

GEPE 001

NAOKHALI CASE  
MR. PENNELL'S JUDGMENT



S. I. S.

THE  
NOAKHALI CASE.

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Mr. Pennell's Judgment.

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AND  
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## NOAKHALI CASE.

## Mr. Pennell's Judgment.

In the Court of the Sessions Judge of Noakhali.

Empress vs. 1. Sadakali 2. Aslam  
3. Anwarali 4. Yakubali.  
Sessions Trial No. 1 of 1901.

## JUDGMENT.

The four accused have been committed for trial on a charge of committing murder by causing the death of one Ismail Jagirdar. The assessors of whom one is the Head Master of Government Zilla School and the other a Zamindar from the interior, are of opinion that Sadakali, Aslam and Anwarali are guilty and that Yakubali should be given the benefit of the doubt. I may state that after the arguments were over the assessors asked leave to retire and consult and on their return after a few minutes Babu Ishan Chandra Sen (the Headmaster) gave what he stated to be their joint opinion. Babu Chandra Mohon Roy when asked by me said that his opinion was the same but as the Headmaster had spoken in English and this latter assessor is unacquainted or but slightly acquainted with that language, I asked him to state his opinion in Bengali which he (Babu Chandra Mohon Roy) accordingly did. The opinions of both assessors were then translated into Bengali and read out by the Court-Interpreter. The case is one of unusual importance. The actual hearing has occupied 16 working days

in addition to a view of the place of occurrence which took four hours and the writing of the judgment has taken as much more. The direct issue—the conviction or acquittal of four men on a capital charge is of itself grave enough but it might almost be called insignificant in comparison with certain other issues indirectly involved which concern the lives and liberties of every one of the inhabitants of this district, perhaps of these provinces generally.

The deceased Ismail Jagirdar, a man of 60 years of age, was a peon of the Bhulua Estate (a large zemindary, in this District now managed by the Administrator-General) under which he held a Jagir (whence no doubt his title of Jagirdar). He lived in a hamlet of 14 or 15 houses included in the village (which in this District means a collection of hamlets scattered, it may be, over several miles) of Char Uri some 3 or 3½ miles from this town. The other houses in this hamlet belonged to him, but though the occupants were his tenants, it is in evidence that he was on bad terms, with all of them, and that with some at least of them he had had litigation of a protracted kind. It is possible that like many other small land-lords he was of grasping disposition; it is at all events certain that he and his ryots were always having cases against each other, and that the litigation was not confined to the Civ;



Courts. At 8—0 or 9—0 A.M., on the 9th *Bhadra* last corresponding to the 25th August 1900, Ismail Jagirdar started from his house at Char Uria to attend Court at Sudharam (the Head-quarters of this District) where he had to give evidence in a revival case which his wife had brought against two of the ryots, Abdul Karim and Karimbox, and in which he was a witness. Kali Kr. Das, the pleader, whom Ismail employed to conduct his cases, deposes that Ismail came to his lodging at 9-0 or 10-0 A.M. and that he gave his evidence the same day in Court where his deposition was finished at 5-0 or 5-30 P.M. just after sunset (which at that time of the year would be about 6-30 P.M.) he was seen by the witnesses Abdulmir and Ahamedullah. He was going towards his home from the direction of the town. Ahamedulla who was accompanied by a constable named Abdul Aziz (who has not been examined) was also returning home from the town. The place where they overtook or came across Ismail was the *Daraja* of one Asad Mollah.

The word *Daraja* which corresponds to the Hindustani *Darwaja* has acquired in this District a peculiar local meaning. In the rains practically the whole of this District, except such portions as have been artificially raised, is under water. The only dry land is the *baris*, the Government and the village roads and the raised paths, often of considerable length which connect the *baris* with these latter. It is these paths which are called *Daraja*. The word might perhaps be rendered "path-way"—leading from the road to the *cut-cheryghar* or office-room or in those *baris* which have no outer apartments to the entrance of the *utban* or yard. These paths, which each *bari* has one, are as a rule artificially raised, but this is not necessarily the case; the *Daraja* of Ismail Jagirdar's *bari*, to give a concrete instance, has for some distance been cut between high banks so that it is actually below the level of the ground on each side of it. I

have seen the *daraja* of Asad Mollah's *bari*—it is a raised path-way leading through paddy fields. The place where the witness met Ismail is the point where this *daraja*—joins the public road. At the time it was raining hard and Abdul Mir who lives in the *bari* to which the *daraja* leads asked the three way-farers to come in and stop there. They, however, declined his offer and proceeded on their way till they came to a large tank known as the *Kala Bhangra Dighi*, distant a mile or a mile and-a-half from Ismail Jagirdar's house. There their roads parted. Ahamedulla and the constable went along the N. bank of the tank towards the west, while Ismail Jagirdar took the road by the east bank of the tank which leads southwards towards his house. He was never after seen alive by any of the witnesses for prosecution.

Ismail Jagirdar had a wife and a son, Idris Mir. The latter, a singularly intelligent lad of 17 or 18, is the first witness for the prosecution. This lad is the only adult male relation the deceased had for some miles round, and this fact may serve to explain the conduct, hereafter to be described, of the investigating police officer and his superiors. They could have foreseen that this boy would display as he has displayed, an intelligence and resourcefulness rare among those of much maturer years and of far higher worldly positions.

Idris has deposed that he made no search or enquiry for his father on the latter's failing to return home, as he supposed that his father had stayed the night with some one. Early next morning, however, on going to the large tank in front of their house (which tank belongs to the deceased) to wash his hands and face, he saw his father's dead body floating face downwards close to the ghat. The boy burst into tears and Naimaddin Mizi, Abdul Aziz, Islam and many other neighbours came to the place, shortly followed by Osmanali Chowkidar

the village watchman. Of these men Naimaddin Mizi, who lives next-door to deceased on the S.W., and Osmanali Chowkidar are both accused in the case, but are not now before the Court. Idris wanted to take his father's body out of the tank. He says he was going down into the water to look at it when Osmanali Chowkidar told him not to take it up till the Daroga came, but go to the thana and lodge information. Taking into account the youth of the lad, the official position of his adviser and the apparent good faith of the advice—for although Idris says that he suspected even then that his father had been murdered, there was no reason why he should suspect Osmanali Chowkidar in particular and as no mark of violence was found in the then position of the body his suspicion of foul play might well seem even to himself unwarranted. It is small wonder that he yielded to the advice. Idris accordingly left the corpse as he has found it and started for the Thana. Mainaddin Mizi, Emdadullah, Yakubali and Osmanali Chowkidar accompanied him. Of these men the first three are accused in this case, although only Yakubali is now before the Court. Apart from the evidence directly incriminating them which will be discussed hereafter, it is certainly somewhat surprising that they should take such interest informing the police of Ismail Jagirdar's death; for they were each and all of them on bad terms with the deceased and against Yakubali in special he had had much litigation both civil and criminal. No explanation of this remarkable conduct of the deceased's enemies consistent with their innocence has been attempted, and unexplained it is certainly a very suspicious circumstance except perhaps so far as Osmanali Chowkidar is concerned. On the way to the town, says Idris, three of these men viz., Osmanali Chowkidar, Emdadullah and Yakubali advised him to say at the thana that his old father was dead, but that he made no charge against any one. When they got

to the town, they asked him if he were going to lodge information as they suggested and on his returning an undecided answer, Yakubali and Osmanali Chowkidar advised him, if he had any doubts, to consult a Muktear. The lad's father had a regular Pleader, the witness Kalikumar Das; and the lad has deposed in cross-examination that he himself was personally acquainted with Jasoda Babu, one of the leading muktears here (who subsequently acted as his Muktear in this case) with another muktear known as *Guaaji* and possibly with others whom he did not know "well" as he did these two. Instead of going to any of these he went to the lodging of a Muktear, named Ashrafali, whom he had never seen before. His explanation which, under the circumstances I find no difficulty in crediting, is that the four men took him there.

Idris and his companions got the Muktear at 7 or 8-o' A. M. On the way to the Muktear's lodging (which is out of the direct way to the thana) Idris says, that they met the accused Sadakali. No explanation has been offered of what Sadakali (of whose movements more hereafter) was doing in that quarter at the time. It is a plausible hypothesis—although only a hypothesis, that he had gone on ahead to prepare a Muktear for Idris's visit. Ashrafali, says Idris, advised him to lodge information "as he had seen," ঘটনা দেখে ইকব্ব দেখিয়াই সেই ইকব্ব কহিবে। The advice is, on the face of it and must have appeared to Idris straightforward enough; only, as has been stated above, the interference of Osmanali Chowkidar had secured that up to that time he should not see anything which might indicate the real manner of his father's death. From the muktear Idris, still accompanied by the four men, went to the thana and lodged the information (marked as Exhibit 1.) which was recorded by the officer in charge of the Police Station, a Sub-Inspector (Daroga), named Osmanali-



n this first information Idris stated his father's departure from home, the clothes he was then wearing, his failure to return and the discovery of his body in the tank that morning, and without saying whether or not he suspected any one or anything, stated that he could not say how his father got into the water or how he died.

After lodging this information Idris returned home accompanied by his cousin Aliullah, who lives in the race-course here and had come to the thana in consequence probably of hearing something. After he came out of the thana Idris's self-constituted friends left him. None of them was to be found for some days after, and although only Yakubali among them has been sent up for trial, it is to be noted that there is direct evidence incriminating Naimaddi Mizi and Emdadullah also and indirect evidence that Osmanali Chowkidar was absent from his home where he would naturally be at that time—about the cultivator's dinner hour when the murder was being committed.

Shortly after he arrived home Idris met a constable and then 2 constables. He is not sure nor does it much matter whether he or they got to his house first. After the constables had both come the body of the deceased was taken out of the tank in Idris's presence. Idris then saw, he says, that the skin on the throat had disappeared, the forehead was swollen and discoloured, the skin just behind the ears abraded and reddish, one eye gouged out and there was a red mark like blood on the—. Idris says that there were other marks of violence also but that he did not notice them particularly as he felt faint, and began crying.

Chandra Bhadra, attached to the Sudbaram Thana has been examined as a witness for the defence. He has perjured himself so grossly on other points that it is hardly safe to place much reliance on what he says. Still he may, perhaps, be believed when he states that

he despatched the dead body to the hospital at Noakhali. Ram Dhan Barma, Police Constable, deposes that he was sent in charge of the body, by this Head-Constable, that he took it to the hospital and made it over to the doctor there, in the same state in which he received it. Idris says that he also accompanied the body. The way to the hospital passes by the thana, and Idris says that he went there with the body *en route* to the hospital and saw the *Daroga* Osmanali. Idris says that he and the Constable got to the hospital at 2-0 or 3-0 P. M. and that a *ghari* or two (24 or 48 minutes) after the doctor examined the body which he identified as his father's. The desposition of Babu Nabin Chandra Dutta, the Civil Medical Officer of this District, recorded by the committing Magistrate, has been admitted in evidence, under Section 509, Criminal Procedure Code. The doctor says that he examined the body at 4-30 P. M. on the 26th August; it was identified to him as that of Ismail Jagirdar by Police Constable Ram Dhan Barma and Idris Mir, the deceased man's son. The body was fresh. There were several small abrasions of the skin on the left side and front of the chest, and right side of the neck and stop of the right shoulder and also on the right side of the chest. There were other abrasions on the back of the fore-arm, on the back of the right knee, on the left knee and on the——. The top and the right side of the head, the right half of the fore-head and the right cheek were generally bruised, and there was a large bruise on the back to the left of the spine. The left upper eye-lid was denuded of skin. On dissecting the scalp and skin of face, the doctor says he found quantities of effused blood—underneath; on the top of the head on the fore-head, on both temples and on the right cheek—and also near the skin in front and on the sides of the neck. The lower jaw-bone was fractured, the

brain and membranes, the lungs, the liver and the kidneys were congested.

The doctor says, he is of opinion that death was due to violence. The probability is, he thinks, that deceased was struck on the head by some hard blunt weapon or thrown upon a hard surface and that his neck was also pressed. These are the violence to which death might have been due. The bruises might have been caused by some hard blunt weapons or even by a man's clenched fist and the abrasions by friction against some rough hard surface.

In addition to this evidence it may be mentioned that when Ismail Jagirdar left for Sudharam on the morning of the 9th Bhadra he had on a black bordered *dhoti*, a white coat and a sheet, was wearing a hat, carried an umbrella and had some papers in his pocket. This we get from the evidence of Idris. Abdul Mir, who has already stated, saw deceased shortly after sunset, says, that he then had a coat, sheet and *dhoti*, that he was carrying an umbrella and that he had a piece of new cloth (presumably bought in the town) under his arm. Ahmed Ullah who was the last of the witnesses to see Ismail alive, did not notice his coat, but says he had a shirt on, was carrying an umbrella and had a bundle under his arm.

When Ismail's dead body was found floating in the tank, had on only a *dhoti*—the same black-bordered *Dhoti*, says Idris, which he was wearing when he left home. The tank had been searched but none of the other articles which deceased had with him when he parted from Ahmad Ullah at the *Kala Bhanga Dighi* have ever been recovered. The disappearance of these articles and the medical evidence prove conclusively enough that Ismail's death was due to foul play. Nor is there any reason for thinking or suspecting that the offence committed by the person or persons who cause his death was anything less than murder. It seems reasonably certain

even from this evidence that the act or acts by which death was caused were done with the intention of causing death; in fact, that Ismail was deliberately murdered, and there is much other evidence which support this view. It has not, indeed, been contended on behalf of the accused that the offence committed was anything short of murder; all that their pleader has attempted to show is that they have not been conclusively proved to be the murderers.

Idris says that it was dark, 6 or 7 P.M. when he got out of the hospital. The bullock-cart in which the body had been brought was waiting outside. Idris sent the body home in this cart in charge of Keramotali a connection of his, who had come with him to the Hospital, and went himself to the thana which, I may say, is a few hundred yards from the hospital. He says he had to wait there two or three hours as the Daroga had not come and that he heard the Collectorate clock strike either ten or eleven. Finally he lodged a second information (Ex 2). He at first stated that he did not remember who recorded it; but afterwards said, it was a Daroga. This is not conclusive, that it was Sub-Inspector Osmanali by whom Ex 2 purports to have been recorded, for there are more than one Sub-Inspector (Daroga) at the Sudharam Thana, Osmanali being the Sub-Inspector in charge. Ex. 2 bears Idris' signature and he admits that it is correctly recorded. Who recorded it, therefore, may not be otherwise important but it should be noted, that the time at which it purports to have been recorded (which is different from that stated by the witness) is not in evidence inasmuch as Sub-Inspector Osman Ali by whom it purports to have been recorded has not been examined. In this second information Idris stated the facts above described. He mentioned the visit to Asrafali Muktear and said that on his way he met Sadakali, who was coming from the direction of the Muktear's



house. He did not mention all four of the men who accompanied him to the Thana, but he said that Emdad Ullah and Abdul Halim told him to lodge a *madabi ejahar* (i. e., to say he suspected no one.)

Abdul Halim is not one of the four men whom Idris names now. He was sent up by the Police with the four men now on their trial, but was discharged by the committing Magistrate for want of evidence. It is noteworthy that then—when Abdul Halim was on his trial—Idris told the same story as now, leaving out Abdul Halim and naming three other men of whom one only, Yakubali, was then before the Court. It should also be remarked that in Ex. 2 Idris is not recorded to have mentioned that he was accompanied by Osmanali Chowkidar, whom he had named in Exhibit 1 and who was certainly with him when, he first came to the Thana. So it is not perhaps strange that Naimaddin and Yakubali were also left out. It should always be borne in mind that even though Idris may have acknowledged in general terms the correctness of the second information (Exhibit 2) the person, who purports to have recorded it, has not been examined, and probably, if he had been examined, would not have been believed. It is perhaps, however, sufficient to point out that under the law (Section 145 of the Indian Evidence Act) if it is intended to contradict a witness by previous statements of his, reduced to writing, it is necessary that his attention should be called to those parts of it which are to be used for the purpose of contradicting him—that Idris was not even cross-examined with reference to this second information and that the pleader who conducted the defence is the leader of the local Bar.

Before mentioning the facts in connection with the visit to the muktears Idris stated that he suspected, his father had been murdered and that his father had enmity with Sadakali, Aslam,

Emdadullah, Anwarali, Abdul Halim, Osmanali Chowkidar, Fazarali, Abdul Hakim and Abdul Karim, that these or some other enemies of his father had put his father to death.

When Exhibit 2 was read over to him the witness volunteered that the Daroga told him to name a few (literally two or four) of the persons with whom his father had enmity. In cross-examination he stated also that he lodged this second information at the instance of the Daroga Osmanali—who told him to do so when the body was taken to the Thana *en route* to the hospital, although it is, indeed tolerably certain, as the witness added, that he would have given *ejahar* even if the Daroga had not told him to do so. It has been urged by the defence that these circumstances indicate good faith on the part of Osmanali, the Daroga—and negative the theory advanced by the prosecution that he has been trying to bush up the case to screen his relatives, the accused in the dock. But it is not the case even of the prosecution that Osmanali knew at this time that his relatives were implicated. They are not near relatives; they are very much his inferiors in social position; it was not a connection to be proud of; and there is nothing to show that Osmanali had tried to keep it up. It was not to be expected that these poor relations should go and tell the great man of the family, the all-powerful Sub-Inspector that they had committed a murder and wanted him to help them out of it. It was natural enough that Osmanali should tell Idris to report that his father had been murdered; in any view of the case it would have been impossible for him after the medical examination to prevent that fact leaking out, and moreover he had no motive to do so. It is, however, suggested that he would, at least, have suppressed the names of his relatives when recording Exhibit 2—and it is pointed out that Idris admits that he knew from the first—all along.

that the four accused now on their trial—of whom three are mentioned in Exhibit 2.—were Osmanali's relatives.

Two explanations suggest themselves. One is, that Osmanali did know at the time that the men, whose names he took down, were his relatives, but that he did not think of burking the case till next morning, when he met Anjad Mir, through whom he is related to the accused. The second and perhaps the more plausible explanation is, that Osmanali Daroga who had probably just been dining and may not have been at his best—I am drowsy enough myself at 10 or 12-0 P.M.—really did not know or at all events notice that the men implicated were his relatives. And in this connection it may be noticed that all three of them have very common names and that the father's name of Sadakali, the one Osmanali was most likely to know, was not given. The men are all distant connections of Osmanali and it is very doubtful whether the fact even of their existence was present to his mind when he took down that information.

More men know Osmanali Daroga than Osmanali Daroga knows. I believe I could substantiate my claim to be at least as near a *blais* of Lord Halsbury as any of these accused is of Osmanali—but I think it at least doubtful, whether some months back when a certain noble Lord got up in the House of Lords, proposed Mr. Bourdillon's compulsory retirement, and made sundry complimentary references to myself, it ever crossed the mind of the president of that august assemblage that the judge who had made so big a splash in the far-away Indian puddle was a relative of his.

After lodging this second information, Idris returned home. Next morning (Monday, the 27th August) at 7-0 or 8-0 A.M. the Daroga Osmanali came to his house. Osmanali remained in the village for 12 or 14 days. For the first five or seven days he put up at Idris's house: he

afterwards removed to the house (which is next to Idris's) of Naigaddin Miji, who, as already stated, is one of the persons said to be implicated in the murder. On the morning of Tuesday, 28th August the District Superintendent of Police, a European named W. Y. Reily, 38 years of age, whom the Civil List shows to be drawing Rs. 600 per month (I give his initials to distinguish him from another D. S. P. of the same name) came out to the place to test the enquiry, he says. For reasons which will be fully set forth hereafter, I am compelled to say at the outset that very little reliance can be placed upon Mr. Reily's statements. He says that he got to Idris's house about 8 A.M. and that he left it for Noakhali about 10-30 A.M. He has, however, to admit that in the interval all he did was to "examine" complainant and his mother and to speak to the village chowkidar—and as all this would not take him anything like two and-a-half hours, it is to be presumed that his stay at Idris's house was considerably shorter. As will be seen hereafter, the time at which Mr. Reily left Ismail Jagirdar's house, is of very considerable importance. On the 27th August, says Mr. Reily, he passed on (Exhibit 25a) the Court Sub-Inspector's copy of the (second) First Information Report and the order "Inspector A.—Pleasant enquiry." The Inspector's report on the occasion, Bharat Chandra Mohan has been examined as a witness in his defence. He says, he is a European and the Civil List shows that he is a senior second-grade Inspector in receipt of Rs. 200 per mensem.

Bharat Chandra Mojumdar's proceedings are noticed hereafter.

Osmanali, the investigating Police Officer, did not arrest or *chalan* any one, although the accused, who according to Idris, were originally absconding, began to make their way back after the first six or seven days. On the 6th September Idris filed before Mr. J. A. Ezechiel C.



S., who for seven months last year officiated for Mr. Cargill as District Magistrate, the petition marked as Ex. 3. That petition runs as follows :—

“ In the Court of the District Magistrate, Noakhali.

The humble petition of Idris Mir, son of late Ismile Jagirdar of Char Uria, Sub-division, Sudharam, most respectfully sheweth :—

1. That on the 9th Bhadra (25th August) the father of the petitioner came to the town to conduct a case in the Civil Court and that he did not return home that night.

2. That early in the following morning (26th August) the dead body of the father was seen floating in a tank in the petitioner's *ghat*; that thereupon the petitioner came to town and informed the Police about it.

3. That on medical examination it was found that the death of the petitioner's father was due to severe beating.

4. That the petitioner and his mother suspected their enemies and named them before the Police; and that during the police investigation it has been disclosed by some persons that the said suspected enemies actually caused the death of the

That in spite of the evidence before the Police is silent up to the Sub-Inspector Osmanali man, most of the accused directly or indirectly related investigating Sub-Inspector her-in-law, Amjoo Myan, and that during the investigation the said Amjoo Myan was all along with the Sub-Inspector; that the Inspector of Police sometimes went to the village at the time of the investigation, but the purpose and effect of his going there was best known to him. That considering all the facts, the petitioner is inclined to believe that no proper care was or will be taken by the Police to bring the culprits to justice.

6. That there are direct and circumstantial evidence to bring home the charge against the accused.

7. That the place of occurrence is near this town and that the humble prayer of the petitioner is that your Worship will be pleased to take up the case from the hands of the Police and take down the evidence by your Worship's self or order due enquiry by a competent court.

Noakhali, 5-9-00.

This petition was drafted by Jashoda Babu, the muktcar already referred to. This Jashoda Babu was cited as witness by the defence, but has not been examined. Idris has admitted in cross-examination that he knew when he filed this petition the names of the eye-witnesses to his father's murder and the defence has laid much stress upon the fact that he did not give those names but only allude to the witnesses in general terms as "some persons."

Now, if Idris or rather Jashoda Babu could have felt any confidence that Mr. Ezechiel would take up the case himself as Idris prayed, still more, if they could have felt any confidence that he would do so at once there might be a good deal of force in this contention.

But a Muktear and for that matter a Judge has to deal with men not as they should be, but as they are, as a European advocate once told me.—“We have to study all your ways and know how to humour your fancies—our living depends upon it.” Add to this that Mr. Ezechiel had been several months in the District. If Jashoda Babu could not by that time form a pretty good idea of what Mr. Ezechiel was likely to do on Ex. 3, he would hardly have maintained his place as a leading muktcar long.

In these remarks I am far from wishing to reflect adversely upon Mr. Ezechiel. It is no doubt much to be regretted. I think Mr. Ezechiel would admit himself that he did not at once take up the case from the hands of the Police and take

down the evidence himself but very few District Magistrates even senior officers would have done such a thing; and Mr. Ezechiel is a comparatively junior officer who has had to revert to Joint-Magistrateship. By his subsequent conduct he fully redeemed his initial errors and the case as a whole does him great credit and he is the only Government official who has come out of it with clean hands.

As the reported cases abundantly prove, the course usually adopted by a District Magistrate when he receives a complaint against the Police, is to refer that complaint for investigation to the immediate departmental superior of the officer complained of—sometimes to the officer complained of himself. And this procedure is not by any means confined to District Magistrates or to complaints against Police officers. There seems to be something in it congenial to the official mind. In a Club in Calcutta to which I belong and to which members of the Services do most resort, a complaint which I made on behalf of a respectable native visitor has just been similarly treated. The order which Mr. Ezechiel passed on Exhibit 3 was: "To D. S. P. for report. His attention is drawn to para. 5. J. A. E. 6-9-00" Mr. Ezechiel afterwards wrote "Early" above "report." Perhaps it was well he did so. For as will be seen hereafter the Police in general and Mr. Reily in particular were not slow to take any opportunity of the delaying the disposal of the case.

Mr. Reily received the petition with this order on the 6th September and returned it to the District Magistrate the same day with marginal notes, which need not here be cited in extenso. He stigmatised the statements in the petition as "all nonsense" and backed up this sweeping denunciation by a number of assertions on matters of fact, nearly all of which were false in fact and some of which can hardly have been made without intent to deceive. He concluded by

suggesting that the complainant may be directed to produce his witnesses before me who, he thinks, will prove the case. (The complainant, it will be remembered, had asked the Magistrate to take the case out of the hands of the Police). On the 7th September Mr. Ezechiel passed on the petition the following marginal order: "The petitioner may produce his witnesses before D. S. P.

T. A. E.

7-9-00"

Mr. Reily at first said, he did not remember ever having got Exhibit 3 back again. When confronted with this order however, he admitted that he had seen it with that order on it in his office—but he cannot be positive that he got it on the 7th September—it might be a day or two after. There is one thing, however, which Mr. Reily admits that he got on the 7th Sept. itself—though his memory does not enable him to say whether he got it before or after he got back Exhibit 3. It is the slip marked as Exhibit L. 40 and strangely enough has been filed quite out of its place in the papers which Mr. Reily handed to me.

It is an order from District Magistrate written in blue pencil—evidently an office note—and is superscribed in the District Magistrate's hand, in red pencil "urgent." It runs as follows:

"D. S. P.,

Please send me the papers of the Char Uria murder case.

J. A. E.

7/9."

Below it is an order in red ink by Mr. Reily:

"Office

Send

W. R.

7/9"

Now, although Mr. Reily's memory is singularly deficient on the point, it is perhaps a reasonable reference from the phrase "Char Uria murder case" that the two men had talked the case over and it is probable if that be so, that Mr. Ezechiel was not satisfied with what Mr.



Reily told him and sent for the papers of the case in consequence.

It is at all event very remarkable that Mr. Reily should not be able to remember whether he got that slip and sent those papers before or after Mr. Ezechiel ordered him to examine the witnesses himself. In a district like Noakhali he cannot often get slips from the District Magistrate marked *urgent* and calling for the papers in murder cases, the police investigation of which has been challenged.

If the District Magistrate expressed dissatisfaction with Mr. Reily at this stage, as is probable enough, Mr. Reily has a very obvious motive for concealing it; for such expressions of dissatisfaction would make any subsequent derelictions on his part the less excusable.

At all events whether before or after Mr. Ezechiel called for the papers, Mr. Reily received from him the complainant's petition with Mr. Ezechiel's order that he should himself examine the witnesses.

Mr. Reily says that on the day he got that petition back—whatever that day may have been—he told the complainant to produce his witnesses. Idris, however, does not remember this; and it is more probable that the Magistrate's order would have been communicated by the Magistrate's office to complainant's Muktear and by the latter to the complainant. Idris, at all events knew of the order—and on the morning of the 9th September—two days after it was passed,—it does not appear that Mr. Reily did any thing in the interval—he presented himself before the D. S. P.

The defence have harped much upon the fact that Idris never complained against Osmanali to the Inspector or to the District Superintendent. To my mind the fact of his going to the Magistrate direct shows pretty clearly that he or his Muktear did not trust either of them and as the event proved, their distrust was fully justified. It was, however, natural enough—for after all, we are here

because on the average and man for man we are better than our native fellow-subjects—these things have a way of working themselves out—that he should distrust the white policeman rather less than the black ones. And it is a significant fact that Idris on the 9th went not to Mr. Reily's office but to Mr. Reily's house.

If, however, he thought he would gain much by going there it was not long before he was undeceived.

