

CASE NO. 11

The Lokenathpur Case—1877

The facts of this mysterious case, which happened in 1877-78, are as follows:—On the 10th June, 1877, Mr. G., Manager of the Lokenathpur Factory, wrote the following letter to Mr. S., the Magistrate of the Choodanga Sub-division in Nuddea:—

“ My dear S—,

“ Ramgati Biswas, the T-hsildar of Kooltolla, has been found over Rs. 400 short of his collections, and I have a case ready to bring against him in your Court to-morrow. This morning at daylight his horse was found near the Boonapara line, and a saddle, a bridle, and some clothes, I suppose belonging to him, under a tree, near the place; so something is up I have given information to the Police at Damoorhooda

Yours sincerely,

G. A. G.———”

A few hours afterwards Mr. G. wrote another letter informing the same Magistrate that the Police had found the body of Ramgati Biswas in a tank near the factory. The body was examined by a doctor, who declared that in his opinion the man had been killed before his body was thrown into the tank, while two men alleged that they had seen deceased at the factory the preceding evening; one of them stated that he had accompanied the deceased to the factory, that the latter, carried with him some ornaments in order to satisfy his debts to Mr. G., that Mr. G. refused to allow the deceased to leave the factory until he had paid the full amount of his debt, and that the witness returned home leaving the deceased in charge of the factory servants. The other witness stated that he had witnessed an altercation between Mr. G. and the deceased. Acting upon these statements and other evidence which seemed corroborative, Mr. S., the Magistrate, arrested the entire factory staff, with the exception of Mr. G. and his head native servant, who were, however, regarded in the light of accused persons.

The Investigation into the circumstances attending the supposed murder was begun by the Police under the personal

supervision of Mr. S., and in the course of this investigation certain statements, in the nature of confessions, were made by some of the prisoners. This inquiry was afterwards conducted by Mr. S. personally for several days, in the course of which he examined many witnesses, the evidence of some of whom clearly indicated that Ramgati Biswas' death must have been due to certain injuries which he had, in all probability, received at the Lokenathpur factory. About this time certain communications passed between Mr. S. and the District Magistrate and the Commissioner of the Division, the precise nature of which is not known; and in the end Mr. S. discharged all the accused. The result of this elaborate enquiry was embodied not in a judgment, but in what Mr. S. called "an official report," and that result was to the effect that in his opinion Ramgati Biswas had deliberately and "maliciously" committed suicide by drowning himself, so that a false charge of murder might be brought against Mr. G. and his servants, although the medical evidence was to the effect that no water was found in the stomach of the deceased! Mr. S. further went on to suggest in this report that the two witnesses referred to above should be prosecuted for having given false evidence before him. These two persons were then prosecuted under orders of the District Magistrate, before Mr. T., Joint-Magistrate of Krishnagar, who convicted them of having given false information, although the depositions were not produced before him, and although it was not clear what was the precise character of the proceeding in which they had deposed, and sentenced them to three months' rigorous imprisonment. The conviction was also wholly unsustainable on the evidence. These two persons then appealed to the Sessions Judge of Nuddea, and on their appeal coming on for hearing, all public discussion of the case by their Counsel was avoided by the Government Pleader, who at the outset informed the Court, under instructions from the District Magistrate, that the conviction could not be supported, inasmuch as the record of Mr. S.'s enquiry could

not be produced, and that it contained the depositions of witnesses as well as Mr. S.'s sanction for the prosecution which had not been put in at the trial. On the acquittal of these two persons their Counsel moved the Judge to call for the record of the enquiry by Mr. S., and to set aside his order discharging the prisoners originally arrested on a charge of culpable homicide. The Sessions Judge was of opinion that the enquiry which Mr. S. had held, and which had terminated in the discharge of the prisoner, was by law a judicial proceeding, and as he thought that there were *primâ facie* grounds for supposing that there had been a failure of justice, he called for the record of the enquiry under the provisions of the Code of Criminal Procedure. The District Magistrate (Mr. S—s), however, being of opinion that the enquiry by his subordinate Mr. S. was non-judicial, declined to comply with the Judge's order calling for the report, on the ground that public interest would suffer by its production. The Judge was thereupon compelled to make a reference to the High Court on the subject, and that Court called for the proceedings of Mr. S. In the meantime, having regard to the public agitation on the subject, the Government of Bengal was induced to publish this extraordinary record omitting certain portions of Mr. S.'s report. Its publication, however, did not in the slightest degree allay the public excitement regarding the case, and the entire press condemned the proceedings of Mr. S. as having led to a scandalous failure of justice. An application was then made to the High Court to quash the finding of Mr. S., but that Court held that, although Mr. S.'s enquiry was, under the law, judicial, he was not bound to come to any finding when making an inquest, and that consequently his report was not a judicial document. (See I. L. R., 3 Cal. 742),

The details of this case and its several episodes were severely commented upon by the press for many months in 1878, and were such as to throw great discredit upon the administration of criminal justice in this country. In the

report submitted by Mr. S. embodying the result of his inquiry, he actually stated that he had detained some of the factory servants "only to keep up appearances,"* and he also admitted having committed, in the course of the enquiry, certain acts which were wholly illegal and unjustifiable.

* Paragraph 65 of the Report.

CASE NO. 12

The Monghyr Case—1879

The facts of this case created much sensation in Bengal in the year 1879. A dispute had existed for some years regarding the possession of a piece of land which a wealthy mohunt † named Lachmi Das claimed as part of his property, while the Majholi Indigo Concern (of which Messrs. Crowdy and Holloway were Managers) claimed as appertaining to their estate. On the 22nd of November, 1878, the mohunt's people sowed the disputed land with wheat and *cheena*. Thereupon a servant of the Majholi Indigo Factory preferred a charge against some of the mohunt's servants and ryots of having, as members of an unlawful assembly, forcibly ploughed and sowed the land. The case was tried by Mr. H., an Assistant Magistrate, exercising second class powers, who discharged all the accused except one Jitoo Lal, whom he convicted of having been a member of an unlawful assembly and sentenced to pay a fine of Rs. 200, or in default of payment to three months' imprisonment. Against this conviction and sentence Jitoo Lal appealed to Mr. M., the District Magistrate, the result of which appeal will be mentioned hereafter. In his judgment convicting Jitoo Lal, the Assistant Magistrate, Mr. H. remarked:—

"Inasmuch as no criminal force was used on this occasion (although there was a show of criminal force, if necessary), I cannot act under section 534, Criminal Procedure Code (Act X of 1872), and restore Mr. Crowdy to possession."

† *Mohunt*—The head or abbot of a monastery.

The section referred to was the only provision of law under which, if criminal force had been actually used, a Magistrate had any right to restore possession, and Mr. H. clearly saw that he had no power whatever under the circumstances of the case to put the factory in possession of the disputed land. Nevertheless, he proceeded to do, in his so-called executive capacity, what was manifestly illegal and what he himself was unable to do in his judicial capacity. He issued a private order to the effect that Mr. Crowdy should be put in possession of the land. This order of Mr. H. being wholly without jurisdiction, was resisted successfully by the mohunt's people, who declined to give up possession of the land. Mr. M., the District Magistrate, on hearing of the resistance on the part of the mohunt's people, himself proceeded to carry out this illegal order of his subordinate. He arrived at the factory on the 23rd January, 1879, and while dining with Mr. Holloway, Manager of the factory, that evening, arranged with him to go on the following morning and take forcible possession of the disputed land, of which the mohunt had admittedly been in possession for two months. Next morning Mr. M. went to the spot accompanied by a number of constables, armed with muskets and bayonets, and Mr. Holloway with some 40 ploughs, to plough down the wheat and *cheena* which had been growing upon the land since the 22nd November. On arrival the Magistrate found the mohunt's people in large numbers on the ground, some of whom were armed with sticks, and though they showed (according to the Sessions Judge, who afterwards tried the case) "extreme desire not to commit themselves and to abstain scrupulously from any illegal act," several of them were arrested by Mr. M. and taken prisoners. Immediately afterwards on the same day, Mr. M., without any complaint and without any evidence, issued a warrant for the arrest of Mohunt Lachmi Das himself, who lived many miles away from the spot, on charges under sections 154 and 155 of the Penal Code, and, although offences under those sections are punishable with fine only,

and are bailable, Mr. M. expressly directed in writing that the mohunt should not be released on bail. The mohunt was accordingly arrested on the 25th January, brought in to Monghyr as a prisoner, and kept in the Monghyr Jail for 20 days without having been once brought before a Magistrate, Mr. M. persistently refusing his applications to be released on bail. On the 14th February, Mr. M. himself proceeded to prosecute the mohunt and all his men in the Court of Mr. S., the Joint-Magistrate, who was subordinate to Mr. M., and though the admitted facts of the case disclosed no sort of offence against the mohunt or his men, Mr. S. had not the independence to discharge them, but committed them on various charges to take their trial in the Court of Session, which Court ultimately held that neither the mohunt nor his men had been guilty of any offence whatsoever, and acquitted them all on the 7th April, after they (the mohunt's men) had been in custody for more than two months. It ought to be stated that Mr. M. had in the meantime caused the crops of these men on the disputed land to be destroyed. As regards the action of Mr. H. who tried to cancel, in his executive capacity, his own judicial order, the Sessions Judge (Mr. Lewis) in his judgment, remarked :—

"Mr. H. admits in his evidence that since January 3rd (the date of his judicial order) he has taken no evidence as to possession; that he has passed no subsequent judicial order on the subject; and that his directions to the Police to uphold the factory in disturbing the possession of the mohunt's people were executive orders practically cancelling the judicial finding refusing to restore possession to the factory."

Regarding the case itself against the mohunt and his people, the Sessions Judge made the following observations :—

"The night before he (Mr. M.) arranged with Mr. Holloway, the assistant of the factory, to meet him next morning and point out the land. He went to the spot accordingly, when the factory were ready with some 40 ploughs, to plough up the crops which had been growing there, as he himself computed, for two months previously. Having got there, he says, he explained to the people that they must allow the order of the Assistant Magistrate to be carried out. The crowd, originally about 200, increased,

as he says, to over 1,000, and insisted that the land should not be given up. He then says he arrested some 14 persons, when, seeing that the people would not go, and that Mr. Holloway's ploughs had been driven away towards the factory, he proceeded to leave the ground. He then goes on to describe the rescue of the prisoners. From the above it is quite clear that from first to last what the magistrate was trying to do was to restore possession to the factory. This, it is almost needless to point out, he had no right to do. Possession was with the mohunt's people; no judicial enquiry had been made under Chapter XL, and no criminal authority has except under this chapter, any jurisdiction to interfere with actual possession of immoveable property.

"The prosecution may urge, why did not the parties appeal to the authorities? But, in the first place, the party in possession was being assailed, and had been assailed ever since January 7th, by the local criminal authorities acting executively, and it was difficult for them to know where to apply for help; not only so, but their failure to apply for the protection of the authorities, had such protection been available, would only deprive them of the plea of self-defence, and it would be unnecessary to consider that or any other plea in their defence until a case under section 141 has been made out against them by the prosecution. No such case has been made out. The assembly had not for its common object the overawing a public servant in the exercise of the lawful power of such a public servant, nor was the common object the enforcing of a right, the only item of clause 4 which could in any way apply; the crowd, therefore, up to the time the prisoners were rescued, were not an unlawful assembly."

The above narrative of facts is based, as indeed the judgment of the Sessions Judge itself was based, upon the deposition of Mr. M, himself given in the Sessions Court. As regards his refusal to release the mohunt, Mr. M. said in his deposition:—

"I directed that no bail should be taken. I knew that the offences under sections 154 and 155 were bailable. From the date of his apprehension, January 25th, up to 13th February, he was not, so far as I know, brought up before any Magistrate, but his Mukhtear came to me and applied for bail, which was refused on the ground that there would be another riot."

According to the finding of the Sessions Judge himself it was clear that if any person was guilty of rioting it was Mr. M. himself, but he probably thought he was justified in acting in his executive capacity in the way he did!

Jitoo Lal's Appeal

On the 30th of January 1879, a few days after Mr. M. had accompanied Mr. Holloway, and attempted to put him by force in possession of the land, Mr. M., while out on tour 30 miles away from Monghyr, and without giving any notice to the appellant of either the time or place of hearing, took up the appeal of Jitoo Lal, and not only dismissed it but enhanced the sentence originally passed by Mr. H., from a fine of Rs. 200 to six month's rigorous imprisonment! Jitoo Lal thereupon moved the High Court, and that Court on the 9th May 1879, quashed Mr. M.'s order, on the ground that the appeal had never been heard. The High Court proposed that the appeal should be sent down to the then Magistrate of Monghyr, as Mr. M. had in the meantime taken furlough, but Jitoo Lal's Counsel stated that, although the original conviction by Mr. H. was in his opinion unsustainable on the merits, yet his instructions were not to press for the hearing of the appeal, unless the High Court itself were inclined to hear it, and he accordingly pressed that the appeal might be transferred to the High Court. The learned Judges not having agreed to hear the appeal themselves, it was withdrawn simply because the appellant had no confidence in the Court of the District Magistrate! The High Court concluded its judgment in these terms :—

' We were prepared to send the appeal back to be heard by the present Magistrate of Monghyr, but Mr. Ghose (Counsel for the appellant) says he does not wish that course to be taken. The original conviction will therefore stand. We are bound to add that we have seen in this case indications of much irregularity and serious indiscretion on the part of the Magistrate. Having made this remark, we do not think it necessary now to say anything further."

In commenting upon this case, the *Englishman* (16th May, 1879), remarked :—

"We feel bound to add, in the interests of public justice on which more than anything else the permanence of our Government in India depends, that the Judges of the High Court have shirked their duty, and under the veil of a half-hearted and indeed most gentle censure, have attempted to

screen one of the grossest perversions of the criminal law that has ever come to our notice."

This "gross perversion of the law" would scarcely have been possible if Magistrates in India did not combine executive with judicial functions. It should be stated that an attempt was actually made by the local authorities to prefer an appeal through the Local Government against the judgment of the Sessions Judge acquitting the mohunt and his men, but the Legal Remembrancer declined to advise any such course in a letter which he addressed to the Commissioner of Bhagulpur, which was published in the *Statesman* of the 27th June, 1879, and which letter ended thus:—

"I do not attribute much blame to Mr. H.: his only fault appears to me to have been in striving to get rid of his own decision, and this sinks into insignificance when contrasted with some other orders that have been passed and carried out in the course of the proceedings.

"It is not my province to distribute praise or blame among any of the officers concerned, but I feel it my duty to point out to you that any attempt to make public these proceedings by appeal or otherwise must result in bringing discredit, not only on the officers concerned, but probably on the service to which they belong. The record is herewith returned."

Commenting upon the withdrawal of the appeal of Jitoo Lal, the *Statesman* in a leading article (20th May 1879) made the following remarks:—

"Jitoo Lal is unfortunately a representative man. There is throughout the Mofussil a deep feeling of dissatisfaction with our administration of justice, and this ought to be known and acknowledged, for it is fatal to true loyalty. There can be no advantage in blinking unpleasant facts, in trying to delude ourselves with the belief that the people have confidence in our administration of justice, and in making our countrymen at home believe that this is one of the great boons we have bestowed upon the people, for which they are truly thankful. The truth is not so. The people have the greatest confidence in our High Courts, and generally also, we think, in our Sessions Judges, but not in the justice administered by our Mofussil Magistrates."

