they have done anything wrong you may arrest them. I am willing to take the whole responsibility on myself. You may arrest me if you like." On this Babu Surendra Nath was arrested by Mr. K. without being told on what charge and for what offence he was arrested. Thereupon two other gentlemen, the Hon'ble Babu Bhupendra Nath Bose, an eminent solicitor of the Calcutta High Court and a member of the Bengal Legislative Council and Babu Moti Lal Ghose, Editor of the *Amrita Bazar Patrika*, (another leading daily newspaper published in Calcutta), who were also delegates and present with Babu Surendra Nath, offerred themselves to be arrested when they were told

by Mr. K. that his orders were to arrest Babu Surendra Nath alone. Babu Surendra Nath was then taken to the house of Mr. E., the District Magistrate of Backerganj. He was accompanied by Babu Behari Lal Ray, an honorary Magistrate and Zamindar, Babu Aswini Coomar Dutt, Zamindar and proprietor of a first grade College at Barisal and Pandit Kali Prosonno Kabyabisarad, Editor of a leading vernacular newspaper published in Calcutta. Babus Behari Lal and Aswini Coomar accompanied Babu Surendra Nath into Mr. E.'s room who at once shouted out at Babus Behari Lal and Aswini Coomar, "Get away, you are not properly dressed. I won't be insulted, you have not got *pugris* on" and these gentlemen left the room. Babu Surendra Nath was drawing a chair in the room to seat himself when Mr. E. suddenly shouted in an offensively loud tone, "Stand up, you are a prisoner." Babu Surendra Nath replied that he had not come there to be insulted and he remained standing. The Magistrate then began recording Mr. K.'s statement which chiefly consisted of answers to the questions put to him by the Magistrate himself. No information was given to Babu Surendra Nath as to the charge he was called upon to answer or for which he had been brought before him nor was told for what offence he was being tried. While taking down Mr. K.'s statement the Magistrate said, "This is disgraceful," referring to the conduct of Babu Surendra Nath as also to that of Babus Behari Lal and Aswini Coomar (who according to the Magistrate were not decently dressed not having had hats on when they came into the Magistrate's room.) Babu Surendra Nath protested against the Magistrate's remark as one that ought not to have come from the court. Whereupon the Magistrate said in a loud voice, "Keep quiet. This is contempt of court and I shall draw up contempt proceedings against you." The Magistrate then wrote something on a piece of paper which was not read over to Babu Surendra Nath nor was the purport stated to him and said to Babu Surendra Nath, "You are fined Rs. 200 for contempt of

court." Then at the suggestion of another European Magistrate who was in the room Mr. E. informed Babu Surendra Nath that if he apologised the fine would be remitted, but to this Babu Surendra Nath did not agree saying he had done nothing wrong. The District Magistrate in his explanation to the High Court afterwards stated that in the mean time, that is to say, after taking Mr. K.'s statement and before fining Babu Surendra Nath for contempt as aforesaid, he drafted an order fixing the case for the next day and ordering the release of the accused on bail, but that he did not proceed with the order (the reason as to why he did was not explained). Immediately after passing the aforesaid sentence of fine upon Babu Surendra Nath the Magistrate drew up proceedings against Babu Surendra Nath under sec. 107 Cr. P. Code directing him to give security for keeping the peace. The order directing security was at once made absolute and Babu Surendra Nath was asked to produce his surety. On Babu Behari Lal Ray offering to stand surety and Babu Surendra Nath protesting that he could not be bound down by an executive order and that a judicial order was necessary, nothing further was done in the matter that day and Babu Surendra Nath never heard of it again.

The Magistrate now took up and finished recording Mr. K.'s statement which had yet remained unfinished. It appears from Babu Surendra Nath Banerjee's petition and affidavit in the High Court that the Magistrate did not record Mr. K.'s statement that when Mr. K. saw Babu Surendra Nath, he was doing nothing and was not shouting *Bande Mataram*,—apparently because such statement was favorable to the accused. Babu Surendra Nath was now asked what he had got to say. He made a statement and prayed for an adjournment in order to have legal assistance to cross-examine Mr. K. and to enter upon his defence. The Magistrate refused the adjournment inspite of the fact that the day was a close holiday.

The Magistrate then told Babu Surendra Nath that he was fined Rs. 200 under sec. 188 I. P. Code for disobedience of an order duly promulgated by a public servant.

There was an appeal to the Sessions Judge of Backerganj against the conviction for contempt of Court and another against the conviction under sec. 188 I. P. Code. The appeal against the conviction for contempt was dismissed and with reference to the other appeal the case was sent back to the first Court for the cross-examination of Mr. K. and for taking further evidence. Babu Surendra Nath moved the High Court against the conviction for contempt of Court. The conviction was set aside. In the contempt of Court proceedings read before the District Magistrate of Backerganj was only as follows—"Babu Surendra Nath produced before me as a prisoner arrested in course of an affray with the Police was repeatedly ordered by me to keep silence while I was passing order in his case after the case was decided. As he disobeyed (T. E. 17-4) I ordered him under sec. 480 Criminal Procedure Code to pay under sec. 228 I. P. Code a fine of Rs. 200 or in default to go to jail for a week T. E. 14-4-06 given an opportunity for apologising but refuses. T. E. 14-4-06."

There was nothing else on the record except the above, the table of contents and the title page. The judgment of the Sessions Judge was subsequently added to the record.

With reference to the words "As he disobeyed T. E. 17-4" which were interpolated (*i.e.* added illegally in the absence of the accused) the High Court (Mittra and Holmwood J. J.) were pleased to hold as follows :—

"In considering this case we must omit from the proceedings the words "As he disobeyed T. E. 17-4" as they were added and added very improperly three days later *viz* on the 17th April. No Magistrate can add to or alter the proceedings or judgment after they are signed and published. It is specially irregular when made in the absence of the accused and without notice to him.

With reference to the conviction for contempt of Court the High Court held that the conviction was illegal and the procedure adopted was bad all throughout. About the omission of the Magistrate to record the necessary particulars the High Court observed:

"The directions contained in sec. 481 of the Cr. P. Code are clearly mandatory and the omission to record the particulars mentioned in sec. 481 has always been held to be fatal to the proceedings. A full and clear record as contemplated by sec. 481 is not only a guarantee of the coolness and judicial temper of the judge but also affords materials for the appeallate court to proceed on. It is conceded and it cannot but be conceded that the proceedings of the District Magistrate in this case are too laconic and contravene the directions of the law."

The Barisal Delegates' Assault Case—1906

It would appear from Babu Surendra Nath Banerjea's case that the Police indiscriminately beat with *lathis* the delegates who had gone to Barisal to attend the Bengal Provincial Conference of 1906. This beating was in the presence and under the direction of Mr. K., the District Superintendent, Mr. H., his Assistant Superintendent and several other police officers of rank. The assault on 18th April 1906 on some of the delegates necessitated their removal to the hospital and some were thrown into a roadside tank after being assaulted.

Mr. Chaudhuri appeared before the Senior Deputy Magistrate, Babu J. K. G. of Barisal to make an application for process on behalf of Fani Bhusan Banerji, Brajendra Lal Ganguli and other delegates who had been severely assaulted by the Police on the way to the Conference pavilion. The court was crowded to suffocation. Counsel, in opening the case, submitted a written petition of complaint, and submitted that after the occurrence those assaulted went to the Thana to

lodge a complaint. The Police, however, refused to record the first information, and referred the complainants to the Court. He therefore applied for process against the accused who would be identified. He also applied for facilities for the identification of others, as the complainants had come from Nuddea, Sylhet and other districts.

Court.—The standing order on me is to record the complaints and send them up to the Magistrate.

Counsel.—Such standing orders are not known to law.

Court.—My power of receiving complaints come from the Magistrate.

Counsel.—As Magistrate, you are to follow the legal procedure, I cannot take notice of any standing order not in accordance with law.

Court.—Two accused are Europeans, I can't try them.

Counsel.—You may not try them but you can issue process against them. You can hold an inquiry yourself or depute another officer for the purpose.

Court :—Have you no objection to the case being inquired by the Inspector of Police ?

Counsel.—I would prefer a Deputy Magistrate.

