culture, is at a discount. Not only is it a fact that the student, the scholar and the learned do not generally receive their due in many ways; but their path, their labours and their ideals are shunned; and the more profitable avocations more enjoyable parts, more luxurious roles, more comfortable and convenient professions and positions are preferred. Man tends to become a money-making machine, a pleasure-seeking, ease-loving animal; talents hanker after limelight and want to have their worth in gold. In this struggle for existence, for eminence and ascendency among nations and individuals, the real student—the scholar—is becoming more and more conspicuous by his absence; hence the student in the man of action—as in Asutosh—is brought into prominent relief, and shines in solitary grandeur. In the inner depths of the towering personality and hero of incessant action that he was, in the man of many-sided activities and varied interests, in the prominent public man and complex character, lived the intellectual giant and profound thinker, the eternal student and versatile scholar, the lifelong devotee of Knowledge and seeker of Truth.

As we have seen, Asutosh developed and manifested, quite early, a remarkable taste for study and research and an uncommon capacity for mastering multifarious subjects, literary and scientific. His monumental library at his house,—which contains hundreds and thousands of books and periodicals on all possible subjects and is said to be worth Rs. 5.00.000

—is a standing testimony to this noble but quiet aspect of his life. And the range of his reading, the extent of his studies and the variety of his cultural tastes and interests were greater than almost all other men of his generation. He would as easily make random rambles in Archæology, Experimental Psychology, Comparative Religion and Philology, as in Physics, Geology and other scientific subjects. He would be as much well posted in Economics, Political Philosophy, Railway Finance, Politics, Anthropology, History, Geography, English Literature as in Pali and Sanskrit. He had also a working acquaintance with French, German, Arabic and Persian. He was as much well-versed in the ancient 'sastras,' Philosophical systems, Poetry, Drama, Rhetoric and Grammar of the ancient India as he was familiar with the latest advance and discovery in the scientific world. He was also noted for his profound love of Islamic Culture and Theosophy and was quite at home in Mahomedan Law and Jurisprudence, History and Philosophy. "The thing", writes Dr. I. J. S. Taraporewala, "that struck one most in him was his vast intellect as well as his imagination.···There were few subjects taught in this University about which he did not know more than an average professor, while in some subject···his knowledge was profound. The only Boards in the Post-Graduate Department, of which he was not president were those for Latin, and for Hebru and Syriac...but occasionally

he would come out with some suggestion regarding book or some scheme of studies which would set the 'experts' wondering where and how he knew about it." He used to set papers—along with others—for almost all the University examinations; he would also correct or modify the papers prepared by others in such diverse subjects as Mathematics, Physics, Economics, English, Sanskrit, Bengalee, Pali, History, Anthropology Philosophy, etc He would even adjudge theses submitted for the degrees of Doctors of Science and Philosophy and of Premchand Roychand Studentships—the blue ribbons of the University.

In this connection, we can do no better than quote from the article by the late Mr. A. C. Bose, himself a distinguished mathematician and Controller of Examination (C U.); says Mr. Bose,··· "His papers for the Matriculation, the Intermediate and Degree Examinations were models of what such papers should be...He would often take upon himself, in the midst of other pre-occupations, the arduous task of adjudging theses submitted for the degrees of Doctor of Science and Philosophy and the Premchand Roychand Studentship. ...But it was not Mathematics and Science alone that claimed his attention. Sanskrit and other languages, History, Philosophy, Anthropology, Literature, Economics, Ancient Indian History and Culture, and Experimental Psychology engaged his active interest. The writer well remembers occasions when he visited

Sir Asutosh at his house with business of the University ...On one occasion he found him dictating elaborate judicial judgment surrounded by books of legal lore. As soon as he finished these, he look up the University work of a *radically different nature* and soon became absorbed in it. He went through, word by word, a heap of question papers on an infinity of subjects, Mathematics, Physics, English, Sanskrit, Pali, History, Philosophy, Economics, Anthropology etc., modifying, moderating, correcting and putting each paper into a shape suitable for the intending candidates whose best interests he always upheld. And this was done not only in regard to the lower examinations but also in regard to the highest examinations of the University. So rapid and unerring was his decision, so clear and logical was his mind, so great was his erudition, so remarkable was his power of grasping at once the essentials of a case that the writer often felt,...that here was a man the like of whom he would never see again... Besides, he was the president of various Boards of Higher Studies created laterly."

But the extent and variety and depth of his scholarship and knowledge can be easily judged by a bare perusal of some of his speeches delivered on the Convocations convened specially for the purpose of conferring Honorary Degrees on eminent savants and scholars. In introducing these illustrious men, who have generally made their mark in the republic of science or art, Asutosh would give a lucid account

—and even trace the history—of their works and eminence ; and in so doing, he would manifest his own profound erudition and his deep interests in the subjects in which those scholars brilliantly shone. His Presidential speeches at the Asiatic Society in Bengal are also remarkable—for they reveal his interest and profound knowledge in the various branches of Indology. History and Anthropology, Archæology etc. which form the subjects of special study and research by various scholars ; thus his towering genius, in the words of Dr. Sylvain Levi, 'could survey the whole range of human sciences.'

It is highly interesting, in this connection, to note the various and numerous titles and degrees that were conferred upon him by his University as well as by the many learned societies, Indian and European The fact is, such a combination of degrees adorning a single name is unique, to say the least. Besides being Doctor of Law, he was Doctor of Science (D. Sc.) and Doctor of Philosophy (Ph. D.) of the Calcutta University. For his deep mathematical researches and knowledge, he was made a Fellow of Royal Asiatic Society of London and at the instance of the famous mathematician Prof. Kayley of Cambridge he was also created a Fellow of Royal Asiatic Society of Edinburgh and was thus, F. R. A. S. and F. R. S E. as well. Nabadwip Pandit Samaj—the society of the learned of Nabadwiph,—the oldest and most highly respected centre of

Sanskrit learning and scholarship in Bengal—conferred on him title of Saraswati—Goddess of Learning and Dacca Saraswat Pandit Samaj—another well-known learned society of Dacca, Second Capital of Bengal,— adorned him with the title of Sastra-bachaspati the master of the 'sastras.' And even the learned followers of Lord Buddha were not behind-hand in honouring one who was deeply learned in their sacred literature and philosophy and gave him the title of 'Sam-buddha-gama-Chakravarti—Master of the Buddhistic lore. It should be recalled in this connection that he was singled out for the unique honour of receiving bare-footed at the hands of Lord Ronaldshay at Government House, Calcutta, the sacred relics of Buddha and he had the privilege of taking them to the Mohabodhi Society at College Square—a unique recognition of his love of the Buddistic culture and philosophy.

This wide reading and unlimited study made his speeches and Convocation Addresses impressive and instructive and, compared with most of the speeches of the kind, they were revelations. No doubt, his perfect mastery of his language, English and Bengalee his dignified style and polished diction, his ennobling ideas and the force and lucidity of his expression were more innate than acquired; but the catholicity of spirit, constancy to higher principles of life, the breadth of outlook and length of view, clarity of judgment and of perspective, and lastly the loftiness of idealism and

faith which were the characteristic features of his personality and of his speeches and addresses, were due, not a little, to his unlimited reading, his varied study, his great culture, his vast intellect and his rare erudition.