CASE NO. 13

The Krishnagar Students' Case—1884

This case illustrates in a very striking manner the evils resulting from the existing combination of judicial and executive functions, and shows likewise how the system may be made to work in the interior of Bengal. The facts of the case stated briefly are as follows:—At a *Barwari jatra* (a theatrical performance given by public subscription) held at Krishnagar on July 15th, 1884, a large crowd had assembled and a number of students were seated on benches constructed of bamboos. The managers of the *jatra* in order to make room for more visitors, suddenly cut down some of the benches on which the boys were seated; some of the boys, in consequence, fell down and the remainder began clapping their hands. The clapping continued for several minutes and the result was that the performance could not take place, and the audience were dismissed, the band playing the National Anthem. The District Superintendent of Police, Major R., who had some hand in organising the *jatra*, was very much annoyed at the performance not having taken place, and he directed his subordinate police to arrest the boys who by their clapping, were instrumental in breaking up the *jatra*. He also caused one of the shopkeepers to become the formal complainant in the case, and a prosecution was accordingly instituted against several of the boys, who had been arrested in their lodgings, on a variety of charges. Major R. got the Magistrate of the District, Mr. T., to make over the case to an Assistant Magistrate Mr. P. H. O. of the Bengal Civil Service, and prevented the case from being taken up in the ordinary course by any of the Bengali Magistrates in the town of Krishnagar. Twenty-five students were accordingly charged before the Assistant Magistrate on the 25th July; fifteen witnesses for the prosecution were examined in chief, the cross-examination being reserved. All that these witnesses proved was that these boys were among those who had, by clapping their hands, prevented the *jatra* from taking

place. On the 26th July, the trial having been resumed, the students were defended by Counsel from Calcutta, and the following extract from the report of the proceedings, published in the *Statesman* newspaper, will show what passed between the Magistrate and the Counsel on that occasion:—

The case was resumed on Saturday, 26th July, when Mr. M. Ghose, Counsel for the accused, who was not present the day before, asked the Court's permission to make a statement. He said that never before, had any court been engaged in the trial of a more trumpety case. It was inconceivable how anybody could have thought that what the accused had done, amounted to an offence either under the Penal Code, or any other law prevailing in the Mofussil. He was ready to give the prosecution a chance of retiring from the case, and recommended them to drop it; but in spite of this opportunity, those who were responsible for this prosecution, desired to proceed he would be glad to have the whole affairs thoroughly sifted. At the same time, Mr. Ghose warned the other side that this course would lead to a great many unpleasant revelations. The learned Counsel thought it most undesirable that the time of the Court should be further taken up with the investigation of this frivolous matter, for clearly the Krishnagar magistracy and police had little serious work to engage them, if they could spare time to investigate such a paltry matter.

The Magistrate—I admit that, so far, the evidence has disclosed no offence. But the prosecution have not finished their case. They have two more witnesses—one to prove mischief, and the other insult, and their evidence, they say, is of a rather serious nature. They do not say that all the boys were concerned in it. Most probably 10 or 12 of them who have not been identified will be discharged; but against one of them there is a very disgusting insult alleged. We must finish the case of the prosecution first. At present I consider there might be a case. The boys, as far as I can make out, did make some noise; but you can of course put another light upon that circumstance by your cross-examination.

Mr. Ghose—But what constitutes the mischief with which they are charged? It must be shown that the boys intended to damage some tangible property, whereby loss accrued to certain people.

The Magistrate—For instance, there was pecuniary loss to the members of the *Barwari*.

Mr. Ghose—Pecuniary loss in this case would not constitute mischief, as it would not in any way come within the definition of "mischief."*

* The definition of mischief according to the Penal Code is to be found in S 425 which enacts:—

Mischief.—Whoever, with intent to cause, or knowing that he is likely to cause, wrongful loss or damage to the public or to any person, causes the destruction of any property, or any such change in any property or in the situation thereof as destroys or diminishes its value or

must be proved that it was the intention of the boys to damage or change property, in consequence of which there was pecuniary loss to its owners.

The Magistrate—I think the *Barwari Jatra* is a kind of property, if those getting it up expect profit from it.

Mr. Ghose—It can be no property whatever; the performance is got up by public subscription.

The Magistrate—The prosecution say that it belonged to Deepun Roy, who got up the performance, as far as I can make out, in the hope of making a profit.

Mr. Ghose—Assuming that to be so, the offence which the boys intended to commit by clapping their hands, could not be considered as mischief. Take, for example, the Tichborne demonstrations in Hyde-park. Could those people who disturbed or interfered with them be charged with having committed mischief? The utmost that could be alleged against the accused is that they had put a stop to a public performance. The doing so might under certain circumstances have been an offence, if the Calcutta Police Act applied.

The Magistrate—Would not the causing of wrongful loss be an offence? If the boys caused wrongful loss, they ought to be punished.

Mr. Ghose—Certainly not. Causing wrongful loss is not an offence under the Penal Code, except under certain circumstances. Wrongful loss may be in some cases ground for a civil action.

The Magistrate—The police allege loss, and therefore I must hear all the evidence they offer. They say they have two more witnesses—one to prove pecuniary loss, and the other the unlawful object of the assembly.

Mr. Ghose then said that if the prosecution were determined to go on, he was quite prepared that there should be a thorough sifting of the matter.

Two more witnesses whom the Police wished to call being absent, the Counsel for the defence urged that the case should not be further postponed unless the remaining witnesses could speak to any particular offence against any one of the accused. The Magistrate decided that he would give the Police an opportunity to produce all their witnesses, and that in the meantime Mr. Ghose might go on with the cross-examination of the witnesses already called. According to utility or affects it injuriously, commits "mischief."

Explanation 1.—It is not essential to the offence of mischief that the offender should intend to cause loss or damage to the owner of the property injured or destroyed. It is sufficient if he intends to cause, or knows that he is likely to cause, wrongful loss or damage to any person by injuring any property, whether it belongs to that person or not.

Explanation 2.—Mischief may be committed by an act affecting property belonging to the person who commits the act, or to that person and others jointly.

ingly the witnesses were cross-examined and the case was postponed to the 2nd August, on which date one of the absent witnesses was examined and cross-examined.

At this stage Mr. Ghose asked the Magistrate whether he thought that there was any use in going on with the case, having regard to the opinion which the Magistrate had expressed on the previous occasion.

The Magistrate—It seems to me that the accused ought to be charged with being members of an unlawful assembly under clause 5 of Section 141 of the Code. The simple question is, whether these boys used force or not?

Mr. Ghose—Upon that point there is no evidence whatever. On the contrary we have evidence that the *jatra* people broke up the performance of their own accord. The complainant began by saying "We will break up the performance if you go on like that." There was no compulsion of any sort used.

The Magistrate—I think there was considerable compulsion.

Mr. Ghose—How can that be when they themselves put a stop to the performance, by thinking no doubt that it would be more discreet to do so?

The Magistrate—The section explaining criminal force says (read S. 350 P. C.)* If the clapping drove the people away, then I consider the accused were guilty of criminal intimidation.

Mr. Ghose—But where is the criminal force? There is no evidence that any person was touched. There was no attempt on the part of any of the witnesses to suggest anything of the kind. On the contrary, the Inspector that morning had no reason to think that any offence had been committed.

At this stage, Major R. came in, took his seat on the bench by the side of the Magistrate, and began speaking to him in an inaudible tone.

The Magistrate—The Police went to ask the witness this question "Why did you go and bathe?"

Mr. Ghose—I object to the question. What he heard and why he bathed would be no evidence.

Mr. Ghose—I object to a double prosecutor. Is Major R. going to prosecute?

Major R.—If you like I will stand as prosecutor. Nobin Dey has been put forward as the formal complainant according to usual practice, but I certainly initiated the proceedings in consequence of what I am about to say. A *jatra* was held with my permission and under my authority, and it was therefore legally held. That *jatra* was interrupted, and I wish to know who did so? (in a loud tone).

* S. 350 Penal Code enacts:—*Criminal force*.—Whoever intentionally uses force to any person, without that person's consent, in order to the committing of any offence, or intending by the use of such force to cause, or knowing it to be likely that by the use of such force, he will cause injury, fear or annoyance to the person to whom the force is used, is said to use criminal force to that other.

Mr. Ghose—That may be a very natural curiosity on your part, which you might gratify by making a private inquiry. But at present we are in the midst of a criminal trial, Major R.

The Magistrate (to Major R.)—Even if this evidence were put forward, it would come to nothing. Even if what these two men said to him were admitted in evidence, it would have no effect. It would prove nothing.

Major R.—The witness means to say that he was not aware of the fact himself, but that others told him that a certain thing had occurred, in consequence of which he went home to bathe.

The Magistrate—Mere hearsay would prove nothing except that he had a reason for going to bathe.

Major R.—What communication did they make to him? My witnesses have been asked what I said to them, and why cannot I ask them what they heard from others?

The Magistrate—That was asked for a different purpose under cross-examination. That is not admissible under the Evidence Act. He received a communication—that is all we can hear, in consequence of which he did what he otherwise would not have done. We cannot go farther than that. If you find out these two men, you may ask them what it was they told the witness.

Major R.—In that case I shall ask the Court to give me a postponement.

Mr. Ghose—If these two men are not myths, the police ought to have found out long ago who they are. I shall object very strongly to a postponement on that ground. If such a statement was really made to him, he evidently attached very little importance to it at the time.

The Magistrate—Their case is that it was communicated to the Sub-Inspector that evening.

Mr. Ghose—Then why did not he make inquiries as to who the men were? The witness was serving on the jury that week, and the police had a whole week to prepare and send up their case. But they did not do so, and now ask for a postponement.

Major R.—There was a very good reason why the Sub-Inspector could not take down the witness' statement at the time. Ashutosh was serving on a jury, and we could not withdraw him from a Court of Justice.

The Magistrate—The explanation of the police seems to me to be satisfactory so far as it goes. The police say "Our witness is going to say so and so," but when he comes here he makes another statement.

Mr. Ghose—There is nothing to show that he has made a different statement. The police never took down his statement to them.

Major R.—Because we could not get him.

Mr. Ghose—Did the police at any time reduce his statement to writing?

Major R.—We are not bound to do so.

The Magistrate—The police send this man up to make a certain statement, and they had every reason for thinking he would make it.

Mr. Ghose—What reason? Is there anything to show that he had made a different statement to the Sub-Inspector? I have no objection to his going into the box, and examining him again on that point, although that would be a most objectionable proceeding. Assuming that such a communication was made to the witness by these two men, what is there in the evidence to exclude the hypothesis that somebody had seen something or discovered something which he imagined was defilement and reported it to this man? What is there to show that the defilement was caused intentionally, or that the substance was not water. It is well known that at the mere mention of the cause of defilement, a Brahmin will immediately go and bathe himself! And in a large concourse like that at the *jatra*, where there were 5,000 people present, if one of their number had seen anything like that, every Brahmin among them would have to go and bathe. Some one in the crowd might have been suddenly taken ill.

The Magistrate—But you will have to prove that.

Mr. Ghose—No: the prosecution must prove the contrary. The mere fact that somebody saw something which he imagined was pollution would not prove that it was intentional. There must be some evidence to show that it was intentional. That is a proposition admitting of no doubt. Is it pretended by the prosecution that the boys had conspired with a common object, and that object was to commit this act of defilement?

The Magistrate—The police say that it was done with the common object of breaking up the assembly.

Mr. Ghose—Not one of the witnesses who have been examined on this point has yet said so.

Major R.—That is because you have not permitted that question to be put.

Mr. Ghose—Major R., I am at present addressing the Court.

The Magistrate—Their intention to put a stop to the *jatra* is perfectly clear, and in pursuit of that object, this act of pollution was committed by one of their number, and by the law every one of them must be held to be responsible. I am rather inclined to think that it might come under the head of criminal force. There is no doubt that the boys did something that was wrong. At the same time, the question is whether what they did was unlawful or not.

Mr. Ghose—Leaving aside the legal aspect of the case, suppose a number of English boys had been seated in a theatre, and the managers ousted them from their seats, I think you will agree with me that they would be unworthy of being English boys if they tamely submitted to being so treated. If anything like this had occurred in England, no Police Magistrate would have thought of entertaining the charge.

The Magistrate—As a matter of fact, I remember a similar case in England, in which several undergraduates were taken before the Vice-Chancellor and fined.

Mr. Ghose—That was merely university discipline. Here the case is different. On the two previous days, there was no disturbance whatever; and even on the day in question the performance was going peaceably until the benches were cut down. It was then that they commenced to clap.

Major R.—Mr. Ghose means to say that no boy is amenable to the criminal law—that is, young men and boys may do anything with impunity!

Mr. Ghose—Pardon me, that is not so, and I would not lay down any such untenable proposition of law. The point is whether there is any criminal offence disclosed.

The Magistrate—Well, what is "force"?

Mr. Ghose—Can it be said that because there was a hissing and clapping, there was criminal force?

The Magistrate—There can be no doubt that the intention of the boys by hissing and making a noise was to break up the *jatra*.

Mr. Ghose—No, their intention was to express their disapprobation at the conduct of the *barwari* people.

The Magistrate—On the contrary, the complainant says "I said I will break up the *jatra* if you do not stop clapping."

Mr. Ghose—But where is the evidence that they intended to use force, or made a show of force?

The Magistrate—The question is, what was the effect of the clapping on the minds of the people?

Mr. Ghose—That it was a good joke—just as, when in a London theatre a play is not approved on the first night of its production, people in the gully hiss, but the audience never take that demonstration as being hostile to themselves.

The Magistrate—It is one thing to express disapprobation and another for the pit to have a free fight. In this case there might have been a fight, only one party thought it wise to leave. Was not this clapping likely to have produced a fight if the people had chosen to stay? We are not bound to consider the lucky circumstance that these boys had a quiet set of people to deal with, who gave way to them. Suppose they had tried to interfere with a Mussulman procession? That I fancy would have been a serious business.

Mr. Ghose—If their intention was to cause a row, then it would have been a different thing, and in the case of a Mussulman procession they would have been charged with outraging the religious feelings of the processionists. In the whole course of my experience, I have seen nothing like this hunting about on the part of the police for sections

under which to charge the accused, and this they have been doing for a whole fortnight.

The Magistrate—Of course the charge of mischief cannot stand after Deepun Roy's evidence, but we are now considering whether the conduct of the accused did not amount to criminal intimidation. It is the usual thing that has happened in the preparation of this case—what is everybody's business, is nobody's business, and no one seems to have taken much trouble about it.

Mr. Ghose—Don't you think that before a case is instituted, those who are responsible should first be certain of their ground? Can they be allowed in the course of the trial to be perpetually shifting it, and all because Major R.'s feelings are outraged by the fact that a *jatra* which had his authority had been put a stop to!

Major R.—I beg to reply to that remark.

Mr. Ghose—Excuse me, Sir, I am addressing the Court now.

Major R.—Mr. Ghose has asserted that I have been hunting about for sections and that sort of thing, in order to bring something against these boys, because they interfered with a *jatra* which had my permission. Now, there was a good deal of influence brought to bear on me not to prosecute, and I went so far as to agree not to do so; but there were some legal difficulties in the way, and the case had eventually to go before the Court. I never anticipated that a matter which Mr. Ghose himself calls trivial should call for the services of so eminent a member of the Calcutta bar as himself and another Calcutta barrister. The probability is, that had there not been so much opposition to the case, there would not have been so much perseverance on our part to ascertain and maintain the authority of the law.