Court.—The order delegating power to me by the Magistrate is that I am to record the complaints and then refer to the Magistrate. I understand he wishes to withdraw the case from my file. My duty is of a clerical nature. That is what I have been ordered to do in this matter. My hands are not quite free.

Counsel.—Of course I quite appreciate your difficulties and I quite sympathise with you. I submit to this procedure under protest.

After this the three complainants were examined.

Fani Bhusan stated that Mr. K. had assaulted him. About twenty-five constables were beating him. He saw Chitta Ranjan beaten. He himself was thrown into the tank.

Brajendra stated he was at the gate of the Raja Bahadur's compound when the Police charged him and other delegates

with *lathis*. In trying to protect his head, his hand was injured. He was struck on the head, and he fell down bleeding and was carried inside and attended by a doctor. He was then taken to the Thana where enquiry was refused. He was next taken to the hospital. The Assistant Surgeon dressed his wounds.

The third complainant, Satis Chander Mukherjee, stated that he was carrying copies of the presidential speech with instructions not to part with any till it was actually delivered. One European Police officer on horseback pressed him against the hedges on the road-side and snatched away some copies despite his protest.

After the examination, Counsel asked for process.

The Court.—The order of the Magistrate is to submit the papers to him.

Counsel:—Before doing so, you are bound to issue process as there is a *prima facie* case before you. You must record an order either under section 202 or section 204 before sending the records to the Magistrate.

Court.—I shall only submit the records to him for orders without any remarks of my own.

Counsel.—I object to that as it is contrary to law.

Court:—You may state your objection in the petition, I shall put it in with the records.

After this, the records were sent to the Magistrate's house through the Peshkar. Counsel, the pleaders, complainants and witnesses accompanied the Peshkar and went to the Magistrate's private room.

The Peshkar returned with the following order, noted on the petition:—"Complaints dismissed and struck off."

Fani Bhusan Banerjee, one of the complainants, now moved the High Court against this extraordinary order of the Magistrate dismissing his complaint and prayed for an inquiry into the matter. Their Lordships held that the action of the District Magistrate was in contravention of the law and the direction to the Deputy Magistrate to submit all

complaints to the District Magistrate for passing orders was clearly illegal. The case was sent back to the Deputy Magistrate to be dealt with according to law.

On the case coming back to the Deputy Magistrate, he took some evidence but dismissed the complaint illegally.

Once again the matter went up to the High Court when their Lordships observed: "We have tried too much of Barisal Judicial dishonesty," and, while directing a further inquiry into the matter, transferred the case to Khulna, a neighbouring District for trial.

Rash Behari Mondol's Case—1908

Indian Law Reports, 35 Calcutta, 1076

Babu Rash Behari Mondol was a Zemindar of Madhepura in the District of Bhagalpore and owned considerable property there. In 1901 some unpleasantness arose between him and Babu S., the Sub-divisional Magistrate of Madhepura, and shortly after proceedings under sec. 107 Cr. P. C. were instituted against his servants by the said Magistrate which ended in their being discharged on the case being transferred to another Magistrate for trial.

In December, 1905 the uncle of Babu S. became the Sub-divisional Magistrate of Madhepura and Babu Rash Behari became involved in criminal prosecutions instituted by the said Magistrate in 1906 and 1907 which were transferred to Monghyr and ended ultimately in his favour.

On January 17, 1908 a complaint was laid before the same Magistrate by one Tufani Shahu against Babu Rash Behari under secs. 330 and 342 of the I. P. C. (voluntarily causing hurt to extort confession and to compel restoration of property and wrongful confinement). This case was transferred by the High Court to Monghyr for trial. It may be noted that the order of the transfer of cases in the aforesaid instances was made by the High Court so that Babu Rash Behari might get a fair and impartial trial which the High Court was of opinion would not be had at Madhepura owing to

the attitude of the District and Sub-divisional Magistrates. On February 16, 1908, Mr. L., the District Magistrate of Bhagalpore, who, it was alleged, was encamped about two miles from Babu Rash Behari's place of residence, issued search-warrants and caused a search of his house and of his kutcharies at other places and of the houses of some of his servants to be made by the police who seized and removed a large quantity of papers connected with his zemindary. These papers were kept in the Sub-divisional Office at Madhepura. On the 28th instant Babu Rash Behari moved Mr. L., the District Magistrate for the return of the documents taken by the Police, alleging that there were settlement papers and other documents among them which were necessary for the purpose of certain pending and contemplated civil suits. The District Magistrate, by his order dated the next day, directed that such papers as were not required for the purpose of the enquiries about to be made, might be returned, but if any such paper was considered by the Inspector of Police as essential for the purpose of the enquiries, Babu Rash Behari was to get a certified copy of it. He also noted that Babu Rash Behari's pleader had assented to this arrangement.

On April 11, Babu Rash Behari applied to the Sub-divisional Officer of Madhepura for the unconditional return of the papers disclaiming any authority, on the pleader's part to accept the condition imposed by the District Magistrate. On the 15th April Babu Rash Behari sent a letter through a Calcutta attorney to Mr. L., the District Magistrate, containing a notice under sec. 424 of the Cr. P. C. alleging that the search-warrants had been issued maliciously and illegally with the intention of oppressing and harassing him. On the 20th April, Babu Rash Behari received in Calcutta a notice, dated the 15th, from the Sub-divisional Officer of Madhepura, to take back all his papers, which had been seized. A notice signed by the Sub-divisional Officer, dated the 26th, was served on a servant of Babu

Rash Behari at Madhepura intimating that the delivery of the papers would be made on the 29th at Murho. On the same date, the Sub-divisional Officer accompanied by a Deputy Magistrate, the Sub-Registrar, the Inspector of Police and others went to Babu Rash Behari's house at Murho and 77 bundles of papers were counted out in the presence of a servant of Babu Rash Behari and a receipt taken. Just after the delivery was made the Deputy Magistrate then and there read out seven search-warrants issued by the District Magistrate the day before and all the bundles were put back in boxes and loaded on three carts and a police guard was left in charge of the same at Babu Rash Behari's *darwaza*. On the following three days the Deputy Magistrate came and inspected some of the papers and took them away leaving the rest behind and removing the guard.

It appeared from the order-sheet that the District Magistrate acting on the information of one Hansi Mondol, received on the 14th February, which he had duly recorded, took cognisance on the 28th April under sec. 190 (i) (c) of the I. P. C. of an offence under sec. 420 I. P. C. alleged to have been committed by Babu Rash Behari and directed the issue of a search-warrant for the production of a certain document. This delay in taking cognisance is unusual and extraordinary nor is it usual for a District Magistrate to take cognisance of offences or hear complaints. There were six other orders of the same date by the same Magistrate in which he purported to have received informations (which were also recorded) from six other persons, and took cognisance of them under sec. 190 (i) (c) against Babu Rash Behari, under secs. 384, 384/511, 403, 420, 505, 506 of the I. P. C. respectively. In each of the six orders he directed the issue of search-warrants, and summonses were issued in all cases and the 9th May was fixed for hearing of the cases. Babu Rash Behari failing to appear on this date the District Magistrate directed his prosecution under sec. 174 I. P. C., but this order was set aside by the High Court by consent.

Babu Rash Behari applied for copies of the informations against him but was only furnished with copies of the order-sheets which did not contain the informations asked for.

The High Court was moved for a transfer of the cases to some other district on the ground that Babu Rash Behari would not get a fair and impartial trial before any officer at Bhagalpur. But the High Court ordered that a special officer should be deputed to deal with cases at Bhagalpur.

It may be noted that Babu Rash Behari was subjected to various other harassing proceedings and his whole trouble ceased on his consenting to be a disqualified proprietor and making over the management of his estate to the Court of Wards.

Rajendra Narayan Singh's Case—1912

16, Calcutta Law Journal, 467

Rajendra Narayan Singh, an elderly gentleman of about 51 years of age, who was a Zemindar with an annual income of Rs. 25,000 to 30,000 and an Honorary Magistrate of 20 years' standing, moved the High Court and obtained a rule calling upon the District Magistrate of Bhagalpore to show cause why the proceedings, under sec. 110 of the Cr. P. C. drawn up against him, should not be quashed as the facts alleged against him, did not fall within the scope of that section or in the alternative why the case should not be transferred to some other district.