Mr. Reily at first said that Idris stated his inability to produce or give a list of his witnesses. This was before he had handed in his special diaries. Directly he looked through these diaries he said—“I wish to correct my statement. It was at the Circuit House, not in office, that complainant stated his inability to produce his witnesses.”

Now the witness had never said that the complainant came to him in office. It is perhaps a not unreasonable inference that the witness had meant to say it, till he saw from his diary (Ex. B I) that it would be no use. Mr. Reily can hardly have forgotten whether the boy came to him at his house or in office.

It will also be seen that Mr. Reily pretended before he was confronted with his diaries that the boy could not name his witnesses. In the statement which he recorded under Sec 161 (Ex B 2) he has, however, recorded particulars of four witnesses and written that the boy offered to give a list of others. The boy himself states that he gave the names &c of some, possibly of the four recorded by the Dist Supdt. of Police and that the latter then ordered him to give a list of the others, and the truth probably is that Idris would have given the names of a good many other witnesses but that Mr. Reily was too lazy to take them down.

At all events Mr. Reily admits that the lad who on the 9th had been unable to name his witnesses gave in on the 10th a list which bears his own initials and the

date, containing the names and addresses of 31 of them. This list is Exhibit B 4.

The course which Mr. Reily took on receiving this list may have been sanctioned by the usage of the Bengal Police Department, but has little else to recommend it. He ordered his office—the Police office—to issue summons to the witnesses named, *through the sadar station* of which Osmanali was in charge and these summonses (Ex. 37) were accordingly issued through this very Osmanali whom the complainant had charged with hushing up the case.

The witnesses Abdul Aziz (son of Samaraddin, and Rajabali) depose that the very day they had to attend the Dist. Superintendent of Police, Osmanali told them not to tell the latter any thing and Rajabali says that Osmanali actually told him this as he handed him the notice to appear before the District Superintendent of police! Abdul Aziz gives the names of three other persons who were present when Osmanali told him and Rajabali not to give evidence. Islam, one of the eye-witnesses to the murder, has deposed that long before this, in fact on the Thursday after the occurrence—Osmanali had threatened him for hanging round Ismail Jagirdar's house, saying that he had given his evidence and that if he did not make himself scarce he (the Daroga) would run a bamboo up his—

I have already remarked that it was a curious procedure of Mr. Reily's to summon the witnesses through Osmanali. But this is as nothing to his conduct with regard to his special diaries. The first of these special diaries is Ex. B 1, dated the 9th Sept.; annexed to it is Ex. B 2—the statement of Idris recorded under Section 161. Cr. P. C. What Mr. Reily did with this special diary and with all subsequent special diaries—was to send them to his own office.

So far as he recollects, Mr. Reily says he did not submit them to the Magistrate. He is not aware of any rule that

they should be submitted to the Magistrate but he thinks they ought to have gone. His object in writing these diaries was to show the work he had done each day. His wish, says Mr. Reily, was to inform the District Magistrate—but he admits that he took no measures to give effect to that wish.

He knew when investigating the case that serious charges had been made against his subordinate Police, but it never struck him, he says, that the natural result of his sending his special diaries to his office would be to inform not the District Magistrate but Osmanali of what he was doing in the case and what the witnesses said. He never thought of that at all.

To understand the true "inwardness" of these evidence it is necessary that I should refer to the record of another criminal case, that of *Empress vs. Mohesh Chandra Guha and Kumudini Kanta Guha* which has already been before the High Court and which has been going on for 18 months or more. It is a case in which currency notes to the value of Rs 5,800 were stolen and in which the defence is that Osmanali, who investigated the case, detected the thieves, but confined himself to taking the booty from them, that he passed off the notes or some of them through Kailash Chandra Deb, the Head Clerk of the Police office, who carries on a trading business in the town in partnership with Kumudini Kanta Guha and that some of the notes having been traced through the Currency Office to that shop, Osmanali and Kailash have combined to make Kumudini and his father Mohesh the scape-goats.

Mr. Reily admits that he was cross-examined in that case at very great length by Mr. C. R. Das, a Barrister of Calcutta, for two or three days he believes. He admits that the tendency of Mr. Dass's questions was to show that he was completely in the hands of his Head Clerk, Kailash. He admits that he knew the nature of the defence but it never led

him to make any enquiry as to the terms on which Kailash and Osmanali were, and he cannot say even now whether they are on good terms or bad terms. (He was cross-examined, I may say, more than a year ago. I had the case before me on appeal in February last). Mr. Reily believes, however, that this Head Muharir, Rajendra, did state in evidence in that case that Osmanali called Kailash father. He admits that on Kailash's verbal report he promptly suspended Rajendra that at the time when he suspended him no charges were framed against him—that they were framed subsequently—that Kailash also brought a separate charge against him but that Rajendra while still under suspension was transferred to Khulna and that nothing more was then heard of his (Mr. Reily's) proceedings or the Head-Clerk's charge. Nothing further, says Mr. Reily, has been done on the proceedings which he drew up against Rajendra since his transfer—he allowed the Head-Clerk's charge to drop. Mr. Reily does not know whether Rajendra's transfer had any thing to do with his suspension—the D. I. G., he says transferred him. He was under suspension when he was transferred.

Rajendra may no doubt have been transferred in the ordinary course of official changes. But I do not suppose the D. I. G. usually or often transfers Head Muharirs of Police offices without consulting the D. S. P.—especially when they are under suspension; and I cannot help suspecting that Mr. Reily has been more economical of the truth in this matter than befits a gazetted officer of Government. Mr. Reily says that the new Head Muharir, Upendranthi Bose, keeps all his diaries. But he cannot say that the Head Clerk did not keep them and whether or not the Head Clerk was in nominal charge of the diaries. It is pretty obvious that he would always be able to see them for when he had just turned out the old Head Muharir the new one was likely to be pliant enough.

Mr. Reily's memory or knowledge as to his leading subordinates are distressingly defective. But he admits that Kailash has been Head Clerk of the Police Office the whole time he has himself been here—close on 3 years. He admits also when cross-examined by the defence pleader, (who had cited him for the defence)—his memory became, astonishingly vivid, then—that Osmanali has been in Government service for more than 25 years and had all along, he believes, been in this district. Mr. Reily also admits that whenever he has had anything specially difficult to do—any specially difficult case—he has usually put Osmanali on it, that he has had every confidence in him; and although Mr. Reily may not know the relations which subsist between his trusted *Darogs* and his trusted *Korans*—although, for all he knows they may be on bad terms, I think the rest of us will have little difficulty in concluding that, whether or not Osmanali calls Kailash "father" the two men are as thick as thieves usually are.

The summonses which Osmanali served directed the witnesses to appear at the Police Office on the 12th September. On that day complainant appeared at the Police Office and filed a *hasira* (attendance list) of 3 witnesses (2 seem to have been added postscript to the original 30.)

This *hasira* is Exhibit B 7. Mr. Reily says that he was engaged from 1-30 P. M., to 4-30 P. M. in examining 30 of these witnesses. He "believes" the Head Clerk was present when he examined them.

It is well known that the common people in this district speak a corrupt *patois*. It is extremely difficult even for Bengalis from other parts to understand I have been 15 months in Noakhali and I am only beginning to understand it myself and that though I have received monetary rewards both in England and India for my knowledge of Bengalee and am, as Englishmen go, a fair Sanscrit scholar.

The defence pleader tried to make out that Mr. Reily must have understood all or most of what the witnesses told him. But even Mr. Reily has to admit that if he could not understand the whole answer of the witnesses he perhaps might not be able to detect mis-translation by the Head-Clerk. He admits that the Head-Clerk translated such of his questions as the witnesses did not understand and such of their answers as he himself did not understand. He also admits that complainant (who is unacquainted with English) had no pleader or Mukhtear with him and that there was no one on his side who knew English and could have said if the Head Clerk translated wrong. At present he cannot recall to his mind that the Head Clerk suggested any questions: but he cannot swear that the Head Clerk did not.

As far as Mr. Reily can remember, he thinks the depositions were read over to the witnesses. They were translated to the witnesses by the Head Clerk. He thinks, however, that there is not any note in the depositions that they were read over.

It is perhaps hardly necessary to add that in Mr. Reily's Diary (Exhibits B 5 and B6) and "the statements" attached to it (Exhibit B8 to B16 inclusive) there is not a word about the part the Head Clerk played in the matter and, as stated above, Mr. Reily at first only "believed" he did not know that the Head Clerk was present at all.

On the 13th September, Mr. Reily examined the accused; on the 14th and 15th he went to the place of occurrence and prepared, or says that he prepared, a plan of it. He has never visited the place of occurrence after the 15th Sept. and it is important to note that the way there leads through a densely peopled country so that he could not go then and "get up" the locality afterwards, if he did not do so then, without people knowing it.

After finishing the plan Mr. Reily says he went and saw the District Magistrate,

showed him the plan and told him what he had done. That may, Mr. Reily says, have been 2 days after.

Mr. Reily says that Mr. Ezechiel afterwards told him to submit B form. But he hopelessly contradicts himself as to the B form and I regard his statement that Mr. Ezechiel told him to do this with very grave suspicion. If Mr. Ezechiel believed the case he would order A form, if not, B. or C. form, directly he got any final report from the Police at all; and when he did get it, it was C. form. Mr. Ezechiel ordered A form and the inference I draw is not that Mr. Ezechiel at first disbelieved and then believed the case—there was nothing to make him change his mind but that he all along believed it, that Mr. Reily and the rest of the Police knew that he believed it, and that they were keeping back the final report as the Police so often do in order to gain time.

Mr. Reily admits that he did not submit any written report to the District Magistrate till the latter ordered him to do so. He offers no explanation of the delay. He does not recollect if he showed Mr. Ezechiel his diaries, and is not sure if he told him what the witnesses had said. On the 21st September eight men presented a petition (Exhibit 4) to the District Magistrate. The names of these men are 1. Torapali, 2. Atorali, 3. Abdul Aziz, 4. Rajabali, 5. Hosenali, 6. Abdul Mujid, 7. Nur Myan, 8. Haidarak.

Of these petitioners, it is in evidence, that Atorali shortly afterwards died. Torapali, Abdul Aziz, Rajabali and Hosen Ali have been examined in this Court. The purport of Exhibit 4 is as follows:—

That the petitioners have deposed before the Dist. Supdt. of Police in favour of the complainant Idris, the son of the murdered man: That at first Osmanali, Sub-Inspector of Sudharam Thana was investigating the case but that as the accused were relatives and clients

of Osmanali and his connection Amjad Mir, Idris apprehending that a proper investigation would not be made had petitioned the Magistrate and that the Magistrate had made over the investigation to the Dist. Supdt. of Police. That thereupon the said Daroga had urged them not to depose but that they had not minded him and had told the Dist. Supdt. of Police of the truth. That ever since the Daroga had been threatening them and every one else who aided complainant both before their faces and behind their backs, and that they were in great fear. That on the previous Saturday (15th September—30th Bhadra) when the Dist. Supdt. of Police had come to the place for a local enquiry the Daroga had accompanied him, and that when the Dist. Supdt. of Police had gone off and they were about to go to their homes, the Daroga had met them at Peshkar's Hat and had abused and threatened them saying that he would "pour water on their heads," "put them in jail," "turn them out of the country," and the like, and that they had heard from others that the Daroga was really in arms (शस्त्र literally sword in hand) against them. That they were poor people and residents of the Sadar Thana and that Osmanali was a wealthy man and a high Police official and that they were not in a position to fight against him. That the Magistrate was their protector and was the Daroga's master and that they therefore prayed that orders might be passed to see that they were not molested.

Mr. Ezechiel on the 21st September sent this petition to the "D. S. P. for note and return." It does not appear to have been returned till the 25th September, when I find another note "Seen" signed by Mr. Ezechiel. So far as the evidence shows Mr. Reily never inquired as to the truth or otherwise of the petition.

Eventually on the 28th. September (the case having then been over a month in the hands of the Police) Mr. Reily

sent the Dist. Magistrate a C from (Exhibits J1 to J3) prepared by Osmanali and attached to it his own reason (Exhibits J4 to J8) for considering the case to be false.

The date deserves notice. It was the day the Courts closed for the Puja holidays. It is a favourite, native trick—it was played on me in the Mymensingh case—to do things at a time when the European officer, if he is effectually to circumvent the villany of his subordinates, must forego a holiday which he is certain to want and as often as not needs. Now, I do not wish to bring my own private knowledge into this case, more than I can help, but I know that Mr. Ezechiel was at Darjiling for the Pujas for he shared a bed-room with me and I know that Mr. Reily knew that he was going there.

And accordingly Mr. Ezechiel when he passed orders as he did at once (on Ex J1) to send up A form, was obliged to direct that it should be sent up for on October, 15th, thus giving the Police 17 more days to tamper with the witnesses.

Mr. Reily's opinion that the case was false is not relevant nor do I suppose that any one will pay much regard to the grounds for that opinion at all events when considering the guilt or innocence of the accused.

There is, however, one statement of Mr. Reily (in Exhibit J 8) which I think myself bound to notice, if only in fairness to the murdered man's widow and child.

"It has been proved," says Mr. Reily "that the deceased's wife was carrying on an intrigue with Sadakali. . . . Even the complainant's Mukhtear Jashod Kumar Rai admitted the above fact."

The paragraph is artistically worded and certainly suggests that Jashoda Kumar Rai admitted the intrigue. As, however, it is also susceptible of another meaning it is fair to Mr. Reily to say that he may have meant only that Jashoda whose statement he recorded in Exhibit B 27 admitted that this Sadak



ali (who is a different man altogether from Accused Sadakali) had been conducting complainant's case.

But it is also fair to the widow and her child to point out that so far as his diaries show, Mr. Reilly had no foundation for his statement beyond the assertions of some of the accused made behind complainant's back (*vide* Exhibits B 18 to B 22) that no sane man, not even a D. S. P. could think such assertions made by men accused of murder a sufficient foundation for such a charge; and that Mr. Reilly himself evidently felt this, for on the 15th September (*vide* his special diary for that date, Exhibit B. 24) he instructed the Inspector and Sub-Inspector to inquire how far the allegation was correct.

It does not appear that any evidence was even elicited to support the charge either from Jashoda Kumar Rai or from any one else; and I need hardly add that before the Magistrate and in this Court it was never even mentioned.

The charge was made against the widow of a man who had just been murdered. It was made because her boy tried to bring his father's murderers to justice. Not only is it wholly false but I think myself bound to express my deliberate opinion\* that when he made it, Mr. Reilly cannot have believed and did not believe it to be true.

On the 15th October the "A" form was submitted, and was made over to Babu Kali Sanker Sen, the senior Deputy Magistrate, for disposal. On the 16th October, the examination of the witnesses by the Magistrate commenced.

\* And from that date to use an expressive

colloquialism it has been all over but the shouting.

On the 10th December 1899, after all his attempts to intimidate me in connection with the Chupra case had failed, Sir John Woodburn endeavoured to cover his retreat by saying that at all events I must admit that my judgment was very long; and when I replied that it was full of facts, he rejoined that any other Judge but myself would have disposed of it in two pages. And in a Resolution of the Government of India No. 1003-1014 dated the 18th April 1900, which, as a copy of it, was sent me by the Government of Bengal under cover of an office letter No. 332 J. D. dated 30th April 1900, from their Under-Secretary (Exhibit Y 21) I suppose I am expected to attend to, exception is again taken to the great length of my judgment.

The judgment in which I ventured to comment upon the conduct of Lord Curzon's officers was after all not half as long as the Resolution whereby he endeavoured to whitewash them; but I admit that a much shorter judgment would have sufficed in the Chupra case if the only thing I had had to consider was the guilt or innocence of Narsingh Singh. And in this case a good deal shorter judgment would have sufficed, if the only issue, or if the only important issue were the guilt or innocence of Sadakali and his three co-accused. For in Narsingh's appeal there was no doubt whatever that the man had really done nothing, at all events, nothing legally punishable and that he had been thrown into jail merely to save the face of the Executive and in this case no sane man can doubt that

some, at all events, of the accused are guilty of the murder laid to their charge. Nor are the facts very complex. If, therefore, my judgment is long, it is not because the case is not really simple enough but because the tale of official wrong-doing is a long one—because those whose duty it was to bring these accused to justice have moved heaven and earth to screen them just as in the Chupra case, those whose duty it was to protect the appellant moved heaven and earth to crush him.

There is a story told of a boatswain whose painful duty it was to administer corporal punishment to a friend. First, the sailor wanted the lashes higher, then lower then higher again. Finally the boatswain lost all patience and exclaimed "Hang it all, Jack, I believe you don't like being flogged at all!" The way in which I have occasionally thought it necessary to comment on Executive officials has excited a good deal of adverse criticism and I doubt not that criticism of some of it has been deserved. For I am a man very much like other men and must needs often do wrong. All I can say for myself is that bad as my work may sometimes have seemed, it has been the best which on that particular occasion I could do. Yet would I ask my official superiors to remember that it is really very difficult for me to do justice without offending them. I suspect as the boatswain did, that they really do not like being flogged at all: that no way of administering the chastisement is likely to please them. And I say this because I have had it remarked to me that it is not the things I

do which are objected to in high quarters so much as the way I do them.

It would be better if the higher official of Government did not think, as they do think, that it is their policy and their duty (I know that with men in their position *it* is apt to seem *honestum*) to screen their guilty subordinates, and to reserve all their indignation for any one who thinks it his duty to expose those subordinates' guilt. Their maxim would almost appear to be "It must needs be that offences come but we to that man by whom the offence cometh". In the Chupra case Resolution the Viceroy has remarked that the case cast discredit upon the Government to which the officers concerned belonged and it had materially weakened the authority and prestige of Government. His principle regret however seems to have been "that the Government of India had been compelled to take notice of the matter." Now, I have never been alarmed by the bogey of lost prestige though I know that to some men it is a fearsome monster. I think we are strong enough in India to be, I do not say, generous but just; that justice would increase our strength and not diminish it. And I have been longer in this country than Lord Curzon and should know more of the Muffasil than most of his advisers.

But whether or not the views of the Indian Government on these matters are sound, I do not think I ought to pay any regard to them. A Judge has nothing to do with politics or with considerations of political expediency. I have to be just whether or not it pays to be just—whether or not it pays the Gov.

ernment as well as whether or not it pays me. And I may humbly remind my official superiors that they as well as I, are servants of the public. So far as official status goes Lord Curzon differs from me only in this that he is not and that I am a member of the permanent Civil Service of the State and I have to consult not the interests of His Excellency but the interests of His Excellency's Master the King in Parliament. And I am indebted to a commercial friend of mine for the metaphor that what I am doing may be bad for the Directors, but that it is good for the shareholders.

And to show that the course which I am taking in this case and which I took in the Chupra case is not without warrant of judicial authority, I will permit myself to quote some portions of the judgment of the Allahabad High Court in the case of *Empress vs. Hargobind Singh* reported in I. L. R. 14, All. 242. The remarks quoted are applicable very literally to the Chupra case and *mutatis mutandis* apply here also: for it is the duty of a Court to see that not only persons accused before its subordinate courts get a fair trial, but also that murderers do not escape justice by the connivance of public servants who are paid for detecting their crimes and bringing them to punishment. The judgment is that of the Chief Justice, Sir John Edge—two other Judges, Tyrrell and Knox, concurring. "It is hardly necessary to say," he observes, "that when a person is convicted of an offence under the Indian Penal Code and has a right of appeal to a High Court and exercises that right of appeal he is entitled to be heard, and in the best way he can to be heard, that there was no valid trial according to law, that the Judge who tried him acted illegally and with procedural irregularity in the course of the trial, and that the Judge by the conduct of his

trial precluded a fair trial being had. Further it need hardly be said that when such serious allegations are bona fide raised by an appellant in a High Court, it is the duty of the High Court to consider them and however unpleasant it may be for the Sessions Judge or for the Judges hearing the appeal, it is the duty of the Judges who have to decide the appeal to express their opinions as to the correctness or otherwise of those allegations and as to the effect of them, if substantiated on the case. When in an appeal whether it be in a civil or in a criminal case it appears to the Judges of a High Court that the Judge of a Court subordinate to the High Court has acted illegally or irregularly in the case under appeal it is their duty, not only to the appellant in the particular case but in the interests of the Government and of the public, to speak plainly and to point out in what manner the provisions of the law have been violated, and its requirements disregarded. It is of greater moment to the Government and to the public, if possible, than to one accused of a crime, that criminal trials should be conducted regularly, decorously, and in accordance with law and statutory procedure and that no ground for doubting the competency or the impartiality of the Judiciary should be afforded by a departure on the part of the Sessions Judge or a Magistrate from the rules of law or the rules of procedure which, as a judicial officer he is bound to follow, or by a High Court passing over in silence and without comment such departures when they are material. High Courts are responsible for the due administration of the law by the courts subordinate to them, the duty of superintendence having been imposed upon them by their Letters Patent. Indeed, the Government of India in one well-known case claimed the right to rebuke a High court for the non-performance, as it appeared to the

Government of India, [of that duty of superintendence. It is necessary in this case to consider not only the evidence on the record, but the circumstances under which that evidence was recorded at the Sessions trial and the most material of the alleged illegalities and irregularities connected with the trial"]

My judgment hitherto has been mainly devoted to clearing away the mass of trickery and falsehood under which the police have endeavoured to bury the features of the case and that task is by no means over. But I think it is time to turn now to the actual evidence incriminating the four men in the dock. Witnesses Nos. 5 and 6 for the prosecution are Saroda Mohun Chakravarti, the Sub-Overseer of the District Board and Benod Behari Pal, the District Engineer. The Civil List shows that the latter gentleman has held his present position for close upon 17 years and that his pay from the District Board is Rs. 400 a month. He says he received a written order from the District Magistrate to prepare a plan in this case and that he had the plan prepared by Saroda Mohun Chakravarti and that he himself visited such portions as he considered important. Saroda Mohun Chakravarti said he made this plan on the 18th November 1900 (when as the record shows the case was still before the committing Magistrate) and that the District Engineer tested it in his presence, on the 20th November 1900. The measurements shown in the margin of the plan in red ink are the District Engineer's own measurements and are in his own handwriting. Exhibit 5 is the plan. It was admitted in evidence by the committing Magistrate on the 21st November 1900. Exhibit 5, as also the evidence, shows that there is a large tank in front of Ismail Jagirdar's house (this is the tank in which his body was found.)

The *daraja* or entrance of the house is immediately south of this tank and

communicates with the high way which runs north to south by the east bank of the tank and which finally merges in the Ichakhali road. To the back (west) of Ismail (or Islam) Jagirdar's house is another road which also goes on till it joins the Ichakhali road. Immediately south of Ismail's *daraja* or about 15 yards south east of his tank is the *bari* (homestead) of the accused, Sadakali and Aslam, who are cousins and live together. The accused Anwarali (house not shown in Ex. 5) lives close to them 25 or 30 cubits to the south of the tank. North of the tank is the house of accused Emdadulla (not now before the Court) and north west of it is the house shown in Ex. 5 as Abdul Hakim's. Abdul Hakim is accused in this case but is not now before the Court. With him live Karim Bux (also accused but not before the Court) and Yakubali. This Yakubali is the 4th of the present accused. He is Abdul Hakim's brother. There is a path from Abdul Hakim's house which leads past Ismail Jagirdar's house (and between his house and his tank—in fact through his compound) towards south. The way out of Abdul Hakim's house debranches on this path. There is a road to the south of Emdadulla's house which connects with the path. The path (whose further course is not shown in Ex. 5) leads south west from Ismail Jagirdar's house (after first going a few feet east) past the *daraja* and *bari* of the accused Mainuddi Maji (not before the Court) and continues past other houses (among them that of witness No. 7 Abdul Aziz) to that of witness No. 4 Islam.

The most important evidence incriminating the accused what may be called the direct evidence—is given by witnesses (2) Hasanali (3) Torabali and (4) Islam (or Ismail). Hasmatali and Torabali are witnesses to the same facts. They were not cross-examined, on the same day, and although the defence

pleader said nothing about this when addressing the assessors (and indeed it would have been no use for him to say it to them) a point may be made of it on appeal. I therefore think it as well to state that (as the record shows) Hosanali's examination in chief was completed on the 9th January, but the defence pleader asked that the cross-examination might be deferred as he wished to cross-examine the two men Hasanali and Torabali on the same day and as it was 4 o'clock and I had some other work I allowed this and adjourned the case. Next day for reasons stated in the Order Sheet (vide order no. 4 dated 10th January 1901) the case was not taken up till 2 p. m. The pleader asked verbally that Torabali might be examined in chief before he began cross-examining Hosanali. Now this was a request which I was not likely to grant, as it was altogether opposed to the usual procedure in Sessions trials and I have no doubt Babu R. K. Aich never expected me to grant it. (Similarly when he addressed the assessors and I stopped him from using Osmanali's diaries as evidence, he expressed surprise and applied verbally to call Osmanali) I told him therefore that he must cross-examine at once but added that I was quite prepared to sit later than usual and that there would be plenty of time for the cross-examination of Hosanali and the examination and cross-examination of Torabali; as the examination-in-chief of the latter was not at all likely to take very long. As the pleader went on cross-examining however, it became very evident that he was in no hurry to bring the cross-examination to a close, and after an hour and a half of it I hinted that my offer to sit late must not be construed too liberally. On this he said that the cross-examination of Hosanali would be so long that he would not ask me to sit beyond the usual hour. He went on cross-examining till 4-40 P. M. and when he sat down must have done so with the cons-

sciousness that even though Torabali might be examined in chief, it was not at all likely he would be called upon to cross-examine him.

In saying all this I am far from wishing to reflect upon Babu R. K. Aich of whom on the contrary I have a high opinion. The defence of persons accused of murder even if believed to be guilty has always been accounted legitimate by the legal profession and I am a member of that profession myself and may before long have to fall back upon it for a living. Having accepted the accused men's brief, it was Babu R. K. Aich's duty to do his best for them. But I think I am fully justified in the remark that he evidently thought that the course he was taking was the best he could do for them—that it was more to their interest to reserve a point for (possible) use before the appellate tribunal than to cross-examine the two witnesses on the same day. And the natural inference is that the accused men's pleader either thought that these two peasants had been so carefully coached that it was hopeless for him to attempt to break them down or that he believed that the story they were telling was a true one. These two men live not far from each other on the Ichakhali Road some 4 miles from Sudharam. They say that they had been at Belu Sahiba's *Hat* which is perhaps or  $1\frac{1}{2}$  miles out of Sudharam, on the Lakshipura road. I may explain that in this town permanent shops are very few and nearly marketing is done at these small *Hats* which on the market day usually twice a week are crowded with people and other time are nearly or quite empty. Hasban says that he went there with two seers of chillies, he had for sale and that he bought a parrot or finishing tray which he brought away with him. Torab went there because he had some betel nuts to sell and heard that



price at this particular *bat* was up. He sold his betel-nuts, he says, and bought two ducks. Hasban says he does not know why Torab went to the *bat*. A little before sunset it came on to blow and rain heavily. The men met at a blacksmith's shop in the *bat* where they and a number of others took shelter from the rain. It stopped raining about 2 *dandas* (-48 minutes) after sunset and the two then set off on their homeward journey. The road they followed is indicated on Ex. 5 by the letters A. B. C. D. E. F. G. H. I. J. K. L. M. N. R. S. T. At H it will be seen they took the road south of Emdad Ullah's house. That road then goes a few yards east and then turn south at I whence it proceeds in a generally southern direction, till it merges at K in the District Board High way known as the Icha Khali road. From the point marked I, of the road the two men took passes to the east of Ismail Jagirdar's tank. Like most such tanks the banks of this tank are somewhat raised above the general level and are covered with trees and vegetation. The tank itself says Hasan Ali is about 45 yards from the road. (From the view I had of the place, I should say this was an over estimate—there is however an applicable space—at least 20 yards and probably in most places 25 or 30 yards between the tank and the road). "The *Daraja* S of the tank is at first a good distance from the tank but gradually approaches it till as it gets near the house it touches it—this is not shown, or at all events not clearly shown, in Exhibit 5. It is true that right up to the Ghat—the steps shown in the T. A. N. K—there is always some intervening space, but as it approaches the Ghat it gets less and less. The two men got to this tank at six *gharis* after sunset. According to Torab at four or six *gharis*, according to Hosaen. When they had got about opposite to Ismail's *darja*—some 60 or 80 cubits

by a rough guess, says Hasan, from the point I—the two men heard a cry of *মাতা* universal cry (*moga*—mother!). This, is the of the Bengali; when dying in terror—or in great pain. At his time, the witnesses say—and this applies to other witnesses as well it had cleared up and though there was no moon, the stars were shining. The cry, say Hasan and Jorab, came from a distance of 17 or 18 cubits 8 or 9 yards. They hastened forward towards the direction of the sound, and saw three men—the first three accused holding or carrying Ismail Jagirdar. Sadakali had him by the throat, Aslam by the waist and arms, and Anwarali by the legs.—They were carrying him towards the West. Torabali says that he got within four cubits of the men and spoke to them saying they would get the whole village into trouble if they killed Ismail Jagirdar (literally "It is not good—are you killing Ismail Jagirdar, or are you setting fire to Char Uria") Husan does not say this—he merely says they advanced towards the three men who were carrying Ismail. The two witnesses agree in stating that as they approached, these latter a number of other men whom they could not recognize—six or seven according to Hasen—4, 5 or 7 according to Torab—came forward from a distance of 15 or 16 cubits (7 or 8 yds.) further west and called out "seize them."