How so great a man of action, one who must devote almost all his waking hours to, who had always to be literally buried in, various complex works, varying from the highest intellectual, to the most humdrum, dry routine labour, one on whose limited time enormous demands were made by many public bodies and institutions—how could such a man give so much time and leisure to reading and studying, is indeed a mystery. Here indeed, is a rarity, a first class paradox, almost a contradiction in human experience and human life, which is seldom to be met with. The student, the scholar, is scarcely the man of action ; the idealist is hardly the practical man ; more often than not the thinker is not the successful man of the world. But there have been personalities, few and far between no doubt, in whom these palpably contradictory combinations, have taken place. The man who, like Asutosh, reaches the zenith of prosperity and prominence, not by a freak of fortune or chance, but by fighting every inch of his ground, by toiling, struggling, breaking one barrier after another, has to keep his eyes fixed on his goal ; he has to be active and alert, he has to give undivided attention to, and keep his energy intact for, the

object he has set his heart upon. He has necessarily to keep the perennial student in himself at a safe distance; he has to give up the luxury of scholarship; he has, often to bid good-bye to the role of the thinker; for too much thinking, too much reading, which, as 'conscience, does make cowards of us all', are not generally accompanied with quickness of decision and promptness of action, not to take into account the enormous inroads they make upon one's limited time and energy. Hence it is that the world has seen comparatively few men who are great alike in the worth, in the volume, and in the variety of work and in the loftiness of idealism, in the wealth of ideas and thoughts and in the range of reading and in the depth of erudition; no wonder the public life of our country tends to be dominated by the noisy and ephemeral and sensational men; the fact is, the world knows very few really great and good men—men who are as much idealists as workers, as much leaders of thought as men of action—men who are ardent students as well as successful men. Nor is this true of our own poor country only—a subject-country as it is. The history of other countries—which are in the vanguard of present-day progress—is not exactly strewn broadcast with instances of this rare phenomenon in human life. The public life of England in the last century, affords an illuminating example of this rarity in the illustrious personality of the late Mr. Gladstone, a name to conjure with. It needs hardly be said that in his own country Mr. Gladstone was

the most prominent political figure of the last century, perhaps the most dominating and powerful personality of his generation. As the veteran leader of the great Liberal party in the hey-day of its glory, as four times Prime Minister of Great Britain at many critical periods in her history, Mr. Gladstone was undoubtedly a most active man of his times—a man, necessarily, of unceasing work. But, like Asutosh's, his life had another—and a very important—aspect, the life of student and the scholar, with an overpowering taste and aptitude for the ecclesiastical and classical literatures. The great authors, the poets and philosophers, of the past, were his constant companions; they supplied the source of his strength, of his sustenance and his solace; in the words of Lord Bryce, "without some such relief, his fury and restless spirit would have worn itself out. He lived two lives—the life of the statesman and the life of the student and he passed swiftly from one to the other, dismissing when he sat down to his books, all the cares of politics."

It can, in like manner, be asserted with equal force, that Asutosh also lived two lives—the life of the student and the life of the many-sided public man and he could as easily pass from the one to the other; he buried himself equally in heaps of books and in volumes of work; if his passion was work and action, his love of literature and science, of history and philosophy knew no bounds.

And the brilliance of his career, the glamour and powers of the highest judicial office that he adorned, the pre-occupations of his public life, his unique position and his personal triumphs, notwithstanding, Asutosh lived a life apart, "far from the madding crowd's ignoble strife" away from the noise and bustle of the multitudes and the heat and dust of the business of life, free from the din and clashing of interests in the current controversies—a life in the illuminating realm of his ideas, and in the boundless expanse of his thoughts—in the company of the immortal spirits, the master minds of the world—a life, in the light of his heavenly Ideal!

In the recent reminiscences of Lord Grey the famous Liberal Foreign Minister in Mr. Asquith's cabinet there is a very striking reference to President Roosevelt, which can be applied with equal force to Asutosh; says his Lordship, "The popular impression of Roosevelt conveyed by the Press was, of course, that of a very important and striking personality, but it was, nevertheless, in one respect, very inadequate....He was renowned as a man of action public opinion was fascinated by this quality; and it was not generally recognised that he was also remarkable as a man of reading and knowledge....The student is often a contrast to the man of action; and it is rare to find the two capacities possessed in very high degree and continued in one person. The man of great knowledge is apt to be so balanced in mind as to be sometimes hesitating

in opinion ..so perhaps it came to be overlooked that he had great knowledge..". Such was exactly the case with Asutosh; he occupied an enormous space in the active public life of his country; his activities in connection with his University began when he was only 24 and continued without interruption for a generation and a half; his epoch-making achievements in the domain of educational reform—his brilliant record as an independent and fearless judge and a learned and renowned jurist, his indefatigable energy, his force of character and the magnetism of his dynamic personality charmed and dazzled his contemporaries to such an extent that it was well-nigh forgotten that he was a versatile scholar—a man of great cosmopolitan culture and wide reading—an intellectual giant. The bare enumeration of his titles and degrees will give some idea of the extent, variety and depth of his knowledge. The late Pandit Issur Chandra Vidyasagar and the late lamented Lokamanya Tilak were among the few public men and patriots of our country, who were as great in the qualities of their intellectual calibre, of their service and sacrifice on the altar of their motherland, as in the depth of their scholarship and erudition; their literary works which are a standing monument to their learning and their scholarship will proclaim to the posterity what a great genius each of them was. But great as Asutosh was in the massiveness of his intellectual powers, and in the depth and range of his

scholarship and learning, he had to pay the penalty of being, moreover, a great—perhaps too great a—man of action, one who was, to all appearance, in a continuous whirlwind of work and labours. From his very boyhood, Asutosh developed considerable aptitude for original thinking and research—specially a great subtlety in solving intricate mathematical problems and in dealing with mathematical propositions but unfortunately for the student and the scholar in him, he preferred to devote all his energies and activities to the cause of his University. he did not care to shine in the world of science and letters. "It is a matter of deep regret that in consequence, he has not been able to leave behind, any original work which is commensurate with his massive intellectual powers," observed a very well-known and respected journal which did not at all spare him in its criticism when he was alive. It is really to be pitied, that barring his learned judgments, most of which are very authoritative and illuminating which in the words of Sir Dawson Miller (Chief Justice, Patna), 'were masterly expositions of law on every subject with which they deal,' many of his remarkable addresses and speeches, mainly delivered in the precincts of various Indian Universities, and his early papers and researches in the domain of mathematical science Asutosh could not, rather did not, leave any great original work which might have handed down his name to the unborn generations; as he himself said in a pathetic