The substance of sec. 110 Criminal Procedure Code is that whenever a Magistrate is informed that any person within his jurisdiction is (i) a habitual robber, house-breaker, or thief or (ii) a habitual receiver of stolen property knowing the same to be stolen or (iii) habitually protects or harbours thieves or aids in the concealment or disposal of stolen property or (iv) habitually commits mischief, extortion, or cheating or counterfeits coins, currency notes, or stamps or attempts so to do or (v) habitually commits or attempts to commit or abets the commission of, offences involving a

breach of the peace or (vi) is so desperate and dangerous as to render his being at large without security hazardous to the community, such Magistrate may require the person to show cause why he should not be ordered to execute a bond, with sureties, for his good behaviour for such period, not exceeding three years, as the Magistrate thinks fit to fix. This section is intended for habitual bad characters and habitual offenders.

The proceedings drawn up against Babu Rajendra Narayan set forth all the grounds for a prosecution, as are mentioned in sec. 110 and were based upon a police report, dated May 14, 1912 in which the police charged the petitioner with association with proved dacoits, and bad characters. The report gave a list of 16 cases of dacoity, wrongful confinement, theft etc. from 1891 to 1910 and a list of 5 cases of dacoity, wrongful confinement and assault within a period of 20 years ending in 1911 in which the petitioner Babu Rajendra was suspected to have taken part. The Police report further stated that the attention of the authorities was drawn to the atrocities of the accused in the year 1908 and after an inquiry set on foot by the District Magistrate of Bhagalpore, he was spared the prosecution on his promising to behave properly in future. No conviction in any case was alleged against Babu Rajendra.

The petitioner, Babu Rajendra in his petition to the High Court, stated that his troubles arose owing to the displeasure of the District Magistrate due to his brother's helping one Rash Behari Mondol when that gentleman was prosecuted by the District authorities as also for his refusal to appoint a European manager nominated by the District authorities.

The Rule came on for hearing before Carnduff and Imam, J. J. After hearing the arguments in the case the learned Judges differed, Carnduff J. being of opinion that the rule ought to be discharged and Imam, J. being inclined to make the rule absolute. The matter was therefore referred to a third Judge, Mookerjee J. who

agreed with Imam J. in holding that there was no justification for drawing up the proceedings against the petitioner.

It appeared, that on the 26th February 1908 the District Magistrate addressed a letter to the petitioner asking him to resign the post of Honorary Magistrate as it was undesirable that he should continue to hold his post on account of the past and the then existing tension between the petitioner and his tenants. In reply the petitioner submitted a representation in which he prayed that the Magistrate might reconsider the matter and change his opinion. This had no effect and on the 30th March 1908 the Sub-divisional Officer of Supaul (petitioner's Sub-division) recorded an order that in view of the strained relations between Babu Rajendra and his tenants, he should not attend the sitting of the Bench, till amicable relations were restored between him and his tenants. It was expressly stated however that there was no intention to cast any slur on the Babu Shaheb and the object of the order was to maintain "the dignity and lofty attribute which the title of Honorary Magistrate must confer upon those who enjoy the high privilege of sitting in that honourable position." After this order the petitioner submitted a representation on 22nd May 1908 to the District Magistrate Mr. L. in which he wanted to establish that the charge of oppression of his tenants was, if not wholly, unfounded, grossly exaggerated, and that the only thing that could be said was that there were several rent suits pending between him and his tenants. Steps were now taken for the institution of proceedings against the petitioner under sec. 110 of the Cr. P. C. and more than 200 witnesses were examined by the Sub-divisional Officer for this purpose but the matter was dropped on the petitioner's agreeing to appoint a competent European manager. In the Administration Report of the District, the District Magistrate stated with reference to one Babu Rash Behari Mondol (already referred to as the person who was helped by the brother of Rajendra Babu) that he was forced,

through the knowledge that he could not escape conviction for forgery, to apply to be declared a disqualified proprietor and it is there added that Babu Rajendra Narayan Singh through fear of similar criminal cases against him voluntarily appointed a reliable European manager and cut himself off from all management.

On the 12th November, 1908, Rajendra Narayan Singh placed the management of his estate in the hands of a European manager approved by the District authorities. After the appointment of Mr. Brae as manager matters went on with apparent smoothness for about a year. On the 14th September, 1909, however, the Sub-divisional Magistrate wrote to the petitioner a letter in which he complained that the reforms introduced by the manager has been nullified by his intrigues and warned him as to the consequences of a revival of the old friction. The petitioner interviewed the Sub-divisional Magistrate and the new District Magistrate Mr. H. and matters proceeded as before till 16th April, 1910. On that date the District Magistrate wrote to him, alleging his interference with the tenantry and with the management of the estate by the European manager, Mr. Brae. It was further stated that the manager was not allowed a free hand. The petitioner, thereupon, complained to the District Magistrate about the conduct and management of Mr. Brae who apparently submitted a statement to the Magistrate who thereupon wrote to the petitioner again on 10th May, 1910 and in this letter the Magistrate reminded the petitioner that the sole reason for Mr. Brae's appointment and the dropping for the time being, of proceedings under sec. 110, was that the causes of friction might be removed by the appointment of a European manager who should be allowed a free hand. The District Magistrate, Mr. H. further reminded the petitioner in this letter that the petitioner had made a definite promise to his predecessor Mr. L., in consequence of which the proceedings against the petitioner were held

in abeyance; then followed a threat that should the petitioner fail to keep his promise these proceedings would be at once revived. On receipt of this letter the petitioner asked for a copy of the report of Mr. Brae; this met with a prompt refusal on the 6th June, 1910.

Then followed an incident which indicates that the relation between the petitioner and the authorities was considerably strained. During the rains of 1910 the river Kosi was flooded and the houses of the petitioner were inundated; he appealed and prayed in vain to the manager and to the Sub-divisional Magistrate that he might be allowed to remove to one of his kutcharies. This request was refused on the 5th July, 1910. Shortly after this incident, Mr. Brae suddenly resigned and according to the petitioner's statement he resigned without rendering accounts to him. On the 20th October, 1910, the Sub-divisional Magistrate asked the petitioner to appoint Mr. Mussleback in the place of Mr. Brae. The petitioner did not accept the suggestion and appointed one Mr. Landale as his manager. The result was that on the 24th January, 1911 the Sub-divisional Magistrate wrote to him a letter in which he called upon him to explain at once why Mr. Landale had been appointed manager without the sanction and authority of the Collector. The petitioner was next asked by the Collector to retire from his estate and to get the names of his sons registered in the place of his own in the Collectorate. This suggestion of compulsory abdication could not however be carried into effect owing to legal difficulties in the way. Matters continued in this state till the closing months of 1911, when the petitioner found it necessary to dismiss Mr. Landale and appointed Babu Tej Narayan Singh, a retired police official as his manager. This appointment of Babu Tej Narayan Singh was according to the District Magistrate Mr. D. a contravention of the condition of dropping of proceedings under sec. 110 of the Cr. P. C. in 1908 namely, "the appointment of a competent European manager," and the proceedings under sec. 110 Cr. P. C. were therefore drawnup.

The High Court held that the proceedings drawn up against the petitioner under sec. 110 were not *bonâ fide* and the rule was therefore made absolute. In the concluding portion of his judgment Mookerjee J. observed: "The very fact that in 1908 the District authorities were of opinion that if Rajendra appointed a competent European manager, proceedings under sec. 110 might be safely abandoned, indicates plainly that at that time there could have been nothing against him of a really serious character and this view is confirmed by the treatment accorded to him by the authorities during the time which followed—a period of more than three years of strict discipline as it were passed under the guidance and control of a European Manager. The fact that he has recently refrained from appointing a European manager, does not render him liable to proceedings under sec. 110, the salutary provisions of which were enacted by the legislature with the purpose of protecting society from habitual offenders. They were unquestionably never intended to be applied to coerce landlords, however recalcitrant they might be, to adopt methods of management of their estate—the efficacy of which very indiscreetly perhaps they might not appreciate."

The Chapra Case—1899

In August 1899, Mr. T., the officiating District Magistrate of Chapra, issued orders to Zamindars and ryots to repair certain bunds. No remuneration was to be paid for the work or in other words the work was to be done by forced labour and orders were issued to the police to get the people to do the work. On the 19th August, Mr. C., an Assistant Superintendent of Police and Mr. S., the District Engineer went to a village called Fulwada to beat up recruits for the work on the bund. Among the villagers was one Nursing Singh, a constable attached to the Jalpaiguri Police (another district) then on sick leave.