The Magistrate—In the illustrations appended to section 349 there are some remarkable instances of criminal force—as for instance A. E. and G.*

* (a). Z is sitting in a moored boat on a river. A unfastens the moorings, and thus intentionally causes the boat to drift down the stream. Here A intentionally causes motion to Z, and he does this by disposing substances in such a manner that the motion is produced without any other act on any person's part. A has therefore intentionally used force to Z; and if he has done so without Z's consent, in order to the committing of any offence, or intending or knowing it to be likely that this use of force will cause injury, fear, or annoyance to Z, A has used criminal force to Z.

(c) A throws a stone, intending or knowing it to be likely that the stone will be thus brought into contact with Z, or with Z's clothes, or with something carried by Z, or that it will strike water, and dash up the water against Z's clothes, or something carried by Z. Here, if the throwing of the stone produce the effect of causing any substance to come into contact with Z or Z's clothes, A has used force to Z; and if he did so without Z's consent, intending hereby to injure, frighten, or annoy Z, he has used criminal force to Z.

(g). Z is bathing. A pours into the bath water which he knows to be boiling. Here A intentionally, by his own bodily power, causes such motion in the boiling water as brings

Mr. Ghose—Those illustrations have a certain element which is absent in the present case. Here there was nothing tangible. It was all a matter of the mind; no matter was set in motion—the whole thing was sentimental.

The Magistrate—Then as regards section 351, which says (reads). * It strikes me that clapping is such a sign of war.

Mr. Ghose—If you clap your hands at a dog, I can understand that the intention is a bellicose one, but I hear now, for the first time, that the clapping of hands is a "sign of war." From an English point of view, it would be regarded as a mere expression of approbation,—or disapprobation when the clapping was ironical.

The Magistrate—The point is whether it was likely to have caused a breach of the peace.

Mr. Ghose—Certainly not,—and what is more it did not.

The Magistrate—Yes, because the boys had to deal with a law-abiding people.

Mr. Ghose—Does your Worship imagine that this clapping was not taken up by the crowd? The fact is that when the boys clapped, everybody followed suit.

The Magistrate—But the clapping had the effect of breaking up the *jatra*, and I hardly think that the *barbarian* people would voluntarily do anything to hurt themselves. It is not usual for a man to hurt himself intentionally.

Mr. Ghose—But there was no hurt here. No one says that anybody was either hurt or annoyed. The people merely went away disappointed. I had your opinion the other day, that no offence had been disclosed; no evidence has since been given to lead you to change that opinion. What is the case against the boys? In the whole course of my experience I have never come across a more absurd case. If Major R. is responsible for the prosecution, I should like to examine him. He has himself told us that he is the prosecutor.

The Magistrate—It strikes me that there was a show of criminal force within the meaning of the Act.

Mr. Ghose—It will shorten matters if the Court will allow me to examine Major R.

that water into contact with Z, or with other water situated that such contact must affect Z's sense of feeling. A has therefore intentionally used force to Z; and if he has done this without Z's consent, intending or knowing it to be likely that he may thereby cause injury, fear, or annoyance to Z, A has used criminal force.

* *Assault*.—Whoever makes any gesture or any preparation, intending or knowing it to be likely that such gesture or preparation will cause any person present to apprehend that he who makes that gesture or preparation is about to use criminal force to that person, is said to commit an assault.

The Magistrate—Whatever Major R. may say will have no effect on what other people may have to say. You will have to show first that there was no force or annoyance.

Mr. Ghose—There is no evidence on record that there was any force or annoyance. There was only disappointment.

The Magistrate—My record and the report in the *Statesman*, both have the word "annoyance" frequently in your cross-examination.

Mr. Ghose—I have been singularly unfortunate if I have made out a case against myself, when the prosecution had failed to do so. I feel confident that my cross-examination did not disclose a case against the accused after the examination-in-chief had not done so. The word "annoyance" does not seem to occur in the report in the *Statesman*. (A copy of the *Statesman* was here handed up to the Court).

The Magistrate—Of course at that time I knew nothing about the case and could not therefore put the witnesses all the questions I should have done, so that the examination-in-chief was rather weak.

Mr. Ghose—About this feeling of disappointment, a man might be disappointed at a performance being put off, but he could not make a legal grievance of that.

The Magistrate—It strikes me that when people are disappointed they are generally annoyed. We may presume that when people have gone to hear a performance which is interrupted, they have gone away unhappy.

Mr. Ghose—If there had been any force used to produce that result, that force would have been criminal. I do not propose to cross-examine all the witnesses. I am prepared to take the risk, because I consider that no offence has been disclosed. Major R. is practically the prosecutor, and that being so, I am entitled to examine him as to the origin of the prosecution. I wish to show that this prosecution is not a *bona fide* one. That is my defence. The prosecution is merely trying to justify Major R.'s illegal proceedings. Assuming that all the witnesses have spoken the truth, still the prosecution would not be *bona fide*. Supposing I go to the dāk bungalow and have breakfast there, am I amenable to charge of criminal trespass?

The Magistrate—It would be for the Court to consider whether that was criminal trespass. But that is different. In this case, I hold that the boys did something wrong.

Mr. Ghose—Considering how the boys were treated by the *barwari* people, I simply admire their moderation. If an attempt was made to oust them from the benches, I say that no collection of European boys would have behaved as mildly as they did.

The Magistrate—Then a collection of European boys should have been punished.

Mr. Ghose—But not under these circumstances, no other court would entertain such a charge.

The Magistrate—Any court would be justified in doing so.

Mr. Ghose—Suppose a number of students were at a public meeting, and its organisers told them, "You must go away," but instead of going away they clapped their hands; in doing this would they be guilty of any offence?

The Magistrate—That is a different thing. In this case they were not told to go away, but merely to make room.

Mr. Ghose—The boys were seated; their benches were cut down, and they were told to go away.

The Magistrate—Have you proved that as the boys were seated somebody cut the benches and the boys fell to the ground?

Mr. Ghose—Yes, that is in evidence already.

The Magistrate—The *barwari* people merely say, "We asked them to get up and they objected." You have got to show that the boys had some provocation to justify their conduct. Take your own case of a theatre; the audience do not leave in a fright when there is a clapping of hands,

Mr. Ghose—But it is not shown that these people left in a fright.

The Magistrate—Some sort of apprehension appears to have been shared by the people who were there, as they thought it was much wiser for them to leave.

Mr. Ghose—But their thinking so will not suffice.

The Magistrate—Certain boys clapped their hands, whereupon the audience left. If the audience thought it a good joke, they would have stopped; but they left because they were disappointed or angry. I consider that those who were on the spot were the best judges of their own feelings, and if in consequence of those feelings they left, I am justified in holding that that clapping was criminal intimidation.

Mr. Ghose—It cannot be criminal intimidation.

The Magistrate—I mean a show of criminal force.

Mr. Ghose—Do I understand the Court to mean that clapping is a show of criminal force?

The Magistrate—Yes, under certain circumstances. Supposing the boys went out on the *maidan* and clapped their hands, that would be no offence, but that they did so at the *jatra* and drove the people away is a different thing. The effect of this clapping amounted to a show of criminal force. It is fair to argue from the effect it had on the people present, that the clapping was a show of criminal force.

Mr. Ghose—Certainly not; because Major R. has a pencil in his hand which he is now brandishing would I be justified in concluding that he was going to strike me with it? The effect it may have on my mind is a consideration absolutely irrelevant to the point.

The Magistrate—It will save time, I think, if you go on with your cross-examination.

Major R.—The boys should be charged under section 268 as having committed a public nuisance.

Mr. Ghose—Ought not that to satisfy you, sir, that the prosecution are beating about the bush to get hold of something? They are not sure even now what the offence is.

The Magistrate—It strikes me that the prosecution are treating this as a trivial case.

Mr. Ghose—I don't doubt the whole Penal Code is open to them, but what we want to know is the charge upon which we are going to be tried. I want to cross-examine Major R. first in order to show that this prosecution is not a *bona fide* one.

The Magistrate—He knows nothing about the case.

Mr. Ghose—He has himself told us that he knows a good deal about it, and that Nobin is merely a formal complainant. If the court does not examine Major R. now, it will have to do so later on.

The Magistrate—The regular order is that he should be examined last. You have first to break down the case to a certain extent. You have not yet shown me that the prosecution is not *bona fide*.

Mr. Ghose—Well, then I object to Major R. being here, because he has been summoned, and I have to examine him.

Major R. thereupon left the Court.

The remaining witnesses were then cross-examined by the Counsel for the defence and at the conclusion of the cross-examination the following conversation took place between the Counsel and the Magistrate. It will be seen from the remarks made by the Magistrate trying the case that he was entirely in the hands of his official superior, the District Magistrate, whose opinion he was anxious to obtain in the matter:—

Mr. Ghose—I have cross-examined the witnesses at some length, and even assuming that they have told the truth, I submit there is no case.

The Magistrate—The broad facts remain the same. It seems clear to me that the conduct of the boys amounts to a show of criminal force. On some of the minor points the witnesses have contradicted themselves, but the fact remains that the *jatra* was broken up. The only question is whether it does not amount to an offence, but I will make a reference to the Magistrate about it.

Mr. Ghose—Have you any power to do so? Under what section do you propose to make the reference.

The Magistrate—It is the practice in the *Mofussil*.

Mr. Ghose—That may be so, but I will consent to nothing which is not warranted by law.

The Magistrate—I am satisfied that what the accused did amounts to criminal force.

Mr. Ghose—But where was the show of force? There are many nice questions of law involved in the case. Even if it were a criminal offence to break up the *jatra*, there would be a great many other difficulties to get over. It would have to be proved that the assembly was an unlawful one, and that the accused had met with a common object. The decisions upon that point are very fine, and the High Court has laid down that even when a party go to dispossess a man of property and one of their number suddenly fire a gun, under section 149. Penal Code, it cannot be said that all the assembly are guilty of the act.

The Magistrate—The evidence goes to show that all the boys clapped, and that they accompanied this clapping with cries, which may be taken to mean that they intended to stop the *jatra*. There are two more witnesses whom the police want to find out.

Mr. Ghose—In this way the police might go on prolonging the case indefinitely on the chance of something turning up. What is to prevent them getting any two men to swear to what probably never took place? On the last occasion the police distinctly said that they had no more witnesses to call except Ashutosh Mookerjee, and the Court said the same.

The Magistrate—The police then did not know of these two men.

Mr. Ghose—Then I understand the case has taken another aspect? First the object of the assembly was to commit mischief; then, it was insult, and thirdly, that it was criminal force; and a fourth aspect was suggested to-day by Major R., *viz.*, that it was a "nuisance." I do not know that you have any power to make a reference to the Magistrate.

The Magistrate—I can make it privately. I can ask for instructions on a point of law.

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

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

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

The Magistrate—The case is now going on under the 5th clause of section 141 of the Penal Code.

Mr. Ghose—But not against those who were never identified.

At this stage 11 of the accused were acquitted by the Magistrate under section 245 of the Criminal Procedure Code.

Mr. Ghose—Will you frame a charge under section 141 ?

The Magistrate—I do not know if it is necessary ; it should be sufficient that I have told you under what section the accused are charged. I thought from the first that that section applied, and although I changed my mind, I had not taken it into consideration in connection with the action of the people whose minds were affected by the clapping.

Mr. Ghose—Your assurance ought to be enough ; but if you think there is any chance of the section being changed, it is right that I should know now.

The Magistrate—As far as I can see, you cannot be tried under any other section.

Mr. Ghose—In my humble opinion the case does not come under the Penal Code at all. But you have a perfect right to make a reference, if you think you have the power. The only reference the Code allows is one to the High Court. Will you ask the Magistrate to refer the matter to the High Court ? I shall gladly submit to such a reference.

The Magistrate—Only the Magistrate of the District may do that. Personally, I have no doubt whatever upon the point, but as you seemed to think the case could not come under the Code, I thought it would be better to have two opinions.

Mr. Ghose—With every respect for your opinion, this is not a case which can come under the 5th clause of section 141 at all.

The Magistrate—I think it does.

Mr. Ghose—Then we must go on with the case. Have the prosecution closed their case or not ? I want to know this before I begin my case. If not, will they undertake to close their case at the next hearing ?

The Magistrate—I think I may say yes, subject to those two men turning up.

Mr. Ghose—But those two witnesses have no possible bearing on the case under the 5th clause. Their evidence won't be relevant on that charge.

The Magistrate—I had forgotten all about them. It will be hard for me to say if the prosecution have closed their case or not, because I do not know.

Mr. Ghose—Then till they have, I ought not to be called upon to make my defence. There ought to be some evidence that these two men will be forthcoming. Who are they ? Their names are not even known. They may be entirely mythical.

The Magistrate (after consulting the police)—Besides these two there

will be no other witnesses for the prosecution. The prosecution have closed their case subject only to those witnesses turning up.

Mr. Ghose—Then my defence will be simply "Not Guilty." I did intend at one time to advise my clients to make full statements, but after what has transpired in Court to-day, I have changed my mind. Our defence is simply "Not Guilty."

The case was then adjourned to the 15th August on which date Major R. himself was cross-examined by Mr. Ghose with the leave of the Court. His evidence throws such light upon the working of the present system that it is desirable to give copious extracts therefrom. The more important passages are printed in italics :—

I consider myself the *de facto* prosecutor in this case. I received certain information regarding the *jatra* on the 13th July last, from a batch of boys. It was not in consequence of that that I went to the *barwari*; a large posse of policemen came to me after the boys had left, and in consequence of what they told me, I at once began proceedings. On going to the spot I did not direct the Sub-Inspector to get a complainant, and to institute a case against the boys.

Q.—Is it true that you told the Sub-Inspector, "Institute a case, take the *ijahar* (statement) of a complainant, and investigate?"

A.—I have no recollection of having given him directions in these terms, but what I did say was to get a complainant in the usual way. *As a matter of fact, there was no complainant on record at the time.*

Q.—Did you tell him to get somebody to become a complainant, and then to investigate the case?

A.—No, not in the way you put it. I merely told him to enquire. I gave him no detailed instructions. I did not say it in so many words. I fear that in the last month, so many things have happened that my memory will not serve me sufficiently well to give you the exact words I used to the Sub-Inspector. The purport of my instructions was that he should investigate the case, and send up everybody that was found to have been concerned in breaking up the *jatra*. I gave that order on the 13th July at about 9 o'clock in the morning.

Q.—Did you then consider what particular offence the boys had committed?

A.—Yes, that they had been guilty of being members of an unlawful assembly. I considered that the object of that assembly was to break up that *jatra*. That was all that struck me at the time: the fact that a *jatra* had been broken up, which had no business to be broken up, was enough for me. To the best of my belief, I did authorize the holding of the *jatra*. Most certainly I was annoyed on learning that a *jatra* which had my official

sanction had been broken up. Before I gave the Sub-Inspector the order to arrest the boys, I did consider under what clause of section 114 the offence would come. I do not go about with the Penal Code in my pocket. I knew well enough that there had been a breach of the peace and my object was to get hold of the offenders, and prove to them that they had done wrong. By "breach of the peace," I mean that the *jatra* was broken up by the boys.