strain in the course of his brilliant Convocation Address in 1914, "to the University concerns, I have sacrificed all chances of study and research." But in spite of the absence of any great original work commensurate with his versatile genius, his uncommon erudition and his varied and vast learning, his 'massive intellectual powers' did not fail to impress or attract eminent scholars and savants, writers and thinkers belonging to all communities. India has produced, in recent times, greater jurists, greater philosophers greater mathematicians and greater scholars (masters in their own particular department or departments.) But as the veteran editor of 'Modern Review' says in his Bengalee journal, "It is not true to say that the world has really seen any man whose genius is really all-pervading it is also deviating from bare truth to hold that the modern world can boast of any one who is truly the master of all the sciences. But it is not violating truth to say...that no one in India has been seen to possess the great gift—the supreme gift by means of which Asutosh carried on, with profound erudition, his complex and multifarious learned labours in so many departments of human activities and thought". Dr. R. Shamasastri also eloquently says, "At once scholar, orator, lawyer, judge educationist, patriot, Sir Asutosh united in himself the qualities which are rarely found in combinations He had acquired a thorough mastery over many departments of learning. His versatile genius

enabled him to preside over various Boards of Studies in Arts and Sciences and evoked admiration of experts. His brilliant address to the second Oriental Conference was a masterpiece not likely to be forgotten by those who had the privilege to listen to it." "His genius was all-pervading" wrote Dr. Paranjpye, "and a look at the lists of subjects on which he could speak with authority takes one's breath away. Such an intellectual giant has not been seen in India during the last hundred years." Dr. Sir P. J. Hartog, speaks of him as a man of "vast capacities and encyclopædic learning...yet his mind was open to all ideas from whatever source they came, and few Westerners have had a more catholic mastery of Western thought, and for him thought meant not only contemplation but action." It was really a marvel, a profound mystery—this 'mastery of Western thought'; he never visited Europe; so he had no opportunities of judging—at first hand and in European soil—European society and civilization, the working of various political institutions and social and industrial systems, the many seats of intellectual activities and homes of original thinking, as well as the great thinkers and scientists working in their studies or laboratories—the nerve-centres of European thought and culture. But no one in India—few abroad—possessed a more perfect mastery of the fundamental principles and ideals, the governing ideas and concepts that lie at the root of, and are rock-bottom of, European thought and

culture. And in his public speeches and addresses—in his private talks and discussions—he gave ample evidence of this 'mastery' of 'Western thought' nay, of 'the whole range of human sciences'. One more quotation—from that 'prince of journalists' Mr. Pat Lovett. "It was universally admitted by friend and foe alike, that he was the dominant giant without compare.··· The Guzratee saint had not the genius for rule, the vast erudition comprising all the humanities which marked the Bengali jurist and educationist as a man among men···his knowledge of human nature was profound ·· his driving force was based on a combination of Eastern and Western cultures in which there was ever present an unerring sense of the norm.···The Bureaucracy may thank its stars that he gave up to the Calcutta University the genius which could have made India a nation in the true sense of that hard-worked and illused phrase." And it is admitted that on all hands, had he decided to follow his natural intellectual bend and inclinations, if it had been given to him to answer the call of the scholar and the thinker in him, he might well have extended the bounds of Knowledge and broadened the horizon of Truth. He might have ended his life as one of Carlyle's heroes as men of letters or of science. Alas! that was not to be; who can go against the decrees of Fate!

Mathematics, as is well-known, was Asutosh's first love; it is in the domain of the mathematical

study and research, that his genius shone the brightest; it is in the realm of this fascinating and all-embracing science that he won abiding fame and glory in India and in Europe; the little that he left behind in some occasional papers and solutions are really worthy of the highest talents and will, surely, hand down his name to posterity as a foremost mathematician of his time. Along with his aptitude for numerous subjects, literary and scientific, he gave, as we have already seen, unmistakable proof of his extraordinary talent in mathematics—quite early in his boyhood; while yet a school boy he was a member of London Mathematical Association—by dint of the remarkable contributions of his school days; as a Matriculate he began to devote himself to research and had appreciated its value. In those days research was conspicuous by its absence amongst even the advanced and meritorious students. Few among the brilliant graduates took to study and research as a serious occupation; of course there was no such facilities to carry on reasearches as exist today. And this absence of research work and original thinking and contributions even among the most talented graduates formed the subject-matter of severe criticism at hands of various critics* in connection with the debate in the Imperial Council on the

* Mr (afterwards, Sir) Alexander Pedler said.—"Have the Indian University Students...shown any aptitude for original research....." —Proceedings of the Imperial Legislative Council 1904.

Indian Universities Bill. But Asutosh proved the exception to this general rule, while yet in his school; he sent to England a paper on the 'direct' demonstration of one of Euclid's '*indirectly*' proved proposition and it was published in the 'Messenger of Mathematics.' In 1886 he contributed to the 'Quarterly Journal of Pure and Applied Mathematics' a remarkable paper on Elliptic functions. He was of opinion that "the proof of the well-known Addition theorem for the first kind of the Elliptic integrals should follow directly from the *intrinsic* properties of the Ellipse and he showed how this could be very elegantly effected by means of confocal conics. The note closed with an "imaginary transformation" suggested by his investigation. Prof. Arthur Cayley said, as regards this paper, it was remarkable how in the investigation of Asutosh, a real result was obtained by the consideration of an imaginary point.*" In his paper on the Differential Equation of a Trajectory, Asutosh—he had just taken his M. A.—took up the problem of ascertaining the oblique Trajectory of a system of confocal Ellipses which was first solved by Mainardi, the Italian Mathematician. But "Mainardi's solution was so complicated that it was a hopeless task to trace the curve from it; indeed it was so unsymmetrical and inelegant that Professor Forsyth in his Differential Equations did not give the answer." Asutosh arrived at an elegant solution by means of

*Mr. A. C. Bose in the "Calcutta Review."

which "Trajectory was represented by a pair of *remarkably simple equations* which admitted of an interesting geometrical interpretation". Dr. Andrew Forsyth, the world renowned mathematician, quoted Asutosh's solution of Mainardi's problem in his latter edition of Differential Equations. Let us give some of his original Mathematical Papers which had won him fame and admiration at the hands of recognised scientific societies* and learned men all the world over : 1. On a Geometrical Theorem ("Messenger of Mathematics"). 2. Extensions of a Theorem of Salmon's (Ibid). 3 Note on Elliptic Functions which has been referred to in Ennepper's Elliptische Functionen ("Quarterly Journal of Pure and Applied Mathematics). 4. Monge's Diffirential Equation to all Conics (Journal of the Asiatic Society of Bengal). 5. Memoir on Plane Analytical Geometry (Ibid) 6. On Poisson's Integral (Ibid). 7. On the Differential Equation of all Parabolas (Ibid). 8. Geometric interpretation of Monge's Differential Equation to all Conics which has been quoted in the famous work—Edward's Differential Calculus (Ibid). 9. On a Curve of Aberrancy (Ibid). 10. Application of Gauss's Theory of Curvature to the Evaluation of Double Integrals. Besides these, he contributed, for years, to the 'Educational Times' of

*For these papers and his mathematical researches he was appointed a Fellow of Royal Society, Edinburgh and a Member of Royal Irish Academy, as also of the Mathematical Societies of London, Edinburgh, Paris, Palermo and New York.