Nursing refused this forced labour particularly as earth-work is considered disgraceful by his castemen (he was a high caste Rajput) and he also pleaded ill-health. Mr. C. threatened to procure Nursing's dismissal from the police service for refusing to work on the bund and on this Nursing was alleged to have snapped his fingers in Mr. C.'s face and said that he did not care for Mr. C.'s threats. This story was however disbelieved by the Sessions Judge.

Mr. C. then seized this man by his shoulders, turned him round, kicked his bottom and told him to go away. Nursing then retreated two or three yards and then it was alleged ran at Mr. C. Mr. S. hit him on the head with a rattan and Mr. C. struck him on the face with his fist causing to fall against at once. It was further alleged that Nursing, then called out to the villagers to use lathis. On being hit by Mr. C. for the third time the man fell down when Mr. C. sat on the man and thrashed him soundly. Mr. S. gave the man 6 or 7 cuts with his rattan on his bottom and back. On a villager interfering Mr. C. let go Nursing who after being severely hammered in this way escaped into the thicker part of the village. After a time a constable was sent after Nursing and he was forced to work on the bund for a short while. He was however let go on his providing a substitute, as he was ill.

In the evening Mr. C. returned to Chapra and related the incident of the fracas to the District Magistrate Mr. T. and the District Superintendent of Police Mr. B., and Captain M., the Civil Surgeon.

Next morning Nursing came to the Chapra hospital to be treated for his disease and on being enquired about his blackened eyes, told Captain M. of the incident of the previous day. The Captain immediately drove to the Chapra club and informed Mr. C. and proceeded from the club to the house of the District Superintendent and informed him. Mr. C. then drove to the hospital where he arrested Nursing and took him to the District Superintendent's house who in the mean-

time had sent an Inspector of Police after the man. Nursing was then threatened with prosecution by the District Superintendent for his conduct towards the Sahebs and asked to resign as a means to avoid the prosecution. This he refused.

On his refusal, Nursing was taken to the house of the District Magistrate Mr. T. by Messrs. B. and C. Nursing was left in the verandah and there was a deliberation in the District Magistrate's room by the three Sahebs as to under what sections the man could be prosecuted. The sections being determined Messrs. B. and C. returned to the verandah where Mr. C. drew up a report of the incident which was taken to the District Magistrate who then and there wrote an order directing the prosecution of Nursing under sections 353 and 186 Indian Penal Code for assaulting a public servant to deter him in the discharge of his duty and obstructing a public servant in the discharge of his public duties and made the case over to Maulvie Z. for disposal.

On the 21st August the Maulvie examined Mr. C. in chief and without permitting his cross-examination recorded the statement of the accused. On the 22nd Mr. S. was examined. The accused was then called upon to defend himself under section 186 Indian Penal Code, and the case was fixed for the 2nd September. After writing his orders, the Deputy Magistrate recorded an order to the effect that it occurred to him that he had better charge the accused under section 353 Indian Penal Code also. He accordingly sent for the accused but could not find him.

The next day, however, the accused attended and was charged under section 353 Indian Penal Code. Mr. C. was then cross-examined, but it appeared that several important statements made by this witness were not recorded by the Deputy Magistrate.

On the 2nd September the case for the prosecution was closed and the defence pleader declined to call any defence witnesses. The defence pleader then addressed the court.

The Deputy Magistrate then adjourned the case for reply by the prosecution to the 4th September. It may be observed that the prosecution has no right of reply under the law when no witnesses are called by the defence. The sole object of adjourning the case, was found by the Sessions Judge to be that the Deputy Magistrate wanted time to find a way out of the situation. He did not see how he could possibly convict the accused on the two charges before him and he did not dare to acquit.

On the 4th September Mr. B., the District Superintendent of Police appeared in court and was given a seat on the bench when he discussed the law and evidence with the trying Magistrate. Shortly after Mr. B. and Maulvie Z. adjourned to the private chambers of the District Magistrate with the records of the case and there discussed the case with him and the Court Sub-Inspector.

The trying Magistrate frankly admitted having previously discussed the case with the District Magistrate as he had done with reference to many pending cases. He did not even hesitate to confess that the purpose of such discussions was to ascertain what the District Magistrate might ask him to do so as to avoid future trouble so that the Magistrate may not find fault with him afterwards in case the Magistrate did not agree with his decisions. In the present case even the District Magistrate admitted having given hint to the trying Magistrate as to how he should decide it.

On the 5th September when the case was pending for judgment only, a new charge was framed under section 504 Indian Penal Code and the accused was informed that he would also have to defend himself under section 29 of the Police Act. On this date the defence pleader applied to cross-examine Mr. C. on the new charges. The order passed was that he had gone to Backerganj, a far away district and the accused must deposit his pay and travelling expenses. Even on this day Mr. B., the District Superintendent, sat on the bench by the side of the trying Magistrate and

the petition to summon Mr. B., Mr. T. and the Civil Surgeon as witnesses, was discussed and refused as vexatious.

The proceedings of the 5th September were followed by another adjournment with the record to the District Magistrate's room.

On the 7th September the case was taken up again and on this day the Government pleader appeared in the case for the first time and was given the right of reply notwithstanding the defence pleader's protest. On the next day judgment was delivered by the Maulvie convicting Nursing of offences under section 352 read with 114, and section 504 of the Indian Penal Code and sentencing him to two months' rigorous imprisonment.

The same day when the Maulvie convicted Nursing, he recorded the following order on the complaint of Nursing against Messrs. C. and S. "This complaint is utterly without ground. I have found in the counter case that this complainant as accused in that case was the aggressor and that he was rightly served. I dismiss the complaint under section 203, Criminal Procedure Code." Nursing appealed to the Sessions Judge of Chapra against the order of conviction and sentence and along with the petition of appeal was filed an affidavit by the defence pleader regarding the conduct of the trying Magistrate as well as the District Magistrate. The Sessions Judge released the appellant on bail and sent a copy of the petition of appeal and of the affidavit to the District Magistrate, called for the trying Magistrate's explanation with regard to the allegations made against him in the affidavit and directed that in transmitting it, he would himself report upon the allegations so far as they affected himself. Acting under the orders or at all events with the approval of his executive superior, the Commissioner of Patna, the District Magistrate refused to submit any explanation. The Sessions Judge therefore examined both the trying Magistrate and the District Magistrate and

further examined Messrs. B., C., S. and the Civil Surgeon as he was empowered to do as an appellate court.

While the appeal was before the Sessions Judge the Commissioner betrayed a desire to hush up the case and sent a demi-official letter to the Sessions Judge to hear the appeal in camera. The trying Magistrate also wanted to see the Judge on the pretext of paying his respects to him.

The Sessions Judge delivered a long judgment in which he totally disbelieved the prosecution story of insults and assaults by Nursing, and, while acquitting him, exposed the entire scheme of the officers concerned to get poor Nursing into trouble.

With reference to Nursing's complaint which was dismissed by the Maulvie, the Sessions Judge observed that it was to avoid this complaint by Nursing for the brutal assault committed on him, that proceedings against him were engineered by responsible officers of the District. Neither the evidence of the Maulvie recorded by the Sessions Judge nor anything on the record justified the Maulvie's statement to the effect that Nursing was the aggressor and that he was rightly served. On the contrary it seemed to the Sessions Judge that this man was very badly treated. The Sessions Judge at the same time ordered a further enquiry into the complaint of Nursing.

PART III

Mr. M. Ghose's Pamphlet

THE UNION

OF

Judicial and Executive Functions

IN

THE MAGISTRATES

OF

BRITISH INDIA OUTSIDE THE PRESIDENCY TOWNS.

A COMPILATION OF CASES ILLUSTRATING THE EVILS OF THAT UNION

IN BENGAL

1874–1873

BY

MANOMOHAN GHOSE

Of Lincoln's Inn,
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High Court of Bengal.

Calcutta :
1913

INTRODUCTORY NOTE.