Q.—You felt that the prestige of your office had been outraged?

A.—Bless you, no. I have no prestige to maintain other than the dignity and supremacy of the law. I am a very humble man with no exaggerated notion of my personal importance in the district. Having given orders to the Sub-Inspector to arrest the boys, I went to the hostel at about 1-30 P. M. that day. Mr. Mann (Principal of the College) was there then. I personally ordered the removal of 8 of the boys who were identified in my presence. I gave no orders about the others. I know that they were afterwards taken. I myself ordered the removal of 8 boys and afterwards others were taken. I told the Sub-Inspector, "You have got 12 of them; you may arrest any others should you think it necessary."

Q.—Did you tell the Sub-Inspector that he was to show "no civility, no kindness, no mercy to the boys?"

A.—I did not use those words. I shall admit nothing "to that effect." I merely said that I would stand no nonsense. *I do not positively deny that I made use of those words.* My object was merely to show that there was to be no nonsense; that the case was to go on without any obstruction. I could not swear that I did not use those words. I neither admit nor deny having used them. I did not direct the Sub-Inspector that the boys were not to be released on bail before 24 hours. To the best of my recollection, I said it aloud generally, but not as an order to the Sub-Inspector specially. It is quite possible, however, that I left that impression on the Sub-Inspector's mind. I said something about its being impossible to release the boys before 24 hours, but gave no peremptory order that they were not to be released before 24 hours. I never meant that my remark should be so construed by the Sub-Inspector. I might have said on that occasion, "I mean to enforce the law 16 annas." I gave no orders at a stage when the investigation had barely commenced. I have no recollection that while I was at the hostel, anybody suggested to me that the boys ought to be released on bail. I was out fishing on that 13th July, when Mr. Mann came to me, and requested me to let the boys go on bail. I told Mr. Mann that I had no intention of keeping them for 24 hours. Mr. Mann asked me to release the boys before dinner. I said I did not know, but would see about it. I told Mr. Mann this, because it depended upon how the investigation of the case would proceed. Before I saw him at the tank, I do not remember Mr. Mann asking me that the boys should be bailed. At the tank he asked me several times—in fact, he badgered my life out. I said I would be going

down to see how the case was getting on. To the best of my recollection, I do not think I discussed with Mr. Mann that I had the power to keep the boys 24 hours without bail. I do not recollect saying anything to Mr. Mann about the 24 hours. Mr. Mann did tell me that there were several boys among those I had arrested who had never gone to the *jatra*.

Q.—Did you not say in reply to that statement of Mr. Mann's, "I cannot help it : the innocent must suffer with the guilty ?"

A.—I believe something of that sort passed.

Q.—Did you not make this remark to Mr. Mann :—"I shall make the boys pay in the shape of fine what I have subscribed to the *jatra* ?"

A.—No. Before Mr. Mann went away, I gave him no final answer as to whether I would release the boys within 24 hours or not. I do not recollect that Mr. Mann said anything to me about my power to keep the boys for 24 hours. I am not prepared to say that I had no conversation with Mr. Mann about the 24 hours, but I certainly have no recollection of it at the present moment.

Q.—Were you aware at the time that you did so, that to refuse bail in bailable cases is illegal ?

A.—Bail was never refused to my knowledge. I was aware that to have refused bail would have been illegal. When I got into my *tum-tum* on leaving the hospital. I went to a distance of 2 or 3 yards from it, and said to the Sub-Inspector that it would not be necessary to keep the boys for 24 hours. I did not intend others to overhear that. This happened before I saw Mr. Mann at the tank. I saw Mr. Mann there two hours after. I did not tell Mr. Mann that I had given these private instructions to the Sub-Inspector. I may have told Mr. Mann that I merely wanted to frighten the boys : I do not recollect. I won't deny it. I do not remember, but very possibly I did.

Q.—Now that you remember you whispered into the Sub-Inspector's ear about not keeping them for 24 hours, does that bring to your mind that you had said he was not to let them go for 24 hours ?

A.—I cannot say so positively.

Q.—What was the necessity for your whispering this into the Sub-Inspector's ear ?

A. Simply that he might know that what I said was not to be acted upon. I know Nobin Day, the formal complainant in this case. The first time I saw him after the occurrence was in the bazaar. Nowhere else to my knowledge. I have spoken to him in the last 2 or 3 days. I do not think I saw him before that. I think that at one time it was quite possible the *barwari* people were not going to press the charge. I cannot be certain now whether that was before the hearing of the case. I have not kept a copy of the record. I am not sure whether it was before or after the first hearing of the case. I have had a conversation with the *barwari* people as to the desirability of going on with the case. I do not think it was with

Nobin Dey. I certainly told them that they were not to back out of the case. I did send for some of the *barwari* people. There were about half-a-dozen of them, but I do not think Nobin Dey was amongst them. I sent for them for the purpose of urging them to go on with the case. I did tell them, "I have done so much for you, you must not now leave me in the lurch." I did not send for the *barwari* people again. I believe they had been to my place once before of their own accord. Before the case was brought into Court on the 25th July, I certainly did not remark to anybody that as the case had got into the newspapers, it could not now be dropped. I do not recollect anybody bringing me a translation of any vernacular paper. I believe I took a copy of the *Statesman* to Mr. T. in which I had been described as a "lunatic." I have no recollection of taking any other newspaper to Mr. T. I also showed Mr. O. (the presiding Magistrate) the same copy of the *Statesman*.

Q.—What was your object in showing it to Mr. O.?

A.—Because I thought the paragraph very amusing. The fact is, there was a question as to whom the honor of the title of fool really belonged, whether to Mr. T. or to Mr. O., but it was eventually agreed to split it. I thought it a very good joke, knowing that it was only Mr. Knight (Editor of the *Statesman*).

Q.—Did it not strike you that it was very improper for you to take a paper of that kind to an officer before whom the case was pending?

A.—No it did not so strike me. Mr. T. was not in Krishnagar when the occurrence took place. He arrived, I believe, on the Saturday morning following.

Q.—Did you discuss this case with Mr. T. on his arrival?

A.—O dear, yes! several times. We threshed it out. In fact I am hand-in-glove with Mr. T. in this case.

The Court—I doubt if you can go on with these questions. Mr. T., as the head police officer of the district might have had any number of conversations with Major R., but they are privileged communications, and in the interest of the State, should not be revealed without Mr. T.'s consent. Before allowing these questions, I must consult him. There is a Government order on the subject.

Mr. Ghose—But Mr. T. is not a police officer. Government orders have not the effect of law. The law is supreme, and we cannot have Government Circulars to override it. The law says that in certain cases certain matters are privileged, but I have never before heard that communications between a Police Officer and a Magistrate are privileged. If, when Mr. T. is examined, he says that answers to my questions would divulge a State secret, or if the Government has ordered that this should be regarded as a State trial, that would be different. The Court is probably thinking of a section of the

Evidence Act which refers to official records. I shall gladly forego further cross-examination if either Mr. T. or Major R. will say that the public interests are likely to suffer by the disclosure of any of their conversations regarding the case. If, however, they say that the public interests will suffer, I am entitled to cross-examine them as to their grounds for saying so.

The Court—I cannot allow the cross-examination upon this point to go on, unless I hear some definite expression of opinion from the two officers concerned.

Mr. Ghose—Major R. has not objected yet, but if he has any objection, it should be recorded. There are certain matters to which the Court cannot object; it is the witness' privilege.

After some further discussion, the cross-examination of Major R. on this point was reserved, pending reference to Mr. T. the District Magistrate.

Mr. Ghose—Then I understand the Court has ruled that this matter is to be reserved although Major R. has made no objection.

The Court—Yes, I want to hear what Mr. T. has to say.

Mr. Ghose—But I may not call Mr. T. at all.

The Court—In that case the precaution, though a necessary one, would prove to be a needless one. I consider that Mr. T. has the right to object as he is a prospective witness.

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

Q.—Then it was with the benefit of that advice that you directed the case to be sent up?

A.—The case was practically forced to go up. It was not sent up in consequence of that advice.

Q.—Did that advice induce you to send up the case?

A.—“ Induce ” is hardly the word. The effect of Mr. T.'s advice was to convince me that it would be as well that the case should not be sent up, but that an arrangement should be made to punish the boys departmentally. There was no help but to send up the case, because I could not manage to arrange to send up the case departmentally. I remember a deputation of pleaders waiting on me and Mr. T. to induce me not to prosecute this case.

Q.—Did you and Mr. T. then say you were willing to make over the case to Mr. Mann on the condition that some of the boys should be flogged, and the others should have their lives made a burden to them by being “ worried ” for a month? Did you not make that a necessary condition of dropping the case?

A.—Yes. That was the impression left on my mind.

Q.—Is it not a fact that Mr. Mann declined to give such an undertaking?

A.—I am not aware of that. Mr. Mann and Mr. T. had it out between themselves. I had nothing to say to that.

Q.—About the time that these negotiations were going on, did you not remark to Mr. T. "Why don't you do your duty and make over the case to Mr. O." or words to that effect?

A.—Certainly not: I should never think of making such a speech to Mr. T. He is my superior officer, and is responsible for his own actions. I hope I shall not be so wanting in common courtesy.

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

A.—I asked him if he would be SO GOOD as to make over the case to Mr. O. for trial.

Q.—And what did he say?

A.—I don't think he said anything at that time; the matter was left an open question.

Q.—Where was this suggestion made?

A.—In Mr. T.'s south verandah

Q.—Had you any necessity for suggesting to him before what Magistrate the case should go?

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

Q.—In other words, you thought that any of the native Magistrates might acquit the boys?

A.—I preferred them to be tried by an English Magistrate. I thought I was more likely to get justice from a European Magistrate.

Q.—Is it not a fact that you thought that a native Magistrate would be likely to let off the boys?

A.—The chances of their getting off would be greater, and the chances less of any European Magistrate letting them off.

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

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

Q.—And these suggestions you make verbally in the house of the Magistrate.

A.—Yes.

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

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

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

A.—I simply mentioned the case. I think I said to him: "I am going

to get you to try that students' case," and he said, "All right." There was nothing further said.

Q.—Had you any talk with Mr. O. about this occurrence?

A.—Yes.

Q.—Did you tell him your view of the affair?

A.—In a narrative form I did.

Q.—After the case was made over to Mr. O., did you have any conversation with him regarding the case?

A.—I have already said that I did speak to him after the first hearing; but subsequently finding that you were making a big business of it, I avoided it.

Q.—When you asked Mr. T. to make over the case to Mr. O., I believe you were aware that Mr. T. was the appellate court?

A.—No, I was not aware of it at the time.

Q.—Do you mean to say that you were not aware of the fact that appeals from Mr. O.'s decisions are heard by Mr. T.?

A.—If you ask me that way, I admit they are, but that never crossed my mind.

Q.—Then you do know and did know at that time that appeals ordinarily lie to Mr. T.

A.—Yes.

Q.—Did you ever tell Mr. O. that the boys had become very unruly, or make any other general statement against the conduct of the boys?

A.—Possibly I did, but have no precise recollection. It is highly probable that I did. They won't be unruly if I remain here.

Mr. Ghose—I beg to differ from you. The course you have adopted is best calculated to make them unruly.

Major R.—Of course if you incite them, they will be.

Mr. Ghose—On the contrary, my only wish is to establish, to quote your own words, "the supremacy of the law."

Major R.—Indeed, that is all that I wish to do.

Cross-examination continued.—I did censure Peary, head-constable, for not arresting the boys. I walked into him sixteen annas.

Q.—Had you any conversation with Mr. O. about this case on the 26th July and the 2nd August?

A.—After you took up the case we left it alone. After the cross-examination of Bipro Das (the Inspector) and the Sub-Inspector, I do not think I had any conversation with Mr. O. on the subject. Yes about the time the *Statesman's* report appeared (30th July), I did have a conversation with Mr. O. by way of *jhugra tukrar* (quarrel and wrangle).

Q.—What was the *jhugra tukrar*?

A.—Well about that time Mr. O. and I had a discussion about the law in regard to this case. Mr. O. said that up to that time no offence had been disclosed.

Q.—Then I suppose you argued with him that an offence HAD been disclosed ?

A.—Yes. He did not agree with me, and he laughed at my exposition of the law.

Mr. Ghose—Yes. Any Magistrate, I should have thought who knew his business would laugh.

Q.—Well, he laughed and did not agree with you, and you tried to convince him ?

A.—Yes, but not successfully.

Q.—Where did all this take place ?

A.—It was in Mr. O.'s own house.

Q.—And this was after all the evidence of the witnesses for the prosecution had been recorded, and after Ashutosh had been examined ?

A.—Yes. About the 2nd August.

Q.—Then you were very anxious to convince Mr. O. that the facts amounted to an offence ?

A.—Certainly, I was very anxious to gain my case—as much as you are to gain yours.

Q.—And was it with that object you went to convince Mr. O. at his house ?

A.—Certainly.

Q.—Did you tell anybody at the beginning of the case, or before that, words to this effect : “I do not care whether the case stands or falls ; the boys will be *hairnanned* and *perashanned* ; (worried and harassed) even if they get off, they will receive a lesson ? ”

A.—It is highly probable I used the words *hairnanned* and *perashanned* ; the expression is so entirely my own, that I feel sure I must have used it.

Q.—Might you have said so to Mr. O. ?

A.—No, I do not think so. I do not recollect having said so to Mr. T. I might have said so to Prasanna Babu (a pleader).

Q.—So you did think likely the boys might get off ?

A.—Certainly not. I thought it a clear case.

Q.—Did you say, “At any rate their parents would have to pay for the stamps and pleaders' fees, whether they got off or not ? ”

A.—Yes.

Q.—While this case was going on, and after it had commenced, and even sometime before that, were you quite sure what the object of the “unlawful assembly” was ?

A.—Yes, to break up the *jatra*, of course.

Q.—Were you all along certain of the clause of section 141, that the case would fall under ?

A.—Yes, clause 5. That has been my opinion since the case has been launched. I never said that it came under clause 3. Clause 3 was suggest-

ed, but I stuck to clause 5. I simply made the case over to the Inspector, and did not bother my head about the clause. My impression was that the offence would fall under section 141. I did not suggest any other offence; but Mr. T. suggested section 268 (Public Nuisance), and according to that suggestion, I mentioned that section to the Court at the last hearing of the case.

Q.—Do I understand you to mean that you never at any time thought that the object of the boys was to commit mischief or intimidate criminally?

A.—Yes, by breaking up the *jatra*.

Q.—Then you thought that the object of the assembly was to break up the *jatra*, and it did not matter to you under what section the case would come?

A.—The fact was that the *jatra*, had been broken up; the object of the boys was palpable—it was to break up the *jatra*, and that was quite sufficient for my purpose; our business was to find out who had broken up the *jatra*, and to take them into custody. I felt sure the law would “fetch ‘em somehow.” I did not bother myself about sections; it was sufficient for me that a disturbance had occurred.

Q.—Have you ever been at Oxford on Commemoration day?

A.—No.

Q.—Have you ever been at Exeter Hall when a popular preacher has been speaking?

A.—No. Exeter Hall is not in my line. I always keep out of it.

Q.—If a public speaker were stopped by clapping and hissing, would you not also consider that a disturbance and a riot?

A.—Not unless some force had been used.

Q.—On the 7th of this month, did you write to anybody to this effect that “I am in a position to say that charges will be drawn up at the next hearing of the case?”