London, his papers and solutions in regard to the outstanding problems set from time to time by eminent Mathematicians of Europe; many of these problems were really so many challenges and remained unsolved for years together; Asutosh's contributions and solutions, in this respect, won him widespread admiration and established his title to be ranked among the foremost mathematicians of his generation. In 1908 he founded the Calcutta Mathematical Society; like the brilliant association of scientists called into being by that illustrious countrymen of ours, Dr. P. C. Roy—the Calcutta School of Chemistry—this society of mathematicians under his fostering care and with the labours of a band of shining scholars brought together by his personality, has been contributing to the progress of higher study and promotion of research in mathematics; it has, moreover, worked its way to a recognised position in the Mathematical world. We are sure we have said enough to show the natural bend of his genius, its intrinsic excellence and the abiding worth of its limited products. "I first heard of him" writes Dr. R. P. Paranjpye, the famous wrangler and public man, "as the author of a book on Geometrical Conics in 1894; and we, students of Mathematics, felt proud of our countryman on reading a reference to him in Edward's Differential Calculus as having found a geometrical interpretation of the complicated differential equation of the fifth order of the general

Conic. If Sir Asutosh had made up his mind to devote himself entirely to the study of mathematics, he is sure to have secured a place in the front rank of world-mathematicians." Let us now refer to what was his most important work in the realm of mathematical study and research—his paper on Monge's Differental Equation to all Conics. Let us again quote from the late Mr. A. C. Bose, himself a prominent Mathematician and Fellow, Calcutta University ; says Mr. Bose : ..."Those who have studied Differential Equations, specially in Boole's work, have come across in the early part of it, the General Differential Equation to lines of the second order, an equation of the formidable character. This Differential Equation was first arrived at by the great French Mathematician Gaspard Monge, Compe de Peluse in 1810 and Boole had added the remark :—'But, here, our powers of *geometrical interpretations* fail and results such as this can be scarcely otherwise useful than a *registry of integrable forms.* Mr. Mookerjee not only dealt with various methods of deriving the Mongian and interpreting the same... the characteristic "permanency of the form" of the Mongian.. gave a critical review of the geometrical interpretation of it by such eminent Mathematician as Prof. Sylvester. He concluded that Sylvester's was not the geometrical interpretation of the Mongian as contemplated by Boole and what Boole sought for in vain *was yet to be discovered.* This was in 1887. In 1888 Asutosh had solved

the problem of geometrical interpretation of the Mongian!—(he was only 24 now)···Since Boole's now famous remark about the failure of our powers of geometrical interpretation of Mongian, two attempts have been made, one by Lt. Col. Allan Cunningham R.E. and the other by Prof. Sylvester, to make good the failure. ·· He (Asutosh) showed that the geometrical interpretation given by each of the two Mathematicians mentioned above, was not the true interpretation contemplated by Boole. He pointed out that Cunningham's was the geometric interpretation, not of the Mongian, but one of its first five integrals which Asutosh actually calculated and that Sylvester's was out of mark as failing to furnish a property of the conic as would lead to a geometric quality which vanishes at every point of every conic. Asutosh himself arrived at the following interpretation of the Mongian:—'The radius of curvature of the Aberrancy curve vanishes at every point of every conic' and he showed all the tests which every geometrical interpretation ought to satisfy...this was a definite and remarkable achievement. The geometric interpretation sought for by the mathematicians for thirty years, since Boole wrote his famous lines, was at last found by Asutosh and the justice of the criticism was acknowledged by men like Prof. Arthur Cayley whom even Sylvester called the High Pontiff among Mathematicians. Cayley remarked about this criticism of Asutosh— "It is, of course, all perfectly right"···Cunningham wrote, "Prof. Asutosh

Mukhopadhyaya has proposed really excellent mode of geometric interpretation of differential equations in general. This is the most *direct* geometrical interpretation yet proposed." Mr. A. C. Bose adds "Asutosh's solutions···made it clear that here was a geometer of great power who, would, if left untrammelled by other pursuits, win a prominent place among the world's mathemeticians." If these random rambles into, if these occasional contributions of his early youth, towards the Mathematical science, won him so striking an European reputation and established his title to be ranked among the prominent mathematicians of the age, who knows, the measure of his unrealized greatness and the height of his unattained eminence! What laurels might not have fallen to his lot had he cared to follow this natural bend of his genius ! but alas ! that was not to be. He elected to be a man of action –to be a serving, sacrificing, burning patriot, plodding, fighting, working his weary way, all his life. And great, indeed, was the price that he had to pay for his consuming love for his 'almamater', for his patriotic fervour, for his passion for patriotic work. As Dr. C. V. Raman truly remarks..."Bengal in gaining a distinguished Judge and a great Vice-Chancellor lost in him a still greater mathematician. If his clear incisive intellect, wonderful memory and tireless energy had been devoted to a lifetime of mathematical research, he might have stood higher in the mathematical world than any of his contem-

poraries; what he did accomplish in the few short years he devoted to the subject is still worthy of study and an encouragement to the present generation of aspirants to mathematical fame in India....."

We can not, however, close this part of our study by emphasising what is, to all appearance, a melancholy aspect of his life; if he did not leave behind, any great original work in the domain of letters or science, commensurate with his genius, his industry and his erudition, surely he left, as his lifework, a superb structure, at once monumental, massive and magnificent—a centre of an intellectual activities, a nursery of scholars and thinkers, of future leaders in life and in society—a University, living and thriving. which is really 'the crown of our national edifice.' No doubt it required the sacrifice of the profound and versatile scholar, of the intellectual giant and genius in mathematics; but surely the sacrifice was not uncalled for—perhaps it was not too great; India which has produced in recent times such intellectual giants as Ranade and Tilak, Ramanujum and Rajendra Lall, Rash Behari, and Surendra Nath—not to speak of the living great, can not boast of another Asutosh, who could have done what he did; for he and he alone possessed the rare combinations of diverse qualities and attainments that he placed at the service of his 'alma mater.' To have thought and worked out the multifarious plans and schemes, to have constructed

and matured the vast organizations and agencies, to have conceived and executed the farreaching policies and ambitious programmes, to have safely steered the immense ship in uncharted waters, all these and more, in furtherance of the highest studies and researches—required not only the 'patience of Job and the wisdom of Solomon'...but also the gigantic brain of the greatest intellectual giant that he was. To quote Dr. Raman again, it is really, 'a matter of astonishment that it has been at all possible to bring together such a body of workers, to reconcile so many conflicting aims, ideals and interests' to advance the cause of the highest studies and researches in so many different and diverse departments. It was possible in Calcutta—and not any where else in India—mainly because there was here such a colossal brain—so great an intellectual giant at the head of the immense and expanding organization. "To have" truly said Dr. Taraporewalla, "such a gigantic brain at the head of all departments led to a correlation and co-ordination of the various parts which would have been impossible without him." And we have nothing to be sorry for the result; for the result was, in the words of Dr. Sylvain Levi, 'a new generation of young scholars as devoted as their forefathers to the search of truth, but able to search, on new lines;' and the new generation that sprang up has taken up the torch which he lighted—the torch of Truth and Knowledge, of

Progress and Freedom—the torch which is contributing its quota to the world illumination. So it will not do merely to regret the absence of any great original work in the world of letters and science; we have much to rejoice over the fact that endowed as he was with manysided and massive intellectual powers, destined as he was to be the greatest intellectual giant of his generation, his greatness lay in his 'sympathy for scholars', in his 'enthusiasm for learning,' in his 'power to communicate them to all near him'—his greatness lay in his capacity to infuse into all around him his own lofty spirit, his own sturdy patriotism, his own undying idealism. And as Emerson says, "this is the key to the power of greatest men—their spirit diffuses itself."