The place, where the three accused were carrying Ismail is on the land of Sadak Ali and Aslam, just south of Ismail's *Darja*. It is under a date tree which is shown in the plan (Exhibit 5) and is some 20 or 25 yards from the row of trees fringing Ismail Jagirdar's tank—according to the Sub-Overseer's note it is 320 feet (a little over 100 yards) from the Jagirdar's house. It is described in the quaint Bengalee English as "place where the two witnesses

saw to catch hold the person killed.") When the witnesses heard the cry they were a little to the north of this place.—The men who came from the west were on a level with them.—It is probable, though the witnesses do not say so, that these other men were in the *daraja* of Ismail which a short distance from the road is a cutting between high banks covered with trees and would be nearly or quite dark.—On these men coming forward the witnesses made off home along the road—Some very unnecessary cross-examination was directed to the question why they failed to inform the inmates of Ismail's house.

The witnesses had about a mile to go before they reached their house. There are a number of houses on the way. Hashanali says there may be 30 or 40. The two men called out to the inmates of some of these houses. It may be explained that none of these houses are exactly on the road. No house in Noakhali ever are—they are all a little way, some more or less, off it and are connected with it by *darjas*. The witnesses did not go to the houses but called to the inmates from the road as they passed by. The first person they called out to Osmanali Chowkidar, whose house is S. E. of the road. They neither saw nor heard Osmanali himself, but his mother or some one whose voice sounded like his mother's replied to them. They called to several other persons—to a man whose name they do not know but who is generally described as the "Lime-seller" (*akha-rallal*). To Amjad son of Asuf and to Ahamedali but neither these persons nor any one in their own *daris* replied. On the way however they fell in with one Atarali at the *darja* of Har Charan Dutta and told him what had happened. This Atarali was of the signatories of Ex 5, but died before he could be examined.

The next most important witness is (4) Ismail (or Islam). It may be noticed that the handwriting of his deposition which was recorded on the 12th January, is very irregular and uneven. The reason is that when recording it, I was suffering from an attack of acute gastritis, a disease to which I am subject. I may say that from Court I went straight to bed that Saturday afternoon and remained there all the rest of that day and most of Sunday. The nature and symptoms of these attacks are set forth in Ex X 34 a copy of a medical statement given me by Dr. R. S. Ashe, the Civil Surgeon of Mymensing who recommended me for medical leave in September 1898. One of the originals is in the Bengal Secretariat. It was sent by me to Mr. Bolton on the 5th September 1898 with the letter of which Ex. X 38 is a copy. Mr. Bolton had on that day expressed great commiseration for me and had asked for the statement that he might show it to Sir John Woodburn.

In any climate like that of Noakhali I am bound to have these attacks (I had one on the 11th instant while writing the Judgment.) In the rains I average 3 or 4 a month; they last 2 or 3 days. The result is that for a long time past I have taken them as it were in the days work and do all such work as recording depositions, deciding comparatively easy cases and the like whether I have them or not. It is like a forest officer with fever in some parts of upper Burma. If I were only to work when I was well it would be very little work I should do here for six months of the year. I may add that I have more than once applied for leave on the ground of my ill-health and have been refused it, I have not formally represented the extreme dampness of Noakhali to Government, thinking it useless to do so but I have applied for a transfer which I would not have done willingly. I have formally

represented the matter to the High Court but that body in their extra Judicial Capacity have seen no reason to interfere and I can not afford to resign so I can only hope that if I did wrong in reading Ismail's deposition on the 13th January it will be recognized that there were extenuating circumstances.

This witness Islam lives say half a mile a little west of south from Ismail Jagirdar's. His house is not shewn in Ex. 5 but it is shewn in (the left bottom corner of) Ex. Aa : and although this latter plan for reasons which will afterwards be set forth, must be regarded with great suspicion, it is not improbably represented fairly enough the position of Islam's house.

This Islam had a case on at Lakshipura which was pending at the time of occurrence. In cross-examination he states that it was a suit for *wasilat* (mesne profits) brought not by himself but by his younger brother : and that the defendant in this suit for *wasilat* has brought another, a title suit against his brother and himself. Karimbaksh, who, as already stated, lives with Abdul Hakim and accused No. 4 Eakubali, were witnesses for the opposite party in one or both of these suits : and Islam says he went to Karim's house on the evening of occurrence to get him to help in bringing about a compromise which had already been mooted (as a matter of fact, the witness says, both cases were eventually compromised) Islam got to Karim's house (that is what 'went there' বাড়ি বাইতে means) at sun-set and presumably after taking over matters with Karim Buksh, started to return home about a *prohar* (3 hours) after sun-set. Karim's house is that shewn in Ex. 5 as "accused Abdul Karim's house." The witness came out of it by the *daraja* which faces east and proceeded south, then east then south again (vide plan) till he got Ismail Jagirdar's *bari* which was on a public (village) road. He then took the private path which crosses Ismail's compound

from north to south and passes between Ismail's house (properly so called) and his tank. This, the witnesses say, is not only the shortest way from Karim Baksh's house to Ismail's, but is the one which they—the neighbours—usually take.

Islam had he says turned the southwest course of the tank had gone two or four cubits east and was just turning to go south (I have been to the place and can say that is the way he would have to go when he saw just to his left four men carrying what looked like a dead body by the south bank of the tank. They were bringing the body from east to west towards the ghat of the tank, and were within 4 or 5 cubits of the witness when he saw them. He says that he recognised three—the accused 1 Sadakali, 2 Islam and 4 Yukubali—the fourth man was under the shade of a tree and he could not clearly recognise him, but he looked the witness says like Abdul Halim (the man was sent up with the present four accused but was discharged by the committing Magistrate).

Islam, asked the men, he says, who they were. On being thus challenged they set down the body under a *badir* tree (pointed out when we viewed the place.) It is on the south bank of the tank a few yards from the *ghat*. Islam was going towards it and asking what it was, when Sadakali abused him and told him to be off. The body, says Islam, was laid face downwards and he could not recognise it. On the man threatening him, Islam ran off home. For a few yards I may say the path, he took, descends fairly sharply to a lower level. Before going far one comes to the *daraja* of Noimuddin Mizi. When he got to this place, says Islam, he saw 8 men sitting on the road conversing together, among them he recognised Naimuddin Mizi himself, Emdadullah, and Abdul Hakim Kabiraj—the same Abdul Hakim who is brother of accused No. 4. Yakubali. Islam says he spoke to Naimuddin and told him what he

had seen. Naimuddin however told him. "Be off, *sala* (a vulgar term of abuse), mind your own business," and Islam went on. After going a little way, he says, he came to the *daraja* of Abdul Aziz, and as he was frightened called out to the latter. After being twice called Abdul Aziz came out and asked him what was the matter. Islam told him every thing he says : and Abdul Aziz went some part of the way home with him. After his examination was over this Islam who was certainly "all here" in the witness box—some of his answers in cross-examination recalled a creation of Dickens—complained in excited tones of their maltreatment to which he had been subjected by the Local Police while attending my Court—and he was corroborated by the Government Pleader. I thereupon sent a note to the senior Munsif, Babu Lalit Kumar Bose, to enquire into the matter. Babu Lalit Kumar Bose's report (No. 72, dated 14th Jan. 1901) and its annexures are filed with the record : they are not of course evidence against the four accused, but it may be necessary to refer to them hereafter when discussing the conduct of the Executive authorities during the trial.

The Abdul Aziz mentioned by Islam is witness No. 7. (He should be distinguished from g Abdul Aziz, the ferry man.) In theory it is perhaps to be regretted that he was not examined the same day as Islam. This was due to the fact that the Government Pleader asked that the two District Board witnesses should be examined on the 12th January (Saturday) as the District Engineer wanted to go to the Mafussil no objection was raised by the defence, and as in the case of Hosan and Torap so here, I mention the matter only because something may be made of it when the case comes before the High Court.

Abdul Aziz says he was sitting in his hut when he was called. He came out to his *daraja* and Islam asked him to come

a little way with him, as he had got a fright. Islam said that he was coming by the west bank of Ismail Jagirdar's tank, when he saw 3 or 4 men carrying what looked like a dead body. Abdul Aziz asked if he had recognised the men and Islam replied "yes, they were Sadakali, Aslam and Yakub Ali. Abdul Aziz says he did not ask anything more but after this went some way with Islam and then returned home. This Abdul Aziz was one of the men who petitioned the Magistrate about Osmanali Daroga threatening them : other petitioners as already stated were the two eye-witnesses Hosan and Torap, and Atar Ali whom Hosan and Torap say they told about the occurrence just after they had seen it, and Rajabali (witness No. 9). Rajab Ali says that just as the sun was setting he saw the four accused under a *bat* tree on the Ichakali road. This *bat* tree is shown in Exhibit A. It is east of Utsara Dighee (the Dighee of 45) and on the other side of the road from the dighi (tank) just in a line with the point J. I have taken it down that Ismail Jagirdar's house is  $\frac{1}{4}$  of a mile S. E. of that place but this must be a mistake of mine—the place is really about  $\frac{1}{4}$  of a mile S. E. of Ismail Jagirdar's.

Rajabali says the 4 accused were talking together—some sitting and some standing. After he himself had gone a little way on, he noticed that they were going west along the N. bank of the Dighi (i. e. towards J.) The witness himself had gone round the East bank of the Dighi and was proceeding W. along the Ichakhali road, so it was easy for him to see them—and they (being as it were parallel with him on the other side of the tank) the road along the N. bank of the Dighi I may point out connects at J. with that leading up past Ismail Jagirdar's house. Then there is the evidence of witness No. 8—Abdul Aziz. This witness's cousin is lessee of the ferry between Lambakhali (10 kanis from

Ichakhali—the old steamer station recently abandoned in favour of Lombakhali on account of the constant diluviation) and Churdukhi. The witness says that the ferry boat is plied by his cousin, his brother and himself, with the assistance of hired boatmen (mallas). The afternoon before the occurrence they had come back from Hatiya at 3-0 P.M. and their boat was moored at Ichakhali. The witness says they stay at Ichakhali for passengers as there is no khal at Lambakhali. (We here know this to be true—indeed most of the places mentioned in this case are as familiar to the assessors and myself as Bondstreet and Pall Mall are to a Londoner.)

Abdul Aziz, the ferryman, says he was asleep at Ichakhali Bazar in the early hours of Sunday, 26th August about 2-0 or 3-0 A.M. Sadakali and Aslam came there. Sadakali, the witness says, woke him up and asked him what *manjhi* there were. Sadakali began the conversation Aslam joined in it afterwards. The witness said he was a *manjhi* (man in charge of a boat). Sadakali then asked when the boat would start; and Abdul Aziz replied that it would leave for Char Lakhi on the flood tide about 2 or 3 A.M. The witness then asked "how many of you are there?" And Sadakali said "we two." The ordinary fare for passengers to Char Pagla, says Abdul Aziz, is 2 annas a head only; and on Sadakali saying there were only two of them the witness told him there were 6 or 7 boatmen and it would not pay them to make the journey. The men said they would think a bit and make them an offer. The witness asked "how much?" Sadakali offered a rupee, Aslam two rupees, and finally Sadakali got up to three rupees but the witness held out for 4 and eventually Sadakali went away saying he would consult other people and did not return.

The witness says he informed other people of this matter a day or two afterwards. He did not depose before Os-

man Ali *Darogh* but he deposed before Mathur Babu, the Inspector, who under orders of the District Magistrate eventually sent up the case. This witness seems to be a man of some substance and it may be worth while to mention a remark of one of the assessors when the defence pleader suggested that he might have been bribed. The assessor rejoined that no doubt he might have been, but that with a man like that several hundred rupees would be wanted and who was to give them?

Then there is the evidence of Mohobatali. This man is a resident of the village of occurrence, but mysteriously disappeared just before the trial. As the Police forgot to take any recognizance from him (or from any of the witnesses for the prosecution) to attend before this Court, it appears that he will escape scot-free for his failure to appear. It is however proved by the evidence of Idris and of witness No. 17, a constable named Mohim Chandra Das—that search has been made for him and that he cannot be found, and his deposition before the committing Magistrate has been admitted in evidence under Sec. 33 of the Indian Evidence Act. This witness said in the Lower Court that early that Sunday morning he met Sadakali on the Char Uria village road. He was going towards the south with his wife and with his child in his lap and after repeated enquiries told the witness he was going to his son-in-law's.

Mohobatali did not say where he met Sadakali and as he disappeared at the trial in the manner above described it was not possible to question him upon the point. But it is interesting to compare his evidence with that of Idris, who says he met Sadakali near the Mukhtar's at 7 or 8 A.M. Sadakali would seem even from the evidence of persons other than the eye-witness of the occurrence to have been extraordinarily active that night and early morning. Ichakhali is a good 4 miles from Sudharam. There is then



the evidence of the accused men's absconding after the crime. Too much of course should not be made of this—the accused were men who would naturally be suspected. But till a comparatively late hour on Sunday it was not known that Ismail had been murdered at all, and till this was known there was no reason for any one but the murderer to abscond. The extraordinary officiousness of the accused Yakubali and other enemies of the deceased on the morning of that day and their attempts—which at first proved successful—to get Idris to report the death as an accident, have already been noticed—and points to their knowing more of the circumstances of Ismail's death than would be known by innocent men. The anxiety of accused Sadakali and Aslam to get away from the rain land that night and Sadakali's presence near the Mukhtar's at Sudharam early the following morning have not been explained. It has been proved by the evidence of Idris and other witnesses that the houses of the four accused were deserted for several days after the occurrence. Even Mr. Reily, although at first he tried to lie about it, had at last to admit when pressed by the Government Pleader that he went to the house of Sadakali and Aslam on Tuesday morning and found it deserted, and he is corroborated by ten defence witnesses. Head-Constable Krishna Chandra Bhadra who shuffled and lied if it be possible even worse than his master. Mr. Reily had also to admit that "as far as he can recollect he does not think" that he found or met with any of the accused that Tuesday morning. No explanation of their absence has been offered.

There is also some important evidence given by Mr. Reily and Head-Constable Kristo Bhadra as to the signs of struggle. Mr. Reily says, Osman Ali showed him a place about 100 yards from Ismail's hut

and about 70 yards from the tank and that he saw marks which looked as if there had been a struggle there. This description would about tally with the date-tree or rather would be a good deal south of it, but Mr. Reily admits that the distances are only guesses and it is certain that he must be mistaken of, at all events, that what he says is incorrect. The place pointed out to me by both parties as the place where the signs of struggle were found is that indicated in the Head Constable's evidence. It is on the road, which leads by the S. bank of Ismail's tank up to his door and N. of the *bari* of the accused Sadakali and Aslam—in short on Ismail's *daraja* and it is in that part of the *daraja* where there is a depression—in the dark cutting or gut already referred to. The witness (who he it remembered arrived before the *daraja*) found footprints and kneepoints on both sides of the path and a plant about a cubit high had been broken.

I now come to the evidence of motive, which is very strong. Sadakali, Aslam and Anwar Ali are all tenants of the deceased, and none of them will pay their rent. Sadakali, says Idris has not paid any for five or six years. Ismail first brought a suit for ejectment against Sadakali and Aslam and got a decree—but the two men took a *nim hawla* settlement from him and stayed on. He afterwards sued to enhance the rent of the *nim hawla* and again got a decree. Three or four years ago, Ismail brought a criminal case for assault against Sadakali, Abdul Hakim (the brother of Yakub Ali) and two other persons in which Sadakali was fined. Later—two years ago, he brought another assault case against the same 4 persons and Yakubali—but this latter case was dismissed. Against Aslam and Anwarali, Ismail brought rent suits which were still pending at the time of his death. The accused Yakubali has an uncle named Jahiruddin. Ismail brought a suit against this Jahiruddin on

a mortgage bond, got a decree and bought Jahiruddin's *bari* (homestead) at the Execution Sale. Jahiruddin, Anuruddin, Yakubali and Abdul Hakim opposed deceased in taking possession, and deceased then brought a title suit against them and got a decree. This was 3 or 4 years ago. Deceased after getting the decree took possession of the homestead, but later on Jahiruddin's son, Amiruddin felled and removed a tree from it. Ismail then brought a criminal case and Amiruddin was fined. About 3 years ago, Ismail's son, the witness Idris, was assaulted as he was going to that homestead by Yakubali accused and his brother Abdul Hakim; and the same day these two and their cousin Ameeruddin looted some paddy from other land of Ismail's. For the beating Idris brought a criminal case in which Abdul Hakim was sentenced to a week's imprisonment and Rs. 10 fine. For the loot Ismail brought another criminal case in which the same Abdul Hakim was sentenced to a week's imprisonment and Rs. 20 fine. Ismail also sued and got a decree for the mesne profits of Jahiruddin's homestead. One Esaf brought a case of cattle theft against Ismail at the instigation, it is said, of these accused. Sadakali gave evidence for the prosecution in that case, which resulted in Ismail's acquittal. Ismail let out three *kattas* of land to Sadakali, and as the latter would not give it up (and apparently would not pay rent for it either) Ismail resumed possession by force a month or a month and a-half before the murder. One day later on Sadakali came to this land and threatened Idris and his father saying they had done for themselves by taking the land. The very day before Ismail started on the journey from which he never returned alive—the Friday—Ismail and his son were trying to impound some cattle of Sadakali which were eating their paddy, but desisted in consequence of the threats of Sadakali

and Aslam, the former of whom said this was the last they would do (lit: this is your last time.)

These facts are mostly derived from the evidence of Idris the son of deceased. They are not gainsaid; but a number of decrees, judgments and the like (Exhibit 6 to 22 inclusive) have been filed to corroborate the oral evidence. The evidence of Kali Kumar Das, Ismail's pleader, is also important in this connection. He proves that on the day of occurrence rent suits of Ismail were pending against the accused Aslam (who lives with Sadakali) and Anwar ali and that the very case in which, Ismail gave evidence that day was one brought by his wife against Abdul Karim and Karim Baksh, the latter of whom, as already stated, lives with the accused Yakubali and his brother Abdul Hakim.

We have it, therefore, that deceased had constant litigation both civil and criminal with all four accused; that on the night of occurrence he had suits pending against two of the accused (Aslam and Anwarali), was returning from giving evidence against the *mate* of a third (Yakub Ali) and had been threatened so lately as the day before by the fourth (Sadak Ali).

I now turn to the defence made by the four accused themselves. From the committing Magistrate's order sheet it appears that on the 6th December, three days after the examination of the witnesses was concluded he heard arguments and it was not till after then—till the 7th that he examined the accused. This was a somewhat unusual procedure, and obviously it was to the advantage rather than otherwise of the accused.

On the 7th December—the day after arguments were heard the four men filed a joint written statement (Ex. 29) the purport of which is as follows—

1. We are not guilty, we did not murder Ismail Jagirdar, we have unjustly and falsely been accused owing to a conspiracy.

2. Nanda Kumar Das *alias* Nanda Basi Das, Nanda Thakur and Sadakali, residing in our neighbour-hood are very litigious people and are *tornis* (village touts corruption of "attorney.") During the Police investigation they threatened and extorted money from several villagers, and demanded money of us, and as we refused to pay they have tutored their neighbours and got up other false evidence long after the occurrence and brought this charge.

3. As a matter of fact we are quite innocent.

When examined orally by the committing Magistrate the accused declined to say anything more. And with the exception of the accused 2 Aslam, they have been equally reticent in this Court.

Aslam says that he is a very poor man without even a hut to live in, and that on the night of occurrence he had fever and headache and could not go out of doors or even take his food. He says he had paid his rent all right but still Ismail sued him. He also says that deceased's family bear him a grudge, because he did not depose when cited in Ismail's defence in the cattle theft case. The charge against him, he says, has been fabricated by the three men named with the help of Jashoda Babu (the Muktear). They have charged him because he would not give them money.

To deal first with these separate allegations of Aslam; it is to be remarked that no attempt has been made to prove that he was ill and confined to his house on the night of occurrence—that it is in evidence that he and Sadakali, live in the *bari* immediately south of deceased and that no attempt has been made to show that Ismail cited him as a witness in the cattle theft case—a thing grossly improbable on the face of it, as Aslam was living with Ismail's bitter enemy Sadakali. If Aslam be a very poor man, it is difficult to understand why anyone should try to extort money from

him. "The empty traveller will whistle, before the robber and his pistol."

Proceeding next to the more general allegations of the four accused, there is no evidence whatever as to the litigious disposition of Nanda Kumar Das *alias* Nanda Basi Das, of Nanda Thakur or of Sadakali. Nor is there any evidence that they are *tornis* or touts—or that they threatened or extorted or attempted to extort money either from the men in the dock or from any one else. Nor does it appear at all likely that if the men or any of them really extorted or attempted to extort money from any of the villagers there would be any difficulty in getting the villagers in question to say so—for there can be no question that the whole power of the Police Department from the District Superintendent downwards, has been thrown into the scale on behalf of the defence. It appears therefore that the defence got up by the accused themselves has entirely failed. I may remark before passing on to other matters that there is no evidence that a single one of the witnesses for the prosecution is in any way connected with either of the three men said to have fabricated the case, and that these three men are, on the showing of the defence, men of no particular consequence.

From the defences set up by the accused themselves I turn to the defences set up for them. The first of these is that the witnesses who now testify that they saw Ismail being carried—Hosan, Torap, and Islam—did not depose before the Police. The all sufficient answer to this contention is that these three witnesses swear that they did depose before Osman Ali Daroga on the morning of the 28th August at Ismail Jagirdar's *daroja* and that Osmanali Daroga does not dare to come into the witness box and contradict them—or if that way of putting it be preferred—if the very obvious fac-

that Osmanali is financing the defence and is the defence, be ignored—that the accused men's pleader did not think it worth while to call him.

The contents of Osmanali's diaries—and his reports are not evidence—being statements in writing made by a person who is within a few hundred yards of the Court but who is not called as a witness. The prosecution are not called upon to explain the fact that he did not send up the accused.

His omission to *chalan* them would almost indicate his opinion that the case was false, and such opinion, even though honestly entertained would not in itself, and as distinguished from the grounds on which it was based be revelant. There is however a very adequate explanation of Osmanali's inaction forthcoming; and indeed the defence pleader's decision not to examine him was the best possible indication how complete that explanation was and how entirely his attempt to negative it had failed. The explanation is to be found in two facts—the first, the extraordinary (I wish I could say unparalleled) ascendancy which Osmanali has acquired in this District—and the second his connection with the accused.

Evidence has been adduced by the prosecution—and with one trifling exception no attempt has been made to rebut it—that a number of witnesses deposed before Osmanali to facts incriminating the accused—that the most important of these depositions were recorded by him the moment the D. S. P's back was turned. Every circumstance of time and place is given—a crowd of people are said to have been present and several are actually named. Evidence has also been given that when the witnesses were summoned by the D. S. P., Osmanali told them (in one case when handing the witness the summons) not to give evidence. This is also said to have taken place at a *kat*

and several names of persons present are given. Evidence has also been adduced that after the men had given their evidence Osmanali threatened them. On one occasion—the 15th September just after the D. S. P. had left, at Peshkar's *kat*, before a number of people of whom several are named—and all these things are said to have happened within three or four miles of the sadar station under the very noses of the European District Superintendent and the European District Magistrate.

It has been urged by the defence that the conduct ascribed to Osmanali by these witnesses is so extraordinary as to cast doubt upon the test of their evidence. But it is strange if he thinks this to be so, that the defence pleader does not put Osman Ali in the box to contradict these witnesses—to tell a more probable story.

As a Zamindary Manager once told me in the very house where I am writing this, the people who have real power in the mofusil are not (save in exceptional cases) the European officials but the European officials' pet natives. It is the pet Deputy to whom a native goes when he wants to get anything out of the Collector-Magistrate—the pet native Policeman—sometimes Inspector, sometimes Sub-Inspector, sometimes Head clerk who leads the D. S. P. by the nose, and the District Judge's Sheristadar is often in everything but the actual disposal of cases a far greater personage than the District Judge. And this is due to two causes. One, the enervating nature of the climate and the inertia it produces, and which leads the European officer to leave more and more to the subordinate who saves him so much trouble; the second, the fact that between us and the natives of this country there is a great gulf fixed. The causes of this separation between the rulers

and the ruled are manifold and need not be referred to here. Suffice it to say that the fact of that separation is notorious and that the natural result of it is that we very often know very little of what is going on around us.

Till I came here the most notable example I had met in these provinces, of the type of subordinate I am speaking of, was the Sherishtadar—he is still the Sherishtadar of the Judges' Court at Mymensing. But Kisto Kisore Bysack the Sberishtadar is altogether eclipsed by Osmanali, the Daroga.

Mr. Reily's evidence as to Osmanali is as follows. He can't say exactly how many years Osmanali has been here; but he was here when he (the witness) arrived. He has always considered Osmanali to be of good detective ability. Whenever he has had anything specially difficult to do—any specially difficult case—he has usually put Osmanali on it. Osmanali has been the only Sub-Inspector he has had whom he could depend on for a difficult case. Mr. Reily believes he has recommended his promotion. He believes he has been promoted while he (the witness) has been here. Osmanali has received a watch and a medal while Mr. Reily has been here. Mr. Reily has had every confidence in him.

The cross-examination of the defence pleader on this point was mainly directed to showing that other people besides Mr. Reily had had confidence in Osmanali.

This may be granted. The success of a man of this kind depends on his not being found out by his European superiors, and many of them Kisto Kisore Bysack for instance, have most beautiful testimonials.

Mr. Reily was more communicative to the defence pleader (who had originally cited him) than he was to me. He can't say for certain, says Mr. Reily, how long Osmanali has been in service—he has all along, Mr. Reily believes, been in this

district—he worked up his way from a constable for a short time. Mr. Reily believes he was in Barisal or Jessore, the witness is not sure which, for about three months. The fool in Mr. Reily is even more prominent than the knave and this flow of information must have rather disconcerted the defence pleader, who merely wanted to get out of him that Osmanali was a man of long service—when, it may be for want of breath, the witness stopped, Babu R. K. Aich managed to elicit that he believed Osmanali had been in Govt. service for more than 25 years. He is in the second grade of Sub-Inspectors. Mr. Reily believes he was given the watch in the time of his predecessor Babu Rash Behary Biswas. The chain was given by the District Magistrate on recommendation, adds Mr. Reily, but does not say on whose.