A.—I did.

Q.—What made you say that you were in a position to do so?

A.—Because the Inspector informed me that a charge had been drawn up, and I asked Mr. O. if it were true.

Q.—Did you say to anybody that you would have dropped the case at this stage, if it had not been “official cowardice” to do so?

A.—Mr. T. wrote over to inform me that he had sent a communication to Mr. Mann, in which he had used those words, and in which I entirely acquiesced. I did not wish it to be thought that I was afraid of you, Mr. Ghose, or anybody else.

Q.—Then I understand that but for this consideration of “official cowardice,” you would have dropped the case?

A.—I should not have consented to drop it altogether; it depended upon

how the opposite side took it. I believe the first suggestion came from Mr. Mann.

Q.—Did you tell anybody that you must press for a severe punishment?

A.—I believe I did.

Q.—Did you say that if these boys had not been defended by Mr. Ghose, they would have been let off with a slight fine?

A.—No. I used no words to convey that meaning. I said that I thought a great "shindy" had been kicked up about a small matter, and that it would be just as well if a fine were imposed. I knew that the boys could not pay, but I know there is a fund which can stand it.

By Court.—Do you remember receiving any telegram from the Inspector-General of Jails from Jessore regarding this case?

A.—The Lieutenant-Governor wanted to know what progress it had made; it was a day or two before we went to Ranaghat. I went to Mr. O. on receipt of that telegram to confirm my own impression, and to give the Lieutenant-Governor accurate information.

Major R., re-examined by Inspector Bipro Das Mitter. I went to the hostel on my own account, because the Sub-Inspector said he was obstructed in the inquiry. Mirtunjoy Babu, Ram Babu, the Government pleader, Prasanna Kumar Bose, and Jadunath Chatterjee, pleaders, came to ask me to drop the case.

Q.—Why did you wish the case to be tried by a European Magistrate?

A.—There was a case before a native Deputy Magistrate in which the accused was charged with rape, but the Deputy Magistrate would not send him to *hajut*, but took him about from place to place till 2 o'clock in the morning. (Objected to by Mr. Ghose.)

Mr. Ghose here wished the Court to ask Major R. whether that case did not happen after the trial of the present case had commenced.

A.—Yes, that case only confirms my view of the influence of pleaders on native Magistrates.

Major R., further cross-examined on 16th August by Mr. Ghose—Before I ordered the arrest of the boys on the morning of the 13th July, I had heard nothing about the cutting of the benches.

Q.—Were you aware on that morning, before you ordered the arrests, that the *jatra* had been going on for nearly two hours before it was disturbed?

A.—I never gave the thing a thought.

Q.—Before you ordered the arrest of the boys did anybody tell you what motive the boys had in causing the disturbance?

A.—No. It would be too late to tell the colour of its feathers after the bird had flown.

Q.—When did you first hear that the benches had been cut or removed that morning?

A.—That morning I did not hear that the benches had been cut or removed. I did not hear it at all that day. I heard it for the first time in this Court.

Q.—Had you been informed in any way before the case came into Court that there had been any row about seats.

A.—A row took place, and that was quite sufficient for me. I did not think it worth while to enquire how it commenced.

Q.—When you went to the *barwari*, is it the fact that you noticed your own constables were present there?

I did not notice it. I had to send for the Head Inspector. I saw the constables who were at the *jatra* before I went to the *barwari*. I did not ask these constables how the row originated.

Q.—I suppose that from the beginning you have been acting in concert with Mr. T. (the District Magistrate) in this case?

A.—We are hand-in-glove in this matter—if you like, 16 annas.

Q.—You told us yesterday that you had discussed the evidence as well as the law of the case from time to time with Mr. T.

A.—I did not say we discussed the evidence. We discussed the law, and went through the Penal Code together.

Q.—Did you ever say to Mr. O. that Mr. T. had agreed with your view of the case?

A.—Having had a consultation with Mr. T., I took sense of the law as he pointed it out to me, and then I repeated it all to Mr. O., and, as I told you on the last occasion, he did not agree with me.

Q.—Did you tell Mr. O. you had consulted Mr. T.?

A.—I do not remember. It is part of my duty to see and consult with the Magistrate daily. It would be a work of supererogation to have told Mr. O. that I had had a consultation with Mr. T. I took for granted that he knew it. I said that I should like Mr. O. to try the case, because I did not think the native Magistrates here would do justice to the case. I told Mr. T. so at the time. That is why I selected Mr. Q. so that there might be no "bazaar sympathies."

Q.—During your residence at Krishnagar have you ever been to the house of any of the native Deputy Magistrates to talk about cases pending before them in which you are interested?

A.—I do not think I have. Since I have been in this district, I have had many cases in which I am interested before native Deputy Magistrates, I frequently go to the houses of native gentlemen. I have been to the house of Babu Tarini Kumar Ghose, Deputy Magistrate.

Q.—Was it you who brought to the notice of Mr. T. that the prosecutors were willing to go on with this case?

A.—I did.

Q.—Did you ask Mr. T. to issue a summons on the prosecutor, and tell him to go on with the case?

A.—I know nothing about it.

Q.—Did you at any time tell Mr. O. what you expected Ashutosh Mukerjee to prove, before he was examined?

A.—Yes, I mentioned it in general terms in the form of a narrative.

The District Magistrate Mr. T—— was subsequently called and was cross-examined by the defence; the following portions of his evidence are important:—

Q.—Do you consider yourself as one of the prosecutors in this case?

A.—*As head of the police I take an interest in it. I was away when the occurrence took place. I gathered the facts of the case from the District Superintendent and the police papers, also from some pleaders. The first I heard of it was from Major R.*

* * * * *

When the case came up in *A* form, I certainly held that an inquiry should be held departmentally or criminally. I did not then take the trouble to inquire if the facts disclosed an offence. I left the consideration of that to a judicial court. Major R. might have suggested to me that the case should be made over to Mr. O. *If he says he did, I would certainly take it for granted. He might have given me his reason for wishing, but I cannot recollect. Major R. occasionally suggests to me that I should transfer cases to particular Magistrates. I look upon the transfer of cases as a judicial and not an executive matter.*

Q.—*Then in judicial matters do I understand that you generally allow the District Superintendent, or any police officer, to suggest to you what course should be adopted in a particular case?*

A.—*He might make a suggestion, and if I saw no harm in it, I would make no objection. To my recollection Major R. did not tell me that no native Magistrate ought to try this case.*

Q.—Has he ever made such a request to you, that a particular case should not be made over to a native but to a European Magistrate?

A.—*Certainly, he did so in the case of Nadir Ally. The High Court set aside my order of transfer. Since making over the case to Mr. O., I have been discussing daily the case in all its legal aspects. I made suggestion as to what sections should be pressed. I have given instructions to the Inspector to press for a conviction.*

Q.—What made you give such instructions?

A.—Because of several things that have come out in the way of obstruction, threats, newspaper writing, and subscriptions from respectable zemindars; also because the boys require a lesson to counteract what they are being taught by outsiders, and to teach them that they must not be a

public nuisance by doing acts which must necessarily annoy the public. Latterly, also, I have reason to believe that our good faith has been impugned, and I was very anxious for the ordeal which I am now going through. By our good faith, I mean Major R.'s and mine.

Q.—Have you any reason for supposing that your good faith has been challenged?

A.—A letter which I saw gave me this impression, I also saw that my examination was to be taken, and certain facts were to be disclosed. By "obstruction" I mean that so many persons are pleading to get the boys off, and the District Superintendent being threatened with a big case as the result of his persistence. In any case I would have pressed for a conviction: I only do so more particularly now. Had there not been this idea that we have been acting unjustifiably, I am not sure but that I might have listened to a compromise if it could have been effected. *Certainly I am personally interested in the conviction of the boys, both as the head of the district and an official whose action has been questioned.* I do not think I wished when I made over the case to Mr. O., that any particular boy should be convicted, but that the case should result in a conviction if possible. Of the subscriptions from zemindars, I have heard from several people as well as from Major R. I have made no personal enquiry into the merits of this case.

Q.—Have you had any talk with the presiding Magistrate about this case?

A.—Yes, on two occasions, as friends, but not as between superior and subordinate—not by way of argument. Once I asked a question about the general aspect of the case, and another time the information was volunteered. It is not my custom to consult with judicial officers as to the particular sections under which a case should be tried.

Q.—While you are having discussions with Major R. regarding the legal aspect of the case, was the fact present before you that, in the event of an appeal against the presiding Magistrate's decision, you were the appellate court?

A.—Yes, and it was for that reason that I had made up my mind from the first to apply to the Commissioner for an appellate court, and not hear the appeal myself.

After a protracted trial and some adjournments the case resulted in the boys being acquitted on the 19th August on the ground that no offence had been disclosed.

The proceedings in this extraordinary case attracted the attention of the Lieutenant-Governor of Bengal—Sir Rivers Thompson,—who, in an elaborate Resolution, transferred and

otherwise punished both the District Superintendent of Police, Major R., and his friend, Mr. T., the District Magistrate, with whom he was "hand-in-glove," an officer of many years standing. The following extracts from the Government Resolution will be read with interest :—

6. * * * It is surprising that a perusal of the papers should not have shown an officer of Mr. T.'s experience and standing that such a charge could never hold good, and if he had made the enquiries, which he ought to have made, into the circumstances of the case, and the manner in which the police investigation had been conducted, it is scarcely possible to believe that he would not have seen that the case should not be proceeded with. He has acknowledged in his evidence that he made no such enquiry. He further committed the very grave error of allowing Major R. to suggest to him that a particular officer should be selected to try the case. It is no defence or palliation of this indiscretion to assert as Mr. T. asserts, that other complainants have made similar applications to him; because Major R. in his position of District Superintendent of Police, was not an ordinary complainant and the very least acquaintance with the circumstances of the case must have shewn that he was pressing this prosecution with an amount of eagerness and pertinacity which only some great State trial would have justified. The reasons, too on which Major R. urged his application were unjustifiable; and if Major R.'s extremely improper attempt to induce the shop-keepers to press the case had come to his knowledge the Magistrate should have taken immediate and serious notice of it. He states that he knew nothing about the men being sent for. But one of the worst features in the whole case is that a prosecution, commenced without any legal justification, has been pressed forward in a peremptory and injudicious manner without any real control from the Magistrate of the district and practically at the will and dictation of the Superintendent of Police. The Lieutenant-Governor is certain that not in many districts of Bengal could such a perversion of authority have been tolerated, and, in his opinion, here it was clearly the duty of the Magistrate, to instruct the police to abandon the case, and if he considered it necessary to take any further notice of the turbulent conduct of the boys, he should have called the attention of the Education Department to the matter. It is quite clear from the communication addressed to the Director of Public Instruction by the Principal of the Krishnagar College, that the latter was prepared to deal in an adequate manner with any misconduct, not amounting to a criminal offence, of which the students might have been guilty.

7. It is not necessary to dwell at length on the subsequent proceedings. The Lieutenant-Governor has read with surprise and regret the evidence

of both Mr. T. and Major R. He observes that they urge that several of their recorded statements require explanation or correction, but they have not supplied this defect in their explanations. Mr. Rivers Thompson must express his strong reprobation of the endeavour made by Major R., in private conversation, to persuade the Assistant Magistrate to take his view of the legal aspects of the case, and the attempt made on the 15th August to obtain a conviction for nuisance under section 290 Penal Code, when it was clearly apparent the charge of unlawful assembly under section 143 Penal Code, would not stand, seems to have been injudicious and vexatious. The complaints now made by Mr. T. and Major R. of the inefficient way in which the prosecution was conducted are unintelligible. Major R. stated in his evidence that he considered himself *de-facto* prosecutor, and Mr. T. stated that he had discussed the case daily with Major R. as to its legal aspects; that he had suggested the sections and that he had instructed the Inspector who conducted the prosecution to press for a conviction. If therefore, the prosecution was mismanaged, these two officers must on their own shewing, be held responsible for its defects. But the Lieutenant-Governor is unable to accept the suggestion that if the case had been differently conducted in Court the result would have been different. It seems clear to him that if Mr. O. had more experience in judicial work, and if he had been an officer of greater standing, he would probably have seen his way to dispose of the case at a very early stage of the proceedings. He possibly made some mistakes in procedure, notably in not reading over to Mr. T. and Major R. the evidence given by them. But the decision came to by him was undoubtedly correct, and having regard to the official pressure exerted for a conviction, even if only with the idea of a nominal penalty, it is clear that the right result of the case does much credit to his impartiality and firmness.

8. Upon the whole case the Lieutenant-Governor regrets to be constrained to record that he has never come across proceedings which betrayed a greater want of sense and judgment than those which he has now been obliged to criticise and condemn. The precaution of half an hour's temperate enquiry in the first instance, must have satisfied the district authorities, not only that no penal offence had been committed, but that taking the occurrences in their most objectionable light, they exhibited a sudden outbreak on the part of a parcel of school-boys to express a not unreasonable dissatisfaction at the treatment they had received at the *jatra*. To magnify this into a criminal offence, to haul the culprits to the police lock-up, to threaten them with a long detention under custody and to commence and carry on a prosecution against them in the court with the express view of causing harassment and annoyance, are acts which are as unjustifiable as they are discreditable to the administration. This want of judgment and discretion on the part both of Mr. T. and Major R. is

aggravated by the fact that overtures for conciliation on what appear to the Lieutenant-Governor to be very reasonable terms, offered by the Counsel for the defence were summarily rejected; and that among the reasons assigned by Mr. T. for pressing for a conviction under the Penal Code, are the extraordinary ones that there had been "obstruction, threats, newspaper writings and subscription from outsiders." and that he wished to court an enquiry into the good faith of himself and the District Superintendent. Mr. Rivers Thompson finds it difficult to understand how officers in their position could have allowed themselves to be influenced in pushing forward a criminal prosecution by considerations such as these, and he would have rejected the imputation of these motives as incredible, if based on evidence less convincing than the admissions made in Court and in the explanations now received. It is not by a mere expression of censure that the Lieutenant Governor can meet such a case and his sentence must be that Mr. T. should be degraded to the second grade of Magistrates for six months, and that Major R., now in the second grade, should be reduced to third grade of District Superintendents of Police, and be debarred from promotion for one year. Both officers will be transferred from a district in which, by these recent proceedings, they must have lost all influence for good. It is with extreme regret that the Lieutenant-Governor finds himself obliged to come to this decision, because he is not unaware of the good services which Major R. has rendered in the Police Department.

The disclosures made by Major R. and by Mr. T. will no doubt seem startling to those who are accustomed to the procedure of courts of justice in England, but they are nothing new to those who are conversant with the manner in which criminal justice is administered in India under the present system, combining executive and judicial power in one and the same Magistrate. The District Magistrate is generally "hand-in-glove" with the District Superintendent of Police and all subordinate magistrates cannot but be under the direct influence of the District Magistrate who guides and shapes their opinions in all judicial matters. The trying magistrate Mr. O. found himself in a most difficult position; he could not help being under the influence of his official superior, and although he ultimately did justice in the case he did not do so without considerable hesitation and reluctance.