The recent agitation in England regarding the necessity of separating judicial from executive functions as regards the trial of criminal cases by Magistrates in India, and the publication of a Memorandum on the subject by the British Committee of the Indian National Congress in London, have suggested to me the desirability of publishing a compilation of a few striking cases which illustrate the evils of the present system. Such a compilation in order to be useful, ought not, in my opinion, to be published anonymously, but some one cognisant of the facts set forth should come forward to vouch for their accuracy, and to guarantee that every statement of fact made is strictly correct. I have accordingly thought it necessary to give my own name to this publication and to confine myself to giving summaries of such cases only as have passed through my own hands professionally or otherwise, and copies of the records of which I have myself read and preserved in manuscript or in print.

Within a very short time of my commencing practice at the Bar in Calcutta in 1867, I was much struck with the frequency of cases involving gross abuse of judicial power on the part of the Magistracy in the interior of Bengal, and I soon discovered that it was the system and not the individual officers concerned, which was primarily responsible for the frequency of these cases. Unfortunately I did not think of preserving my briefs until the year 1874, or I could have included several instances which occurred prior to that year, that facts of which in some respects were just as striking as any of those now given.

A period of 20 years, however, is long enough for my purpose, but I must guard against its being supposed that I have included all or nearly all the cases bearing on the subject in which I have been myself professionally engaged during these 20 years. I have omitted all petty cases of

almost every day occurrence, and I have likewise not included those which have occurred in the other Presidencies of India, or even in Bengal, the facts of which I am not personally in a position to speak to, but of which the newspapers have been full during the last 20 years.

It is not difficult to imagine how shocked an Englishman brought up in the pure and healthy atmosphere of English Courts of Justice, must feel when he reads the facts of any one of these 20 cases which are now presented to the public; but the most unfortunate feature in the whole of this controversy is that there are still many eminent members of the Executive Branch of the Indian Civil Service, who seek to minimise the evils of the present system, and to uphold it on various grounds of State policy. They have themselves been brought up and trained from their early youth under a system which they imagine gives them a hold over the population of this country, though such a system wholly militates against all English ideas of judicial fairness and propriety, and is utterly subversive of that confidence which the native population ought to feel in the purity of British Justice. On the other hand to the credit of the Service, it must be acknowledged that several equally eminent members of that body, though themselves brought up in the same way, have from time to time protested against this system, and strongly urged the very reform which we are now seeking. In a separate pamphlet, which I am placing before the public, will be found in a collected form, all the opinions I have been able to collect of numerous Anglo-Indian authorities extending over nearly a century (from 1793 to 1883), and these opinions both for and against the present system, will enable the reader to understand the history of this question in India.

In the present compilation I have thought it fit to omit the names of the several officers concerned and have described them throughout by their initials, because I do not wish it to be supposed that I have the least intention of exposing or attacking any individual officer. I am concerned only with

the system, and I believe the real objection on the part of those who seek to uphold the present system, is not based, as is sometimes alleged, on the ground of increased expenditure, but on an apprehension that the prestige and influence of District Magistrates are likely to suffer if they are deprived of all judicial powers. Some of the opinions collected by me will show that I am quite right in entertaining this belief. I would therefore draw attention to the cases in this compilation to show what is really meant by "the prestige and influence of the magistracy" by some of those who are strenuously opposed to any reform on this ground.

A perusal of these 20 cases will satisfy any unprejudiced mind that the tendency of a system under which such cases as these are possible, must be to demoralise the majority of youngmen whom England sends out to this country every year to administer justice. Nevertheless, I gladly take this opportunity of asserting that in spite of such a system, the early training which our young Civil Servants receive in a purer and healthier judicial atmosphere before they come out, enables some of them to resist the baneful influences incidental to the present system, and to become exemplary judges in after life, as well as to exhibit that thorough honesty of purpose and independence of the executive which are so essential for the efficient administration of justice.

I wish it were possible for me to say the same of a large class of my own countrymen brought up in this country, who are entrusted with the trial of the bulk of magisterial cases. The effect upon them of the present system is simply disastrous, and it is with great regret I confess, as the result of nearly 30 years' experience of the Criminal Courts in Bengal, that if I happened to be professionally engaged for the defence in a case in which I had reason to suspect that the District Magistrate was interested in the prosecution, I would unhesitatingly prefer that the case should be tried by a covenanted Subordinate Magistrate who had received his early training in England, rather than by a Deputy Magis-

trate brought up in this country. I am certain that 9 out of every 10 such subordinate Deputy Magistrates would feel bound to decide the case not upon the value of the evidence adduced, but according to the supposed wishes of the District Magistrate. A perusal of these cases will, I think, show that I have ample grounds for this opinion.

On a recent occasion the present Lieutenant-Governor of Bengal, Sir Alexander Mackenzie, while replying to an address presented to him by a public body is reported to have made the following remarks with reference to the demand for this reform :—

"All that the laborious collection of what they term 'scandalous incidents' proves is that young Magistrates of the present day are not always as judicious as men of riper experience and longer training might be expected to be * * * Far too much is sought to be made of occasional errors of judgment or crudity of operation due to inexperience." With reference to the above remarks, I think it right to say, that the District Magistrates concerned in these 20 cases are not generally young and inexperienced officers whose youthful indiscretions might be attributed to individual temperament or inexperience, but that with the exception of 2 or 3 instances, all the District Magistrates in these cases were senior officers of standing, and that some of them were even about to retire on pension. It is, I think, useless to urge that the present system is not directly and mainly responsible for such cases.

17, THEATRE ROAD,
CALCUTTA,
15th July, 1896

MANOMOHAN GHOSE.

NOTES of CASES illustrative of the danger of investing District Magistrates who are Executive Officers with judicial powers, and with powers of supervision over Subordinate Magistrates as regards the trial of Criminal Cases.

Case of Lal Chand Chowdry of Chittagong—1876

Babu Lal Chand Chowdry was a Municipal Commissioner and an Honorary Magistrate in Chittagong. The District Magistrate as Chairman of the Municipality had proposed the enactment of certain Bye-laws, to which several of the Municipal Commissioners, including Lal Chand Chowdry, were opposed; but eventually the Bye-laws were carried by the casting vote of the Chairman. Lal Chand Chowdry incurred the displeasure of the District Magistrate by opposing the Bye-laws. On the 24th April, 1876, a discussion took place at the Municipal Board regarding the proper construction of one of the Bye-laws relating to certain latrine arrangements for the town, and on a vote being taken Lal Chand Chowdry refused to vote, as he was altogether opposed to the scheme proposed by the Chairman. Three days afterwards Mr. K., the Chairman and District Magistrate, appointed Lal Chand Chowdry a Special Constable under the Police Act V of 1861, and directed him to watch twice during the day, and twice during the night, certain public latrines, as some of these had been burnt down, it was supposed, by incendiaries. Only those native members who were opposed to the Bye-laws were, however, subjected to this indignity, to which they all had to submit. Lal Chand Chowdry and other members were directed by the Chairman to attend meeting of a Financial Sub-Committee of the Municipality on the 1st May, 1876, and as Lal Chand entered the room in which the meeting was being held, he was peremptorily ordered by the Chairman,

in an insulting tone, to leave it. When he left, another member, Mr. Fuller, pointed out to the Chairman the impropriety of insulting a member in the manner Lal Chand Chowdry had been insulted. Whereupon the Chairman immediately threatened to have Lal Chand Chowdry arrested, saying, "I intended to insult him. I will issue a warrant against him and have him arrested. If you insist on having him at the table I must leave it." * This threat he proceeded to carry out the next day, after he found that Mr. Fuller and other members had declined to withdraw their motion for the repeal of the Bye-laws of which Mr. Fuller had then given notice. On the 2nd May, without any complaint or charge, and acting under his extraordinary powers, the Magistrate of the District issued a warrant in the first instance, for the arrest of Lal Chand Chowdry on charges under sections 143, 186, 189, 353, 505, 506 and 117 of the Penal Code, and Lal Chand Chowdry was arrested by the Police on the same day, and subsequently released on bail. The next day the Magistrate, Mr. K., proceeded to try the case himself, rejecting two petitions which the accused presented, praying for time to enable his Counsel, for whom he had telegraphed to come from Calcutta, and also for a transfer of the case to some other Magistrate. The evidence which Mr. K., recorded and which admittedly was in accordance with the information on the strength of which he had initiated the proceedings, was to the effect that after a certain meeting of the Municipality was over, Lal Chand had expressed his disapproval of the Bye-laws in strong language to some of his colleagues within the hearing of a number of men who had collected outside to know the result of the meeting. Mr. K., at the close of the case for the prosecution, framed three charges against the accused and called upon him for his defence. At this stage the Counsel for the accused arrived at Chittagong and moved the Sessions Judge to refer the proceedings to the High Court. The Judge made the order prayed for, remarking, "I have been myself through the