CHAPTER VII.

The Brilliant Judge.

His pre-eminent position in the premier High Court – His brilliant record – The importance and intrinsic worth of his judgments – Some of them referred to – His last memorable judgment, a historic one – His criticism of various parties – Refutation of the Stephens (J.)'s interpretation of Sec. 34 of Indian Penal Code, his search for principles and precedents from far and near, his own authoritative interpretation and terse comments – His remarks on the trial – His clear interpretation and disapproval of the limited jurisdiction created by Clauses 25 and 26 of the Letters Patent—His reference to the British procedure of invoking clemency of the Crown – His reasons for dismissal – Striking tributes of the Bench and the Bar as well as of the Press on his retirement – Factors contributing to his singular success on the Bench – Estimate of Sir Sivaswamy Iyer.

The High Court of Judicature at Fort William in Bengal—as the Calcutta High Court is called—enjoys a pre-eminent position among the highest Courts of Justice established by our rulers in India; and the factors contributing to this pre-eminence are both historic and intrinsic; Calcutta has not only been the premier city and, until quite lately, the capital of British India; but it is the 'London of the East'; while these factors have invested its High Court with an importance all its own - the galaxy of legal talents and intellects, the brilliant jurists and lawyers, both European and Indian, who have sat on its Bench or laboured at the Bar, have shed a lustre upon it; they have

enhanced its reputation and its prestige and created a tradition that is almost unexcelled in the legal world of India. And in the illustrious role of the Advocates and Vakils who have upheld its lofty tradition and have adorned its Bench or the Bar, there are few, whose careers in it were more brilliant, and who were greater jurists than Mr. Justice Asutosh Mookerjee; with Mr. Justice Dwarka Nath Mittra and Sir James Colvile, Sir Barnes Peacock, Sir William Garth, Sir Guroodas Banerjee, Sir Ramesh Chandra Mitter, Sir Chandra Madhab Ghosh, Sir Laurence Jenkins and some others of their calibre, Asutosh may justly be said to be one of the brightest ornaments of its Bench.

A much misunderstood, much criticised man as he was, thanks to his manysided activities and interests and his virile and versatile personality, Asutosh built, by dint of his strenuous exertions and unrivalled erudition, his unique independence and legal acumen, a reputation second, to that of none of his brother Judges throughout the length and breadth of the land. The fact was his pre-eminence as a Judge and a jurist received universal recognition and there was a consensus of legal and judicial opinion that not only did he maintain but also raised, the high tradition of the premier High Court of India, handed down by his some of his illustrious predecessors on the Bench; it is admitted on all hands—and even bitterest critics and worst antagonists do not deny—that he

upheld the claims, and proved to demonstration, the ability and fitness, of his countrymen to hold and adorn the highest offices, independently of the British rulers—in the judicial sphere at any rate. It is for his biographer to deal adequately with his stupendous labours and his remarkable achievements as a Judge; and none but an erudite lawyer can do justice to them; we can only touch upon this aspect of his public life. No student of contemporary events in India, no one, who takes any interest in the affairs of this country or in the activities of its great men, not to speak of those who can boast of some acquaintance with the proceedings of the High Courts, during the long period of Asutosh's career on the Bench, can fail to come across or be impressed with his monumental judgments. And many and various important cases it was his lot to try; naturally enough, very many difficult and complicated questions of law and procedure, numerous problems of succession and inheritance, innumerable matters of supreme importance to the state or to the individual, he had to deal with; and in his treatment of these, he left nothing to be desired but won universal admiration and appreciations of his striking ability and his unique independence. The fact is his is a name to conjure with, in the legal world and so far as Bengal is concerned, no one commands—now that he is dead and gone—greater admiration and homage than Justice Asutosh Mookerjee.

We have seen that Asutosh's father meant his son to be a High Court Judge; Asutosh himself aspired, quite early in his boyhood, to the Bench; but perhaps seldom, if ever, did he, in the highest flights of his infant fancy, dream that he would, in after life, leave such indelible marks of his labours in the annals of the High Court of which he was to be the a central figure as long. The immense popularity and the universal fame that he acquired and enjoyed may be judged by the fact that though Law is an intricate, learned and technical subject, his judgments attracted the greatest notice and were read and reread all over the land, and won him a name for independence and integrety, erudition and originality, fairness and justice, which was and which is the envy and admiration of one and all. His activities on the Bench, his manly and judicious conduct of the sensational as well as lesser cases, his calm and quiet temper, his unperturbed judicial mind, his sense of equity and fairness, his spirit of independence and dignity, and last but not least, his genial and endearing personality are part of the tradition of the premier Court of Justice in India and serve as a great example to his learned brothers on the Bench. The Hon'ble Sir Dawson Miller, Chief Justice of Patna High Court referred to him thus. ..... "Although, more eloquent tongue than mine will, at the proper time, do justice to his achievement and character, I may say that the name of Sir Asutosh Mookerjea is a household word

throughout the High Courts of India. His judgments were invariably lucid and a masterful exposition of law on every subject with which they deal ..... They have only to be quoted to command universal respect."

Perhaps it may be said without fear of contradiction and without any disparagement to his learned brothers belonging to the various High Courts that few deserved, and none in greater degree, so great a respect as to be universally cited as authority ; and the reasons are not far to seek ; Asutosh was not only one of the greatest intellectual giants and a most profound and versatile scholar of his generation—a veritable walking encyclopaedia; he was, moreover, a prince among men and a prince of judges for that ; his unique spirit of independence and fairness, the clarity of his vision and breadth of his outlook, the sureness of his grasp of the fundamental principles and the firmness of his grip of actualities of his case at hand, the wealth of his erudition and fund of his learning as well as his profound researches and deep dive into the region of authorities and sources and precedents, combined with his sturdy common sense and never-failing sense of equity, made him one of the greatest jurist-judges of our land. Like his famous Convocation Addresses, his judgments are remarkable in many respects ; they reveal at once, the makings of the jurist, the eminence of the Judge as well as the greatness of the man ; on the one hand, his judgments are verily the

monuments of his legal scholarship and wisdom, his unrivalled knowledge of, and his unsurpassed capacity to apply, the fundamental principles underlying the mass of unwritten law, local usages and practices of our society and our country; on the other hand, they constitute a standing testimony to his ability and his anxiety to deal with one and all, to deal between man and man, between an individual and the society or the state or a corporation, to deal with the rich and the poor, the high and the low, and to deal with them all, fairly and squarely. He never feared the frowns of the powers that be ; nor did he care for their favours ; he always called a spade a spade, in no uncertain terms and gave, the devil his due, and rendered unto Caesar what was Caesar's; he was the spirit of fairness and justice and independence incarnate as it were, on the Bench.