CASE NO. 14

The Rungpore Deer Case—1886

In the district of Rungpore, Babu Annada Prasad Sen possessed considerable landed properties, and lived in the same house with his paternal aunt, Prasannamayi Dasi. For three years prior to 1886, he had a tame deer of the species known as swamp deer, which was first brought when very young and always believed to be quite harmless. The deer used to be kept within a bamboo enclosure six feet high and a servant was specially appointed to look after, and attend to it. On the morning of the 6th September at about 7 o'clock, Mr. S—h, who was Assistant Superintendent of Police at Rungpore, was informed by a man named Ainddin, who had been in the service of a gentleman who was staying with Mr. S—h, that the deer had got loose. Mr. S—h thereupon took his rifle and went to the house of the zemindar, Annada Prasad Sen, and found that the zemindar was not then in the district. According to the evidence of the men present in the house, Mr. S—h sent for the zemindar's Dewan, Pyari Mohun Bose, and told him that his master had twice deceived him: (once he had refused to lend his elephant after having promised to do so, and on another occasion had insulted him in connexion with a procession), and said that he would see the zemindar punished. While Mr. S—h was speaking to the Dewan the servants of the house were trying to drive the deer into the enclosure, but did not succeed in doing so. Thereupon Mr. S—h shot the animal dead within a few yards from where he was standing. A pleader of the High Court who happened to come to the house was instructed immediately by the Dewan to inform Mr. S—h that he had needlessly shot the deer and that proceedings would be instituted against him on behalf of the zemindar for his having done so. Immediately afterwards the Dewan sent the dead animal in charge of some servants to Mr. N., the District Magistrate, in order that he might have an opportunity of seeing that it had no horns, and that he might also be informed of what had been done

by the Assistant Superintendent of Police. Mr. N., instead of listening to the complaint, got enraged at the sight of the deer, ordered the carcass to be removed instantly from his house and declined to listen to any complaint against the Assistant Superintendent of Police. Later in the day Mr. S—h sent for Ainuddin and insisted upon his preferring a complaint at the Police Station against the Dewan, Pyari Mohun Bose, and this man accordingly at 2 P.M. on the same day, under orders from Mr. S—h, preferred a charge under section 289 of the Penal Code for the offence of neglecting to take care of a dangerous animal in his possession. Mr. S—h having secured the support of the District Superintendent of Police Mr. S., and of the District Magistrate Mr. N., caused his subordinate police officers to send up the charge as a true one to the court of Babu Chandi Charan Bose, a Deputy Magistrate. The case against the Dewan was accordingly heard on the 8th and 9th September, and all the witnesses cited by the police were duly examined. Mr. S—h volunteered to give evidence as an important witness but was not fully or properly cross-examined by the accused, the Deputy Magistrate having intimated that such cross-examination was unnecessary as no case had been established on behalf of the prosecution. The result of the trial was that the Dewan, Pyari Mohun Bose, was acquitted without being called upon for his defence, but unfortunately the Deputy Magistrate expressed no opinion upon the question as to whether the evidence adduced by the police regarding the vicious propensities of the animal was true or false. This decision of the Deputy Magistrate, however, was very distasteful to Mr. S—h who, after a private consultation with the District Superintendent of Police, and the District Magistrate decided to prosecute the aunt of Babu Annada Prasad Sen, the zemindar, as she was, in the Zemindar's absence, the head of the family. The Sub-Inspector of Police was set up as a formal complainant and he applied on the 15th September 1886, for a summons against the lady. The Deputy Magistrate at first was reluctant to issue any

summons, but instead of taking upon himself the responsibility of refusing the summons thought it safer for himself privately to consult Mr. N., the District Magistrate, under whose advice, five days after, the Deputy Magistrate, decided to summon the lady to answer a charge under section 289. The case accordingly came on for hearing before the same Deputy Magistrate on the 14th October, when Counsel from Calcutta was engaged at considerable expense, to defend the lady. What happened at the commencement of this trial will be found in the following report as taken from the *Statesman* newspaper of 19th October, 1886 :—

On the Magistrate taking his seat, Mr. Ghose addressing his worship, said :—I appear, Sir, on behalf of the lady, Prasannamayi Dasi, and before the case is proceeded with, I believe you will agree with me in thinking that it is but fair to the accused that she should know the circumstances under which the prosecution against her originated, as there is nothing disclosed at present on the record. I have been informed, Sir—and you will correct me if my information is wrong—that after the case against Pyari Mohun Bose had concluded, that is, after he had been acquitted, an application was made to you for a summons against the lady ; that you at first disapproved, of the proceeding, and recorded your disapproval, but that afterwards, after a lapse of five days, you granted the application. I should therefore like to know, Sir, if what I state is correct, under what circumstances the summons was subsequently ordered to issue against the lady, and whether anything transpired in the interval to induce you to change your mind.

The Magistrate—Yes, first let me take evidence in the case, and I shall then let you know the circumstances under which I granted the application.

Mr. Ghose—But surely, Sir, that would be at a very late stage. I see that a letter or petition was presented to you on the 16th September, and that it was not till the 21st September, that you were pleased to direct a summons to issue against my client. What I would like to know is, why there was this delay in granting the application, and the circumstances which led to the issue of the summons, as it is very important I should know them at the beginning.

The Magistrate—I can only say this, that I consulted the Magistrate—there is no harm in my taking his opinion—whether it would be proper for me to summon Prasannamayi, and in accordance with his opinion I issued summons.

Mr. Ghose—Then am I rightly informed, Sir, that when the application was first presented to you, you declined to issue the summons, but that you granted it at the suggestion of the Magistrate?

The Magistrate—What passed between me and the Magistrate is private, and I don't think you have any right to know it.

Mr. Ghose—There can be nothing private in a judicial proceeding. I am entitled to know who my prosecutor is, as the law requires that the complainant should be examined, and no complainant has yet been examined.

The Magistrate (pointing to the witness Ainuddin)—He is the complainant.

Mr. Ghose—No, Sir, he is not, and has never been the complainant. He never preferred any charge against the lady before the police at any time. The application against the lady was made by Kasi Mohun Sen, Court Sub-Inspector, and as he applied for the summons, I should like to begin by examining him, he being the complainant.

The Magistrate directed Kasi Mohun Sen to be called, but was informed that Kasi Mohun had taken a week's leave and left Rungpore.

Mr. Ghose—This is extraordinary, especially as the first thing to be done is to find out who is the prosecutor, and to examine him.

The Magistrate—You can ask the District Superintendent who appears as prosecutor.

Baboo Nil Kamal Banerjee (another Court Sub-Inspector) said he was instructed to appear as prosecutor.

Mr. Ghose—He is not the complainant.

The Magistrate—He may appear as public prosecutor.

Mr. Ghose—I have a right in law to examine this man Kasi Mohun Sen, on whose written complaint process has been issued. As you know, Sir, a magistrate can take cognisance of a case only in one of three ways :—1. On a complaint. 2. On a police report, as defined by the Code. 3. On suspicion, or personal knowledge. So far as I can see, this case originated on a complaint, there being no A form or police report against the lady. Kasi Mohun Sen is the complainant, and he is not here.

The Magistrate—He is a complainant in his public capacity.

Mr. Ghose—There is no such a thing as complainant in a public capacity. He is either the complainant or he is not.

The Magistrate—But his letter may be called a police report.

Mr. Ghose—There is no police report, but a letter, or petition, or whatever else it might be called, upon which the sanction for summons was given. It is, as I am sure you will allow, Sir, of the utmost importance to me, that I should know who my prosecutor is. I see in the original list of witnesses sent by the Police that Mr. S—h's name is mentioned. He was considered a very important witness in the case against Pyari Mohun Bose, and was examined on that occasion. I should like to know if he will be examined to-day in this case.

The Magistrate—His name appears in form A. (To the Court Inspector—

tor). Are you going to examine Mr. S—h? You ought to be able to say so at once.

Babu Nil Kamal Banerjee—I am not acquainted with the facts of the case, and leave the matter to the Court.

The Magistrate—Kasi Mohun Sen, the Court Sub-Inspector, who applied for the summons in this case is not here.

Mr. Ghose—Whoever is pulling the strings should, in justice to all concerned, appear and take the responsibility of the prosecution. The law says the complainant should be examined. Ainuddin, the complainant in the other case before the police, never mentioned the same of this lady, and as the summons in this case was issued on the application of Kasi Mohun Sen, I should like to examine him, but, as you see, Sir, he does not appear.

The Magistrate—This is a police prosecution, and the police have brought these men (reads list of witnesses)

Mr. Ghose—You issued the summons, Sir, not on any police report, for there is none, but on a letter or petition of Kasi Mohun Sen. However, I do not object to the witness Ainuddin, being examined now, but the person on whose petition action was taken, must also be examined. If, however, Mr. S—h is going to be examined, I will show that he is the real complainant, and I shall be glad to give up Kasi Mohun. The sooner it is understood that a criminal prosecution of this sort is a serious matter, and should not be lightly undertaken, the better for all concerned. I confess I am not a little surprised at the hesitation displayed to call Mr. S—h, the person who killed the deer, and who is the prime mover in this case.

The Magistrate (to his clerk)—Let me see the list of witnesses, and see how many persons they are going to call.

(The Magistrate here entered into a short conversation with Babu Nil Kamal Banerjee, who afterwards went out to consult Mr. S—h for several minutes.)

Mr. Ghose—We are losing very valuable time, Sir. The police should have known what course they intended to adopt. This is scarcely the time for consultation.

Babu Nil Kamal Banerjee, Inspector, on his return, intimated that it had been decided not to call Mr. S—h as a witness, and handed to the Court a fresh list of witnesses.

The Magistrate then read out the the names of the witnesses.

Mr. Ghose—Then I understand, Sir, that Mr. S—h, who represents the police, who killed the deer, and who was a most important witness in the case against Pyari Mohun Bose, does not venture to come forward in this prosecution.

The Magistrate—His name is not in the list of witnesses now handed to me.

Mr. Ghose—Then, Sir, it will be my duty to present to you certain petitions. As I am anxious, on behalf of my client, that this case should be disposed of at once, and as Mr. N., the District Magistrate, will, I hear, be leaving the station to-day, the first petition I have to present is this :—

To the Deputy Magistrate of Rungpore.

The humble petition of Srimati Prasannamayee
Dasi of Rungpore.

Humbly Sheweth—

(1). That your petitioner is at present being prosecuted under section 289 of the Indian Penal Code, on a complaint ostensibly brought by one Kasi Mohun Sen, Court Sub-Inspector.

(2) That your petitioner submits that the prosecution is not only without any reasonable and probable cause, but absolutely malicious and *mala fide*.

(3). That in order to substantiate the defence of your petitioner, it would be most material to examine Mr. J. H. N., the District Magistrate of Rungpore, who, your petitioner is advised and believes, will be able to give very material evidence bearing upon the circumstances which have led to the prosecution.

(4) That as the said Mr. N. is at Rungpore to-day, but is about to leave the station, and as your petitioner cannot without summons secure his attendance, she prays that he be requested or summoned to appear in Court, and give evidence in Court to-day, and, further, that he be called upon to produce the following documents in Court :—

(a) All letters, correspondence, proceedings, reports, and memoranda which have passed between the said Mr. N. and your worship (written by either) regarding the case of Anuddin vs. Pyari Mohun Bose, or this case, between the 6th September and the 21st September, both dates inclusive.

Your petitioner is willing to deposit at once any amount which the Court considers reasonable for the attendance of the said Mr. N.

And your petitioner as in duty bound shall ever pray.

KALIDHAN MOOKERJEE,
Vakil,

DATED RUNGPORE, 14TH OCTOBER, 1886.

Mr. Ghose (continuing)—This, I may say, I shall only ask for, if you think that a sufficient case has been made out against me to put me on my defence. The second petition which I have to present is to the following effect :—

To the Deputy Magistrate of Rungpore.

The humble petition of Srimati Prasannamayee
Dasi of Rungpore.

Humbly Sheweth—

That in the case under section 289, Indian Penal Code, in which your petitioner is at present being prosecuted, Mr. E. A. S.—his a very impor-

tant witness for the prosecution, and as such he was examined in the Court in the case against Pyari Mohun Bose.

No reason has been assigned why Mr. S—h who killed the deer, has not been cited by the prosecution; and as it is very important for your petitioner to show that the present prosecution is malicious and *mala fide*, and as Mr. S—h's evidence would be very important on this point, your petitioner prays that he be summoned to give his evidence in Court to-day, your petitioner being prepared to deposit any amount which the Court thinks reasonable for his attendance.

And your petitioner as in duty bound, &c.

Mr. Ghose—I am informed that Mr. S—h is within the precincts of this building.

The Magistrate—Yes, let the witnesses for the prosecution be first examined, then I will consider about Mr. S—h.

Mr. Ghose—I say, Sir, that Mr. S—h is a most important witness in this case. He was the person who killed the deer (laughter); he was the Police officer most concerned in the case, and was examined by you in the case against Pyari Mohun. If he is animated by proper motives, how is it that though he came forward as a witness in the last case, he now refuses—that is the interpretation I am reluctantly forced to put upon his conduct—to come into the witness-box.

The Magistrate—With regard to Mr. N., I may tell you that he will be going away on leave to-day.

The Magistrate—With regard to Mr. N., I may tell you that he will be going away on leave to-day.

Mr. Ghose—It may be that after examining Mr. S—h and getting the answers which I expect to get from him, it will not be necessary for me to examine Mr. N.

The Magistrate—Yes, you may depend that Mr. S—h will be summoned, and on the understanding that he will be examined later, we may proceed with the examination of other witnesses.

An immediate summons was then ordered to be served on Mr. S—h, Mr. Ghose undertaking to inform the Court in time should he require Mr. N.

The trial then proceeded and the witnesses were examined, and cross-examined, and it was shown clearly that the whole prosecution had its origin in Mr. S—h who was the real prosecutor behind the scenes. As soon as the witnesses were cross-examined and the statement of the lady who was allowed to appear through Counsel, was taken, her Counsel applied that Mr. S—h should be the first witness called for the defence, especially as the defence had produced certain

letters from Mr. S—h to the Zemindar, showing that the latter had incurred Mr. S—h's displeasure by his refusal to lend his elephant. The Magistrate thereupon said "There is no necessity for you to go into the defence. I acquit Prasanamayi Dasi." The lady was put to very great expense by reason of this prosecution and after the publication of the proceedings in the newspapers of Calcutta, the Lieutenant-Governor of Bengal (Sir Rivers Thompson) reviewed the case in a Resolution dated 1st March 1887, from which the following extracts are taken:—

* * * It is no doubt possible that Mr. S—h originally went to the spot and with a rifle, in consequence of the exaggerated account given to him by his informants. But his proceedings after his dispute with the Dewan were entirely uncalled for, and it is quite clear that he should have retired from the scene when he found that the reports regarding the animal were extravagantly wide of the truth, and that the servants of the Babu were in a position to secure it

5. The proceedings in the next stage were more serious. It appears that Mr. S—h at once reported the circumstances to his superior officer, the District Superintendent, Mr. S., and that the result of their conference was that Mr. S—h sent a constable for the man Ainuddin who had originally reported to him that the deer was doing mischief and told him, that, as injury had been done to him he should complain. Without such instigation, there is no reason to suppose that the man would have moved in the matter. Thereupon, Ainuddin laid a charge at the Police Station against the Dewan, Pyari Mohun Basu, and the police sent the case up for trial. It appears that the matter also came to the notice of Mr. N., the Magistrate and Collector of the District, and that he was cognizant of these proceedings and approved of the action of the District and Assistant Superintendents. The question for the Lieutenant-Governor to consider is whether Mr. S. and Mr. S—h acted in good faith, in causing this prosecution to be instituted. They both argue that the fact that some people went to Mr. S—h and asked him to take measures to have an animal which was loose and doing mischief tied up constituted the laying of a charge under section 289 of the Indian Penal Code before a Police Officer, and that the Police were bound to proceed with the charge. This explanation does little credit to those by whom it is advanced. All the proceedings show that the prosecution was a police prosecution, and the police authorities should not have put forward a complaint or to endeavour to invest it with any other appearance. Mr. S—h himself in his evidence on oath said—"I then told the Dewan that I should prosecute him for not taking proper care of a savage animal

in his charge." But it is quite evident that the circumstances did not justify a police prosecution. The animal was not shewn to have been dangerous and the events of the night on which it got loose were not sufficient to make its owner or keeper criminally liable because it succeeded in escaping from its enclosure. Moreover the animal was then dead, and Ainuddin or any of the other persons who had been frightened should certainly have been left to their own remedy. Looking to all the circumstances, the Lieutenant-Governor must hold that Mr. S. and Mr. S—h were actuated by other motives than those of public duty in proceeding with the case. Whether these motives were on Mr. S—h's part, irritation at the action or words of Babu Annada Prasad Sen or his adherents, or at the threat of a civil action, or on Mr. S's part, a desire to support his subordinate cannot be determined. But that a police prosecution was instituted for some other objects than the prosecution of the public interests, is the only inference to be drawn from the facts. Mr. N. appears at least passively to have acquiesced in this abuse of official power.