The Government Pleader of this District is a man of strong religious convictions. It is possible due to this that he did his duty in this case, it may be at the expense of his interest. Many Government Pleaders—the one at Chupra for instance—would certainly not have done their duty in this case. Other people, it appears from his cross-examination of Mr. Reily, have not had the same high opinion of Osmanali as Mr. Reily himself has. Mr. Reily believes that the S. D. O., Feni, called on Osmanali to show cause why he should not be prosecuted under Section 211 (bringing a false case) in nine salt cases which he *challenged*. These nine cases were (thereupon) transferred from the Court of the S. D. O., Feni, to that of Babu Ashu Tosh Banerjee at Noakhali. Yes, he believes Ashu Tosh Banerjee has dismissed all those cases. He has not as yet taken any action against Osmanali after the dismissal of those cases. Those cases were dismissed before the Puja vacation. He knows that a certain number of cases which Osmanali had



sent up in 'C.' Form were directed by Mr. Ezechiel to be sent up in "A" Form. (The question was: Is it not a fact that many such cases, &c? The witness at first answered "I believe so." I then asked him if he did not know and his reply was as above.) It is a fact that in some of those cases convictions were obtained. He did not take any step against Osmanali after convictions were obtained in those cases—except calling for explanations. The Government Pleader then asked the witness, "am I to understand that after receiving explanations you dropped the whole matter?" The witness replied "I don't think I have dealt with all the explanations as yet." In answer to further questions of the Government pleader's Mr. Reily said that he knows of a case in which Hamidall chowkider was complainant and Serajul Huk accused—decided by Babu Sarat Chander Sen, Deputy Magistrate. It was a case of cattle-lifting. He did not take any action upon Sarat Babu's remarks against Osmanali in that case—but believes that an enquiry was made into them under his orders by the Inspector Bharat Chandra Majumdar. (The last in reply to a question put by the Court at the instance of the defence pleader.)

The case of Empress vs. Mohesh Chandra Guha has already been referred to. Mr. Reily says that the District Magistrate Mr. Ezechiel, ordered "A" Form to be submitted in this case. The District Magistrate is head of the Police. Mr. Reily is only head of the Police under him. It did not occur to Mr. Reily when Mr. Ezechiel ordered "A" Form that it was desirable to remove Osmanali from the charge of the Sadar thana. He has heard that one of the witnesses attending Court in this case was arrested by a town constable named Isopall, but had not, when he gave his evidence, seen the first information in that case. Town constables

are under the Sub-Inspectors of the Sadar thana.

With this evidence should be read that of the defence witnesses Kristo Chandra Bhadra, Head Constable of the Sadar thana, given on the 31st January, five days after Mr. Reily had given the above evidence, and three days after Mr. Reily's examination had been concluded. Osmanali says the witness, is still in charge of the Sadar thana. He has not been suspended so far as the witness knows, no proceedings have been instituted against him by the superior Police authorities.

Magistrates and Sessions Judges may complain of Osmanali, but it matters naught, so long as he has his departmental superiors on his side—it is the Magistrates and Sessions Judges who will come to grief, not he—so long as he keeps out of the witnesses box—can't prosecute him; and he knows well enough that Government won't.

I now come to the nature and extent of the Supervision exercised by his departmental superiors over Osmanali during the month or more that the case was in his hands. The supervision exercised by the Inspector will be discussed when I come to deal with the Inspector's evidence. I confine myself here to the D. S. P. Mr. Reily says that he went to the place on the morning of the 28th August to "test the enquiry" made by Osmanali. All he actually did however was to examine complainant and his mother and "speak to" the village chowkidar. After the 28th all he did was to "supervise the enquiry from the office" by seeing the diaries as they came in every day. The way he exercised this supervision was by passing written orders. There were three such orders. The first, dated 29th August, is as follows: "the Sub-Inspector must make every endeavour to trace the accused." The accused, be it noted, were not at that time ascertainable from the diaries. All, the order means, is that the Sub-

Inspector must try to find out the murderers—a harmless order enough but not a very useful one. The second order, dated 31st August, is as follows: "The Sub-Inspector should have recorded their statement under Sec. 161." By "their" Mr. Reily explains he meant the accused. As under Sec. 162 of the Cr. P. Code, such a statement would not be evidence this order also is not a very useful one. The only other order Mr. Reily passed was on the 1st September. It runs: "The Sub-Inspector does not seem to have questioned the accused as to the actual occurrence—whether they were present. The Inspector must see that important points are made quite clear."

Much as I have condemned Osmanali I do not think he could reasonably have expected the accused to admit their presence at the murder or could reasonably have attached much (or any) importance to their denial. So much for the supervision from the office. I now come to Ex 3 the petition which Mr. Ezechiel sent to Mr. Reily on the 6th September and which the latter returned the same day. It has already been quoted in extenso.

Against para. 4 when complainant said that some persons had disclosed the suspected enemies of his father had actually caused his father's death, Mr. Reily has noted "incorrect, no such evidence has been elicited." In para. 5 Mr. Reily has underlined the name "Amjad Meah" and has noted against it "He is a panchayet and went to the village with other panchayets on being called by the Inspector. The statements mentioned here are all nonsense. I have visited the spot and tested the enquiry."

Against para. 6 he has noted "The Inspector has been supervising the enquiry locally and has kept me informed daily of how the enquiry is proceeding. Up to date there is no direct or circumstantial evidence against the accused, in

fact there is not an atom of evidence against any one. The complainant may be directed to produce his witnesses before me who he thinks will prove his case."

Now Mr. Reily admits that the only steps which he took to test the truth of Ex. 3 were to look at the Police papers and to question the Inspector and the Head Clerk. The only test he had made of the enquiry was that which he had made on the 28th August and which has already been discussed, and he had not since then been to the spot. By his note "incorrect no such evidence has been elicited" he merely meant that no such evidence was to be found in the papers which the Police put up before him. He denied the statements in para. 5 to which his attention was specially drawn by the District Magistrate, on the strength of what the Inspector and the Head Clerk told him. The Head Clerk certainly and the Inspector *he thinks* told him that Osmanali was not related to the accused. So far as he can recollect he did not ask Osmanali himself upon the subject. His marginal note as to Amjad Myan was based on the statement of the Inspector.

This was when Mr. Reily was examined by the Court. When cross-examined by the Government Pleader he said that he cannot say whether Amjad Meah is panchayet of the village of the deceased, as he made no enquiry on the point. "He then shuffled and said he may have made enquiries." He thinks he enquired from his Head Clerk, when pressed by the Government pleader he said that he can not recollect that he made any enquiry as to the truth or falsehood of the allegation that Amjad Meah was a panchayat of the village. It is noteworthy that the Inspector Bharat Chandra Mojumdar entirely fails to corroborate Mr. Reily's evidence about Exhibit 3. I think that probably Mr. Reily's evidence as to his consulting the Inspector is false and that he consulted

no one but the Head Clerk. It may be that between his examination and his cross-examination Mr. Reily found that the Inspector was unwilling to be on his behalf. I do not think I am doing Mr. Reily an injustice in saying that what he did on Exhibit 3 was to pass on to the District Magistrate a series of of falsehoods told him by his Head Clerk under his own signature and to add to them other lies of his own intended to wake Mr. Ezechiel believe that he had carefully checked the investigation and gone into every thing himself, when he had really done nothing of the kind, but on the contrary had grossly neglected his duty. Mr. Reily's suggestion that the complainant be directed to produce his witnesses before him (Mr. Reily) was obviously designed to prevent Mr. Ezechiel from "taking up the case from the hand of the Police" as prayed by complainant and "taking down the evidence by his Worship's self or ordering due enquiry by a competent court." And the result achieved was that the due enquiry by a competent court was postponed for another one month and 10 days. The way in which Mr. Reily played into Osmanali's hands with regard to his special Diaries and the summoning and examination of the witnesses has already been described. It is not necessary here to go into Mr. Reily's proceedings on the 14th and 15th September. Mr. Reily never went to the place after the 15th. He admits that he would not send up any report at all, until Mr. Ezechiel ordered him to send the other Inspector Mothur Babu down to the spot to arrest and *chalan* the accused, and that Mothur Baboo actually did arrest some of them but then even after they had been arrested and in defiance of the Magistrate's orders he submitted "C." Form—and submitted it as already stated just as Mr. Ezechiel was going away. He also admits that during the period between 15th and 26th

September he talked over the case with Osmanali and Bharat Babu—and here again there is only Mr. Reily's evidence that Bharat Babu as well as Osmanali was consulted. It is I think not unreasonable to suppose that Mr. Reily's delaying and his disobedience of Mr. Ezechiel's orders were due to Osmanali's influence.

Of Bharat Babu's supervision suffice it to say here that on his own showing it was nominal. And it will be seen from the above that Osmanali not only could but did twist Mr. Reily round his little finger. It is due to Bharat Babu, who so far as I can see has not told any direct lie though he has probably kept back a good deal, that I should point out that in all probability he was powerless to check or control Osman Ali, and that if he had attempted to do so, he would probably only have got himself into trouble.

It will thus be seen that Osman Ali was in a first rate position for burking this case if he had wished to do so, not only was no effective control in fact exercised over him but he had no reason to fear that any such control would be exercised—had on the contrary every reason to believe that whatever he did his superiors would back him up through thick and thin. I now come to the motive which Osman Ali had for burking the case. This may of course have been a pecuniary one but a more natural and obvious explanation is supplied by his relationship to the accused. Osman Ali's maternal uncle (mama) Ali Manghi is paternal uncle (chacha) of the accused Yakub ali. Osman Ali's daughter is married to the son of the Amjad Mir already alluded to; and the accused Sadakali is this Amjad Mir's maternal uncle. Abdool Hakim the man discharged by the committing Magistrate is Amjad Mir's nephew. Abdool Karim who though accused in this case is not on his trial, is Osman Ali's wife's uncle. Another accused Karim Buksh (the man who lives with Yakubali) has married

the niece of Hamidullah, Amjad Mir's nephew. It will thus be seen that in this way or another Osmanali Daroga was connected with no less than five of the persons implicated in the case. Further it is proved that this Amjad Mir was extraordinarily active during the Police investigation, as also was his nephew Hamidullah. This Hamidulla is better known by his sobriquet: indeed the witnesses hardly ever call him by his name. Many people, perhaps wrongly, attach considerable importance to the indication of character afforded by the nickname given to a person by those who know him best as, in a case reported by Montague Williams, a poor little innocent girl lost her rape case against a great brutal man because "they called her Cock Robin," is the Head of the Local Government, among the Anglo-Indian community is universally known as Soapy John, so none of his neighbours ever call Hamidullah any thing but Hamida Thak-Hamid the Rogue. "Samin" Hamid might serve as a translation but that  $\text{সমিন}$  denotes instead of connoting, rascality (every Bengali will remember the  $\text{সমিন}$  of the *Allah Ghorer Dalal*). Amjad Ali and Hamidullah Thaka, says Idris, were in his village the whole time the Daroga was there. They do not live in his village. Amjad lives  $2\frac{1}{2}$  miles and Hamida one mile off. They were looking after the case on behalf of the accused, they would go to the houses of these latter and come back to whisper to Osman Ali.

Idris was cross-examined for nearly two days but no attempt was made to impugn his testimony as to the part played by Amjad and Hamida Thak.

Torab Ali deposes that he saw Amjad and Hamida before the Daroga when he was examined by the latter on the morning of the 28th August.

Ismail (Islam) goes further. He says that having received certain information he went to the Jagirdar's

bari the morning after the occurrence and was present when the body was taken out of the tank. As the Jamadar (Kista Bhadra) was preparing the *Surathal* (descriptive roll) of the corpse, he caught sight of Amjad and Hamida and beckoned them to come aside. They did so and he told them what he had seen the night before. They told him not to tell the Head-Constable, but wait till the Daroga came and tell him. This witness also says that Amjad and Hamida were present when he deposed. The defence pleader had not ventured to cross-examine Torab as to Amjad and Hamida, but he elicited from Ismail that three other persons named were present when the body was taken out and asked him why he told Amjad and Hamida instead of telling them. The witness replied that they were country fellows like himself, while Amjad and Hamida conduct cases and know about law. It will be seen from the above that till the case for the prosecution was closed no serious attempt was made to dispute the fact that Amjad and Hamida were present at the Police investigation and were looking after the defence. The first witness for the defence was the Head-Constable (Kista Chandra Bhadra) who prepared the *surathal*. This witness admits that Hamida Thak was present when *surathal* was written, but denies that Amjad was there. He admits that Amjad was present one day during the investigation. He denies knowing of any relationship between Amjad and Hamida.

The *surathal* prepared by this witness has mysteriously disappeared. The witness says he read it over to Osman Ali on the night of the 27th August (why he kept it till then does not appear) and has not seen it since.

The prosecution allege that the *surathal* has been made away with because Amjadmir's name was in it as a witness. The witness denies this, but his

prevarication was more instructive than any admission and he will not swear that no Amjadmir is down on it as a witness. Probably he is not without suspicion that the *surathal* may turn up yet.

The witness has committed gross perjury on other points and I have no hesitation in disbelieving his evidence as to Amjad Mir's absence and in preferring that of Ismail (Islam). The defence have not attempted to deny the relationship between Amjad and Osmanali. Amjad has, however, been examined for the defence and has denied that he is any relation either of the accused man or of Hamida or that he looked after the case for the defence in the Lower Court. He says he only attended the Police investigation on one day when Bharat Babu was there—that Bharat Babu sent for him. The defence cited Bharat Babu but did not examine him on this point. This Amjad, it appears, is a panchayet not of Ismail Jagirdar's village but of the neighbouring village of Salla. He admits he lives 3 miles from Ismail. There is nothing but his own word to show that Bharat Babu ever sent for him—and perhaps he may have felt it would not be safe for him to deny his presence at a time when Bharat Babu was present. Not only is Amjad's evidence at variance with that given by several witnesses for the prosecution, two at least of whom were not even cross-examined on the point, but the witness himself is obviously not a man on whom any reliance can be placed. He admits that he was a duftry in the Collectorate. He denies having been dismissed but says he was suspended and that after being suspended he never rejoined. He also admits that all his property has been sold in execution of a decree and that the decree has not been satisfied thereby. He admits that he heard of the occurrence before the Inspector's visit and knew that Osman Ali, his daughter-in-law's father, had gone to investigate; but he says that

there was rain and storm and he was unwell and did not go to the place.

Ali Manghi, a very old man, has denied all connection not only with accused but with Osmanali. As to the relationship of Amjad Mir with the accused and of Ali Manghi with both Osmanali and the accused, the prosecution have not only examined Idris and Rajabali, but have called two witnesses who are themselves relatives of Amjad and Ali Manghi. The first of these is Abdul Latif (witness 13). This man is a Khas Mahal peon and is also a taluqdar. He says that Amjad Mir's mother was his own grand-aunt, that Amjad calls Sadah Ali nephew and that the two men visit each other. Hamida, he says, is Amjad's brother's son. The witness says that he was present on two days of the police investigation, and that he looked in twice during the evening on his way home from office. Amjad and Hamida were present and looked after the case for the accused. Amjad Mir, it should be remarked, denies even knowing this witness. Witness No. 14 Ahmir says that Ali Manghi's mother was his aunt, so that he and Ali Manghi are first cousins. Osmanali's father he says, is Ali Manghi's cousin and Yakubali and Ali Manghi are similarly related. Ali Manghi's sister—Mans Bibi lives with Osman Ali and her husband Reajuddin died in Osman Ali's house. Ali Manghi denied even knowing this witness and says that so far from Ana-Mir's aunt being his mother, Ana-Mir and he are not related at all. Ali Manghi however finds it convenient to forget what his own mother's name was, or whether she had any brother. He admits however, that Munabibi is his sister and that Reajuddin was her husband. He denies that Munabibi is living at Osman Ali's but admits that Reajuddin is buried there. I have no hesitation in disbelieving the evidence of Amajad Ali and o.

Ali Manghi and in believing in spite of that evidence that Osmanali is related through them to the accused and that Amjad Mir and his nephew Hamida Zia managed the defence before him. For the above reasons I do not think that there is anything surprising in Osman Ali's failing to send up the accused, nor does his omission to do so in any way shake my belief in the truth of the evidence as to the accused men's complicities now given by the prosecution witnesses. The reason why Osmanali does not himself venture into the witness box is simple enough. It is contained in Section 477 of the Code of Criminal Procedure, which empowers a Court of Session when perjury is committed before it to take up the case itself without any reference to the Magistrate or to Government. Osmanali knows better than to put his own head inside the lion's jaws. But still there had to be some evidence contradicting the evidence adduced by the prosecution that Hosan, Torab and Islam deposed before Osmanali on the 28th August and the Head-Constable Kisto Chundra Bhadra, a subordinate of Osmanali, is accordingly put forward to give that evidence. This witness's prevarication about Amjad Mir and the mysterious disappearance of his *Surathal* have already been noticed. He gave some palpably false evidence as to his finding a number of the accused present on the 2nd August and a reference to his deposition will show how he prevaricated as to the D. S. P's finding the *bari* of Sadakali and Aslam deserted on the following morning. He says that he was with the Sub-Inspector for the whole of Tuesday, the 28th August, and that neither Hosan, Torab Ali nor Islam deposed before the Sub-Inspector on that day. He also says that he remained at the place for 4 or 5 days, but that none of these 3 witnesses deposed on those days either. In

cross-examination the witness said that the Sub-Inspector did not depute him on any duty that day. He was that whole day and night at Ismail Jagirdar's *bari*—he did not go anywhere else.

He was then asked by the Government Pleader: "Is it not a fact, as stated by Osman Ali, that he deputed you that day to make enquiries and that you returned at 10 P. M. and told him that you had found out nothing?"

A.—I do not remember it.

Ques.—Can you swear that you did not go out of complainant's *bari* that 24 hours?

Ans.—I did not go beyond the village.

Ques.—I am speaking of complainant's *bari*, can you swear you did not go out of that?

Ans.—I can not say for certain.

The witness can however say for certain that during the whole day the *Daroga* did not examine the three witnesses: Torab Ali, Hosan Ali, and Islam. He can not say how many witnesses or what witnesses Osman Ali examined on that day. He did not know Hosan Ali or Torab Ali before. (The witness says he knew Islam before, but denies it because Islam was a witness to the *Surathal*.) He first saw them in Court. He had never seen them till they came to court to give evidence. He was sitting to the North side of the tamarind tree, (a tree in Ismail's *daraja*, under which the witnesses say they deposed—a few yards from the *cutchery ghar*) when the *Daroga* took deposition, but how long he remained sitting there he can not say. He can't say on which side of the tamarind tree the *Daroga* was seated. He does not remember whether it was in the morning or afternoon that the *Daroga* examined witnesses. Sometimes he was in the *cutchery* but. He can't say at what time he was under the tamarind tree and what time in the *cutchery* hut. Torab Ali, Hosan Ali and Islam were not there—he can not say what other witnesses the *Daroga* examin-

ed. In short the witnesses can not tell us anything else at all about the examination of witnesses by the *Daroga* on that day. The one thing absolutely positive about is that the *Daroga* did not examine any of these three men, although the examination was more than four months ago and the witness admits that he never saw two of the three men in his life till a few days before giving his evidence.

Comment on this evidence is superfluous. I can not believe Kisto Chandra Bhadra and think he has committed gross perjury. Not improbably he has received a heavy bribe for doing so, an in connection with the possible motive for his perjury I may mention, a fact which is not of course evidence on the issue as to the guilt or innocence of the accused—the fact that Osmanali's cross-examination in *Empress vs. Mohesh Chandra Guha* (the record of which I sent for while the case was going on) shows that he has amassed what for a man in his position may be called a considerable fortune. It is worth while noting that no one, not even Head-Constable Kisto Chandra Bhadra denies that Abdul Aziz, and Rajjab Ali gave evidence before Osman Ali incriminating the accused; nor has any evidence whatever been adduced to rebut the allegations of these two witnesses and of the three eye-witnesses of the occurrence contained in Exhibit 4 and repeated on oath at the trial, that they were threatened by Osman Ali.

NEXT it is urged for the defence that Hasan Ali and Korap Ali in going from Bellew Shahib's *hat* to their homes, would have naturally taken on not the route A B C D E F G H I J K L M N O as described by them (vide Ex. 5) which route took them to the east of Ismail Jagirdar's house, but a shorter route. In the D. S. P's remarks on the "C" Form (Ex. R7) two shorter routes are suggested (1) Gura Mir's road (2) Ashak Jamadar's road. In the arguments

however Gura Mir's road has practically been given up, as it is proved by 5 Saroda Mohun Chakraverti (and we also saw for ourselves when we visited the spot) that this so-called road is a mere footpath, almost on the level of the fields and it is admitted on all hands except by defence witness 3 the Court Head Constable Mohim Chandra Mazumdar who says that when the D. S. P visited the place on 15th September the *Math* (cultivated land) was dry that at the time of occurrence—the height of the rains—the whole country was under water.

The road which the D. S. P. Calls Ashak Jamadar's road, and which it is suggested by the defence, the witnesses Hosan and Torap would naturally have taken when returning home from Bellew Shahib's *hat* is that indicated on the District Board's plan (Ex. 5) as A B C D E F O P Q R. It passes to the west—to the back of the houses of Ismail Jagirdar and of the accused Abdul Hakim. At Ismail Jagirdar's house it runs parallel or nearly so to the road F. J. by which the witnesses say they came. At that point it must be at least 300 yds. from the eastern road the distance F G is according to the District Engineer 870 feet.) If therefore the witnesses had gone home this way they would have seen or heard nothing of the occurrence.

The two roads have been measured by the District Engineer who says that the distance from F to R via G H I J K L M N is, 6670 feet (say a mile and a quarter) and the distance via O P Q is 5345 feet (say a mile). There is then a difference of 1325 feet or almost exactly a quarter of a mile in favour of the west road. And the defence urge (and persisted in urging even after we had been to the place, so desperate was their case) that Hosan and Torap would have taken this western road to save the quarter of a mile, and



are not to be believed when they say on oath that they took the eastern one.

It is to my mind very significant that the defence pleader has not even cross-examined Hosan and Torap as to why they took the longer road in preference to the shorter one. The reason why they did so is that they could not possibly have gone by the shorter road, as they would have been pulled up by a break 20 yards long with 2 feet of water, and a drop into 4 feet of water on each side. There is no mention of this break in Osman Ali's "C" Form or in Mr. Reily, D. S. P.'s accompanying remarks—nor is it shown in the Police map (Exhibit A.) prepared under Mr. D. S. P. Reily's signature for the edification of the District Magistrate.

Mr. D. S. P. Reily says when cross-examined by the Government Pleader that he believes there is a break on Ashak Jamadar's road somewhere near the point where it joins Guramir's road—he believes it, that is all.—He has been all over the road, but does not remember any other breaks.

The length of the break he saw was about the length of the Bench Clerk's table (perhaps 5 feet) and its breadth would be about the breadth of the witness box (say 1 foot 9 inches.) The witness made all these statements with the utmost assurance and sangfroid. The Government Pleader next asked him if he would undertake to swear that the length of that break was less than 60 feet.—Oh no, he could not do that.

The assessors and I had a view of the place under Section 293 of the Criminal Procedure Code, on the application which the Government Pleader ascribed to the grace of God—of the pleader for the accused. It has been laid down by the Madras High Court in *Queen Empress vs. Manikum* (I. L. R. 19 Mad. 263) that an inspection of the *locus in quo* should only be made for the purpose

of enabling the Magistrate to understand the better the evidence which is laid before him, and it must be strictly confined to that. This being so, I will confine myself here to saying that no one thing in the case helped us so much as this local inspection to understand the extent to which Mr D. S. P. Reily had lied.

To revert to the evidence laid before us, the District Engineer and his Sub-Overseer both depose that there are three breaks along this road F to R. (Ashak Jamadar's road.) The District Engineer measured all three—his subordinate the biggest only. The breaks are all shewn on Ex. 5. The first between O and P, is 50 feet long by 1 foot deep—but there is an *ail* or raised part along the side—the second between P and O is 20 feet long by 9 inches deep. The third between O and R is 60 feet long by 2 feet deep. The breadth according to the Sub-Overseer is 8 or 9 feet, *i.e.* the whole breadth of the road. No one asserts there was any side-path—and there are ditches on each side. There is a slight discrepancy between the District Engineer and his subordinate. The latter says that the break at the edges (ends) would not be more than 9 inches below the level of the road; the District Engineer, that the minimum depth of the breaks would not differ from the maximum by more than 3 or 6 inches, he does not think it would be as much as 9 inches. The break at Q to R according to him would thus at no part of its length be less than 1 ft. 6 inches deep and in part would be 2 ft deep.

The Sub-overseer deposes that in the rains (and the occurrence took place at the height of the rains) the water in these parts is within 6 inches of the level of the road. It is also in evidence that at that season the surface of the breaks is muddy.

Hosan and Torap depose that at the time of occurrence the water in this break

would have been waist-deep. Witness No. 15 Hari Das Das, who lives just the other side of the break, deposes that when there is heavy rain the water is up to one's chest, and that in the rain there is never less than 2 or 2½ cubits of water. No one, he says, ever goes that way in the rainy season. People pass by the road which Hosan and Torap say they took.

With this should be read the evidence of the Court Head Constable Mohin Chandra Majumdar the man who prepared the police map under the orders and in the presence of Mr. Reily. This witness says (I have no doubt it is all pure invention) there was much talk between the parties which road the witness would have gone and the Shahib said "Let us see what will happen if we go by each road." So they went by the western road as well as the Eastern. They went south along the western road till they came to a break, not far from the Ichakhali road. They did not go any further south because they were in uniform and there was water in the break. They all—D S P, Bharat Babu, Osman Ali and himself—went as far as the break and then went back again. In cross-examination the witness said that they got past some smaller breaks before coming to this south break, that on this south break there was mud and about 18 inches of water. He did not show the break because the D. S. P. did not tell him to. He was then asked if he purposely omitted it. He replied in a shame-faced manner that he put down whatever the Sahib Bahadur told him to. The D. S. P. did not tell him not to show the break. He was not bound, the witness says, to show the true state of things, he only put down what the District Supdt. ordered him to.

To the Court the witness said that they all—Police Sahib, Bharat, he and Osman Ali came back from the break because there was a break and water in it and

they would have got wet. It did not strike him, says the witness, to note in the plan the reason why they could not go any further that way, nor did an one tell him to. He cannot say why he showed both the roads east and west of Ismail's bari he did it because he was told to. Mohin says he was all along with the D. S. P. They did not go along Guramir's road. He has shown it on his plan, but that is because he could see a certain way from each of the ends as he passed and he made the two pieces meet in his plan.

Mr. Reily says he can say from his own knowledge that Mohim's plan is correct. He went over all three roads—Guramir's and the other two—himself. He passed along the whole of Ashak Jamadar's road. The water at the break was not deep—he sent some villagers in, and it was below their knees. He himself passed along on horseback (apparently Mr. Reily thought that the break had high land and not ditches on each side of it). The Inspector Bharat Babu says Mr. Reily, was with him when he went over these three roads on the 15th as also were the witnesses Hosan and Torap. The Inspector Bharat Babu denies this. On the 15th he says he came with Mr. Reily from Bellew Shahib's Haf and they passed round the Kalabhanga dighi and come down the road which passes east of Ismail's house. On striking the N. bank of the tank (at H) they went W along it and got to a place where two roads meet (presumably F.) Bharat Babu says he remained standing there. The Sahib went south to see the break but he did not go with him—nor, the whole time he was there—and he was there not only on the 14th and 15th September but on 6 days before in August and the early part of September. When he was "supervising" the investigation—did he ever go along the road where these breaks are—Ashak Jamadar's road. For

all, therefore, that Bharat can tell us to the contrary, his superior's assertion that there is only one break about five feet long may be true, but his superior's assertion that Bharat was with him when he went over that road must be a mistake. And as to Torap and Hosan, who also according to the D. S. P. were with him, Bharat does not know any such persons. Bharat does not know the witnesses for the prosecution. He has not seen who have deposed, so how can he say who they are? Bharat Babu, be it remembered, is the second Police officer in this District—even as Mr. Reily is the first. Which of them are we to believe?

I now come to the plan (Exhibit A) which Mr. Reily puts forward as a correct plan of the place of occurrence. It bears in ink his signature and the date 15-9—Mr Reily swears he finished it on that date. He swears that he can say from his knowledge of the locality that it is correct. Mr. Reily says that *after he finished the plan* he went and saw the District Magistrate Mr. Ezechiel and showed him the plan. That may have been 2 days after (the 15th). There is no evidence as to the subsequent custody of Exhibit A, but not improbably it may have remained with Mr. Ezechiel even then. Sarada Moban Chakraverty, the District Board Sub-overseer says he prepared Ex. 5 under orders of the Dt. Engineer on 18th November and it must therefore have been on or before that date that Benode Babu (witness No 6) got Mr. Ezechiel's orders to prepare one. It is clear therefore that by 18th November, at latest Mr. Ezechiel suspected the accuracy of Exhibit A and it is not perhaps a very wide inference that from that time onwards he would see that Ex. A was not tampered with.