But his judgments have yet another and not a less striking aspect ; in most of these he had occasions to lay bare the subtleties and expound the complexities, of law, to solve various intricate problems and to deal with many difficult questions; none the less did he express himself in such lucid and straight forward manner, put them in such dignified, easy and attractive way that they appealed to the public in general, besides the lawyers ; it is no wonder that his judgments afford profitable and interesting reading even to those who are stangers to Law ; really is rebounds to his lasting glory that they are not only masterpieces as ' lucid expositions of law ' but are also

unexcelled in force of exposition, in treatment of authorities and precedents in wealth of erudition and researches, in breadth of view and common sense.

It is difficult to distinguish between his important judgments and emphasise some and relegate others to the back ground ; most of them are equally striking Let us, however, refer, at ramdom, to a few of the important cases that he had occasion to deal with in his later years. Firstly let us take the case of Chandra Kanto Ghosh versus the Calcutta Improvement Trust. This was of considerable imporrance to the public and attracted a good deal of attention in the press. Calcutta Improvement Trust was and is a very powerful body, patted on the back by the Government as well as by the European press and the public in Calcutta ; and Mr. C. H. Bomphas, its original Chairman was their prizeboy ; rightly or wrongly they decided to have the land of one Chandra Kanto Ghosh ; against their decision, this gentleman brought a suit in the High Court, on the ground that his land was situated at a safe distance from the line of their operation and so the Trust could not claim his land in that position. But Mr. Justice Greaves who tried the case gave his decree for the Trust. Against this decree, an appeal was preferred by Chandra Kanto Ghosh and it was heard by the Appellate Bench presided over by Mr. Justice Mookerjee, who upheld the contention of the poor man and decided against the all-powerful Trust.

This decision and judgment of Sir Asutosh

Mookerjee were hailed with no little relief, and received with enthusiasm, by the whole Indian population of the city, as they sought to curb down the overzealous activities of the Trust in improving many quarters of Calcutta out of existence and making hundreds and thousands of the poor middle class people homeless ; it must, mereover, be borne in mind that the immense resources and enormous influence of the pampered Trust, were requisitioned and hurled against the puny efforts of a poor citizen to save his hearth and home from demolition. No doubt, the judgment of Mr. Justice Mookerjee was, ultimately reversed by the Privy Council—for it was contended that it cut the very ground from under the feet of Mr. Bompas—the Indian public and the Indian press refused to accept the Privy Council's decision but clung to Mr. Justice Mookerjee's, as true and right.

Another case of importance to the public came before him sitting in Appellate Bench. A respectable gentleman at Howrah—an Executive Engineer P. W. D.—and one or two of his people were severely assulted and actually laid violent hands on by the police ; the gentleman brought a criminal case and some members of the police got a few years' regourous imprisonment ; but an appeal was preferred and the sentence was prayed to be reduced ; Mr. Justice Mookerjee, however, rejected the appeal, refused to reduce the sentence, held it to be lenient instead of being stiff, complemented the complainant

—the Executive Engenier—on his 'public spirit' in bringing the case against the ruthless and omnipotent police and passed a severe stricture upon the latter. Sir Asutosh was called upon to try, along with Mr. Justice Hoolmhood and Sir Laurence Jenkens C. J.—who between themselves, constituted a Special Tribunal to try one of the most sensational cases—the Musulmanpara Bomb case.

This case was of peculiar significance and of particular importance, coming as it did in wake of similiar other cases; it was construed to be directly due to, and proof positive of, a well-organized and widespread revolutionary movement of criminal patriotism or anarchism, working underground and taking to bombs and pistols, indiscriminately; as it deserved, the case was elaborately prepared, ably conducted and stoutly fought by the Government; the accused—who was an educated Bengali youth—was defended by Mr. Langford James. The special Tribunal acquitted the accused and set the poor young Bengali at liberty; Sir Asutosh delivered a very short but concurring and crushing—judgment of a few sentences only, in which he mercilessly exposed the unscrupulous ways of the police and pithily, sternly remarked that their attempt to 'connect' an innocent youth with 'a dastardly crime' had absolutely failed. This short judgment—one of the very shortest—was characteristic of the man and indicative of his firm attitude at the inefficiency and high handedness

of the executive and the police, of his stern unbending independence and his uncompromising and absolutely fearless nature. It is no use multiplying instances. Let us, refer at some length to his last judgment, delivered on the eve of his retirement from the Bench. This learned and elaborate judgment of his is said to be a masterly pronouncement on intricate points of law and procedure; it is really a characteristic and striking judgment from more than one point of view. Not only does it display the extraordinary fund of erudition and intelligence of the jurist-judge; his singular thirst and characteristic search for authorities and precedents amidst a labyrinth of findings of the highest Courts in India and in a mass of decisions of British and even American Courts; his unique industry and unsurpassed knowledge of law and case-law together with his illuminating comments thereon; but also does it contain fair and unequivocal criticism of the conducts of the defending Counsel, the Advocate General and of the trial Judge! It is not, however possible, within our limited scope, to attempt to do full justice to this masterly judgment, which is typical of his.

The case is known as Sankaritola Post Office Murder Case, better still as Emperor versus Barendra Kumar Ghosh. The accused, a young, newly married man scarcely out of his teens, was charged with murdering, with a revolver, the Post Master of