evidence and do not find any evidence in support of the charges framed. * * The very utmost that can be said is that Babu Lal Chand made use of some imprudent expression in the excitement of a discussion with other Commissioners regarding certain Bye-laws * *. It appears to me obvious that framing charges which are entirely unsupported by evidence, and calling on a defendant to answer to them, is unlawful." The Judge, however, being of opinion that the Magistrate should be given an opportunity of dropping these strange proceedings, before sending the case up to the High Court, caused a copy of his Judgment to be sent to the Commissioner and to the Magistrate, and the latter on receipt of the Judge's order expressed a wish to hear Counsel on behalf of the accused. The Counsel declined to enter into any defence, but simply pointed out to Mr. K. the illegality of his proceedings, whereupon Mr. K. dropped the case and acquitted the accused. The case caused considerable sensation at the time, and formed the subject of a strongly-worded resolution by the Lieutenant-Governor (Sir R. Temple), who ordered that Mr. K. should be degraded to the rank of a Joint-Magistrate and debarred for ever from being in executive charge of a district. Mr. K. was accordingly transferred to the Judicial Branch of the service, and was for many years a District Judge. The case subsequently went before the Government of India who considered the sentence of the Lieutenant-Governor, having regard to his findings, to be "lenient," but did not think it necessary to pass further orders.

This case also illustrates the danger of making the District Officer Chairman of the Municipality in the Mofussil.

CASE NO. 2

The Fenwa Cases—1876-77

These cases caused considerable sensation throughout Bengal in 1876-77, Mr. Webster, Manager of the Fenwa Tea Garden, had gone with a large body of men to cut a *bund* or embankment which the villagers had put up as they had a

right to do according to custom. The villagers in large numbers having raised an outcry against this act of oppression on the part of Mr. Webster, either he or one of his party (a European) fired his gun loaded with shot, and wounded several of the villagers; Mr. Webster's party then set fire to the sheds of the villagers and came away. On receipt of this information, Mr. Rattray, the District Superintendent of Chittagong, after investigating the case, arrested Mr. Webster and sent him up on various charges. Mr. Webster was tried by a Subordinate Magistrate, Mr. Badcock, who convicted Mr. Webster and his companion, Mr. Macdonald, of the offence of rioting, but let them off with a fine.* The matter would have ended there, but for the zeal of Mr. K., the District Magistrate. This officer apparently became highly enraged at his friend Mr. Webster, having been arrested by the District Superintendent, and he (Mr. K.) as head of the Police and as District Magistrate, wrote an elaborate memo. censuring Mr. Rattray for having arrested Mr. Webster. In this memo. Mr. K. of his own motion directed three distinct prosecutions against the villagers, although no one had complained against them. It so happened that these ignorant villagers who had been severely wounded, had deposed before Mr. Badcock in the case against Webster, that it was the *Burra* Saheb of the Garden who had fired, meaning thereby the accused. Webster's defence, however, was that though he had headed the riot, it was the *Chota* Saheb (Macdonald) who had actually fired the gun, and this defence was supported by the evidence of Macdonald, who was subsequently convicted by Mr. Badcock on his own statement. Mr. K., when reviewing the proceedings of Mr. Badcock which were not judicially before him, and writing the memo. above referred to, directed these wounded men to be prosecuted for perjury for having stated that the *Burra* Saheb had fired the gun! Mr. K. further directed the villagers to be prosecuted

* Webster was sentenced to pay a fine of Rs. 500 and Macdonald to pay a fine of Rs 100.

for rioting in having resisted Mr. Webster, and for committing a public nuisance in having erected the embankment! The perjury and rioting cases were then made over by Mr. K. to Mr. Deputy Magistrate Sarson, who seeing the villagers undefended, put a few questions to Mr. Webster and his witnesses, the answers to which clearly showed that the charges could not be sustained. Mr. Webster it is said, informed Mr. K. that Mr. Sarson was likely to acquit the villagers. Mr. K. thereupon passed orders of his own motion, without any notice to the accused, transferring both the cases from the file of Mr. Sarson to that of the Joint-Magistrate Mr. V. who tried those cases as well as the nuisance case originated by Mr. K. and convicted the villagers in all the three cases, sentencing them in the perjury case to six months' rigorous imprisonment!! In the other two cases the villagers were sentenced to pay fines. The Sessions Judge having dismissed the appeal of the villagers, the cases were taken up by the Press in Calcutta, and Sir R. Temple, then Lieutenant-Governor, being convinced of the gross injustice which had been done to the ryots, directed the Legal Remembrancer to move the High Court for an enhancement of the sentences passed on Webster and Macdonald, and for the release of the villagers. A Bench of two Judges (Ainslie and Morris, J. J.), granted a rule calling upon Webster and Macdonald to show cause why the sentences passed on them by Mr. Badcock should not be enhanced, but declined to interfere on behalf of the ryots. An application was subsequently made by Counsel for the villagers before another Bench presided over by Mr. Justice Pontifex and Mr. Justice Birch, and those Judges ordered the villagers to be immediately released on bail. Subsequently all the cases were argued before three Judges of the High Court (Markby, Ainslie and Morris, J. J.), who sentenced Webster and Macdonald to two months' rigorous imprisonment in addition to the fines originally imposed, and quashed the conviction of the villagers in the rioting case on the ground that the Magistrate Mr. K., had acted illegally in

transferring it from the file of Mr. Sarson without hearing the accused, and also quashed the conviction in the nuisance case on the ground that the charge was unsustainable having regard to the facts found by the convicting Magistrate himself.

As regards the perjury case in which two of those Judges had once declined to interfere on the application of the Government, the Court without expressing any opinion on the merits, simply ordered the discharge of the prisoners, on the ground that even if guilty, they had been sufficiently punished—a decision which caused great public dissatisfaction at the time.

Few cases have caused greater scandal than the Fenwa cases, the facts of which are very briefly given above. But for the executive memorandum of Mr. K. (the District Magistrate) and his wholly unjust and indefensible action in the matter, no proceedings would have been taken against the villagers, and they certainly would not have been convicted or sent to jail if he had not at the last moment transferred the cases to a friend and Subordinate Magistrate, who probably felt himself bound to carry out the views of his official superior. Upon the facts found by the Joint-Magistrate himself no charge of rioting or nuisance was sustainable in law, and as regards the perjury, even if the ignorant and wounded villagers had misdescribed one European for another, no Magistrate, unless improperly influenced, would have sent them to prison for such a long term under the circumstances of the case.

CASE NO. 3

The Case of Barada Kant Roy—1877

An application was made by Counsel before Markby and Mitter, J. J., for the transfer of a case from the Court of the Deputy Magistrate of Patuakhali in Backergunj, in which a zemindar named Barada Kant Roy was one of the accused. One of the grounds for the transfer was that the Magistrate

of the District, Mr. B., had written to the Deputy Magistrate a letter to the effect that the accused ought to be sentenced to the maximum term provided for in the section under which they were charged! A certified copy of this letter was annexed to the petition to the High Court, the Deputy Magistrate having himself given a copy of the letter treating it as an official document. The case was transferred.