Exhibit A is not drawn by Mr. Reily—there is nothing of his in it but the signature and date. Exhibit A was put in evidence by the defence pleader Babu R.

K. Aich. It was only when Mr. Reily was cross-examined by the Govt. Pleader that it transpired that Exhibit A was not an original but a copy—that there was a "rough map" in Mr. Reily's office and that he had signed Exhibit A without comparing it with the rough map prepared in the locale. Mr. Reily was then asked to send for the rough map. Before it was shown to him he swore that he could say from his personal knowledge that the fair copy, even though he had not compared it with the draft, was correct. The rough map is Exhibit Aa. Mr. Reily admits that he had it in his hands two days before Tarak Babu examined him, i.e., on the first day of his examination. He had, therefore, the opportunity of tampering with it. And it is very significant that Bharat Babu, who says in cross-examination that he saw the draft as it was made, declared even without taking it into his hand that he did not see Exhibit Aa,—the plan Mr. Reily swears is the draft, and when pressed says he cannot say for certain whether or not it is the draft. I think most likely it is the draft, but that Bharat Babu knows it has been added to and does not want to be asked about the additions. Both Exhibit A and Exhibit Aa are the work of the Head Constable Mohim Chandra Majumdar and as Exhibit A has nothing of Mr. Reily's but his signature and the date, so Exhibit Aa has nothing of his but certain pencil marks shortly to be noticed.

Both the entires are "false documents" within the meaning of Section 464 of the Indian Penal Code, for in each case Mr. Reily's intention when he made the entry was to make people (in the first case Mr. Ezechiel, in the second this Court) believe that the entry was made at a time at which he knew that it was not made and as the documents purported to be made by a public servant in his official capacity. Mr. Reily by making them appears to have committed offences

under Section 466 of the Indian Penal Code and by using them as genuine to have committed offences under section 471.

To take the date on Exhibit A Mr. Reily's Diary for Sept. 15th (Exhibit B 24) shows that he left the place of occurrence at 4 P.M. The last place Mr. Reily mentions in that Diary is close to Ismail Jagirdar's house. The distance from Ismail Jagirdar's house to Sudharam is 3½ miles. When he left that place only Exhibit Aa (and probably only a part of that) had been prepared. Even assuming that Mr. Reily is a good rider and could gallop that 3½ miles, still Mohim Chandra Mazumdar, the Head Constable and map-maker was not mounded and would have to walk them. A mere glance at the plans will show that it would take Mohim Chandra Mazumdar a good 3 or 4 hours to copy out Exhibit A. Mr. Reily no doubt says he did not compare Exhibit A with Exhibit Aa before signing, but there was really no occasion if Mr. Reily were working honestly for any special hurry and no reason why the Head Constable should bring the copy to him at 9 or 10 at night. The fact no doubt is that Mr. Reily has purposely antedated his signature because he did not want Mr. Ezechiel to know that Exhibit A was a copy, he wanted Mr. Ezechiel to believe that it was a plan made by himself on the 15th instead of being, as it really is, a copy made after the 15th of a plan made partly in but in great part (and that the most important part) out of Mr. Reily's presence on the 14th and 15th and possibly subsequent dates. Even in this Court it will be noted that Mr. Reily first claimed Exhibit A as being his own plan; and it was only by slow degrees that the truth was forced out of him. It may be worthwhile noting as bearing on Mr. Reily's veracity, although not as evidence in the case, that it appears from Osmanali's diary for 15th Sept.

(sheet 112 in the B. file) that Mohim Chandra Mazumdar, the Head Constable remained at the place till 6 p.m. and then came back to the town with Bharat Babu and Osmanali himself. No doubt the plan was being finished then. Mr. Reily was too lazy to do it himself; his complaisant subordinates said they would do it for him. Complaints had no doubt been made against Osmanali; but then, as Mr. Reily wrote to Mr. Ezechiel, they were "all nonsense."

I now come to the draft Ex. A1. Mohim Chandra Mazumdar, who made this draft, says he did not show any break in it at all; that he was never told to and did not think it necessary to. But Mr. Reily points to two pencil marks at the place marked Exhibit Aa, and says he made these to indicate the break. And so I have no doubt he did make them, but I have equally little doubt that he made them on the 16th January 1901, and not on the 15th Sept., 1900. Mr. Reily explains the absence of any such marks from Exhibit A by saying it might be an omission on the part of Mohim. But the far more obvious explanation is that Mr. Reily was unable to tamper with Exhibit A. It must be remembered that on Mr. Reily's own showing there was really no need to show this break, for it was an insignificant hole 5 feet long by 1 foot 9 inches broad in a road which according to Saroda Babu is 8 feet broad, it was no particular depth, and he himself had ridden by it—unless a man stepped into it on a dark night, it would not stop any one going that road. You only had to go by the side of it, and indeed according to Mr. Reily no one ever alleged they had been induced to take another road by the existence of this break, for he has recorded in his Diary of the 15th September and so is obliged to swear in this Court that Hossainali and Torapali could not assign any reason why they went home by the

longer route instead of by Gura Mir's road or Ashak Jamadar's road, although if he had really asked them there was no reason whatever why they should not have told him the very obvious facts, which he would have seen for himself if he had gone to the place, that by Guru Mir's road they would have been walking through water the whole way and that by Ashak Jamadar's road they would have been pulled up by the big break. Before quitting Ex. B24 I should point out that it clearly represents that Mr. Reily "drew the plan" himself. The witness's evidence shows that this statement in his official Diary is incorrect.

Neither of the Police plans (Exhibits A and A.A.) at all indicates the route by which the witnesses Hosan and Torap really came to the road east of Ismail Jagirdar's *bari*—and as will be seen by a comparison of these plans either with the *locale* or with Ex. 5, the parts of them in which Gura Mir's road and Ashak Jamadar's road are shown, are all wrong. The only road shown to the east of the Ashak Jamadar's road is that which passes round Kalabhanga Dighi and which is a long way north and east of the route (B. C. D. E. F. G.) actually followed by the witnesses. In fact the only effect and probably the only object of these plans is to confuse one. In the original draft (Ex. A) a lot more roads even further east than the Kalabhanga Dighi have been shown; why, no one can say, for there is no reference whatever to these roads in the evidence—they are not copied in Ex. A, perhaps, because it was thought that there might be some limits to Mr. Ezechiel's credulity that if the Police took the witnesses too many miles out of their way he might swell a rat.

Before leaving the subject of these maps I must notice one very extraordinary statement of Mr. Reily which furnishes the key to a great deal of his evidence. Ex. 5 as I have already stated was

prepared by the District Board Sub-Overseer, and much of it tested by the District Engineer and having been over nearly the whole place (and a great many parts not shown) with this plan in my hand I can say, (and I am an old settlement officer and accustomed to plans) that it has been prepared with very creditable accuracy. But when the Government Pleader handed the witness this plan, Mr. Reily after puzzling over it for a long time was obliged to confess that he could not make out any thing from it at all. The truth no doubt is that the only parts of the locality he ever went over personally are the road (much of it but-side the limits of Ex. 5) from Bellew Shahib's *Hat* round the Kalabhanga Dighi to Ismail Jagirdar's and the continuation of that road from Ismail Jagirdar's down to I. or K., when Mr. Reily would get on to the broad good road known as the Ichakhali road, along which even a bad rider would have no difficulty in proceeding to Sucharam. He has probably been trying on the 16th January and possibly earlier to "get up" the locality for the Police plans, but they would only mystify him—and of course his subordinates were not likely to tell him they were all false!

And the fact that Mr. Reily was riding—he passed along all these roads on horse back *vide* his cross-examination by the Government Pleader—also serves to explain another remarkable incident, *viz.*, his going round the Kalabhanga Dighi. Mr. Reily says he went that way because Hosan and Torap pointed it out to him as the road by which they had come. Hosan and Torap deny this. There was really no reason why they should alter their statements if they ever had told Mr. Reily, they went that way, but there was also no possible reason why they should go that way in preference to the road they now say they took by A. B. C. D.

E. F. G. which meets the road round Kalabhanga Dighi at G. some distance, above Ismail Jagirdar's house, and is very much shorter. Yes, the road round the dighi is as Mr. Reily says, a circuitous route—most circuitous—and I can't understand why Hosan and Torap should have pointed it out to him, but I can very well understand why his subordinates, who have had time to learn his ways and his nature should have taken him along it. The reason is that between E. and F. there is a break in the shorter road caused by a *khal* (creek) running east and west and bridged by a *tal* (palm tree). The District Board Sub-Overseer and District Engineer say that this break is 60 feet long. But from what I saw myself I should say this was an over estimate. The witness Hosan says it is 20 cubits (=30 feet) long, the truth lies between them.

At all events there the *khal* is with the palm tree over it. Now cultivators like Hosan and Torap would think nothing of crossing by this palm tree. I have gone over worse bridges myself when on settlement work—but Mr. Reily is not an old Settlement officer and I doubt very much if he could cross that palm tree even, on foot, and I am quite confident that the best rider in the world would never get a pony (unless it were a circus pony) across it. Mr. Reily, I may say, is blissfully unconscious of the very existence of this break (*vide* his evidence.) I have no doubt he followed blindly just where Osmanali, and Company took him. But he won't say this, he prefers to lie, so as to make out that he did his work properly. And he has to lie on oath in my Court, because he has first lied not on oath to his departmental superiors. Hosan and Torap say they neither pointed out the Kalabhanga dighi road to Mr. Reily nor told him they had been by that route. They are black-men, no doubt, and ignorant peasants and Mr. Reily is a white man and a

highly paid officer of Government but I have no hesitation in preferring their evidence to his. Nor does his perjury make me doubt the truth of their statements on this point or in consequence on other matters more directly bearing on the guilt or innocence of the accused. As Mr. Reily made many statements by reference to his diaries the defence pleader very probably emphasized the fact that Mr. Reily's statement as to Hosan and Torap taking him round by the Kalabhanga Dighi was not based upon his diaries, and that he must have a clear and distinct recollection of it. But Mr. Reily has noted in Ex. B24 that "they" (Torap and Hosanali) could not assign any reason why they—took a roundabout road and he has to invent this story about the Kalabhanga Dighi road (or more probably has had it invented for him by Osmanali) because if he had confined himself to the later portion of the witnesses' journey, the explanation of their taking a roundabout road would be too palpable.

The next defence set up for the accused is that the three most important witnesses—Hosan, Torap, and Islam—made to Mr. Reily on the 12th September statements differing in certain respects from what they say now. In most cases the discrepancies are comparatively unimportant—in no case are they admitted by the witnesses, who as to some thing flatly deny having told the Police Sahib so and so, in other matters simply say they do not remember having told him so and so.

Even if Mr. Reily were in a position to say positively that the men made to him the statements he has recorded, (and he admits that without referring to his Diary he cannot remember what they said). Mr. Reily has perjured himself so grossly on other points that I should not be disposed to believe him. But I think it sufficient to point out that Mr. Reily admits he does not

thoroughly understand the dialect of Bengali spoken in this District, and that parts of what he has written were translated to him by his Head clerk: that he can not say with regard to any particular statement that it was not so translated: and that the Head clerk, who alone could say, whether he translated correctly, has not been examined.

In disposing of Mr. Reily, I have practically disposed of the defence for Babu R. K. Aich's sheet anchor in the case was the supposed impossibility that a European District Superintendent of Police would lie and when that went, the defence went. The Head Master, the Zemindar and myself have shown by our finding that we think it quite possible that white Policemen should lie—if I had been stationed all my service at Simla or Darjeeling, or the assessors had been accustomed to a type of District Superintendent different from those who are sent to Noakhali, perhaps we might have thought differently. However, as it is, I certainly think Mr. Reily a liar and I believe the assessors do too—or they would not have found the accused men guilty of a capital offence.

The defence pleader has however made one really good point in favor of the accused or rather what looks at first a point in their favor. He urges that the Kalabhangra Digbi, where the witness Ahmadullah parted company from the deceased is only a mile or a mile and-a-half from Ismail's house—that it was at most two *gharis* after sunset, when deceased turned off homewards there, and that he would have got to his home or to the place of occurrence by three *gharis* after sunset. If therefore he were waylaid then it would have been at about three *gharis* after sunset, but the witnesses time the occurrence at six *gharis* after sunset a good hour later, Heshanali says 4 or 6 *gharis*: Torabali 6 *gharis*, Islam about a *prakar*, and Babu

R. K. Aich has urged that Hosan and Torab at all events could not time their arrival earlier, for it was raining up till 2 *gharis* after sunset, and if they had said they had left Bellow Sahib's *Hat* (3 or 4 *gharis* journey from Ismail's house) before the rain stopped, no one would have believed them.

Now, it would be easy to rejoice that the people of the country, especially of the cultivating class, are not very particular as to time—and that even educated people might make a mistake between 8-0 or 9-0 P. M.

But a far more probable explanation has been suggested by Babu Tarak Chunder Guha, the Government Pleader. It is, of course, a hypothesis only, for as to what really happened to Ismail between the time when he left Ahmadullah and the time when his cry of *wago* was heard by Hosan and Torab, there is only one man besides the accused who could have told us, and that man is dead.

Babu Tarak Chandra Guha meets the defence pleader's objection by referring to the evidence of the Civil Medical Officer already alluded to. It will be remembered the deceased had a number of minor injuries, but that in particular "the top and right side of the head, the right half of the forehead and the right check were generally bruised" and that on "dissecting the scalp" the doctor found "quantities of effused blood underneath, on the top of the head, on the forehead, on both temples and on the right cheek, and also near the skin in front and on the sides of the neck" and the doctor says the probability is that deceased was struck on the head by some hard blunt weapon or thrown down upon a hard surface (there was a large bruise to the back on the left of the spine) and that his neck was also pressed. The doctor has not said nor has any attempt been made to show that the blow on the head would be immediately fatal. The witnesses do not say that they saw Ismail waylaid or knocked on



the head, but merely that they saw him carried along.

Babu Tarak Chandra Guha suggested that Ismail was first waylaid and knocked on the head at some place unknown. After felling him to the ground he would no doubt have been stunned, and the accused in the dark would think him dead. Then the Govt. Pleader suggests there must have been a consultation as to the disposal of the corpse—and finally it must have been decided to throw the body into the deceased's own tank and perhaps as was afterwards done to try and get the death reported as an unnatural occurrence and not a murder. All this would take time. Tarak Babu suggests that as they were taking the supposed dead man towards the tank he may have revived and by crying out *mago* attracted the attention of Hosan and Torab. The men carrying him then took him into the dark part of the *Daraja*, and at the place where the Head Constable saw the knee prints and foot-prints, flung him down upon the ground and throttled the life out of him. It was after this, when they were bringing up the corpse to fling it into the tank that Ismail came along by the foot-path and challenged them.

The theory is at all events a very plausible one and it is confirmed by the fact that the deceased was undoubtedly stripped and rifled, before being thrown into the tank. This must have been before the three witnesses Hosan, Torab and Ismail saw it.

From this it will be seen that the very circumstance—the apparent discrepancy as to time which at first seemed to cast discredit upon the witnesses, becomes on closer examination the strongest possible testimony to their truth. For if this were a conspiracy the witnesses would certainly have made the time 2 or 3 *gharics* earlier.

One or two other minor arguments have been employed on behalf of the accused

as to supposed improbabilities in the evidence but the assessors have not been impressed by them and I do not think it necessary to notice them in detail specially as this judgment is already a very long one.

It is said the witnesses to the occurrence would have appeared before the Daroga on Monday. But Bengali cultivators are not anxious to give evidence in murder cases and if the witnesses were false witnesses they might just as well have said they deposed before him on Monday instead of selecting a day—Thursday and a time 10 A. M. when the Dt. Supdt of Police had just been to the place (no doubt 10 or 10-30 A. M. in Mr. Reily's evidence is a lie, intended to make out he stayed at the place longer than he had and to discredit the witnesses for the prosecution—vide the diary Ex. 10) of Osmanali himself and the evidence of Hosanali.

The defence have examined three witnesses to prove that on the date of occurrence the prosecution witnesses Islam and Rajabali were at CharPagla. One of these witnesses broke down in examination-in-chief and the defence pleader declined to question him further. The other two are obviously false witnesses, as a perusal of their evidence will amply show, and the last of them (Chand Mir) seems to be not the witness originally summoned but another person substituted at the last moment. I think it sufficient to point out that although these witnesses were summoned months ago and the defence have had ample time to get up their case not a question on this point was put in cross-examination to Islam when he was examined on the 12th January and it was only on the 14th after several other witnesses had been examined that the defence pleader asked and obtained leave to recall and further cross-examine him about it. The inference (considering Babu R. K. Aich's posi-

tion at the bar) is obvious that up to the 12th January it was not the case for the defence that Ismail had been at Char Pagla, that it was a late afterthought. No doubt the defence witnesses were originally meant to prove an *alibi* not for the prosecution witnesses but for the accused. It was, however, felt that the ferryman's evidence about the anxiety of Sadakali and Aslam to cross over to Char Pagla would rather spoil that story, so at the eleventh hour it was changed (just after the ferryman's examination) and an *alibi* for the witnesses set up instead.

It is said that the name of the 4th witness is Islam not Ismail but that Idris named Ismail to Mr. Reily on the 9th September, and it is suggested Islam may have been substituted and that the man first named was Islam, a near neighbour of deceased.

Idris says this neighbour is an enemy of his father and no attempt is made to contradict him. *Islam* is named in the list Idris gave in at the Police Office the very day after he called on Mr. Reily and it is not questioned that the 4th witness for the prosecution is the man who deposed before Mr. Reily on the 12 September. Idris even now calls him *Ismail*. The man himself gave his name as Ismail though most of the witnesses call him Islam. The truth seems to be that Islam and Ismail are pretty well interchangeable; of this there has been ample proof in the present trial. In the plan (Ex. 5), in the charge sheet, and the examination of the accused by the committing Magistrate and in many other places the deceased man himself is called Islam and not Ismail (with regard to the charge, vide Sec. 225 of the Code of Criminal Procedure and Illustration (d) there is no suggestion that the accused have been misled).

Then it is said that in Exhibit B4 the third witness is called Hosan Ali (a)

whereas his real name is Hosan Ali (o) But in the Hazira or attendance list (Exhibit B7) filed two days later (12th Sept) Hosan Ali is shown and there is no doubt that Hosan Ali (witness No 2) was examined by Mr. Reily on that date.

There is really no room for the supposition that any of the witnesses would be substituted or tutored. What motive had any one to come forward and give evidence on behalf of this poor boy against the all-powerful Osmanali and his myrmidons, among whom Mr. Reily himself must be included. The witnesses for the prosecution were, indeed, running the greatest possible risk; and this case makes me feel (and though a well-wisher of the people of India, I have sometimes been tempted to imitate Elijah) that there is hope for this country yet.

None of these witnesses, neither the eye-witnesses, the men whom they told such afterwards, the ferryman, the man who saw accused loitering on the road, or any of the subsidiary witnesses, has any connection whatever with Idris or his father (several of them did not even know Idris himself before this case); none of them has any quarrel with the accused; none of them has any grudge against the "Police."

From the fact that they have not been cross-examined on the point it may reasonably be inferred that Hosan and Ismail (Islam) who say they are cultivators, are at least substantial men of their class, and that Torabali is really, as he says, a haoladar, the owner of a petty tenure rather above the ordinary peasant proprietor.

The position of the ferryman has already been referred to. There is no reason for discrediting Rajabali or Abdul Aziz and although Atarali is dead and was never examined by a Magistrate there is no doubt that he was alive when named and that one Atarali was actually

examined at the Police Office and joined in the petition to the District Magistrate. As to the witness Islam, it may be taken for certain that he had at the time a case pending in which Karim Bux was a defence witness and which has since been compromised. So the story of his going that night to Karim Bux's is at all events a plausible one.

As to the truth of the case as a whole there can be no doubt. It remains to consider how far the charge is proved against individual accused.

Of the three eye witnesses (as Hasora Torap and Islam may not inappropriately be called) all identified two of the accused Sadak Ali and Aslam (two) viz the two witnesses coming from Bellew Shabib's *Haf*, identify Anwarali, while Yakub Ali is identified only by the witness Islam.

Islam named Sadak Ali, Aslam and Yakub Ali to the witnesses Abdul Aziz (No. 7) immediately afterwards—still this does not remove the possibility of his being mistaken about Yakub Ali. He also says there was a fourth man who might have been Abdul Hakim. In one respect this rather supports Ismail's identification of Yakub Ali: for it shows he does not name people unless he thinks he really is sure of them—but it also shows that he was not able to make out all the four men satisfactorily.

Rajab Ali saw all four men loitering on the road. This may be proof of abetment of murder—but it does not show that Yakub Ali took part in the murder itself and as his pleader, very pointedly remarked, that is all he has been charged with. On the whole, considering the gravity of the charge, I think there is just about enough doubt as to Yakub Ali's participation in the actual murder to justify me in agreeing with the assessors. If it were anything but murder I would convict him—and I may point out that his acquittal on the present charge will be no bar to a fresh trial for abetment of murder, if the Crown considers that the evidence

against him (and possibly against some other persons not now before me) justifies such a charge.

As to the identification of the other three accused I do not think there can be any doubt. The witness from Bellew Sahib's *Haf* approached quite close to them—and with regard to two of the accused they are corroborated by Islam. Against all three of the accused there is the corroboration afforded by Rajabali's evidence, although as already remarked this does not prove participation with actual murder.

The night was dark in the sense of that there was no moon: but it is proved beyond question that there was star light and also occasional flashes of lightning. As against Sadakali there is the further test of his voice: for he spoke to the witness Islam. Hasora and Torap could have had no doubt about the three men, for they named all three to Atar Ali immediately after.

I think, therefore, that the charge of murder is proved beyond reasonable doubt against all the accused other than 4 Yakub Ali.

With regard to the question of punishment the crime was a cruel cold-blooded murder without any redeeming circumstances. An old man being waylaid by a number of younger men and deliberately done to death. At the same time I do not think it necessary or expedient to pass the capital sentence on all of the men convicted. It is to my mind a sufficient justification for the course which I propose to take, that, I believe, it will commend itself to the people of this country. A Judge in my opinion does a very poor service to the administration of justice if by unnecessary severity (or by severity which appears to them unnecessary) he deters Juries or Assessors from convicting and witnesses from giving evidence. Justice and specially criminal justice is not the preserve of officials or of a profession, but the concern of the

people at large. Without their co-operation we are helpless. Mr. Ezechiel could have done nothing in this case but for the willingness of the people to come forward with their evidence and my position in writing this judgment has been immensely strengthened by the fact that I have had both the Assessors on my side.

It is most desirable to avoid exciting any sympathy with the guilty—especially with murderers and if only for that reason, an over-lenient sentence is much to be preferred to an excessively severe one. If people say it is a pity the Judge did not hang all three of these men, that is after all what I want them to say. Amongst these three men there can be no doubt who is the ringleader. Sadakali is not only the oldest, but he is much the biggest and strongest—a more forbidding looking ruffian I have seldom seen. None of the other accused had with the deceased such bitter and long-standing enmity as Sadakali had; and as already mentioned, he had threatened “to do” for the deceased the very day before the murder. Not only was it *a priori* likely that he would take the leading part in the murder, but the evidence shows pretty clearly that he actually did take it. It was he who threatened and drove off the witness Islam. It was he who woke up the ferry man. It was he who was seen near the Muktears the morning after the occurrence.

As to Aslam and Anwar Ali I am willing to believe that their part in the murder was a subsidiary one, and that their guilt is not of so deep a dye. The only alternative punishment which the law allows is after all a very severe one.

I now turn to the conduct during this trial, of the Police, of the chief Civil Officer of this District, and of the Government of Bengal. And the matters on which I now proceed to touch are matters of far graver consequence to the community than the issue directly before

me of the guilt or innocence of the four accused. The punishment of Ismail Jagirdar's murderers will not bring Ismail Jagirdar to life, but if that is all that this case brings about I fear that a great many more of the King's subjects are likely to be murdered. I bring to the notice of the High Court and I may add of the public also certain facts which I think it desirable they should not overlook. For the failure to punish an individual murder is no doubt a bad thing but it cannot, occasionally be helped—the things which I am now about to mention can be helped; and I hope the public will look to it that they are helped—I can conceive of nothing of greater moment to the public than that their own servant, charged with the protection of their lives and properties, should when they betray their trust, screen murderers and asperse the chastity of their victims' wives, receive the punishment which they deserve, that witness attending a court of Justice to give evidence in a murder trial should be protected from molestation, or that a Judge specially when trying men for their lives, should not be liable to be intimidated by executive authority.

With the exception of the Inspector Bharat Chandra Mazumdar, all the Police witnesses from Mr. Reilly downwards appear to me to have committed gross perjury. With regard to the native Police Officers, however, I think it unnecessary and inexpedient to enlarge further upon their offences, for the law gives me, if I am not interfered with, the power of applying the appropriate remedy myself. When the remedy is in his own hands, a Judge is not justified in making a clamour. And my Lord Coke says it was an aphorism continually in the mouth of a great sage of the law, “Blessed be not the complaining tongue, but blessed be the amending hand.”

I come now to Bharat Chandra Mazumdar, the Inspector. As I have already re-

marked, there is no statement of this witness of which I can feel confident that it was intentionally false. It is also to be recognized that he was placed in a position when telling the truth may well be counted to him for righteousness—that he was exposed to peculiar temptations to lie. But although I am glad that he has not by committing perjury in my Court aggravated his previous misconduct, I am compelled to draw attention to that misconduct in order that the public may force their servants, the Executive authorities, to take due notice of it. Mr. Reily says that on the 27th August he passed orders, on the First Information report, to Bharat Babu to supervise the enquiry. The order in question is on Exhibit 25a. For some reason which has not transpired Bharat Babu did not however go out to the place, which as already stated, is 3 to 3½ miles from Noakhali—till the 30th August, three days after the order was passed and two days after Mr. Reily himself first visited the spot.

Bharat Babu says that he supervised the investigation on the 30th and 31st August and the 1st, 2nd, 3rd, and 5th September. He came back every evening to his lodging at Sudharam (Noakhali).

Bharat Babu's own account of what he did is not very clear. He kept no diary but a personal one which has not been produced. He can't remember whether or not he ever saw the *curakul*. He questioned many people he says, but he does not remember who they were or what they said—he kept no record of it. He does not know the witnesses Hosan, Torap and Islam—not even now. The one definite statement he makes as to his proceedings during these six days is that he went one day—a market day—to Peshkar's *Hat*, which as he says is close to the place of occurrence and made enquiries of the people there. As Bharat Babu himself can tell us so little of what he did, let us turn to what the witnesses say.

Idris, the complainant, says when cross-examined "Bharat Babu, the Inspector, came to our village how many days after Osman Ali I cannot say. I saw the Inspector fishing two or three days in the tank of Abdul Hakim, accused, I can't say how many days he was in the village. . . . The Inspector Bharat Babu one day asked me who I was, and some one said I was the murdered man's son—that is all Bharat Babu. . . . ever asked me. . . . I don't remember seeing Bharat Babu in our village more than 2 or 3 days. . . . Bharat Babu did not make any investigation."

As already stated Idris petitioned the Magistrate by Exhibit 3 (dated the 5th and filed the 6th September) "that the Inspector of Police sometimes went to the village at the time of the investigation, but the purpose and effect of his going there was best known to him." Hosan Ali and Torap Ali were not asked anything about Bharat Babu. Ismail (Islam) was. He says (in cross-examination) "I do not know Bharat Babu. I did not tell the D. S. P. of this threat of the Daroga's (to run a bamboo up him) but I spoke about it to a stout gentleman who used to fish in the tank of accused. (Bharat Baboo is stout)" "I also told that stout Baboo about the occurrence. I do not remember whether I spoke to him on that Thursday (when the witness says, Osman Ali threatened him" or afterwards—but I remember speaking to him at the Daroga's of one of Ismail's tenants who lives to the west where the Babu was fishing.