Sankaritola Post Office, Calcutta, not alone but in company of three or four other unknown persons. He was committed to Sessions and was tried and sentenced to death by Mr. Justice Page. But before the trial took place the Counsel for the accused saw the Judge privately in his Chamber; he said to His Lordship, that they 'felt the case to be a difficult one' and asked him whether he would treat the accused leniently if the accused pleaded guilty to the major charge. Mr. Justice Page could, however, give no assurance or information as to what he would do at the trial. Then a certificate was obtained from the Advocate General, Bengal under Clause. 26 of the Letters Patent, for a review of the case; and the application for review was heard by a Full Bench presided over by Sir Asutosh who delivered a lengthy and a very interesting, instructive and illuminating judgment. As we have just said, this last and most remarkable judgment of his reveals at once the Judge, the jurist and the man in the proper perspective; as a Judge, he was bound to move within the four corners of Law; as a jurist he outstript its narrow limits, but went far beyond, the four corners of Law—the particular Indian Law that it was his duty to abide by—and investigated into the sources and precedents, instituting comparisions and analogies from far and near; in a comprehensive survey and critical review of these, he not only took cognizance of most of the relavent judgments

and findings of all the High Courts and Chief Courts in India and Burma but of those of British and American Courts. And he did not even stop at merely referring to famous findings of Indian Judges and to those of numerous jurists as also to other authorities, British and Indian, he went so far as to offer his comments and criticisms on the important provisions and procedure of law as it stands at present; while reviewing the actions of varies parties in the trial, he criticised them—the defending Counsel, the Advocate General who happened to be the power behind the throne in Bengal, as well as the trial Judge, a newly appointed British colleague of his on the Bench—in a strict and striking, dignified and impartial way, and this showed the metal the man was made of; but no one who has even a cursory reading of this interesting judgment will deny that he has been fair to the respectable, and high personages he had had occasion to criticise; for he referred to various cases in the British Courts where the advocates lost faith in their case or were convinced of the guilt of the accused and saw the trying Judge. But he found no real analogy between the present case and those in the British Courts; hence he criticised the conduct of the defending Counsel as well as of the Judge, a colleague of his on the present Bench in these words, "...This much appears to me to be incontestable that it is not his (defending Counsel's) duty to approach the trial Judge and to asprise him that in his opinion the

man whose fate has been entrusted his care, has no defence to make. I venture to add, that if, as trial Judge, I had been placed in such predicament, I would, without hesitation, have reported the Counsel concerned to the Chief Justice, for deciplinary action, and would have asked to be relieved of the duty of participating in the trial and in passing sentence upon a man whose Counsel had previously assured me that there was no defence to make..." The Advocate General came in for his share of criticism, for granting a certificate for review of the case under Clause 26 of the Letters Patent, exparte and without sufficient materials. "The fact remains" proceeded Mr. Justice Mookerjee, "that statements were made in the petiiont presented to the Advocate General, which are either inaccurate or are not supported by the evidence on record...In my view, the certificate of the Advocate General···should be granted after he has heard the representatives of the prisoner and of the Crown and has carefully considered all the available materials whose accuracy has been verified by Counsel or other responsible persons. If this course has been pursued in the present case before the certificate was granted, there would have been no occasion for an unseemly dispute as to the weight to be attached to the certificate". To cut a long story short, we will refer to only three points in this monumental document. The most important of these is Mr. Justice Mookerjee's elaborate and

learned discources and detailed references as to the true construction to be put upon Sec. 34 of the Indian Penal Code in view of the overwhelming volume of authoritative legal and judicial opinion of British and Indian Courts; second is his admission that the accused had not had a fair enough trial in the Sessions Court ; thirdly, his consideration and interpretation of the Clauses 25, 26 of the Letters Patent under which a review or retrial was sought. Section 34 of the Indian Penal Code runs thus : "When a criminal act is done by several persons, in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone." The Advocate General "certified that whether the direction and the nondirection (as specified by him), amount in law to misdirection, should be further considered by the Court" ; and this direction or nondirection was contended to be contained in these passages of summing up by Mr. Justice Page. "In this case, if these three persons went to that place with the common intention to rub the Post Master, and if necessary, to kill him, and if death resulted, each of them is liable, whichever of the three fired the fatal shot. If you come to the conclusion that these three or four persons came into the Post Office with that intention to rub, if necessary to kill, and death resulted from their act, if that be so, you are to find a verdict of guilty. I say if you doubt that it was the pistol of the accused

which fired the fatal shot, that does not matter. If you are satisfied, on the otherhand, that the shot was fired by one of those persons in furtherance of the common intention, if that be so, then it is your duty to find a verdict of guilty." It was contended, proceeded Mr. Justice Mookerjee, that thus a wrong construction was put upon the scope and effect of the Section 34 of the Indian Penal Code and in its support, the judgment of Mr. Justice Stephens in Emperor versus Nirmalkanta Roy was relied upon ; the latter (Stephens. J.) stated his views and findings as follows : "A and B set out to murder C. Both fire pistols at him, A hits him and kills him, B misses him. Does B's act come under Section 34?...I hold as the act in question was the killing of C and as that was represented as having been done by A alone, the section did not apply to the case." Mr. Justice Stephens's was opposed to the views held on the Section by the judicial authorities as well as to those of Mr. Maine ; but he believed that these latter view is wrong, and proceeded to attempt a historical and critical survey, in order to discover the 'source of error.' Mr. Justice Mookerjee quoted at length from Mr. Justice Stephens and made a most elaborate, most learned and impartial analysis and review of the numerous judicial and authoritative legal opinions, and views on the Section —which form the characteristic features of his judgments and disclose his unique and encyclopedic knowledge and erudition in law

and jurisprudence ; His Lordship continued,. "This analysis' –which we need not go into in detail— "of the course of decisions in the different Courts which administer criminal justice according to the Indian Penal Code disclosses a deep-seated divergence of judicial opinion as to the true interpretation of Section 34. The apparent simplicity of the language of the Section is delusive, as it furnishes no test to determine when a particular criminal act may be said to have been 'done by several persons". There we have the jurist rising above the limitations of the law and laying his fingers on those limitations and defects, not content to live, move, have his being within the four walls of the law as it stands. "In my judgment," held Mr. Justice Mookerjee 'the exposition given by Stephens J, places too narrow an interpretation upon Sec. 34 and that the question whether a particular criminal act may be properly held to have been 'done by several persons' withen the meaning of the Section can not be answered regardless of the facts of the case.....the balance of reason and authority is, in my opinion, against the limited interpretation placed by Stephens J. on Sec. 34 in Emperor *v.* Nirmalkanta Roy and I must hold accordingly that the first point specified in the certificate of the Advocate General, that direction, erroneous in law, was given, can not be sustained." The real truth was not that the summing up was 'inadequate,' specially regard being had to the 'perfunctionary

cross examination' but that the 'defence theory has not been laid in the evidence'; and His Lordship had serious doubts as to whether, the accused could be said to have had 'a fair trial'; that the cross examination and consequently the defence, was most unsatisfactory—and it is no part of His Lordship's business to find out if this was due to the advice the Counsel for the accused received at the hands of the trial Judge, the advice, namely 'that they were not entitled to set up any substantive defence in opposition to the case of the Crown'—may be judged by the fact that material point was elicited from the Crown witnesses not by cross examination but in reply to the Court's query; and he rightly held such grave defects "in the conduct of the defenee case can not in such circumstances be remedied except by retrial if such retrial is permissible under the law." And to ascertain how far—if at all—the High Court enjoys the power, and has the jurisdiction to order the retrial nothing short of which was the remedy in the present case and, is so, in very many cases, brings him to a consideration of the Clauses 25 and 26 of the Letters Patent which define the powers and jurisdiction of the High Court in these circumstances. In the words of Sir Asutosh, 'Clause 25 ordians that there shall be no appeal from any sentence or order passed or made in any criminal trial before the High Court as a Court of Original Criminal Jurisdiction. The trial Judge, however, is granted discretion to reserve