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

7. On its coming to Mr. S's knowledge that the case had been dismissed on this ground, he directed the Court Sub-Inspector to apply for a summons against Babu Annada Prasad Sen's aunt Srimati Prasannamayee. This was a serious aggravation of the previous impropriety of pressing the prosecution at all, and it brings into strong relief the action of Messrs. S. and S—h in instigating Ainuddin to lay his formal complaint in the first instance. It indicates a reckless determination to cause trouble and annoyance to those against whom the police had once directed their exertions. The Deputy Magistrate instead of peremptorily refusing to issue summons referred the case to Mr. N., giving his reasons for thinking that a summons should not be issued. Thereupon Mr. N. recorded the foolish order sanctioning the issue of summons. It is probable, as you observe, that he never looked at the record, but in any case it is clear that he

absolutely failed in his duty as chief controlling authority and executive head of the district. The deer, which was the cause of the offence, was dead; the first prosecution had failed, and an officer in his position with any claim to judgment, would have been glad of the opportunity of staying further proceedings. That he should encourage the continuance of the scandal by allowing action to be taken against a lady, and thus, instead of suppressing it, giving it the sanction and support of his authority makes it manifest that he is wanting in ordinary discretion.

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

9. The whole case exhibits a course of arbitrary and oppressive action on the part of Messrs. S—h, S. and N., which the Government cannot tolerate. Such proceedings can only bring the administration into contempt and disrepute and enhance the difficulties of officers who are really anxious to administer their charges with fairness. Babu Chandi Churn Bose displayed a want of judicial accuracy in the first case and of judicial firmness in the second; but beyond this, his conduct does not call for unfavorable comment. Mr. S—h has already been transferred to the Chittagong Hill Tracts. He is an officer of only a year's standing and was acting in a

greater part of these proceedings in a subordinate position. He is a 2nd grade Assistant Superintendent officiating in the 2nd grade. He will be deprived of his officiating promotion for six months, and the Commissioner of Chittagong in communicating to him an expression of the strong displeasure of Government will inform him that his restoration to promotion will be dependent on the nature of the reports received from his Departmental superiors. Mr. S. has already been deprived of his officiating charge as District Superintendent, and transferred to another District in the capacity of Assistant Superintendent. The Inspector-General will convey to him the severe censure of Government, and inform him that he will not be appointed to the charge of a district for at least one year, and until he is reported to have shown a better appreciation of his duty and responsibilities. Mr. N. has applied to resign the service, but having regard to the part he took in the case, and considering that it was to him as the chief officer of the District, that Government had to look for the repression of the irregularities of his subordinates, the Lieutenant-Governor is constrained to mark his dissatisfaction by directing that from the 1st March, Mr. N. shall be reduced to the 2nd grade of Magistrates and Collectors.

It will be seen that the Deputy Magistrate was compelled to issue a summons in the case in order to please his official superior Mr. N., the District Magistrate, whose conduct in the case is so severely censured by the Lieutenant-Governor. Had the Deputy Magistrate been left free to exercise his own judgment such a scandal as this would never have taken place. But the Bengal Civil Service according to its leading organ the *Pioneer*, considered that Mr. N. was very severely dealt with by the Lieutenant-Governor and that paper remarked that nine out of ten members of the Civil Service would consider themselves "very harshly treated" if they were called to account in the same way for doing what Mr. N. had done!

CASE NO. 15

The Jamalpur Mela Case—1887.

Jamalpur is a sub-divisional town in the district of Mymensingh. In 1883 Mr. Nanda Krishna Bose was in magisterial charge (executive and judicial) of the sub-division of Jamalpur, and in that year a public meeting of the inhabitants of the place was held, in which it was

resolved that a *Mela* (exhibition or fair) should be held annually in the town for the encouragement of trade and agriculture and that it should begin in February or March and last for about a month and a half, and that the expenses should be defrayed by public subscription. The first *Mela* or exhibition was held after raising the necessary funds, on a piece of land belonging to the Government called Line Jamalpur, which was placed at the disposal of the *Mela* Committee by the Sub-divisional Officer, with the consent of Mr. R. M. Waller, then Magistrate and Collector of Mymensingh. The *Mela* continued to be held similarly in 1884 and 1885, the surplus proceeds from the public subscription and the profits being deposited in the Postal Savings Bank, in the name of the President of the Committee, who during those years was Mr. Nanda Krishna Bose. Early in 1886 he was transferred from Jamalpur and was succeeded by Babu S. C. D. a Deputy Magistrate who, shortly after his arrival, was elected as Chairman of the *Mela* Committee and the exhibition for 1886 was held as before. About April 1886, certain letters passed between Babu S. C. D. and his official superior Mr. G., then Magistrate and Collector of Mymensingh, as to the desirability of making over the *Mela* and its funds to the Government. The members of the *Mela* Committee apparently disapproved of this suggestion to deprive the public of the management of the *Mela*, and represented the matter by letter to Mr. Nanda Krishna Bose, the founder, who was then in another district. Mr. Nanda Krishna Bose's reply was to this effect:—"You should remember that the *Mela* is a public institution, and not Government property. There is a committee of management and you have every right to protest against the diversion of the funds to Government." It had been customary on the opening of the *Mela* every year for the Hindus to worship an image of the goddess Kali which used to be kept in a thatched house within the *Mela* grounds. In November 1886, Mr. G., Magistrate of the District, visited Jamalpur and directed his subor-

dinate Babu S. C. D., by an order in writing, that the image of the goddess Kali should be removed from the *Mela* ground within six hours, and the goddess was accordingly thrown away by coolies,— a proceeding which naturally gave offence to the Hindu community. On the 28th November 1886, the inhabitants of Jamalpur held a public meeting and resolved that a general meeting should be convened at an early date for the purpose of making arrangements for the *Mela* of the following year, and for the purpose of obtaining from the Government a lease of the *Mela* ground. A letter was accordingly addressed by the chairman of the meeting to Babu S. C. D., containing the substance of the resolution, to which Babu S. C. D. replied that he would convene a meeting, as requested, at an early date. Instead of doing so however, Babu S. C. D. without consulting the committee began making arrangements for holding the *Mela* independently of the committee, whereupon another public meeting of the inhabitants was held on the 19th December, at which it was resolved that a letter be addressed to Babu S. C. D. requesting him to desist from spending the money of the *Mela* fund and from disposing of the furniture and other moveable property belonging to the committee without their sanction. This resolution was also duly communicated to Babu S. C. D. On the 25th December 1887, a further meeting of the *Mela* Committee was held at which it was resolved that Babu S. C. D., having failed to convene a public meeting, and by reason of his time being almost entirely taken up by official duties a non-official and Honorary Magistrate should be appointed president of the *Mela* committee, and that he should take over all the properties belonging to the *Mela* from Babu S. C. D. It was further resolved that inasmuch as Mr. G., the Magistrate and Collector was opposed to any religious worship or amusement of any kind being held on Government land, it would be desirable to hold the *Mela* on some other site not belonging to the Government. The substance of this resolution having

been communicated to Babu S. C. D. by the newly elected president, Babu S. C. D. by way of reply forwarded a copy of the following letter from the Magistrate and Collector:—

"To the Sub-Divisional Officer, Jamalpur.

"Your No. 193, dated 28th December 1886. You will make nothing over to any one else; the regulation of the *Mela* is to remain in your hands as Sub-Divisional Officer, assisted by the Committee.

1st January, 1887.

(Sd.) E. G.,— *Magistrate and Collector.*"

A general meeting of the inhabitants of Jamalpur was again held in February 1887, and it was resolved by those present that in consideration of the approaching Jubilee of Her Majesty the Queen-Empress, the *Mela* should be opened on the 16th February, the date fixed for the celebration of the Jubilee, and that out of the proceeds of the *Mela* a school should be established to be called the Jubilee Vernacular School. In accordance with this resolution a public subscription was raised by the Committee, and it was announced that the *Mela* would be opened on this occasion at a place called Khatiakury in Jamalpur, on the 16th February. Traders and shopkeepers accordingly commenced to arrive from the interior from about the 13th February 1887, with various kinds of goods, and to occupy stalls which had been built for them by the Committee. On the 14th February, Babu S. C. D., who expected to be supported by the District Magistrate, accompanied by a Sub-Inspector of Police and about 20 constables and 8 or 10 chaukidars or rural watchmen, suddenly appeared without any complaint or information of any kind on the *Mela* ground, and ordered the Police to examine the weights of the shop-keepers. Whereupon several persons apprehending ill-treatment ran away; three of them who stayed there were arrested by the Police, but subsequently released and their weights taken from them. Babu S. C. D. intimated that orders would be passed regarding them hereafter. On the 15th February several Police constables again came to the *Mela* ground and commenced to dissuade the shop-keepers and others from attending the *Mela*. About that time Babu S. C. D. further instituted

proceedings against several of the supporters of the *Mela* for the purpose of binding them down to keep the peace, but afterwards took no further steps in the matter.

The *Mela*, in spite of the opposition of the Magistrates and the Police, was however opened on the 16th February as announced, and about the same time Babu S. C. D. himself gave out that he would open another *Mela* at Line Jamalpur, on 9th March. The Police during this period were instrumental in harassing the supporters of the public *Mela* opened on the 16th February in various ways, and certain complaints of ill-treatment and wrongful confinement were brought against the Police by some of the shop-keepers who had come to the *Mela*, while on the other hand, the Police preferred certain charges against the *Mela* people, accusing them of having forcibly compelled traders to go to their *Mela*. Babu S. C. D. in his judicial capacity accepted all the complaints by the Police and set them down for hearing, while he was reluctant to take any action on the complaints brought by the shop-keepers. On the 22nd February, the Sub-Inspector of Police reported to Babu S. C. D. through the Inspector that a constable under him had been obstructed in the discharge of his duties on the previous day by two of the men who had preferred charges against the Police. On this report Babu S. C. D. passed the following order: "Police to send up rioters under section 353 Penal Code," and in accordance with this order sent up two of the complainants against them on a charge under that section. On the 25th February, a further complaint was made by a Head-Constable of Police at the Police Station charging the Vice-Chairman of the Municipality, one of the principal supporters of the *Mela*, with having been a member of an unlawful assembly in his own house with the intention of beating the Police, but that the unlawful assembly were unable to carry out their intention, in as much as the constable had taken shelter in the Police Station. While these charges and counter-charges were being preferred, Babu S. C. D. instead of waiting till the 9th March,

suddenly opened his *Mela* at Line Jamalpur about the end of February and attempted, with the assistance of the Police, to induce traders and shop-keepers to stay away from the public *Mela* and to attend his own. Early in March several of the complainants and accused persons connected with the public *Mela* applied to the Magistrate of the District to transfer all the cases then pending before Babu S. C. D. to some other Magistrate, on the ground that Babu S. C. D. was personally interested in their result. Mr. G. felt bound to accede to this prayer and he transferred all the cases then pending to the Court of another subordinate of his—a Deputy Magistrate, Babu A. K. B. in the town of Maimensingh. However, the day before the order of the District Magistrate to transfer the cases, reached Babu S. C. D., he himself instituted certain cases against some of the men and charged the mukhtear or legal practitioner, who had objected to his trying the cases, with perjury in having made, as he alleged, a false statement in a petition filed by him on behalf of some of the supporters of the public *Mela*. After the transfer of the cases to the Court of Babu A. K. B. he, before he had been spoken to by the District Magistrate, discharged four of the accused persons sent up by the Police on the 14th March. On the 15th, however, that is the next day, Mr. G., the District Magistrate, sent for Babu A. K. B. while he was trying some of these cases and had half-an-hour's conversation with him. Babu A. K. B.'s attitude towards the public *Mela* people changed considerably after this interview with his official superior and he convicted three of the defendants as being members of an unlawful assembly and sentenced them to pay a fine of Rs. 20, the sentence being unappealable. Two persons who had been charged by the Police with obstructing them, the same Deputy Magistrate sentenced to 31 days' rigorous imprisonment, declining to summon Babu S. C. D. who had been cited as an important witness by the defence. These two persons appealed to the Sessions Judge who acquitted them both disbelieving the evidence adduced against them.

The Sessions Judge concluded his judgment thus :—

"In conclusion, I think that the reasonable and proper construction to be put upon the case is that the Police used undue pressure to prevent people from attending the *Mela*, and that any conflict that may have arisen between the Police and the others, was the consequence of the unwarrantable and forcible interference of the former. This is the probable interpretation as shewn by the evidence for the defence, and specially of the respectable witness, Gobind Prosad Neogy, whose testimony appears entitled to full credit."

With respect to a case brought against two other persons belonging to the public *Mela*, of wrongful restraint, Babu A. K. B. refused to acquit the accused although by law he was bound to do so when the complainant did not appear and gave no evidence. In consequence of Babu A. K. B.'s determination to proceed with the case the Sessions Judge was appealed to, to interfere, and he at first hesitated to believe that any Magistrate could proceed contrary to the express provision of the law and suggested that a fresh application should be made to Babu A. K. B. on the subject.

The second application to Babu A. K. B. having been ineffectual, the Sessions Judge passed an order to the effect that the Deputy Magistrate's action was contrary to law and that he should stay proceedings pending a reference to the High Court on the subject, the Sessions Judge being by law unable to give any relief himself. On receipt of this order Babu A. K. B. abruptly acquitted the accused. In another case originally brought by the Police Babu S. C. D., in which three persons were accused of using fraudulent weights, Babu A. K. B. sentenced two of the accused each to 9 months' rigorous imprisonment.