Abdul Aziz (No. 7] who says he deposed before Osman Ali at Peshkar's *Hat* on a market day, stated that he does not know Inspector Bharat Baboo that when he deposed before the Daroga he did not see any Government officers present except constables. Rajabali, who also deposed before Osman Ali, at Peshkar's *Hat* on a market

day, does not remember the Inspector's being present on that day.

As already stated, Bharat Babu says he never during the whole time he was at the place went over the road to the west of Ismail Jagirdar's house and yet the supposed probability that Hosan and Torap would go by that road in preference to the one, they said, they took, is made the foremost reason in the final Police report for discrediting the case against the accused.

When I was a littleboy I had to learn from a book called "Butler's Spelling Book" one of the things in this was "equivalents"—English, Latin and Greek. I remember one of these ran—

English,	Latin,	Greek,
Overlooker,	Supervisor,	Bishop.

In this case do not see what Bharat Babu's supervising amounted to: but I think there can be no question that he overlooked a good deal. And I am constrained to say that the Police force in this district is in a very bad way, and that we want at Noakhali an Inspector who will overlook a little less and supervise a great deal more.

I now turn to the case of the greatest offender, Mr. Reily, the District Superintendent of Police. Mr. Reily is a European British subject, and although that does not debar me from trying him myself, I am unable under Section 449 C. P. Code to pass upon him if convicted a sentence of more than one year's imprisonment. I consider such a sentence to be entirely inadequate to Mr. Reily's offences; and both on that account and because I think it desirable for many reasons that the case should be tried by the Highest Court in the country, I intend after completing the proceedings preliminary to commitment, to commit Mr. Reily if I still consider that there are sufficient grounds for doing so to the High Court for trial.

I now come to the conduct of the Local Executive Officers during the trial.

And I first wish to draw attention to Exhibit X 22—a letter I received from Mr. Cargill on the afternoon of the 31st January while writing this judgment and to my reply, a copy of which is Exhibit X 23. This letter of Mr. Cargill's, may of course be private and I have no doubt it was not intended for publication but I cannot but think it unfortunate that he did not wait till any was delivered before writing to me; for it looks to me very much like an attempt to get up a private quarrel with me by way of discounting any thing I may say about him in this judgment. As he has written this letter I think it advisable to say that apart from this case I have no animus whatever against Mr. Cargill—no more animus than I had against the Executive officers whose misconduct I thought it my duty to notice in the Chapra case.

The trial commenced on the 7th January. It began by the Government Pleader applying for warrant against several of the witnesses for the prosecution. On this I recorded the following orders. "It seems that by some negligence the witnesses were not bound down to attend this Court as directed by law. The Government pleader says, that the Court Sub-Inspector states that he took no recognizance because he has not ordered to do so. He is a senior officer and should have brought this matter to the notice of the committing Magistrate, if an order were required. Let a copy of this order be sent to the District Magistrate with the request that due notice may be taken of the failure to take recognizances. It is the more necessary that I should bring this matter to his notice on the conduct of several of the Superior Police Officers seems to be very much in issue in this case."

The Court Sub-Inspector I may men-

tion is immediate Superior of the map maker, the Court Head Constable, Mohim Chandra Mazumdar. It seems to me pretty obvious that the Police were determined that if the witnesses did not care to attend from a disinterested regard for justice, no legal compulsion should be allowed to influence them.

My order of the 1st January was duly communicated to Mr. Cargill on the following day, but if he has taken any notice whatever of the failure to take recognizances he has not informed me of it. Any action he would take against the Court Sub-Inspector would necessarily be taken through the D. S. P. But Mr. Reily when examined on the 16th—five days later—says that he does not remember the failure to take recognizances having been brought to his notice. It seems, therefore, a fairly safe conclusion that Mr. Cargill neither has taken any notice of my orders of the 7th ultimo nor intends to take any.

It appears from Mr. Cargill's letter (Ex. 22) and also from Mr. Reily's evidence that on Wednesday 9th January Mr. Bignell D. I. G. Police came to Noakhali for his annual inspection of the Police office and that Mr. Cargill went away the same day. It also appears from Mr. Reily's evidence (I had to send an urgent telegram after him to Feni) that on the 15th, Mr. Reily accompanied Mr. Bignell to Feni on the latter's departure from the District. Now it is useless for Mr. Cargill to say he does not know that the Police Office in Noakhali is in a very bad state. *Nec in quod omnes sciunt* is a time-honoured executive device—but if Mr. Cargill were ignorant of the state of affairs before he went on furlough Mr. Ezechiel has had plenty of opportunity to enlighten him since his return. And I can not help saying that it must have been a very strong motive which took Mr. Cargill away from Noakhali just at the particular time—

a motive which was sufficient not only to counteract his desire to confer with Mr. Bignell on the state of the local Police but to induce him, to leave the Police in uncontrolled possession of the station during the trial of a case in which as I had informed Mr. Cargill officially, the conduct of their superior officers was very much in question. And although Mr. Cargill's parsimony might account for some of the facts, it by no means explains all. It would have cost Mr. Cargill nothing to take action against the Court Sub-Inspector or to remove Osman Ali from the charge of the Suddar thana, which is in his hands even now and of which he has made use during the trial to impede the course of justice—it would have cost him nothing except a few words to keep Mr. Reily in order during the trial of the case.

The real fact of the matter is that Mr. Cargill would have been very pleased to have this case break down. A fact which has not come out in the evidence, but which is known to me as it is known to everyone in Noakhali is that Osman Ali has been at least as much Mr. Cargill's favourite as Mr. Reily's and that it is to Mr. Cargill's favour even more than to Mr. Reily's that Osman Ali has owed his position as uncrowned king of the District—a position which he might be holding even now, but for the fortunate accident of Mr. Cargill's having taken furlough and Mr. Ezechiel having come here to act for him and this I may say explains, if any explanation is required the anxiety of the Police to delay the case—if they would only have kept it back till Mr. Ezechiel was out of the way its suppression was reasonably certain. I do not mean to suggest that Mr. Cargill would have willfully buried the case. But men are prone not to believe what they do not wish to believe, and Mr. Cargill did not wish to believe that this case was true. He told me himself



the very night before I began trying it that he should be very much surprised if it stood.

And I am led to mention these matter because it is my conviction that if Mr. Cargill is left here as District Magistrate the difficulty of putting things right will be increased indefinitely. This is the first of three Sessions cases committed in Mr. Ezechiel's time in which Police sent up C form and Mr. Ezechiel—who was here the other day as witness—tells me that one at least of the others is as sensational as this—I have not of course gone into these cases but think the opinion of the late Dist. Magistrate who committed one of the cases himself—entitled to professional respects as for cases other than Sessions cases, the state of the District is sufficiently disclosed by the Government Pleader's cross-examination of Mr. Reily.

The irony of the situation will be appreciated when I point out that Mr. Cargill is the nominal prosecutor in these cases. It is the Crown which says that Osman Ali has burked this case—it is the crown which declined to call Mr. Reily as not being a witness of truth (and rightly so—I at first had a higher opinion of their officer, I thought that he might have been incompetent and careless, but that he would at last speak the truth and that I ought not to leave it to the defence to call him; but I am bound to admit that Government was right and I was wrong) Mr. Cargill and the Lieutenant Governor ought in theory to be anxious that these accused men should be convicted, that Osman Ali should be dismissed and that the evidence which Mr. Reily gives on behalf of the defence should be disbelieved. But yet Osman Ali is kept in charge of the Thana within which I am now living. Mr. Reily is still in charge of the district and when I show an intention of prosecuting him for giving evidence

which the Crown alleges to be false, the Lieutenant Governor endeavours to intimidate me!

The very day after Mr. Cargill left the station,—just after the examination of the *eye-witnesses* had begun—Islam or Ismail perhaps in some respects the most important of these witnesses—certainly the one who had given most trouble to Osman Ali & Co., was hailed off from the Court to Osman Ali's thana by Osman Ali's men on a false charge. After finishing giving his evidence two days later the man complained to me in open Court and I sent him to my senior Subordinate Judicial Officer with the paper marked 22, in B file. Babu Lalit Kumar Bose's report is paper 19 etc, in the same file. I extract the following: "Ismail has substantially proved his allegation about arrest, about rough treatment by the constable who arrested him and about his being taken to Thana. He has further proved that the town constable, Isopali, arrested him with full knowledge that he was witness in Sessions case and was in charge of constable Aliwar Chobey when he attended call of nature. . . . The arrest of Ismail could not have been *bonafide*."

When these things happen the chief Civil officer of the District is absent "in islands" out of reach of post or telegraph and the person to whom I have to appeal to keep the European D. S. P. within bounds is a native Deputy Magistrate, who if he has not really "trembled with awe" at the D. S. P.'s frown has probably found it politic to pretend to do so!

I received Babu Lalit Kumar Bose's report on the 15th. The same day the Government Pleader informed me that the witness Ramdhan Barooa whom he next wished to call had been sent away to Comillah with the D. J. G. and on my sending for Mr. Reily to enquire about this (and also because failing Ramdhan Barooa he was the

next witness for examination) I discovered that he also had left the station. I sent an urgent telegram after him to come back himself and bring Ramdhan Barooa, but had perforce to stop work for the day.

Ramdhan Barooa was examined the next day. From his evidence it appears that it was an exaggeration of the Government Pleader to say he had been sent to Comillah; that he was really sent to Harish Chandra Bhunja (a place on the Feni Road ten miles out). Mr. Reily when examined disclaimed responsibilities for this deputation. The man himself says that Osman Ali sent him; and that Osman Ali persisted in ordering him to go though he requested he had to attend this Court. Mr. Reily first affected ignorance of even the approximate number of Constables in Noakhali; but had at last to say that there were 35.

As to his own absence Mr. Reily admits that not only did he receive a summons citing him as a witness for the defence, but that he paid me an official visit on the morning of the 9th January and that I told him that I intended to call him myself after the witness for the prosecution were examined and that he must not leave the station. His only excuse is that he thought he would get back before he was wanted.

I regret to have to say that Mr. Reily has since done some similar "thinking" until at last I have had to take from him a personal recognizance of Rs. 500.

I mention these and similar pinpricks on the part of the Police and the Executive authorities, because I am inclined to believe that the object of them is not so much to affect the course of the trial. They only cause a little delay as to irritate me and cause me to use strong language. It is all very well gentlemen, but it won't work; I had all these tricks played upon me in the Chupra case by Messrs.

Maddox, Bradley and Twidell. The only difference that case has made is that I did not mention these tricks there and that I do mention them now.

Mr. Reily was examined on the 16th 17th and 18th January and the translation of his evidence and the examination of the accused occupied the 19th. On the 20th (Sunday) we had a view of this place of occurrence. That view and the evidence given by the Police witnesses on the following day, 21st January, removed from my mind any lingering doubt that Mr. Reily had committed perjury and from the morning of the 22nd January, I insisted on his being present throughout the proceedings.

The examination of the witnesses for the defence was completed on the 22nd January. The 23rd January being a close holiday on account of the *Id*, the case was adjourned for arguments till the 24th. On the 24th January Babu R. K. Aich addressed the Court and the Assessors for the defence, Mr. Reily being present. As Babu R. K. Aich began laying down proposition that it could not be thought for a moment that a European of Mr. Reily's position would deviate from the truth, I interrupted him and said that Mr. Reily's evidence would have to be weighed in the same manner and scrutinized by the same tests as that of any other witness, that I could by no means accept the theory that because a man had a white face he was incapable of telling a lie.

A letter posted at Noakhali up to 4 P.M. on the 24th would reach Calcutta in the evening of the 25th and would be delivered in the early morning of the 26th.

Babu R. K. Aich closed his arguments on the afternoon of the 24th and the case was then adjourned till the 25th for the argument of the Government Pleader. As it was the Hindu festival of *Sripaukani* on which date the Hindus are not allowed to touch pen or to do any

work after Puja, the trial was held in the early morning and the arguments were finished and the opinions of the assessors recorded by 9-30 A. M.

On that morning the Government Pleader exposed with a boldness as creditable as it was rare, the tussis of prejudices committed by Mr. Reily, who was sitting close beside him. It was with regret, said the Government Pleader that he said these things, but it was his duty to say them and he must do his duty.

The Assessors both found three out of the four accused guilty of murder, and thus by implication the District Superintendent guilty of perjury: for if Mr. Reily has spoken truth, the conviction cannot be sustained: and if the evidence is good enough to hang Sadakali, it is good enough to send Mr. Reily to Jail.

The significance of the Assessors' opinion should not be overlooked. They are both Hindus of the classes known as (*Bhadralok*) and the reluctance of men of those classes to find accused persons guilty in capital cases is well known: it was put forward a few years ago by the Executive authorities as main ground for abolishing trial by Jury. Under the circumstances I am not perhaps going too far in saying that the fact of the two Assessors finding three of the accused guilty in a case where the only possible doubt was whether the Judge would hang *all* the persons convicted shows that these gentlemen must have thought the evidence very strong indeed. The Assessors gave their opinions shortly before 9-30 A. M. There is a telegraphic communication between Calcutta and Noakhali and also between Calcutta and other places accessible from Noakhali in a few hours.

On the 26th January Mr. Buckland the officiating Chief Secretary to the Bengal Government, sent me the Demi-official letter marked as Exhibit X 18. The post-

mark on the envelope in which it came (Ex X19) shows that this letter was posted at Wellesley Street, Calcutta at or before 1-45 P. M. Wellesley Street is, I believe, the Post office to which letters from the United Service Club, at which Mr. Buckland not only lives, but does his work, are taken. The time shows that the letter must have been posted between 12-45 and 1-45 P. M.

I shall revert to this letter (which I received on the 28th January) hereafter. In the meantime I refer to subsequent proceedings of the local Executive authorities—whether or not directed from Calcutta, I am not in a position to say. All I can say is that the same mail which brought me Exhibit X 18 may have brought instructions to Mr. Cargill from his Executive superiors.

At all events that very day, the 28th January, Mrs. Cargill began the correspondence with my sister which culminated in Ex. X22 and I cannot help suspecting that her husband set her up to it.

On the 29th January Mr. Cargill sent me officially the letter which is sheet 51 in B. File, asking if he could take copies of papers as soon as judgment was delivered. Such precipitation on the part of the Dist. Magte is at all events unusual.

In reply (No 44 of 30th January) is sheet 53 in B File. It expressly informs Mr. Cargill that he cannot have copies until sometime after judgment is delivered. On the 30th January I read out my order No. 18 in open Court in Mr. Reily's presence and hearing. On the 1st February I similarly read out my order No. 20. Mr. Reily and Mr. Cargill live in the same house (the Circuit House) and their offices are within a few feet of each other. On the afternoon of the 1st February I received from Mr. Cargill the letter which is sheet 54 in B. File. Paper 56 in B. File is my reply. Although Mr. Cargill is the pro-

secutor in this case, I do not believe that he is afraid the accused will get off or that it is any such fear which makes him impatient at the slow course of justice. I am rather inclined to the opinion that he is desirous that I should use hasty expressions in this judgment.

On the 4th February I read out in Mr. Reilly's presence the order No. 21 postponing delivery of judgment till the 7th. Part of my order runs: "Let the District Magistrate be informed that I desire that any application he may wish to make to me with reference to this case or to his proceedings during the trial may be made to me through the Government Pleader in open Court." This order was duly communicated to Mr. Cargill.

Two hours after I received from Mr. Reilly the letter which is paper 67 in B File. It purports to be sent through Mr. Cargill and though it does not bear his endorsement, I cannot help suspecting that it was sent with his knowledge. The effrontery of that letter, coming from a man who must have known that he was about to be prosecuted for perjury needs no comment. But I suspect the letter was sent under orders—possibly under orders from some one outside the district.

On receiving this letter I sent to Mr. Cargill the letter which is paper 53 of B File.

On the 7th Feb, the next date fixed for delivery of judgment, I took from Mr. Reilly (who as the order-sheet shows was not in attendance and only came after considerable delay) a personal recognition of Rs. 500.

Within the last half hour (12-2-01) while writing these remarks, I have received from Mr. Cargill the letter marked Ex X 24 in the envelope Ex X 25. It will be seen that both letter and envelope are official and that Mr. Cargill affects to write on behalf of Government. I cannot help wondering what damages the

Secretary of State for India in Council would recover in a suit against my grass-cutters for the Government grass which Mr. Cargill alleges they have taken!

From Mr. Cargill and his Government grass I turn to some more important matters—Paulo Majora canamus.

I have already referred to a letter (Ex X18) from Mr. Buckland, the Officiating Chief Secretary to the Government of Bengal, which I received on 23rd January. I thought over the matter and determined to leave Sir John Woodburn as few loopholes as possible. Accordingly on the 29th January I wired the Chief Secretary as follows: "Please wire whether your demi-official of 26th was written by order of Government." This telegram was sent State Ordinary to Chief Secretary at Calcutta from Sessions Judge at Noakhali. I received no reply (and indeed expected none.) I therefore on the 31st January filed the affidavit of my Peshkar that he had despatched it (paper 15 in B file) and sent the Chief Secretary the following urgent State telegram:—"please wire whether you have received my telegram of 29th concerning your demi-official of 26th."

These telegrams seem to me innocent enough; but apparently Sir John Woodburn does not like to answer them; or it may be that Mr. Buckland declines to answer them, as directed.

The letter and the telegrams together (or indeed, the letter in itself) make it necessary for me to go back a considerable period and to refer to the case of Empress w. Narsingh Singh, commonly known as the Chupra case.

And I would begin by soliciting a reference to Exhibit X26, a demi-official letter, from the Chief Secretary dated 1st January 1901, promising the three months' privilege leave in or about the early part of May. Under the new leave rules, which have come out while I am writing this judgment, I should be

allowed and indeed encouraged to add to this privilege leave a certain amount of furlough, of which I have 18 months at my credit; and this would carry me on to a time by which Sir John Woodburn must retire. From Exhibit X27, (demi-official letter from Mr. Bourdillon, Chief Secretary, dated 3rd September, 1900) it will be seen that I have also been promised a transfer to a healthy district. And although this latter promise is, to say the least, a variation of one, held out to me in Exhibit X28 (demi-official letter from the Private Secretary to the Lieutenant-Governor, dated the 12th June, 1900), yet the implied admission that Noakhali is not a healthy district is a distinct advance upon the Lieutenant-Governor's inability to admit "that it is in any sense an undesirable one." And the real truth of the matter is that every day I am kept here makes the position of the Executive authorities more untenable, and that they would be heartily glad to see me out of Noakhali in any manner, consistent with saving their own face. Why I was not transferred in October was, I believe, because it was desired to keep the native papers quiet and avoid inconvenient questions in Council during the cold weather—in fact, I am kept here as a hostage for the silence of the Native community. If therefore I bring up the matters to which I now advert, it is not because it is to my personal interest to do so. I only have to refrain from prosecuting Mr. Reily, and to write a judgment in the style of a Government resolution; and everything will be made smooth for me. I shall get my privilege leave, get my furlough; and when I come back I shall be posted to a healthy district. As it is, if I am not dismissed it will certainly not be for want of will on the part of those with whom my dismissal nominally rests.

I think it very necessary, however, not merely to prosecute Mr. Reily, but

to expose Sir John Woodburn—which I now proceed to do. On 7th October, 1899, I delivered judgment in the appeal of Narsingh Singh, and acquitted the appellant,—a man who had been convicted under Sections 352—114 and 504 of the Indian Penal Code by Moulvi Zakir Hosain, District Magistrate of Chupra and sentenced to two months' rigorous imprisonment. The conclusions to which I came were briefly that Mr. Corbett, Assistant Superintendent of Police, and Mr. Simkins, District Engineer had set upon and severely thrashed the appellant for refusing to obey the illegal orders of Mr. Twidell, the Collector-Magistrate, and had afterwards unlawfully compelled him to labour on a *bund* (embankment); that fearing that he would bring a case against them, Mr. Corbett arrested Narsingh in the Chupra hospital, and carried him off to Mr. Bradley, the District Superintendent; that Mr. Bradley tried to intimidate him into resigning a Government post which he held elsewhere (and so admitting himself to have been in the wrong); that on this failing, the two Police officers took him to Mr. Twidell, the Collector-Magistrate, who sent him to *hajut* (lock-up); that a false case was then brought against him by Mr. Corbett; that a mock trial was held before a native District Magistrate of 27 years' standing; that even this man's seared conscience revolted at the task before him, and that he tried to get Mr. Twidell to allow him to let this man off; but that Mr. Twidell proving obdurate, he finally gave way and convicted and sentenced the man as described, at the same time dismissing as utterly groundless "the case of assault and unlawful compulsory labour which Narsingh had brought against the two European officers and the crucial facts of which the latter had had to admit on oath when cross-examined in his Court. Under Section 417 of the Criminal Proce-

Code and Schedule II, Act 157 of the Limitation Act, XV of 1877, it was open to the Local Government to appeal against my judgment at any time within six months from the 7th October, 1899. No such appeal was ever presented; nor has any serious attempt ever been made to question the correctness of any of the findings of fact, contained in the judgment.

There was the less reason why the Local Government should have hesitated to appeal to the High Court, as two of the Judges composing that Court have and had, for reasons entirely unconnected with the case, a strong personal animosity against myself. These two Judges are Messrs. Rampini and Stevens. The grudge which Mr. Justice Rampini has against me is that stated in my 2nd letter of 31st December to the Chief Secretary (of which Ex. XI4 is a copy) of which Sir John Woodburn thought to make the fulcrum to turn me from prosecuting Mr. Reily. The grudge which Mr. Justice Stevens has against me is well known to the High Court, but is not so well known to the general public whose servant I am and for whom this judgment is written. It is that in an official letter, No. 1112 dated the 21st August 1899, to the address of the Registrar, which letter I insisted should be laid before the English Committee of five Judges, I made the fact that Mr. Justice Stevens desired a particular Government appointment for his son in the Police a ground for my objecting to his deciding a certain personal matter in which my interests conflicted with those of the executive authorities who had the gift of that appointment in their hands. The executive authorities, from the Lieutenant-Governor downwards, did everything in their power to prevent the true facts of *Empress V. Narsingh Singh* from coming to light. The Commissioner of Patna, Mr. Bourdillon, &c. &c., who, it was well known, was about to be made the Chief

Secretary—the man to whom a Sessions Judge has to write for leave to go to Calcutta to meet his sister—wrote to me demi-officially to hush up the case; and before this demi-official letter was sent me, the Legal Remembrancer had, as Sir John Woodburn, K.C.S.I., himself admitted to me on the 10th December, been consulted with a view to prevent the appearance before me of the guilty officials from whom alone the extraordinary illegalities, which took place during the trial, could be elicited. (In this country the only people, who will come forward to give evidence against officials in a case of this kind, are those who do not mind their houses being burnt, their crops looted, their relatives turned out of Government employ, and themselves and the members of their families dragged up on false charges and sent to jail. Small wonder that Lord Curzon and his advisers object to their officials being “put on oath to criminate themselves—” it is the only way they can be criminated at all. And it is Lord Curzon, not the High Court, which calls my action in this matter an abuse of the liberty of enquiry: the High Court were wanted to say that, but refused: the penultimate paragraph of Lord Curzon’s Resolution is as artistically worded as the last paragraph of Mr. Reily’s report.)

While writing my judgment in the *Chupra* case I had received from Mr. Bolton, the then Chief Secretary of the Government of Bengal, a telegram, informing me that on relief by Mr. Anderson I was to stay on at *Chupra* as Addl. Judge. In due course a notification to that effect, dated 9th October appeared in the *Calcutta Gazette* (of the 11th October.) By the mail of the same day (9th Oct) a copy of my judgment was forwarded by me to the Chief Secretary to the Local Government. In the ordinary course it would have reached him at Darjeeling on the 14th or 15th October.

On the 16 Oct. the Chief Secretary wired to me that I was appointed to be Judge of Noakhali, and that Mr. Fisher, (then Deputy Commissioner of a non-Regulation District) was to relieve me as Addl. Judge.

On the 20th January 1900, the Lieutenant-Governor was asked the following question in the Bengal Legislative Council by the Hon. Babu Surendranath Banerjea :

"Whether there is any foundation for the statement which was been made that Mr. Pennell has been transferred owing to his judgment in the Chupra case. If not, will the Government be pleased to state the circumstances of the transfer?"

In reply Hon. Mr. Bolton said : "Mr. Pennell was transferred in the course of official changes. And the order appointing him to Noakhali, was passed before the Government saw his judgment."

I am indebted to a gentleman of considerable standing in the mercantile world at home, who has recently been staying with me, for the criticism that "that reply is what we call a commercial statement. It's when you are asked an inconvenient question and don't like to tell the other man a direct lie but want to put him off."

It no doubt may be and probably is true that Sir John Woodburn himself had not seen my judgment on the 16th October. But I have also no doubt that his Chief Secretary had not only seen it but had acquainted him with its purport.

Not only was Government aware of the case before the judgment was pronounced,—not only was there ample time for the copy of the judgment sent from my office to have reached the Chief Secretary,—but I am also able to prove that the local executive officials showed the same feverish anxiety to get copies which Mr. Cargill has shown in the present case. The pencil writing at the head of Exhibit X29 is Mr. Twidell's: it shows that

he wanted a copy of the judgment before 3 p. m. on the 8th October. Three p. m. is the hour when the Chupra Mail for Patna, Calcutta and Darjeeling is closed.—Exhibit X30 is a later letter on that same day from Mr. Twidell himself. "He understands," says Mr. Twidell "that judgment was given yesterday, and he should be glad to know what difficulty there is in the way of his having a copy." The 8th October, I may add, was a Sunday. I can carry the matter a little further. Mr. N. C. Macpherson, the permanent Collector-Magistrate of Saran, (Chupra), who arrived at Bombay on the 10th Oct, told me and indeed seemed to make it a grievance against me, that he found a telegram awaiting him from Mr. Bourdillon, the Commissioner of Patna, directing him to come on to Chupra at once, whereby he lost several days' holiday which he had intended taking. The Commissioner of Patna, —the Chief Secretary-elect—was, it is evident, very much alive to the situation even on the 10th October; and I find it difficult to believe that he did not acquaint his future master with it before the 16th.

Further it appears from a letter which I received from Mr. Huda, that he got information of his transfer from Noakhali at the same time as my appointment there appeared in the *Gazette*—and Mr. Fisher, the Deputy Commissioner of the Sonthal Perganas, was equally taken by surprise. From his letter, dated 20th October from Naya Dumka, (Exhibit X31,) it further appears that "Bolton had written to him to proceed to Chupra as soon as possible." Although Mr. Bolton was so anxious that I should be relieved at Chupra, he did not for some time further show any particular anxieties that I should quit that place, and under the Regulations I was entitled to nearly a fortnight's joining time, even after making over charge. It would seem indeed



that although the Government had made up their mind even before seeing my judgment to send me to Noakhali, they did not make up their mind for some time after what to do with Mr. Huda, who was already Judge there.

I have indeed little doubt that at this time Government imagined that they could bury the scandal (which, be it borne in mind, was not in Bengal, but in the most remote district of Behar) without any difficulty. I no doubt had to be punished for my insolence in disturbing them, but no further notice need be taken of the case.

On the 26th October, however, my judgment appeared *in extensa* in the *Amrita Bazar Patrika*, one of the most powerful organs of native opinion in the country, and from that date, to use an expressive colloquialism, the fat was in the fire.

The *Amrita Bazar Patrika* of 26th Oct. would, in the ordinary course, reach Darjeeling on the afternoon of the 27th. On the 28th Mr. Bolton sent me a telegram to "join early at Noakhali on being relieved, and followed it up by a demi-official letter (Exhibit X 32) of the same date. It will be seen that Mr. Bolton himself created the necessity to which he refers for my proceeding early to Noakhali.

The reasons for this urgency were, I believe, two: first, that Mr. Bolton (or his master) was apprehensive of what I might do in Calcutta on my way through; secondly, that they feared that after public attention had been drawn to the matter, it might be difficult for Mr. Macpherson to delay much longer taking action on the complaint of Narsing Singh vs. Corbett and Simkins, in which I had directed him on 7th Oct. to make further enquiry.