CASE NO. 4

The Murshidabad Fishery Case—1879

In April 1879 Mr. M., Collector and District Magistrate of Murshidabad, gave on behalf of the Government a lease of a certain fishery regarding which there had been some boundary disputes with the proprietors of a neighbouring fishery. The ostensible lessee was one Lahoree, but as it afterwards transpired, the real lessee was one of Mr. M.'s own subordinate ministerial officers, who could not have legally taken the lease in his own name. The nominal lessee soon afterwards preferred a charge of theft against certain fishermen on the allegation that they had caught fish within the boundaries of this fishery. This case was tried by a Bengali Deputy Magistrate. The fishermen who had been accused of theft stated they had been catching fish for many years past within the disputed fishery, and Mr. M.'s lessee having admitted that he had never been in actual possession of this portion of the fishery, the Deputy Magistrate called upon the complainant to show cause why his complaint should not be dismissed. The complainant then urged that as the Government was interested in the result of the case, the Government Pleader should be instructed to appear on his behalf. The Deputy Magistrate thereupon wrote to Mr. M. (who as Collector represented the Government) that "if he thought it necessary he might instruct the Government Pleader to appear for the complainant." Mr. M., however, did not think it necessary to instruct the Government Pleader, and passed a written order in Bengali, which ended thus:—"It

would be the duty of the Deputy Magistrate to keep an eye over the interests and cases of Government." Notwithstanding the plain hint contained in this order, the Deputy Magistrate subsequently dismissed the charge of theft, holding that, as the complainant had never been in possession, no such charge could be maintained. The complainant then applied to Mr. M. in his capacity as District Magistrate to revive the case, alleging as one of the grounds "that in such cases where the Government is a party, it is the duty of its officers to increase the boundaries of the fishery in possession." Mr. M., finding that under the Indian Criminal Procedure Code of 1872, he had no power under the circumstances to revive a case in which the accused had been discharged by another Magistrate, refused the application, but at the same time, of his own motion, instituted a fresh judicial enquiry regarding the possession of the disputed fishery under a summary power conferred by the Criminal Procedure Code, which, however, can be exercised only when there are grounds for believing that a breach of the peace is imminent. It was admitted that no one had suggested to Mr. M. any probability of a breach of the peace, nor was he able himself to state any grounds in the proceeding which he was required by law to record, before he could have jurisdiction to enter upon such an enquiry. The fishermen protested against this new inquiry and against Mr. M. trying the case himself, he being manifestly interested in the result. Mr. M., however, refused to transfer the trial of the case to some other Magistrate, which could have been easily done, and although there was no evidence adduced on behalf of his own lessee regarding actual possession, directed, in spite of the contrary judicial finding of the Deputy Magistrate in the theft case, that the lessee should be maintained in possession as against everybody else. The fishermen then applied to the High Court to revise Mr. M.'s order, and that Court quashed it on the ground that Mr. M.'s proceedings were entirely without jurisdiction. Mr. M., however, rendered the decision of the High Court

nugatory by ordering the Police to prevent the fishermen from fishing in the disputed fishery and to arrest them on a charge of theft if they did so. He professed to do this in his executive capacity. It was alleged by Mr. M. that when he first gave the lease, he was not aware of the fact that his own subordinate officer was the real lessee, but it was admitted that he became aware of that fact before he instituted the inquiry into possession of the parties.

CASE NO. 5

The Purnea Intimidation Case—1881

In July 1881 a very extraordinary prosecution was started by Mr. W., District Magistrate of Purnea, the facts of which were published by the *Statesman* newspaper at the time.

A petition was presented by Mr. Taylor, Manager of the Estate of Raja Lilanund Singh, to Mr. W., in which it was alleged that the Raja had recently dismissed his Dewan Bhoobun Chunder Roy, who on hearing of his dismissal had remarked:—

"If any *fasad* (trouble or row) takes place, who will be there to prevent it when I am gone?" The offence consisted in having uttered these words. On receipt of this petition Mr. W. passed the following order:—

"Under Section 142, Criminal Procedure Code, I consider the offence suspected to have been committed should be enquired into. Warrant to issue for the arrest of Bhoobun Chunder Roy," The warrant issued specified an offence under section 506 (criminal intimidation), and the case was by a written order transferred to the file of a Bengali Deputy Magistrate on the 26th July 1881. After the transfer of the case, Mr. W. continued to pass written orders in the case for the guidance of the Deputy Magistrate, who said in open Court that he was bound to carry out Mr. W.'s orders. Mr. W. went on directing the Deputy Magistrate to examine the Raja at his own house, although the accused objected to it, and Mr. W. also passed orders for the adjournment of the

case, as if the officer trying the case was simply to carry out the orders of his official superior and had himself no voice in the matter at all. After the Raja had been examined at length, the following dialogue took place between the Deputy Magistrate and the Counsel for the accused, as reported in the *Statesman* of the 29th August 1881 :—

"Mr. Ghose then applied to the Deputy Magistrate to dismiss the case at once, on the ground that the evidence of the Raja did not disclose any sort of criminal offence, and that the Magistrate of the district had acted illegally and without discretion in issuing a warrant without any evidence in such an utterly frivolous case. His client ought not, therefore, to be put to the expense of being compelled to go through the form of hearing the evidence of all the witnesses in such a case.

"The Deputy Magistrate pointed out to Mr. Ghose that section 147 of the Criminal Procedure Code, (X of 1872) under which alone he could possibly act, contemplated a dismissal before the appearance of the accused. He therefore asked Mr. Ghose to point out under what section he was competent to dismiss the case at that stage.

"*Mr. Ghose*—The Legislature evidently did not contemplate that any Magistrate of the district would ever think of issuing process under such circumstances. It would be monstrous if a Magistrate on finding even after the appearance of the accused that the case did not disclose any offence, were still bound to go through the ceremony of recording the evidence of numerous witnesses who could not possibly carry the case any further.

"The Deputy Magistrate said he was bound by the terms of Explanation III of section 215 of the Criminal Procedure Code, unless Mr. Ghose could show some law to the contrary."

Although the Deputy Magistrate thought at the time that there was no case, he was powerless to drop it, and the trial was prolonged for several days, the accused being compelled

to spend more than Rs. 10,000 in counsel's and pleader's fees, &c.

In the course of the subsequent proceedings Mr. W. kept on openly giving the Deputy Magistrate advice in writing as to the order in which certain witnesses should be examined, &c.; and when the counsel for the accused went to Mr. W. at the suggestion of the Deputy Magistrate himself, to remonstrate and respectfully protest against his interference, Mr. W. claimed the right to advise the Deputy Magistrate on the ground 'that he was his subordinate! At the conclusion of the case for the prosecution, the Deputy Magistrate went with the record to Mr. W.'s house to consult him, and then discharged the accused, holding that no offence had been disclosed! If the Deputy Magistrate had been left to himself, the case would have terminated much earlier and saved the parties much expense and annoyance.

CASE NO. 6

The Furreedpore Bribery Prosecutions—1874

In 1874 Mr. W., District Magistrate of Furreedpore, acting on some private or anonymous information, issued in his executive capacity a proclamation to the effect that if any person would come forward and admit that he had paid any illegal gratification to one Het Lal Roy, a clerk in the Police Office, the informant would not be liable to any punishment. Mr. W. further directed the Police to collect evidence against the accused, and himself passed orders from time to time as to how the investigation was to be conducted. The result of this unusual proclamation in a district like Furreedpore, was that more than fifty Police chaukidars and others came forward and stated that they had at different times paid small sums to the accused. Mr. W. made over some of these cases to a first class Subordinate Magistrate and some to a second class Magistrate, and himself took an active part in prosecuting them. In some of them the accused was convicted by the Subordinate Magistrates although there was nothing to corro-

borate the statements of the informers on whose evidence the convictions were based. As regards the convictions by the second class Magistrate, the accused was only entitled to appeal to Mr. W. himself, and it would have been perfectly useless for him to have adopted that course. The accused accordingly moved the High Court to transfer his appeals to another district. At the hearing of the rule Mr. W. opposed it on the ground that his prestige as a District Officer would suffer if the appeals were transferred. The High Court, however, made the rule absolute and transferred all the appeals to Backergunge (22 W. R. Cr. Rule 75). The appeals were eventually heard by the Sessions Judge of Backergunge (afterwards Mr. Justice Tottenham), who acquitted Het Lal Roy in all the cases.

CASE NO. 7

The Case of Ramzan Ali

A case in some respects similar to case No. 6, happened at Midnapore in 1875, in which the High Court was moved for a transfer of the appeals of the prisoner from the Court of Mr. H. the District Magistrate, who was the real prosecutor and who was the appellate authority, the case having been made over by him originally to a second class Magistrate for trial. The appeals were transferred to the Judge. The judgment of the High Court will be found reported in 24 W. R. Cr. Rule 58. The following passage occurs in that judgment:—

"There is no doubt that he has, as Magistrate of the District, acted zealously in the way of procuring the initiation of this very prosecution and many others of a like kind against the prisoner, and has in a manner taken upon himself (at the outset at least) the character of a prosecutor in it. It would, therefore, not be altogether seemly that the appeal from the Deputy Magistrate should be made to him, and as we understand his letter, it would appear that he naturally feels himself that would be so."