On appeal the Sessions Judge in May acquitted both prisoners on the evidence remarking that the Sub-Inspector had acted unfairly in making a raid on the shop-keepers in the public *Mela* while leaving the shop-keepers of the rival *Mela* "unmolested." As regards the cases brought against the Police, Babu A. K. B. dismissed them all. Meanwhile Babu S. C. D., the Deputy Magistrate in charge of Jamalpur,

wrote a letter to Mr. G. asking for permission to prosecute two persons on a charge of perjury for having made certain allegations which Babu S. C. D. characterised as false, in a petition filed before him objecting to be tried by him. Mr. G. thereupon passed this order:—"The prosecution is sanctioned under section 193, or any other section that may appear necessary. Made over to Moulvi Mahomed, Deputy Magistrate, for trial." On the same day Moulvi Mahomed, another subordinate of Mr. G., equally afraid of incurring the displeasure of Mr. G., without recording any evidence whatever at once, on the receipt of Mr. G.'s sanction issued warrants for the arrest of the two men concerned. An application was thereupon made to the High Court at Calcutta setting out all the facts in detail, and praying that all the convictions referred to above might be quashed, and that the proceedings in the so-called perjury case should also be quashed on the ground that the whole of the proceedings of the Magistracy of Maimensing were *mala fide* and perverse. The High Court consisting of the Chief Justice and Mr. Justice Chunder Madhub Ghose quashed all the convictions and proceedings of the different Magistrates concerned as illegal and improper. In the result while all the prosecutions instituted by the Police and the Magistracy ended in the acquittal or discharge of the accused, nothing could be done as regards the complaint preferred by the public *Mela* people which had been summarily rejected or dismissed, and whose grievances therefore remained unredressed so far as the criminal courts are concerned.

The whole of the proceedings were subsequently reviewed by Sir Stuart Bayley, then Lieutenant-Governor of Bengal, who in an elaborate Resolution, dated 31st August 1887, after pointing out in detail some of the facts narrated above, passed orders not only inflicting punishment on the different Magistrates concerned, but also censured the Commissioner of the Division for having neglected to interpose his authority in order to prevent what was, in the Lieutenant-Governor's

opinion, a grave scandal. Sir Steuart Bayley felt it to be his duty to examine the facts of the case minutely and came to the conclusion that the action of the local magisterial authorities was wholly unjustified. The following four paragraphs are extracted from the Lieutenant-Governor's Resolution and special attention is drawn to the remarks contained in paragraph X. The more important passages have been printed in italic type:—

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

* * * * *

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

* * * * *

XII. On a review of all these unfortunate proceedings ¹⁸⁹⁰ it is impossible to acquit the District Officer, Mr. G., who must be held mainly responsible

for them, of grave errors of judgment, of want of temper and arbitrary conduct. The same remarks apply, though in a less degree, to the Sub-Divisional Officer, while the failure of Mr. L. adequately to grasp the responsibilities of his position as Commissioner is disappointing. The Lieutenant-Governor sees nothing to find fault with in the conduct of the Sub-Divisional Officer at the outset. His report to the Magistrate of the 4th November shews that he clearly understood the character of the *Mela* and the position of the Committee, and he then gave sound and judicious advice to the Magistrate which, if followed, would have prevented all the mischief which has occurred. The Magistrate having rejected his recommendation in his ill-considered order of the 18th December, the Deputy Magistrate did not offer any advice when forwarding the proceedings of the *Mela* Committee meeting on the 25th December, after he had received the order to carry on the *Mela* himself as Sub-Divisional Officer with the assistance of a Committee who were overriden by that very order. He seems to have identified himself completely with Mr. G.'s policy, and to have fought the Committee with all available weapons. His conduct from this time, was a long series of blunders and perverse acts, while much of his reports to Mr. G. amounted to distortion of the actual facts. He had an opportunity of retreating from his false position by acting on the suggestion made by Mr. G. in reply to his letter of 5th January, but failed to avail himself of it. It is obvious however that he believed himself throughout to be acting in harmony with the Magistrate's views, and there was only too much to satisfy such a belief on his part. His Honor is satisfied of the Babu's unfitness for the place he occupies, and an arrangement will be made for his early removal.

XIII. The task of reviewing Mr. G.'s action throughout this case is a difficult and unpleasant one. He is an experienced officer who has hitherto borne a fair reputation, and the Lieutenant-Governor has anxiously tried to take the most favourable view of his conduct which the facts will allow. He is however compelled to remark that some points have left a painful impression on his mind. Among these are Mr. G.'s silence on the subject of removal of the image and hut of *Kali* till attention had been called to it in the press, although the matter was more than once referred to in papers which came before him. His remark that the Sub-Divisional Officer was to be assisted by the Committee in carrying on the *Mela*, the order being passed on the proceedings of a body claiming to be the Committee which had removed the Sub-Divisional Officer from the post of Chairman; the misleading remark on the report to the Commissioner on the 7th March that there had been a local dispute about some rival fairs at Jamalpur, and the ambiguous orders given to the Sub-Divisional Officer regarding the *Mela* started on the new site. Assuming that these omissions and ambiguities were the results of heedlessness, there still remains

the fact that nothing but Mr. G.'s indiscreet interference with the committee's method of celebrating the *Mela* led to the decision to have an unofficial Chairman, and to sever themselves from the Deputy Magistrate's management. Mr. G. next refused to accept this decision or even to enquire into the representation made to him, and insisted on the Deputy Magistrate continuing to manage the *Mela* and retain the funds and property of the institution, with which, save in the matter of withholding the use of the Government land, he had no longer any claim to be consulted. Then when the rival *Mela* was started, and the Police, acting under the supervision if not at the instigation of the Deputy Magistrate, began a series of arbitrary arrests to obstruct it, the District Magistrate, instead of at once putting a stop to the prosecution and staying the arbitrary proceedings of his subordinate, allowed the case to proceed, passed the weak and injudicious order to the Deputy Magistrate about proceedings under section 144 of the Criminal Procedure Code, arbitrarily dismissed the Government Pleader and suspended the Sub-Inspector of Schools almost avowedly for the part they had taken in support of the rival *Mela*, sanctioned what he ought clearly to have seen was an unjustifiable prosecution by the Deputy Magistrate under section 193, Indian Penal Code, and so through his mismanagement and remissness, caused what before was a trivial and unjustifiable exhibition of local feeling, to grow into a grave public scandal rendering necessary the intervention of the High Court to prevent further injustice. Sir Steuart Bayley has anxiously considered whether he is justified in allowing Mr. G. to continue in the first grade of Magistrates and Collectors. He has decided, though with much doubt, that the general good service rendered in the past by Mr. G., may now be counted in his favour, and that the Government may be spared the pain of degrading him, especially as after the present case he must forego all hope of further promotion. But His Honor considers that it is no longer safe to entrust to him a District so important and difficult to manage as Mainpuri, and arrangements must be made as soon as possible for his removal to a lighter charge.

As regards the proceedings of Babu A. K. B., the Lieutenant-Governor in a separate Resolution passed the following orders:—

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

judgment in this and the other cases cannot be adequately punished by the most severe reprimand.

4. His Honor therefore directs that Babu A. K. B. be degraded to the bottom of 6th grade of the Subordinate Executive Service, and that he be deprived of his first class powers. He will remain at the bottom of the 6th grade, until satisfactory reports are received from his superior officers regarding his work and industry. On the receipt of such reports, the Lieutenant-Governor will then consider the question of restoring to him first class powers, and moving him to the top of the sixth grade in order that he may become eligible for promotion to the fifth grade. The Deputy Magistrate will also be transferred to the head-quarters of the District of Dinagepur.

It may be mentioned here that Mr. G., the Magistrate referred to in the case, was a senior officer of many years' standing, and that the Resolution from which extracts are given above created a great sensation among the members of the Executive Branch of the Bengal Civil Service, who as a body strongly disapproved of the vigorous action which Sir Steuart Bayley had been forced to take against a member of their own service. Accordingly an agitation was set on foot by some members of the Bengal Civil Service against the action of Sir Steuart Bayley, and Mr. G. was induced to prefer an appeal to the Government of India against the orders of the Lieutenant-Governor. The Government of India was led to modify only that portion of Sir Steuart Bayley's order which directed that Mr. G. should forego all further promotion as, in the opinion of the Government of India, such a direction as regards the future ought not to have been made. The grievance of the Executive Branch of the Civil Service in connexion with this case appeared to be that by his action Sir Steuart Bayley had publicly exposed the proceedings of a District Officer and many of them felt, and urged in the columns of the public press, that if the Government were to take such action as Sir Steuart Bayley had done, the prestige of District Magistrates as a body would be lowered. As regards the proceedings of the Subordinate Deputy Magistrates, the general feeling in Bengal was that few Deputy Magistrates, if placed in the position in which Babu S. C. D.

and A. K. B. had been placed, could have had the courage to act differently.

CASE NO. 16

The Contai Case—1889

In this case Bikanta Nath Hazra, a Pleader practising in the Munsiff's Court in the Sub-division of Contai in the District of Midnapur, had bought a plot of land near the Sub-divisional Court-house at Contai for Rs. 1,150, and after his purchase he had taken possession of the land as well as of the building and tank situated thereon. Subsequently a claim was asserted by the Sub-divisional Magistrate on behalf of the Collector of Midnapur, who represented the Government, that the tank in question was partly situated on Government land. In order, however, to avoid all litigation Bikanta Nath Hazra in October, 1886, applied to the Sub-divisional Officer of Contai to put an end to all dispute by settling at a reasonable rent that portion of the tank to which the Government had asserted a claim. Bikanta Nath Hazra after taking possession of the tank spent about Rs. 400 in excavating it with the knowledge of the Sub-divisional Officer. Certain personal differences having arisen between the Sub-divisional Officer and Bikanta Nath Hazra, the former reported to the Collector and Magistrate of Midnapur, Mr. V., that he disapproved of a portion of the tank being settled with Bikanta Nath Hazra. In April 1889, Mr. V., the Collector of Midnapur, on the suggestion of the Sub-divisional Officer objected to make the settlement of the tank with Bikanta Nath Hazra, whereupon the latter presented certain petitions to the Collector of Midnapur, urging that although the claim of the Government was based upon certain errors in a certain measurement paper, he was willing, in order to avoid all litigation, to take a settlement of the disputed tank at a reasonable rent. To these petitions Bikanta Nath Hazra received no reply until the 13th May, when Babu B. K. B. then

Sub-divisional Officer of Contai wrote to Bikanta Nath Hazra to say that the tank was to be kept *Khas* (in the possession of the owner) for the present, under the orders of the Collector, and it could not be settled with Bikanta Nath Hazra; the letter ended with these words: "Please therefore do not interfere with the tank in any way." Bikanta Nath Hazra, believing that the Collector of Midnapur had no authority to oust him from any portion of the said tank without a decree of the Civil Court continued to remain in possession of the tank. On the 21st May proceedings were instituted in the Court of the Second Deputy Magistrate of Contai under section 145 of the Criminal Procedure Code, so that the Magistrate might be in a position to decide summarily who was in actual possession of the tank. After the issue of the summons in this section 145 case, it struck the magisterial authorities that such a case must necessarily result in Bikanta Nath Hazra being maintained in possession of the tank and accordingly the proceedings were dropped. On the 23rd May, however, an order was issued by Babu B. K. B., Sub-divisional Officer of Contai, who purported to act as a judicial officer, calling upon Bikanta Nath Hazra to show cause within seven days why he should not be prosecuted under the Penal Code for having disobeyed the order contained in his letter of the 13th May, namely, "Please therefore do not interfere with the tank in any way." Bikanta Nath Hazra accordingly showed cause and contended that the order in question was not lawful and not one which he was bound to obey, and that therefore he had committed no offence under section 188 of the Penal Code on the admitted facts of the case. In as much as the Magistrate of the District had sanctioned and approved of this criminal prosecution, Babu B. K. B. refused to drop the case and passed the following order on the 15th June:—"Prosecute Bikanta Nath Hazra under section 188 Penal Code. Case made over to Babu S. P. Sircar (another Deputy Magistrate), for trial." At the time of passing this order in reply to a remark of Bikanta Nath Hazra's Pleader, that such a

prosecution would be vexatious and serve no useful purpose, the Deputy Magistrate remarked in open court:—"You do not see my peculiar position in the matter," undoubtedly referring to the prosecution having been inspired by the Magistrate and Collector of the District, Mr. V. The case was taken up on the 15th June by Babu S. P. Sircar, who fixed it for the 25th of that month, but subsequently intimated to Bikanta Nath Hazra that he should try to move the High Court and relieve him from the unpleasant task of trying such a case and gave him time for that purpose until the 10th July. Bikanta Nath Hazra thereupon moved the High Court on the ground that the prosecution was not *bonâ fide* and that its only object was, by harassing him, to compel him to abandon possession of the tank. On the application of Bikanta Nath Hazra, the High Court issued a rule, and on the 29th July, after reading the explanations submitted by Mr. V. made the rule absolute setting aside all the proceedings, at the same time remarking: "We do not think this prosecution was rightly instituted."

Case of this description though petty in character, are by no means uncommon, but in the vast majority of such cases the aggrieved person would rather submit to the dictates of the Magistrate of the District than bear the expense and trouble of moving the High Court at the risk of incurring the displeasure of the local authorities.

CASE NO. 17

The Serajunge Case—1891

Two Zemindars in the sub-district of Serajunge, named Chandra Kishore Munshi and Dinendra Nath Sanyal, had some altercations regarding their respective shares in the rents of certain lands in the Serajunge Sub-division of the District of Pubna. Dinendra Nath Sanyal claimed a portion of the rents which the tenants were paying to Chandra Kishore Munshi and managed to enlist on his behalf the sympathies of Mr. B., the Collector and Magistrate of the

Sub-division of Serajgunge. Mr. B. summoned Chandra Kishore Munshi to his private residence on Sunday morning, 7th June 1891, and told him that he would not be allowed to depart until he had made up his dispute with Dinendra Nath Sanyal, who was also present on the occasion, and until he had signed an agreement to that effect, adding that in case of refusal Chandra Kishore Munshi should be at once arrested and sent to the lock-up on a charge of hiring club men. Chandra Kishore Munshi was then detained without food for some hours and, seeing no means of escape from the prosecution with which he was threatened, he intimated in the afternoon his readiness to obey the Collector's orders. Mr. B. then wrote out the desired agreement which both parties signed in the presence of two police officers, who were called to witness the execution of the deed. Some days later Chandra Kishore Munshi on being requested to appear before the Registrar of Deeds, and acknowledge his signature to the agreement, refused to do so on the ground that the signature had been obtained by coercion. Thereupon Dinendra Nath Sanyal brought a civil suit to enforce the registration of the agreement and eventually obtained a decision in his favour from the Subordinate Judge of the District. From that decision Chandra Kishore Munshi appealed to the High Court at Calcutta on the ground, that the deed having been extorted from him by Mr. B. by coercion, he was not bound by law to register. The High Court, consisting of Mr. Justice Norris and Mr. Justice Banerjee, on the 17th August 1894, when the appeal came on for hearing, reversed the decision of the Subordinate Judge and made the following remarks :—

“There cannot, we think, be a shade of doubt that the defendant's signature to the agreement was obtained by duress and intimidation. Mr. B.'s evidence is conclusive on the point. We are of opinion that the defendant's signing of the agreement under the circumstances was not an execution thereof within the meaning of the Act; indeed it was no execution at all. Execution must mean voluntary execution, that is, the signing of the document of the executant's free will. It could not possibly be contended that, if Mr. B. had forced a pen into the defendant's hand, held it there, and, by