By arrangement with Mr. Anderson, I managed to stay on same days at Chupra even after Mr. Fisher's arrival, and did not make over charge and leave the place till

the afternoon of 3rd November. No sooner was my back turned than Mr. Macpherson summoned *not* Messrs. Corbett and Simkins, but Narsingh, and having subjected him to a lengthy cross-examination, *again* dismissed his complaint (on the 7th Nov.) on the ground that "granting that Messrs. Corbett and Simkins were not warranted in beating the complainant or in forcing him or attempting to force him to work against his will, I consider it inexpedient in this case—considering all the circumstances—that they should be made to stand a trial in a Criminal Court for what they did."

In an earliest part of his order, Mr. Macpherson states that "it appears, clear to me that the two accused persons, who are public servants, acted in the belief that it was their duty to do all that could be done to effect the repair of the embankment and that due and sufficient notice can be taken by their departmental superiors of actions on their part which should not have been taken." It does not appear, however, that Mr. Macpherson took any steps to secure that due and sufficient notice or any notice at all should be taken of the matter by the departmental superiors of the officers involved. It was well known to Mr. Macpherson that one of them, Mr. Simkins, was the servant not of Government but of the District Board of Saran—a body mainly composed of indigo-planters. Mr. Macpherson is himself the brother, (and I believe) the son) of an indigo-planter, and must have been well aware of the sort notice a body composed of such men would be likely to take of Mr. Simkins's conduct. So far as I know the only action which Mr. Simkins's departmental superiors have taken against him is to raise his pay.

In the meantime what had the authorities been doing?

The Bengal Government must have got my judgment on the 14th or 15th October. They have never even alleged

that they took any action upon it then or for long after.

No sooner had he published the judgment than Babu Mati Lal Ghose, the veteran patriot who edits the *Amrita Bazar Patrika*, sent a copy of it to Mr. W. R. Lawrence, the Private Secretary to the Viceroy. Copies were sent by that mail (though the executive authorities knew nothing of it) to many influential people in England.

For nearly a month Mr. Lawrence (or his master) did not find it convenient to acknowledge Babu Mati Lal Ghose's letter. (They have acknowledged and acted on many of his letters before.) It may be nothing but a coincidence; but about the same time as the copies, sent by Babu Mati Lal Ghose, would be received by their addressees in England, Lord Curzon suddenly woke up to the necessity both of taking action and of acknowledging Babu Mati Lal Ghose's letter. So on the 20th Nov. 1899, a letter No. 1651 (never yet published) was sent to the Government of Bengal: and about the same date Mr. Lawrence sent Babu Mati Lal Ghose a reply, stating that "His Excellency's attention" had already been drawn to the case, and thanking him for his letter. I must however take upon myself to correct a statement of Lord Curzon's (he has had his Resolution sent to me, so I suppose he expects me to notice it)—of course, from a judicial officer's point of view it is so much waste paper—in paragraph 6. It is there stated that "as soon as Mr. Pennell's judgment was brought to the notice of the Government of India, they requested the Bengal Government to furnish them with a full report upon the case." This is not so: Lord Curzon took action about such time as his attention would have been drawn to the case from England: but not till nearly a month after his attention was drawn to it from India. But Sir John Woodburn at all events was not yet prepared to despair. Shortly before the

end of November it was intimated to Babu Mati Lal Ghose by Mr. Bolton that newspaper agitation would do me harm, and that the whole matter of my transfer was under consideration. Babu Mati Lal Ghose consulted Mr. P. L. Roy, the eminent Counsel who was looking after my interests in the matter, and on his advice stopped for a time writing about the subject and reproduced in his paper the purport of the semi-official communiqué. Then followed (not I will ever believe, without previous conference with Lord Curzon) the descent of Sir John Woodburn upon Noakhali. The pretext for this was, I believe, the improvement of the Jail: it is a strange fact that the decision arrived at was that the Jail did not require improving. It deserves note that this was the second time in history that "your very beautiful but somewhat secluded station" (His Honour's speech in Durbar) has been honoured by the Lieutenant-Governor's presence. In the early morning of the 10th December Sir John Woodburn, K. C. S. I., Lieutenant-Governor of Bengal, with his Chief Secretary, the Hon'ble C. W. Bolton, C. S. I., his Commissioner Mr. Collier and his Private Secretary, Major J. Strachary arrived at Noakhali. All other *darbaries*, including my senior Munsif, Babu Lolit Kumar Bose, having been sent away, I was sent for into a private room.

It should be noted that I had not sought this interview or any other interview with Sir John Woodburn; indeed I had been advised by Mr. P. L. Roy not to broach the subject of my transfer or to allude to it in the most distant manner, but to treat the Lieutenant-Governor and his followers as if nothing had happened.

From the Circuit House where Sir John Woodburn delivered himself, I walked direct to my Court where he was shortly expected, and then and there wrote down on a piece of paper and with

a pencil with which I had provided myself beforehand notes of his conversation. Those notes are Exhibit X33. They necessarily do not contain everything: by the mail of the same day I sent a detailed description of the interview to Mr. P. L. Roy in Calcutta, and from his letter, dated 12th December I gather that he received my letter in due course of post.

So far as I remember, the only important omission in the notes (which will be found in the letter) is Sir John Woodburn's statement that the Chupra case was a trumpery case. This was made when I took him aback by showing him that I knew that he himself had tried to hush up the case. Sir John Woodburn began by asking me whether Mr. Bolton had spoken to me about my transfer. I said "no, Mr. Bolton had said nothing to me on the subject."

Sir John Woodburn then said, "you will be glad to hear that I had not read your judgment when I passed the order for your transfer." He then went on: "having said that, I will tell you that reading your judgment I have grave doubts whether you are fit for judicial employment. The judicial officers are my officers just as much as the executive, and I want them to do well. Mind I am speaking for your benefit and your guidance. Reading your judgment leads me to doubt whether you were really so impartial as you should have been. The vindictive rancour with which you pursued the police man and the District Officer, makes me think you must have had some quarrel with them."

On this I interrupted His Honour and asked whether these officers themselves alleged that I had any quarrel with them;

Sir John Woodburn rejoined: "I have not seen the policeman or the District Officer and have received no communication from them. I can only say that reading your judgment as a perfectly impartial man, I have doubts as to your impartiality."

On this I retorted that other people took different views of my judgment; that a friend of mine to whom I had shown it just after delivering it, had told me that a judgment like that was worth two National Congresses.

Sir John Woodburn replied that I must admit that a friend was hardly the best person to pass an opinion on my judgment, that he was a perfectly impartial man and that I must admit he was in a better position to form a proper judgment.

I rejoined that I doubted if he were really as impartial as he said: that as head of the executive he would naturally not like it to be believed that his executive officers had done wrong and that I knew his Government had done all they could to prevent the truth coming out. On this Sir John Woodburn lost his temper and said: "my Government! Be careful, Pennell, you had better be careful what you are saying!"

I said: "Well, at all events I know this much that you consulted the Legal Remembrancer as to whether the witnesses, need appear before me, and it was only when, Handley told you of course, they must that you gave way."

Sir John replied in great heat: "yes and I had every right to consult the Legal Remembrancer. It was a trumpery case, and you were calling witnesses from all over the Province!"

I replied that except Corbett all the witnesses were in Chupra, and that an A. D. S. P. did not matter.

Sir John then showed signs of a desire to rise and cut short the interview. He said that he had a great deal to do. I stood in front of him and said: "What you have been saying to me sound very much like a threat. Have I your permission, if I be so advised, to represent the matter to the High Court?" Sir John replied emphatically, "No, I am not going to enter into a discussion with the High Court. It is my business to say

where my officers can be most usefully employed. The Judicial Officers are my officers and not those of the High Court. I am speaking to you privately."

I rejoined that as a Judicial Officer I was bound to follow my own opinion and not his as to the way in which I dealt with cases.

He rejoined "well, at all events, Pennell, you must admit that your judgment was very long. If you had simply acquitted the man, no one would have minded." I replied that my judgment was full of facts and that there was very little comment in it.

On this Sir John Woodburn said: "any other Judge but you would have disposed of the case in two pages"; and with these words left me and passed on into the room where his followers were awaiting him.

During the time this conversation was going on, Mr. Collier, the Commissioner, was, if I am not mistaken, patrolling the Circuit House on the other side. This may have been and very likely was a mere coincidence: but it may also have been by preconcerted arrangement to prevent any outsider from overhearing the conversation.

Sir John Woodburn departed; and shortly after his return to Calcutta, Babu Mati Lal Ghose was ordered by Mr. Bolton to publish a demi-official communique to the effect that my transfer to Noakhali had been decided long before the Chupra case.

When the lying has to be done for them, "Government" do not stop short at "commercial statements."

What I have never been able to understand is why that communique was not sent to Babu Mati Lal Ghose for publication before instead of after Sir John Woodburn's visit to Noakhali.

The explanation which I suggest to the High Court and to the public whose servant I am, is as follows: That the Government of India and that of Bengal had not

up to this date and two months after my judgment—taken any action in the case, or at all events had not taken any steps which they could not retrace: that Sir John Woodburn persuaded Lord Curzon to let him try one last shot at hushing up the matter—no doubt he could have very truly assured the Viceroy that he had assisted at the hushing up of worse things in the North-West (I have no doubt from his point of view it was a trumpery case) that it was hoped by intimidating me to silence the native press, or more probably that if I had shown any disposition to give way, terms would have been made and I should have been given a good district as the consideration for the native papers dropping the whole matter.

It is note worthy that up to the 10th December Sir John Woodburn had not received any explanation from Mr. Corbett, (I suppose, he was meant by the "Policeman") or Mr. Twidell: and I suggest that up to that date he had not called for any: though it appears from the Government Resolution that by the 2nd January 1900, Mr. Twidell's explanation, as well as Maulvi Zakir Hosain's, had been received and considered.

The orders of the Government of Bengal were not passed till the 2nd January, 1900—the day after the holidays when it must have been clear to "Government" that I did not intend to avail myself of the opportunity afforded by the X'mas holidays, of making any overtures to them. I would invite the High Court's special attention to Exhibit X28 (the letter from the Private Secretary, dated 12th June). It seems to me relevant to point out that between the time when my letter of 21st May would have reached Darjeeling and the 12th June, there was time for a reference to Simla.

With regard to certain statements in that letter as to admissions of my own it is not perhaps really important what I have admitted or not admitted. The important thing is not my conduct, but that

of Government. But I think in justice to myself I may be permitted to point out that my letter (which should be in the Lieutenant-Governor's hands) was an autograph one and does not contain the admissions set forth in Major Strachey's letter. If I have really admitted that decide cases partially, why do they keep me on as a Judge? I do not believe that they pay me £2,000 a year because they are fond of me.

The explanation which I suggest of Ex. X. 28 is that the Executive authorities thought that they had got me down and imagined that it would be not only safe but profitable to insult me.

The statement in Ex. X. 28 that the L. G. told me in December that my appointment to Noakhali was arranged long before he ever heard of the Chupra case is false; and the explanation which follows, is I believe equally false. My appointment to a lighter charge would not necessitate my removal from Chupra; the appointment of Additional Judge was a lighter charge. If I had done anything which merited punishment, it is certain that no consideration for my feelings would have led the Lieutenant-Governor to suppress the cause of my appointment to Noakhali when questions were asked about it in Council. If my appointment to Noakhali had been arranged long before, Messrs. Huda & Fisher would have been informed. But the real reason why the Lieutenant-Governor could not put forward publicly in January the lie which he has put forward demi-officially in June, is that Mr. Justice Ghose would have been prepared to contradict him.

It is perfectly well known to the Chief Justice and other Judges of the High Court that a heated discussion was held by the English Committee on receipt of my letter No. 1112, dated the 21st August 1899, and that Mr. Justice Rampini (whom I had then also objected to as an arbitrator) proposed that recommenda-

tion should be made to Government for my reduction. He was, however, overruled by the Chief Justice and Messrs. Ghose, Hill, and Wilkins, who held the opinion that although I had been less economical of the truth in my letter than decorum required, it would suffice to tell me that I must not do it again, and that sentiment was accordingly conveyed to me in the Registrar's letter No. 2424, dated 7th September, 1900.

There were several reasons why the High Court would not at that time have consented to my appointment to Noakhali. First and foremost was the state of my health, which I had prominently brought before them. It was known to the High Court even then, although Sir John Woodburn did not discover it for a year afterwards, that Noakhali was an unhealthy district; and I had submitted to them not only the certificate which Dr. Ashe gave me when I applied for medical leave at Mymensingh (Ex. 34) but also two later certificates from the Civil Surgeons of Champaran and Saran (the latter Captain Maddox who figured in the Chupra case and against whom I am said to have an animus). These certificates Exhibits X35 and X36 represent me not as an idler, but as a man struggling hard to do his work against ill-health and attending court, contrary to the advice of his medical attendants.

But indeed Sir John Woodburn himself does not say I was sent to Noakhali as a punishment it was only because I had to be appointed to a lighter charge. I represented to Sir John Woodburn in October last that the work at Noakhali was really heavy, as there was no Sub-Judge and every other District had one; he said that he was sorry I had found the work heavy; he has not however taken any steps to make it lighter.

This much however is certain that an Additional Judge will now be required

here for at least six months, and there-  
after a permanent Sub-Judge.

Exhibit X37 is a demi-official letter, dated 5th October, from Mr. Bourdillon. It states that the Lieutenant-Governor has definitely decided to give me no assistance in effecting an exchange (what I asked for was not an exchange but a transfer) to another province.

It refers to an interview which I had with Sir John Woodburn on 2nd Oct. I took advantage of Mr. Bourdillon's confirmation as Chief Secretary to ask him (on 29th Sept.) to help me to get a transfer. Mr. Bourdillon showed what seemed to me a genuine willingness to assist me and said he would speak to Sir John Woodburn about it. And I arranged with Mr. Bourdillon to call on Sir John Woodburn on the 2nd October. Sir John Woodburn raised objections, I avowed to him that the real reason why I wanted to get a transfer was that I did not wish to serve under a man who believed that I was not impartial and had threatened to dismiss me. On this Sir John Woodburn said that he remembered very well what I meant, and that he had spoken as he had done because he had had a very bad report about me from Burma and really did not know how to employ me.

Now I left Burma at the end of 1894 (to be precise, on the 1st. January 1895). Whether I there did good or evil seems to me apart from the point. Whatever reports the Bengal Government had before them in December 1899, they had before them in February 1895, when they appointed me a Sessions Judge in Sept. 1897, when they appointed me to the charge of the most important Sessions Division in these Provinces: and it seems to me clear that whatever the executive authorities may now say as to my misdeeds in Burma, what they really object to is not my having done wrong then, but my doing right now.

From Sir John Woodburn I went to

Mr. Bourdillon and told him of my failure and asked him to renew his efforts. This I did for two reasons; first, because Mr. Bourdillon had tried to put the transfer on the ground of my health, and get me a better climate (the N.-W. Provinces or Central Provinces); but, secondly and mainly because I could not feel sure even of him and wanted something in writing. Why I really wanted a transfer was that once I was out of Sir John Woodburn's clutches, I would have been in a better position for laying my grievances before the Secretary of State (and ultimately, before Parliament); and I may say that I have always regarded the public aspect of this matter as a great deal more important than the private one, and am resolved that whatever might happen to myself, Sir John Woodburn should not go unpunished, if I could help it, for his impudent attempt to intimidate an English Judge.

This ends the history of the Chupra case so far as I am concerned; but I also think it my duty to lay before the High Court in their judicial capacity certain facts connected with that case which they have hitherto in their extra-judicial capacity "supervised."

Narsingh Singh's complaint against Messrs. Corbett and Simkins, the truth of which is admitted by those persons themselves, was illegally dismissed by Mr. Macpherson. Mr. Macpherson has been since appointed to officiate as a Commissioner.

Mr. Corbett was nominally punished with the stoppage of his promotion for one year. No sooner were the Government orders issued than he was transferred from the undesirable station of Backergunj to Ranchi, which is well known as a sanitarium; and he has remained there ever since. Further, the last Civil List shows that he has been put back over the heads of all the Police officers of his year, with the exception of Mr. Justice Stevens' son, who were confirmed before him.

An expression of the Lieutenant-Governor's severe displeasure was conveyed to Mr. Bradley whose conduct, in the opinion of the Governor-General in Council, "amounted to little short of persecution, and was a flagrant abuse of the authority with which as a police officer he was entrusted." Between the first and second of these verbal castigations, Mr. Bradley was appointed to officiate as District Superintendent of Police of Muzaffarpur, the prize District of Bengal, in succession to a very senior officer who is Mr. Bourdillon's brother-in-law: and there Mr. Bradley has remained up to date. A good many of us would rather like the sort of punishment.

Mr. Bourdillon has been first appointed to officiate and has since been confirmed as Chief Secretary to the Bengal Government.

I was refused leave last year though in bad health, Messrs. Twidell and Zakir Hossein were granted leave on full pay (though, so far as I know, in good health) and were allowed to join it to the *Puja* vacation,—an extraordinary concession, not admissible to Judges even of the High Court.

Mr. Bolton has been promoted to a seat upon the Board of Revenue.

Sir John Woodburn is still the Lieutenant-Governor of Bengal, and I am still the Judge of Noakhali.

Mr. Twidell and Moulvi Zakir Hossein are still administering injustice at Chupra with powers to try men summarily and inflict three months' rigorous punishment without any appeal. Babu Jagannath Sabay, the Pleader, who championed Narsingh Singh, has had to remove his practice elsewhere.

These matters will show the High Court and the public the good or bad faith of the executive authorities—of the Government of Bengal and of the Government of India. They will also show—and this is their relevance here—the meaning and point of

Exhibit X18—for they show what the independence of the judiciary in Indiareally amounts to. The mills of Gold grind slowly, but they grind exceeding; small and I cannot but regard it as very special dispensation of His Providence that the action of the executive authorities in this case has enabled me to represent these matters in such a manner that the High Court cannot avoid, even if it wished, taking judicial notice of them.

With regard to Mr. Twidell or to Maulavi Zakir Hosain, I would point out that the case of *in re Gamish Narayan Sallin* (I. L. R. 13, Bom. 425) shows that the High Court has power to secure the removal of dishonest Magistrates. The High Court in that case abstained from compelling the Bombay Government to do its duty, only because the needful compulsion had already been applied by the Secretary of State.

As for Sir John Woodburn's treatment of me, I confront the High Court with this dilemma—either I am not telling the truth, in which case I am not fit to try the King's subjects for their lives, or I am telling the truth, in which case Sir John Woodburn is not fit to be employed in the King's service.

I now come to Exhibit X 18 which, as I have said, was sent to me as soon as Sir John Woodburn got to know that I was likely to prosecute Mr. Reily.

Section 477 (sub-section 1) of the Code of Criminal Procedure runs as follows:

"Subject to the provisions of Section 444, a court of sessions may charge a person for any offence referred to in Section 195 and committed before it or brought under its notice in the course of a judicial proceeding, and may commit or admit to bail and try such person upon its own charge."

The Code says *may*—not that I *shall* prosecute Mr. Reily for his perjury and forgery but that I *may* do so.

But "may," as the Legislative Councils have found, has a way of meaning

"must" in such cases. The discretion which I have to exercise, is not an arbitrary but a judicial discretion. In deciding whether or not I should prosecute Mr. Reily, I ought not to allow myself to be influenced by such considerations as his being or having been a personal friend of mine, or that the Local Government will be pleased with me if I let the matter drop—"superwise" Mr. Reily's crimmess; or that it will be the worse for me personally if I don't let it drop. The only thing I have to look at, is not European "prestige," not "policy," but whether or not the prosecution is expedient in the interests of justice. And this is a question which admits of but one answer.

What the Government want is that I shall allow my judicial discretion to be guided by their executive will. I decline to do anything of that sort.

If I had asked, as Sir John Woodburn anticipated, that my imputations upon Mr. Rampini should be withdrawn, I should have had to wait for the Government answer just as I am now waiting for the Government answer to my telegram. Sir John Woodburn wished me to write my judgment and to decide about Mr. Reily with the "imputation" hanging over my head.

But I am no more afraid of Mr. Justice Rampini than I am of the Lieutenant-Governor, Mr. Rampini has long been stabbling me in the back, and I am glad to get an opportunity of meeting him face to face. I may be doing him an injustice; but a gentleman very much like him ran away from me at Tallygunge on the afternoon of the 1st January last. What I have to say about the imputation is, that it is true. I give a few facts. Mr. Rampini and his friends can have more if they please. Early in 1898 Mr. F. S. Hamilton, C. S., who was my Additional Judge at Mymensingh, sought my advice with reference to a tea syndicate in

which he told me he had already lost over £1,000. The principal papers relating to this syndicate had been printed and he laid them before me.

It appeared that about the time of the tea boom, an enterprising individual, named Sawyer—now I believe removed to a wider sphere of activity—thought to relieve the British public of some of its superfluous cash by floating a rotten tea company. With this object he formed a syndicate.

Some of the members contributed experience. I think that was all. Mr. Sawyer brought into hotch potch some names. Mr. David Yule gave land; and other members (among whom was my unfortunate friend) provided money.

Further (and this was the worst of all) the syndicators bound themselves jointly and severally to go on contributing rateably *ad infinitum* as a majority of the syndicate might decide, which was a little hard upon those members who had to contribute money and not experiences especially as the voting was not confined to them; and in practice the control was out of their hands. I forget the name of the syndicate, but the agents were Messrs. Andrew Yule and Company and among the members were Messrs. David Yule, C. de C. Richards, E. S. Sawyer (none of these gave money) F. S. Hamilton, a Dr. Murray (I believe the gentleman who has just discovered a new way of settling old differences) and the Hon. Robert Fulton Rampini.

There was no question as to the rottenness of the whole thing; Mr. Sawyer openly referred to it in his letter (printed) to his confederates as "our Company made to sell," but it was hoped that by judicious "salting" a profit might be shown for a year or two and the whole thing turned over to the British public, with no doubt the Hon. Robert Fulton Rampini, M. A., I. C. S., Judge of the High



Court, Calcutta, figuring prominently among the Directors.

Unfortunately, however, British public were not taking any tea or tea shares just then; and Mr. David Yule, in announcing the decision of his firm to have nothing more to do with the syndicate, playfully consoled the members by telling them that he would make them a present of the land.

It was at this juncture, the question being whether he should pay more money, that Mr. Hamilton came to me. I told him that so far as I could see he had made himself legally liable to pay whatever a majority of the syndicate ordered him to pay; but that I thought he might safely decline, for the thing was so barefaced a swindle that they would never dare to take it into Court. I said Mr. Rampini for one would give anything to hush the matter up.

Now Mr. Hamilton has not told me that he repeated this to Mr. Rampini. But he has told me that he went and saw Mr. Rampini in connection with the syndicate after his return from privilege leave, and that Mr. Rampini told him I was quite mad. Mr. Hamilton has not, I believe, lost any more money in the syndicate—but Mr. Rampini has lost no chance of doing me a bad turn in the High Court.

It may, of course, be said that all this was perfectly legitimate speculation on Mr. Rampini's part. But the difference between say Mr. David Yule and Mr. Rampini is that one dealing with the former knows what he has to expect. It is like betting at Monte Carlo. You know that the chances are against you; but if you choose to take them, the management are ready to oblige.

The reason why it is undesirable that people like Mr. Rampini should take part in these things is that most people are fools, and are led by names. Mr. Rampini knows nothing about tea-growing, has no qualification, but greed of gain for

a seat on the directorate of a tea-company. But owing to his predecessors in the High Court, he possesses a more or less valuable asset in his title and name. And it is a pity he is not above selling them.

When the old-established wine and whisky business of B. Smyth & Co., of Calcutta, was turned into a limited company with a High Court Judge as Director I withdrew my deposits. But I doubt if many other people did. The company has not failed yet. But some of the shareholders I understand have been using language which is positively rude.

I need hardly however enlarge upon Guinea-pig Judges, seeing that the public has just had the spectacle of a Guinea-pig Viceroy. The "Outlook" of 12th January has some remarks on the subject, which seem not inappropriate: "The appalling thing is that men of very high standing can sell themselves—for what they must suspect can be no other object than to act as the gilded bait for miserable gudgeons among the public. Is it worthy or honest—is it not contemptible and paltry—to put the best face upon it?"

There can be no question that Exhibit X18 was written under orders. I have no doubt Mr. Buckland has or had the draft sent him by Sir John Woodburn. It is written on Government paper and in a Government envelope and bears a service stamp. Mr. Buckland has franked it and corrected the "under" Secretary into Offg. Chief.

The passage in my 2nd letter of 31st Dec. (of which Exhibit X14 is a copy) did not escape Mr. Buckland's attention. Of course, if he is told to copy out Ex. X18 he has to do so. But Mr. Buckland knows that I know that the expression is incorrect and that the story of the passage turning up again is a commercial statement.

Mr. Buckland and I lived together over the Currency Office 11 years ago. It may be owing to that circumstance

that he received me on the evening of 31st. December in his shirt. He told me he had read my covering letter—and it was all right. I told him I should like it in writing in a few days. He said, of course he knew that. As to Ex. X12 Mr. Buckland was as good as told me he had written it under orders. "The fact is" he said "I had heard you were wanting leave, so I spoke about it to the Governor this morning," (before I applied). Of course, my friends in Calcutta had been making the whole thing as public as possible.

Next day Mr. Buckland sent me Exhibit X15. Of course, he had my letter Exhibit X14, before him then.

On arriving at Noakhali on 3rd. Jany. I sent Mr. Buckland the letter of which Exhibit X17 is a copy. He would in the ordinary course have Exhibit X14 again before him, and would lay them both before Sir John Woodburn for whom and not for Mr. Buckland himself Ex. X17 was obviously intended.

If it were a case of Mr. Buckland personally making such a fuss about giving me a day's casual leave, Mr. Buckland knows me well enough to know that it is not apologies he would be getting.

Secretaries don't leave letters of this description lying about loose—I was untidy enough when I was in the Secretariat but I did not do that. Mr. Buckland's rooms are particularly neat.

They are 15 yds. (on the same level) from the Club Library, which contains an ample supply of writing paper and envelopes; and if he had wanted to send me a private note and had run out of paper, why did not he go or send them?

Finally, if the letter was a private one or was not written under orders of Government, what on earth was the objection to saying so?

The explanation which I suggest is that Mr. Buckland's master has ordered him to lie and that Mr. Buckland has refused.

I have known some Secretaries who would not lie. One such died lately in Rangoon.

I think, as my judgment may be read by people in England, that I had better indicate the reason of Government's extraordinary solicitude for Mr. Reily. It is that the Police Department is the most "genteel" of the refuges for the destitutes in the Indian Empire and that there is hardly a man in high place out here who has not got in that department some relative of whom perhaps he may not be very proud, but whom he has not wish to have on his hands. To go no further, I may point out that only two of the Civilian Judges of the Calcutta High Court—Messrs. Prinsep and Stevens—have grown-up sons at all; and that both of them have sons in the Indian Police Department.

In the course of this judgment I have had to deal with and to expose many persons in high place. I have yet to learn however that an English Judge need apologise for such a course, if justice requires it.

I will go further and say that the past action or rather inaction of the High Court with regard to certain of the matters I have mentioned, has in my humble opinion done much to lessen the confidence of the people of this country in the administration of justice. There are certain qualities which appear at present to preponderate in that body, which may be to the advantage of the individual Judges composing it, but are far from conducing to raise the estimation in which the court itself is held. The qualities which the public desiderate in a judge are those which Burke long since pointed out as those which brought success in their train in an open election for members of Parliament. "A strenuous resistance to every appearance of lawless power; a spirit of independence carried to some degree of enthusiasm; an inquisitive character to discover and a bold one to display every corruption and every

error of Government." But the qualities which bring men to the High Court Bench, at all events from the ranks of the Civil Service or of the Local Bar, are rather an indolent and submissive disposition;—a disposition to think charitably of all the actions of men in power, and to live in a mutual intercourse of favours with them, an inclination rather to countenance a strong use of authority than to bear any sort of licentiousness on the part of the people. "The instinct which carries the people towards the choice of the former," says Burke, "is justified by reason, because a man of such a character, even in its exorbitancies, does not directly contradict the purpose of a trust the end of which is a contest on power. The latter character, even when it is not in its extremes, will execute this trust, but very imperfectly; and if deviating to the least excess, will certainly frustrate instead of forwarding the purposes of a control on Government."