any point or points of law for the opinion of the High Court. Clause 26 contemplates in addition a case where the Advocate General has certified that in his judgment there is an error in the decision of a point or points of law decided by the trial Judge or that a point or points of law which has or have been decided by the trial Judge should be further considered. Clause 26 provides that in both the classes of cases that is, where a point of law has been reserved by the trial Judge, or where a certificate has been granted by the Advocate General, the High Court shall have full power and authority to review the case, or such part of it as may be necessary, and finally determine such point or points of law and thereupon to alter the sentence passed by the trial Court and to pass judgment and sentence as to the High Court shall seem right." In the present case, although the accused might not have had fair enough trial the trial might have been vitiated by the peculiar attitude or prejudice of his Counsel and by 'perfunctionary cross examination', the Letters Patent do not grant any relief or remedy the defects, the certificate of the Advocate General notwithstanding. The circumstances in which the High Court can review or direct a retrial are absent, there is no reservation of any point or points of law, by the trial Judge ; nor is the suggestion or supposition—in the certificate—that there might be an error in the decision of a point or points of law, sustained. The Court in the first

instance, examined and determined the point of law, reserved or certified ; and it is only in case of the Court's deciding this point in favour of the accused, it proceeds to consider the question of alteration of the sentence passed by the trial Court and where the Court decides this point against the accused it does not,—in the present case, it did not—proceed further.

It is clear that the powers and jurisdiction of the High Court are extremely limited and well defined, under Clauses 25 and 26 of the Letters Patent, so far as the review or retrial of a case tried at the 'Original Criminal Jurisdiction' is concerned. Hence his hands were literally tied and he could not, under the law,—as it stands—order a retrial or alter the sentence or the conviction even though, he had 'serious doubts' as to whether the accused might be said to have had a 'fair trial' ; for "the matters" which in his judgment, 'have tended to affect the fairness of the trial are not mentioned in the certificate. In the second place, as neither of the two points specially certified has been sustained, we can not pass from the second to the third stage where alone the question of the alteration of the sentence can come under consideration." This state of things is, no doubt, to be regretted ; and in his own words, 'it may seem unsatisfactory that the jurisdiction created by Clauses 25, 26 of the Letters Patent should be so limited in scope and that its exercise should be subject to such stringent conditions

...If the Court of Criminal Appeal in England—which found it impossible to grant relief by way of appeal, though it did not hesitate to express the opinion that circumstances might justify the intervention of the Secretary of State with a view to the exercise of the clemency of the Crown found itself in this position, we can not put an extended construction on Clauses 25, 26 of Letters Patient'. So Mr. Justice Mookerjee dismissed the application of review, as he had no other alternative under the law as it stands; as he himself put it, "In my opinion, there is no escape from the conclusion that as neither of the two points of law specially certified by the Advocate General can be answered in favour of the accused, his application for review must be dismissed so far as exercise of the powers conferred on this Court by Cl. 26 of Letters Patent is concerned." To sum up, in the course of this historic judgment Mr. Justice Mookerjee first of all, criticised properly, the conduct of the Counsel of the accused, of the Advocate General as well as of the trial Judge, at the High Court sessions—a task which is as difficult as it is delicate.

With a most comprehensive and sweeping survey of, and elaborate references to, authoritative judicial and legal opinion and findings Indian, European and American, Sir Asutosh refuted the narrow construction sought to be put upon Sec. 34 of the Indian Penal Code and put rightly, and once for all, what should and must be the true interpretation

of the section. Then he discussed the scope and effect of the Clauses 25 and 26 of Letters Patent, defining the powers and jurisdiction of High Court to review or direct a retrial of a case dispossed of in the Original Criminal Jurisdiction; in conclusion he found that the Court, could not grant relief in the present case, under the limited jurisdiction created by the Clauses 25 and 26 of the Letters Patent; hence he dismissed the prayer of the accused; but before this, he criticised the simplicity of the language of the Sec. 34 of Penal Code and characterized it as 'delusive' in this that it gives no 'test' to determine what is it that constitutes the criminal act referred to in the section; then he was of opinion that the accused had not had a fair enough trial mainly for the reason that both the defence Counsel as well as the trial Judge were prejudiced against the accused; but he could give no relief, the Court had no jurisdiction to do so, under Clauses 25 and 26 (Letters Patent) as he construed them; but he expressed his dissatisfaction at the limited jurisdiction of the Court, and at the 'stringent conditions' (of its exercise) created by the Clauses, he ended by referring to the practice adopted in England of invoking the clemency of the Crown and he might almost be said to have hinted at a similar course in the present case.

It is interesting to note the tributes of respect and appreciation of his brilliant career on the Bench, that were showered upon him on the eve of his

retirement by those most competent to give their opinion and express their views—his Hon'ble Colleagues and the leaders of the different branches of profession : when he sat for the last time on Friday the 21st December 1923, the legal profession as well as general public mustered strong in Chief Justice's Courtroom -where all his brother Judges were assembled to bid him farewell - and a touching and, one might say, a unique farewell, it really was. Mr. Basanta Kumar Bose, President of the Vakils' Association said in the course of an address, "Your career as a Judge has been characterised throughout by profound learning, great ability, marked independence, unerring patience and uniform courtesy...Your successful and brilliant career as a Judge is a source of pride to the members of the profession to which you belonged, and will ever remain an illustrious example to the body." "Apart from the brilliance of your career on the Bench," said the Advocate General, Mr. B. L. Mitter, "You have earned the esteem and affection of the Bar by your uniform courtesy, quick appreciation and constant encouragement of diffident merit. In the maze and labyrinth of adjudged cases, you ever walked with a firm step, holding aloft the torch of justice. You demonstrated the truth of the old saying, 'No precedents can justify absurdity." Sir Lancelot Sanderson, the 'Chief Justice, said on behalf of his learned brothers as well as of himself, ...The many activities of the learned Judge present

a proposition of such dimensions that it would be difficult, if not inpossible, to deal adequately with it in the short time which is at my disposal....In all that he has done during the many years that he has sat on the Bench, I am convinced that he has been actuated by one desire only, namely, to maintain the great traditions of this Court and to promote the administration of justice in all its branches.... His great knowledge, his wonderful memory and his untiring energy have been devoted to this purpose for nearly twenty years and his service in this respect will always be remembered and will constitute a record of which any man is entitled to be proud. He has been an outstanding personality not only in the Court but also in Bengal and I think I may say with propriety that his name has been known and his influence felt throughout the whole of India...."

The 'Indian Daily News' in the course of a leading article, said, "His career was one of exceptional brilliance and he summed up in his person all the best attributes of a Judge,...Sir Asutosh as a Judge ceases to exist from to day but his great work on the Bench will endure for ever. If it is true, that Judge-made law is, after all, the best law, Sir Asutosh's contributions in this respect have been simply invaluable. And when posterity comes to review his work as a Judge, it will find how eminent he was..." The 'Forward' said, "Between