CASE NO. 8

The Jungipore Case

In the District of Murshidabad, a European indigo-planter had a dispute with a number of his ryots, who were not very willing to sow indigo. Thereupon, a series of criminal cases were instituted against the ryots by the planter, charging them with the forcible rescue of some of their cattle, which were about to be impounded on account of an alleged trespass on the factory grounds. These cases were tried by a Bengali Deputy Magistrate, who dismissed some of them, and in others convicted and fined the accused ryots, that being the usual sentence in such cases. The indigo-planter, however, was not satisfied with the punishment inflicted, and was supposed to have made some private representations to the Magistrate of the district. Anyhow the District Magistrate, Mr. M., wrote several demi-official letters to the Deputy Magistrate finding fault with the sentences passed by him as being unduly lenient, and laying down certain instructions for his future guidance. Soon after there was a fresh case of the same kind before the same Deputy Magistrate, who on this occasion passed sentence exactly in accordance with the directions of the District Magistrate, quoting certain passages from the demi-official letter of that officer in justification of the unusual severity of the punishment inflicted. The convicted ryots then appealed to the Sessions Judge, who declared that the sentence passed was illegal, and reduced it to its proper limits. The District Magistrate, Mr. M., being informed of what had taken place, and annoyed at finding that his private instructions to the Deputy Magistrate had been disclosed, sent for the latter officer and told him that he had no business to refer to the demi-official letter. In the course of this conversation Mr. M., went so far as to characterise the conduct of the Deputy Magistrate as pure "*budsati*" (rascality).

This case caused a good deal of sensation by reason of the treatment which the Deputy Magistrate had received from

Mr. M., and subsequently from the higher authorities but it furnishes an illustration of the manner in which the independence and discretion of Subordinate magistrates are constantly interfered with by District Officers.

CASE NO. 9

The Bhagulpore Case—1883

In the year 1883 a very strange case occurred at Bhagulpore, in which a well-known and wealthy zemindar named Surdhari Lal, had to apply to the High Court for redress. A dispute existed for some time between him and certain Mahomedans, regarding a piece of land which had led to the institution of several cases between his men and the Mahomedans. Mr. S., the Magistrate of the District, in a private letter to the zemindar, had asked for a large sum of money (Rs. 20,000) for a public object, which request had not been complied with. He had also proposed in certain letters that the zemindar should sell his property to the Mahomedans for a small amount; but the zemindar had not agreed to these terms. Mr. S. then wrote to the zemindar threatening to take action against him under section 144, Criminal Procedure Code which authorises a magistrate by an executive order to "direct any person to abstain from a certain act, or to take certain order with certain property in his possession." Shortly before this a criminal charge had been preferred against the zemindar by the Mahomedans, and the Joint Magistrate of Bhagulpore had dismissed the complaint on the ground that he had made a full enquiry into the same facts in another case, and although the zemindar was not formerly a party to that proceeding, yet the facts disclosed in it clearly showed that neither he nor his men had done anything wrong. Mr. S. finding that the zemindar was reluctant to sell the property, revived, after the lapse of a month and-a-half, the prosecution in that case, made it over to a Subordinate Deputy Magistrate, and directed the personal attendance of the zemindar who lived in Calcutta. About this time

certain overtures were made by Mr. S., to the effect, that if the zemindar would sell the property, the prosecution would be withdrawn. But the zemindar, instead of yielding, moved the High Court annexing to his affidavit the letters he had received from Mr. S. A rule was granted by the High Court, calling upon the Magistrate to show cause why his proceedings should not be quashed, and it being apparent that a discussion of the case in the High Court would lead to a great public scandal, the Legal Remembrancer consented to the order of Mr. S., reviving the prosecution being quashed without any argument; and accordingly it was set aside by consent.

CASE NO. 10

The Maldah Embankment Case—1876

As an illustration of the manner in which a strong executive officer vested with judicial powers sometimes acts in the Mofussil, the facts of the Maldah case, which occurred in 1876, may be given in the words of Mr. Justice Louis Jackson, one of the Judges who decided it in the High Court. The District Magistrate of Maldah, Mr. M., had summarily convicted two respectable inhabitants of the place and sentenced them to two months' rigorous imprisonment each, in consequence of some private information he had received from the Police, without allowing the accused any time to defend themselves. Mr. Justice Jackson in his judgment, dated 6th June 1876, in the case of *Pran Nath Shaha* and *Rama Nath Bannerji*, said:—"From the letter, which the Magistrate himself has addressed to the Registrar of this Court, and from the register (kept in summary cases), it appears that the Magistrate of the district having learnt, shortly after his arrival at the station of Maldah, *in a private conversation with the Assistant Magistrate and the Superintendent of Police*, that some persons were committing acts which, in their opinion, endangered the safety of a large public embankment, directed some enquiry to be made, and followed up that order by

himself walking out the next morning in that direction. In the course of his walk he came upon the petitioner, who was at the time engaged in superintending some work, not on his own account, nor in the capacity of a servant or paid agent, but simply to oblige the owner, the Maharajah of Burdwan; and it appears from the terms of the conviction that, in the opinion of the Magistrate, the defendant had been "proved conclusively to have cut away a part of the slope above the tope* for the purpose of erecting a house and extending a mangoe garden now belonging to the Maharajah of Burdwan, for whom he appears to be acting." * * * * * * * "It is impossible to conceive that if a person engaged in laying out his garden and making the foundation for a house should, in so doing, encroach slightly on the inner slope of a large embankment, he can be supposed to be doing so with the intention of causing, or with the knowledge that he is likely to cause, wrongful loss or damage to anybody, especially when it is considered that the loss, if any, caused by the act would inevitably fall most severely on the person doing the act himself, because if the irruption which the Magistrate anticipates should occur in that place, it is the very garden and house in question which would be first exposed to the fury of the waters. This alone is, it appears to us, enough to vitiate the conviction, and if there were nothing more to be said in this case, we should have felt it our duty to annul the conviction and set aside the sentence of the Magistrate; but we think there is more to be said. In this case the complainant or the prosecutor set down is the Government. It does not appear that any information was laid by any person before the Magistrate against this particular petitioner, and the form of the register specifically states that the case was commenced without complaint, and therefore it is to the spontaneous action of the Magistrate himself that these proceedings are to be ascribed. Now, considering that the Magistrate himself was the prosecutor and

* *Tope*, a clump or grove of trees.

himself dealt penally with the case, and considering the important nature of the case in the Magistrate's own view, it appears to us that this was not a case in which he ought to have acted under the summary procedure. *It certainly conveys an alarming picture of the insecurity of liberty in these districts, if a person of respectable position, engaged in a perfectly lawful occupation, which happens unfortunately to have an unsuspected tendency to promote danger to the public, should be surprised by the Magistrate in his walk, taken into custody, and before he has time to turn round, sentenced to rigorous imprisonment for two months.* I cannot think that the Legislature intended to authorise summary procedure in such a case as this. These observations apply in precisely the same degree to the case of another petitioner also before us, *viz.*, Pran Nath Shaha. But in his case there is a still further circumstance. He was also dealt with in the same manner, *was surprised in the course of the Magistrate's walk, brought before the Magistrate, and sentenced to two months' rigorous imprisonment;* but three days after the conviction had taken place he appears to have been served with a notice now before us, dated the 24th April, in which he was called upon forthwith to repair the damage which he had done to the public road by taking earth from its sides. Now, considering the proceedings taken, and the extremely severe sentence passed, there appears something like irony in this notice. We can quite understand that if the Magistrate is informed that a certain practice is dangerous to public security, he should enquire into the matter, give notice to all parties concerned to abstain from such practice, and warn them that any infraction of the notice should be severely dealt with; but it appears to us that to come suddenly upon these persons, take them into custody, and sentence them to rigorous imprisonment is, to say the least, the exercise of a misplaced rigour. We reverse the convictions in both these cases, and set aside the sentences." The passages printed in italics were not underlined by the Judges in the original judgment.