Four years ago one of the most eminent Civilian Judges who have ever adorned the High Court Bench was superseded for the Judicial Membership of the Bombay Council by a gentleman of whom no one outside the Bombay Secretariat had ever heard. I was then in England; and I remember Sir Charles Pritchard remarking sagely: "ah poor Jardine! he never would do anything to help the Government."

What I think the public feel with regard to some of our present High Court Judges is that they are rather ready to help the Government; and it would be a great pity if such an impression were to become widely current—for the people of this country look to the High Courts to protect them against Government: they are a peaceable folk and it takes a great deal to rouse them but there are 300 millions of them and it will be indeed a very bad day, even for British prestige, if any considerable proportion of that 300

million get it into their heads that the only way by which we can carry off our abuses is to carry off ourselves.

This judgment is already three times as long as any judgment I have ever before written; but I may be excused for quoting the words of a former Lord Chancellor with reference to one of the most famous cases of our legal history—the case of ship money.

"And here the damages and mischief cannot be expressed that the Crown and State sustained by the deserved reproach and infamy that attended the Judges, by being made use of in this and like acts of power, there being no possibility to preserve the dignity, reverence and estimation of the laws themselves, but by the integrity and innocency of the Judges and no question as the exorbitancy of the House of Commons in the next Parliament, proceeded principally from their contempt of the laws, and that contempt from the scandal of that judgment. So the concurrence of the House of Peers in that fury, can be imputed to no one thing more than to the irreverence and scorn the Judges were justly in, who had been always before looked upon these as the oracles of the law, and the best guides to assist that House in their opinions and actions. And the Lords now thought themselves excused for swerving from the rules and customs of their predecessors (who in altering and making of laws, in judging of things and persons, had always observed the advice and judgment of those sages) in not asking questions of those whom they knew nobody would believe, thinking it a just reproach upon them (who out of their Councilship, had submitted the difficulties and mysteries of the law to be measured by the standard of what they called general reason, and explained by the wisdom of state) that they themselves should make use of the license, which the others had taught them and determined that to be

the law which they thought to be reasonable or found to be convenient. So these men had preserved the simplicity of their ancestors, in severely and strictly defending the laws, other men had observed the modesty of theirs, in humbly and dutifully obeying them "Clar Hist Rebell 1. 6. 9.

In dealing with this case I have done what I have humbly conceived to be my duty. It remains for their Lordships of the High Court to do what they conceive to be theirs.

FINDING AND SENTENCE.

The Court of the Sessions Judge, Noakhali, agreeing with both the assessors convicts Sadakali, Aslam and Anwarals

of murder under Section 302 of the Indian Penal Code; the Court directs that the said Sadakali be hanged by the neck till he is dead; and that the said Assam and the said Anwarali do undergo transportation for life. The Court agreeing with both the assessors acquits Yakubali of murder and the Court directs that the said Yakubali be set at liberty.

The proceedings will be submitted to the High Court for confirmation of the sentence of death passed upon the accused Sadakali.

(Sd.) A. P. PENNELL,  
Sessions Judge.

15-2-01.

## EXHIBITS IN THE CASE.

### EXHIBIT X1.

NOAKHALI,  
2ND DECEMBER 1900,

DEAR MR. BOURDILLON,

I wish to ask if there would be any objection to my taking casual leave, say 3 days to go to Calcutta to meet my sister, who is due to arrive there on the 11th instant. My sister has never been in India before and the journey here is not an easy one. I should esteem it a favour therefore if I could be given this leave.

The work in my Court, I may say is well up to date. There are no Sessions cases pending and as far as I can see my absence will cause no appreciable inconvenience to any one.

Yours Sincerely,  
(Sd.) A. P.

HON. J. A. B.

### EXHIBIT X2.

CALCUTTA, 5TH DEC. 1900.

DEAR MR. PENNELL,

There is no objection to your having 3 days' casual leave to Calcutta to meet your sister.

Yours truly,  
(Sd.) J. A. BOURDILLON.

### EXHIBIT X4.

UNITED SERVICE CLUB,  
CALCUTTA, 12TH DEC. 1900.

DEAR MR. BOURDILLON,

I find on arriving at Calcutta that my sister's steamer the "Parramatta" instead of arriving yesterday as advertised will not be in till to-morrow morning. Under these circumstances I am constrained to ask you for casual leave till the end of this week. I might with a rush get to Noakhali in

time for work on Saturday, but think myself that it is not worth while trying to do so.

Yours sincerely,  
(Sd.) A. PENNELL.

Hon. J. A. Bourdillon.  
MY DEAR PENNELL,

Certainly stay, as you propose.  
12 Dec. Yours sincerely,  
(Sd.) J. A. BOURDILLON.

EXHIBIT X6.

4, MIDDLETON STREET,  
CALCUTTA, 25TH DEC. 1900.

DEAR PENNELL,

The Judges are informed that you obtained leave from the Chief Secretary to come to Calcutta for the 12th Dec. last you were to have returned to your station on the 15th and the Chief Secretary understood that you did so. The Judges desire to know when you left Calcutta and upon what date you returned here and also from whom you obtained leave to quit your station again or to remain on in Calcutta if you did so. I am to ask for an early reply.

yours sincerely,  
(Sd.) E. R. CHAPMAN.

EXHIBIT X8a.

B HOTEL CONTINENTAL,  
26TH DEC. 1900.

MY DEAR CHAPMAN,

I am in receipt of your, D. O. of yesterday's date—I obtained 3 days, casual leave from the Chief Secretary to meet my sister, who was due to arrive in Calcutta on the 11th instant. As her steamer was late, I was obliged to apply for casual leave for the rest of the week which was granted. I left Calcutta on the 15th instant (a day earlier than I need have done) for Noakhali. I returned to Calcutta on the night of the 23rd instant I did not obtain leave from any

one to do so, as I did not consider it necessary. I have hitherto been under the impression that except for the *Pujas*, it is not necessary for a Judge to obtain leave to absent himself from his station during authorized holidays, and this impression was confirmed by the result of some correspondence which I had with you in July 1899 and to which I would solicit a reference. I may add that I came to Calcutta similarly for the Christmas holidays in 1898 and 1899, but no questions were asked about it and it is my belief that a great many other Judges are at present in Calcutta without any other authorization than exists in my case.

As the courts are closed I could not work even if I were at Noakhali, but I may say that even apart from that the state of my file is not such as to necessitate my remaining at Noakhali. I would solicit a reference to the returns for the September quarter, which will show that the work is well up to date. I may also add that with one trifling exception not a single order of mine has been reversed or modified by the High Court during the whole time I have been at Noakhali. I would submit that neither the quantity nor the quality of my work has been such as to call for any specially rigorous treatment on the part of the Court. And I would point out that it would be particularly hard if I were denied the indulgence (if it be an indulgence) of coming to Calcutta this Christmas as I have my sister with me and would like her to see the gaieties which go on here at this season. It is true that I have recently had casual leave but it was for a domestic reason and it is the 1st time in more than 14 years' service that I have ever asked for leave for such a reason. It may perhaps be the belief of the Judges that I remained on in Calcutta after the 15th. I have already stated that this is not so. If such an erroneous impression led you to write this letter, the Judges will not perhaps

be offered at the request which I now make. It is my intention to apply to the Chief Secretary for casual leave for the 2nd January to enable me to attend Mr. S. C. Mukherjee's wedding, which is fixed for the 1st instant and I should be obliged if the Hon'ble Judges will intimate that they have no objection to my having it.

Yours sincerely,  
(Sd.) A. PENNELL.

P. S.—I enclose copies of the correspondence between myself and the Chief Secretary with reference to my casual leave.

Sd. A. P. P.  
(Here follows the letters marked Exhibit X. X2 and X4.)

EXHIBIT X9.

INDIAN TELEGRAPH.

To Station—Birbhum ;  
From—Station Calcutta, ;  
A. P. Pennell,  
Park Street,  
Chapman ;  
Dated 29. 12. 00.  
Rampini has given me no order.

(c) EXHIBIT No, 10,

To Calcutta,  
To High Court.  
From Birbhum,  
From A. Pennell.  
Solicit that orders on my demi-official may be sent to Hotel Continental to await my arrival to-morrow.

(Sd.) A. P. P.  
Despatched on 29th Dec.

EXHIBIT XII.

HOTEL CONTINENTAL,  
31st Dec. 1900.

MY DEAR BUCKLAND,

I write to ask if I may have casual leave for the second January. I want to attend the wedding of Mr. S. C. Mukherje whom I have known from a boy, on the

1st January and as there is only one mail to Chandpur which leaves very early in the morning I cannot do this without exceeding the authorized holidays.

Yours sincerely,  
(Sd.) A. Pennell.  
Hon. C. E. Buckland, C. I. E.

EXHIBIT X12.

CALCUTTA,  
The 31st Dec. 1900.

MY DEAR PENNELL,

Your letter of to-day just received asking for casual leave for the 2nd January.

Please let me know why you have not applied before. To be back for your work on the 2nd I suppose you would have to start by the very early train on the 1st, and at present I do not understand why you should have put off till afternoon of the 31st Dec. to ask for casual leave for the 2nd January. Have you only just received an invitation or did you not intend until this afternoon to ask for it ?

Also please let me know if you start from here on the early morning of the 2nd at what time ought you to reach Noakhali ? Shall you be in time to hold court on the 3rd and for how long ?

Yours sincerely,  
(Sd.) C. E. BUCKLAND.

EXHIBIT XI4.

HOTEL CONTINENTAL,  
31. 12. 00.

MY DEAR BUCKLAND,

The enclosed correspondence which has passed between myself and the High Court will show how it is I have not applied for casual leave for the 2nd January before. The expression "The Judges" denotes Mr. Justice Rampini only. Mr. Ghosh who is a member of the English Committee expressed to my great surprise at Mr. Rampini's action. Mr. Rampini has not replied either to my letter or telegram. I cannot compel him to reply.

He has against me a private grudge of long-standing in connection with a syndicate into which he entered for promoting a tea company. (2) I have all along intended to apply for the casual leave. I received invitations both informal and formal long ago. I am an intimate friend of the bridegroom and his uncle Mr. P. L. Roy and have known the bride's People for years.

(3) If I start from here on the early morning (5. or 6. A. M.) of the 2nd, I reach Feni at 1-58 A. M. on the 3rd starting from there at dawn I reach Noakhali at say 10-30 A. M. on the 3rd in time to hold court on that day for as long as most Judicial officers sit. I am sorry to have given you so much trouble in the the matter, but you will see it is not my fault.

Yours sincerely,  
(Sd). A. PENNELL.

Hon. C. E. Buckland, C. I. E.

EXHIBIT X15.

Calcutta, 1. 1. 1901.

MY DEAR PENNELL,

In reply to your 2nd letter of yesterday you may have casual leave for 2nd, i. e., you may remain in Calcutta for Mukherjee's wedding on the 1st and I must ask you to leave Calcutta by the early morning train of 2nd so as to be back at Noakhali for Court on the 3rd.

Yours sincerely,  
C. E. BUCKLAND.

I return your letters.

EXHIBIT X17.

NOAKHALI

3rd January, 1901,

MY DEAR BUCKLAND,

In order to save you the trouble of having to communicate with me again upon the subject, I write to say that I reached Noakhali at 10-4 A. M., Calcutta

time, and that I am now (12-0 noon Calcutta time—11-27 Ry. time) in Court. As it so happened I walked to Court with the Collector so that we both attended office almost simultaneously.

I may perhaps be permitted to add that the Mail steamer of the first grounded and in consequence the passenger for places beyond Chandpur had to proceed by the same train as myself, even therefore if I had not been allowed casual leave for the 2nd instant I could not have got to Noakhali any sooner. I have received no reply to my letter or telegram to High Court.

Again apologizing for giving you so much trouble.

Yours sincerely,  
(Sd). A. PENNELL.

Hon. C. E. Buckland, C. I. E.

EXHIBIT X18

C. S. CLUB, CALCUTTA,

The 26th January 1901.

MY DEAR PENNELL,

I ought to have written to you before about a passage in a letter of yours, dated the 31st Dec, to π, but it escaped my notice (after I gave you the leave you wanted) and has only just now turned up again.

You wrote "Mr. Rampini has not replied either to my letter or telegram, I cannot compel him to reply. He has against me a private grudge of long-standing in connection with a syndicate into which he entered for promoting a tea company."

This is an imputation of motive which ought not to be made against any one, and certainly not against a Judge of the High Court as a reason for his dealing with an official matter in a particular way. Before taking any action on the subject I think it right to give you an opportunity of withdrawing this passage, if you desire to do so. If you prefer to let it stand it will be my duty to bring it to Mr. Rampini's notice.

Please at the same time forward to me a copy of the letter and telegram referred to in this passage of your letter of 31st December.

Yours Sincerely,  
C. E. BUCKLAND.

EXHIBIT X 20.

To Calcutta,  
To Chief Secretary,  
From Noakhali,  
Sessions Judge.

Please wire whether your demi-official of 26th was written by order of Government.

A. P. P,  
29-1-1901.

Deep.

Exhibit X 3.—Is a cover addressed to A. P. Pennell by J. A. Bourdillon, Chief Secy. to the Govt. of Bengal.

Exhibit X 5.—Is a cover addressed to A. P. Pennell.

Exhibit X 7.—Is a cover addressed to A. P. Pennell, Hotel Continental, Calcutta, by E. P. Chapman, Registrar of High Court.

Exhibit X 13.—Is a Cover addressed to A. Pennell, Esq., C.S., Hotel Continental, Calcutta, b, C. E. B., Offg. Chief Secy. to the Govt. of Bengal.

Exhibit X 16.—Do. Do. Do.  
Exhibit X 19.—Do. Do. Do.

EXHIBIT X21.

NO. 332 J. D.

JUDICIAL DEPARTMENT,  
JUDICIAL BRANCH.

From—C. L. S. RUSSELL, Esq.,  
Under-Secretary to the Government of Bengal,

To—A. P. PENNELL, Esq.,  
District & Sessions Judge, Noakhali.  
Dated Darjeeling, the 30th April 1900.

SIR I am directed to forward for your information the accompanying copy of a Resolution by the Government of India in the Home Department, No. 1003-1014, dated the 18th April 1900, regarding the case of Narsingh Singh of Chupra.

I have the honour to be,  
Sir,

Your most obdient servant,  
C. L. S. RUSSELL,  
Under-Secretary to the Govt. of Bengal.

EXHIBIT X22.

NOAKHALI,  
31-1-1901.

MY DEAR PENNELL,

I Should like to know, if you have no objection to telling me, whether when I left the station on the 9th current, you remarked that I always left the station when outsiders came here, or words to that effect, because I did not care to entertain them.

My wife tells me she heard this and shows me some correspondence she had with your sister on the matter.

Yours sincerely,  
J. D. CARGILL.

EXHIBIT X23.

NOAKHALI, 31-1-1901.

MY DEAR CARGILL,

I have no objection (beyond that it is useless) to telling you that so far as I remember I did not on the occasion in question give expression to the opinion indicated by you. I wrote to Ezechiel sometime before than asking him to stay with me and said in the letter that you were, I heard, going out before Bignell arrived and were not expected to return till after he (Ezechiel) had gone. This may possibly have something to do with what you have heard. I did not



however express any opinion as to the reason of your absence. Ezechiel can show you the letter. It will not possibly have to be filed in Court.

Please try to avoid all correspondence with me just now. It will be better for both of us.

Yours sincerely,  
A. PENNELL,

EXHIBIT X24.

12-2-1901.

MY DEAR PENNELL,

Your grass-cutters have cut grass in the Circuit House compound, and refused to discontinue the practice though my servant have spoken to them. When I enquired for them they refused to come. I have therefore no alternative but to write to you.

To make matters worse they have cut or rather dug, grass, on the cricket and foot-ball ground where I am particular about the grass remaining in good condition.

I would be obliged if you would order them to desist from this; and either to re-turf the part of the ground they have spoiled or to send me the money to have it returfed.

Your sincerely,  
J. D. CARGILL.

P. S.—You will see I am obliged to write to you though on the last occasion I did so, you asked me to desist. The grass, I may add, is not my property. It belongs to Government.

J. D. C.

No. 25.

TO DISTRICT MAGISTRATE.

SIR,—I enclose copy of a letter (No. 67, dated 4th February 1901), which I have just received from the District Superintendent of Police. The letter purports to come through you, but does not bear your endorsement.

2. I also enclose extract from an order (No. 18, dated 30th January 1901), passed by me in the Sessions case referred to and read out by me in Mr. Reily's presence in open court.

3. Mr. Reily is your subordinate and I request that you will direct him to obey my orders and to abstain from any further communication with me with reference to the case.

A. P. P.

4. 2.

The 4th February 1901.

To the Sessions Judge, Noakhali,  
Through the District Magistrate,  
Noakhali.

SIR,—In connection with the murder case of Empress vs. Sadakali and others I have the honor to enquire if I may now go out of the station. I have not been able to do any camping in January and it is necessary for me to go out. There is a murder case of P.S. Lakhipur which I have not yet been able to look after and also that unless I go out to the islands now I shall not later on be able to do so, on account of the weather. I intend to go out to-morrow evening if you have no objection. Kindly give a reply to-day.

I have the honour to be,

Sir,

Your most obedient servant,  
W. Y. Reily,  
District Supdt. of Police.

EXHIBIT X26.

Government of  
Bengal.

CALCUTTA U. S. CLUB.

1.1. 1901.

MY DEAR PENNELL,—Yours of the 29th Dec. from Suri. Arrangements will be made so that you can have your 3 months' privilege leave in or about the early part of May, as you ask.

Yours sincerely,  
C. E. BUCKLAND.

## EXHIBIT X 27.

Darjeeling, 3rd September, 1900.

DEAR MR. PENNELL,—In continuation of my letter of the 29th August I write to say that the Lieutenant-Governor has this morning had before him the proposals for posting Judges in the cold weather.

I am to say that after giving the matter his careful consideration His Honour is unable to transfer you at present, but there will be several changes before the hot weather, and you may count upon being transferred then to a healthy district, probably Bankura.

Yours truly,  
J. A. BOURDILLON.

## EXHIBIT X28.

Darjeeling, 12 June' 1900.

DEAR MR. PENNELL,—The Lieutenant-Governor desires me to acknowledge your letter of the 21st ultimo and to express his regret that by an oversight it has not been answered earlier.

He is pleased to see that you now recognise that your judicial deliverances have been often wanting in dignity and impartiality, essentially as you put it yourself, in charity, and he sincerely hopes that as you say, the High Court will not again have occasion to comment adversely upon them. Your appointment to Noakhali was arranged, as the Lieutenant-Governor told you in December, long before he ever heard of the Chupra case. The arrears in Saran and Champaran had become so serious as to lead to correspondence with the High Court and to necessitate your appointment to a lighter charge. The Collector of Noakhali has asked permission to return to the district on the expiry of his leave, and the Lieutenant-Governor cannot admit that the district is in any sense an undesirable. One of your predecessors, Mr. Green, remained there for many years at his own request. It would not be convenient to make any

change at present but the Lieutenant-Governor will bear your wishes in mind in the arrangements for next cold weather.

I am,  
yours faithfully,  
J. STRACHEY.

## EXHIBIT X29.

Go to the Sessions Judge and see if you can be allowed to take a copy as I want a copy before 3 P. M. to-day.

J. T.  
8-10-99.

SIR,—I went to the Judge's Court and met a clerk there, asked him for a copy of the Judgment delivered by the Sessions Judge in appeal case of Narsingh Singh; he said that he was copying the Judgment yesterday when the Judge took it again with the record and that if it is sent to office to-day the copy will be sent here to-morrow.

Your most obedient servant,  
Bachoo Lall.  
8-10-99.

## EXHIBIT X30

8-10-99.

DEAR SIR,—I have sent to your office and also to you for a copy of your Judgment in the case of Narsingh Singh, which I want if possible before this afternoon. Could you please allow my Mohurrir to take a copy?

I understand that Judgment was given yesterday and I should be glad to know what difficulty there is in the way of my having a copy.

Yours faithfully,  
J. E. TWIDELL.

## EXHIBIT X31.

Naya Dumka,  
Sonthal Pgs.  
20-10-99.

MY DEAR PENNELL,—I expect to be relieved by Carstairs on the 25th instant and

Bolton has written to me to proceed to Chapra as soon as possible. Shall I find you at Chapra about the 27th Oct. and would it be convenient to you if I were to take over charge on the morning of the 28th October.

Yours Sincerely,  
C. FISHER.

EXHIBIT X32.

Darjeeling, Oct. 28th.

MY DEAR PENNELL,—I have sent you a telegram requesting you to join early at Noakhali on being relieved. I understand that Fisher reaches Chupra to-day.

Huda is to take charge of Furidpur at the end of the vacation, Mitra having been granted one month's leave. I have authorised him, pending your arrival, to place the Munsif in charge. This arrangement should obviously not continue for more than a few days, and it is for that reason you are requested to proceed early to Noakhali.

Yours sincerely,  
C. W. BOLTON.

EXHIBIT X33.

I had not read your judgment when I passed the order for your transfer.

The vindictive rancour with which you pursued the policeman and the District Officer . . . My Government . . . you had better be careful what you are saying. Reading your judgment I have grave doubts whether you are fit for judicial employment.

I am speaking for your benefit and for your guidance.

I am not going to enter into a discussion with the High Court. It is my business to say where my officers can be most usefully employed. The judicial officers are my officers and not those of the High Court.

Reading your judgment leads me to doubt whether you were really so impartial as you should have been.

I have not seen the policeman or the District Officer and have received no communication from them. I can only say that reading your judgment as a perfectly impartial man, I have doubts as to your impartiality.

I am speaking to you privately.

EXHIBIT X34.

BENGAL CIVIL MEDICAL DEPARTMENT,  
Form No. 37.

Statements of the case under articles 487 (a) and 894 (a) and 903, Civil Service Regulations.

Statement of the case of

Name—A. P. PENNELL.

Office—District and Sessions Judge.

Age—33.

Service in India 10 years (active.)

Previous sick-leave. Nil

Habits—active

Present disease, its symptoms, causes, and duration, with details of its progress and treatment.

PRESENT CONDITION.

Has suffered from dyspepsia since, 39 first came under my treatment in Oct. 1897. On my advice had a new set of teeth put in, in December and for a couple of months kept better. Since I have treated him he has had 8 distinct attacks of acute Gastritis with vomiting, purging, intense headache and prostration lasting from about 24 to 48 hours. The last attack was on the 25th of August 1898 he has been treated with pepsine, Bismut Creasote, Bromides, Sulpho—Carbonate of Soda and Tonics with regulation of food and drink. As the attacks are recurring at frequent intervals I have advised a sea trip to Australia and back.

(Sd.) REGINALD S. ASHE, M.B.,

Offg. Civil Medical Officer, Nymensingh.

EXHIBIT 13.B

4-8-99.

AND

EXHIBIT X35.

14-2-01.

## MEDICAL CERTIFICATE.

I hereby certify that Mr. A Pennell, Additional Sessions Judge of Saran, was when on Session's duty at Motihari, under my treatment from the 12th to the 16th April 1899. Suffering from severe headache constant vomiting and fever, and was quite incapacitated from going to Court and doing any duty. Though far from well he attended Court on the 15th April against my advice.

F. R. SWAINE, M.B.,  
Lt.-Col., I. M. S.,

Civil Surgeon, Champaran.

Motihari, 5th August, 1899.

EXHIBIT X22 and X36

No. 453.

From—CAPT. R. H. MADDOX, I.M.S.,  
Civil Surgeon, Saran,

To—A. P. PENNELL Esq., I.C.S.,  
District Judge, Saran,

Chapra, 9th Aug.

SIR,—In reply to your letter No. 99, dated 2nd August 1899, I have the honor to state that I visited you twice on 31st May: once on 1st June and once on 2nd June. You were then suffering from an attack of acute gastritis, Catarrh with vomiting and diarrhoea. You were certainly not fit to go to Court on 1st June and were not really fit for work for several days after that date and I consider you were quite justified in leaving the Court earlier than usual.

2. I remember seeing you after your return from Motihari in May (at the time when Mr. Caspersz was on leave in Darjeeling). I certainly thought you were looking very ill and to the best of my recollection, I told you so at the club the first morning I saw you after your return,

at any rate I mentioned it incidentally to Mr. Caspersz in a private letter which I wrote to him to Darjeeling of which, being a private letter I kept no copy.

I have the honor to be,

Sir

Your most obedient servant,  
R. H. MADDOX, Capt., I. M. S.,  
Civil Surg. Saran.

Darjeeling, 5th Oct. 1900,

MY DEAR PRNNALL,

I have to-day seen the Lieutenant-Governor and he has told me of what passed at his interview with you.

He has definitely decided to give you no assistance in effecting an exchange to another province.

In these circumstances you will, I suppose, apply for leave in due course.

Yours truly,

J. A. BOURDILLON

EXHIBIT X37.

5th Sept 98.

MY DEAR MR. B,—I understand that it is in contemplation, if I do not take furlough, to post me to Saran for two or three months at the end of the privilege leave just granted to me. Under these circumstances I should be glad if you would permit me to withdraw my application for furlough. I trust that at the end of my term in Saran you will be able to let me have some district with a good climate or at all events one where dyspepsia is not prevalent.

Yours sincerely

A. PENNELL,

S. P.—I find I took away the statement of my case which I think you want. I enclose it herewith.

THE HIGH COURT AND  
MR. PENNELL.

Mr. Pennell has come down to Calcutta with the records of the Noakhali case and is putting up in the Continental Hotel. His sister, his Sheristadar and another

clerk have accompanied him here. We learn that on Sunday last Mr. Chapman, late Registrar, High Court, perhaps under instruction from the Chief Justice, saw Mr. Pennell in order to take delivery of the record. Mr. Pennell is reported to have refused to deliver them as Mr. Chapman was no longer the Registrar. Later on, as suggested by Mr. Chapman, he waited upon the Chief Justice for an interview which was refused and Mr. Pennell was asked to approach officially through the Registrar. On Monday the Chief Justice called a meeting of all the Judges, probably on Mr. Pennell's refusal to deliver the records to the Registrar, to consider the steps to be taken in the matter. The meeting of the Judges was not over till after 4 P. M. As the consultation was held *in camera* nothing could be gathered as to their Lordships' decision that day. There were all sorts of rumour afloat in the town regarding the affidavits of Mr. and Miss Pennell being sworn in. Nothing definite however was ascertained. Mr. Reilly, the District Superintendent, was also seen in the Court busily engaged with his legal advisers with a view to get all the proceedings against him quashed by the High Court.

#### MR. PENNELL AT THE ALIPUR SESSIONS COURT.

The following affidavit was sworn in on the 5th March by Mr. Pennell—

##### AFFIDAVIT.

I M. F. Penrell do hereby oath and say:—

1. That in the evening of the 2nd instant my brother A. P. Pennell received from Mr. Chapman an invitation to dinner on the evening of the 3rd instant.

2. That on Yesterday Monday Mr. Chapman called at the Hotel Continental and saw me between the hours of eleven and twelve o'clock and after staying some time went away. Mr. Chapman on saying goodbye said "I must go

and look your brother up. I want to see him about some records."

3. That later on in the afternoon my brother showed me a letter from the Chief Justice of which Ex. A. is a correct copy.

4. That later on my brother showed me a note which he was sending to Mr. Chapman to the effect that my brother and I did not want to compromise Mr. Chapman and we would like Mr. Chapman to say if he would prefer we did not dine with him.

5. That we dined last night with Mr. Chapman.

6. That my brother has informed me that he has been this morning to see Mr. Chapman and that then the latter declined to admit in writing that he ever came to see my brother at all. My brother has, therefore, requested me to swear to this affidavit.

##### Ex. A.

The Chief Justice of Berhal is unwilling to see Mr. Pennell and desires that any communication he may wish to make should be made through the Registrar of his Court.

I A'ibaidar, son of Munshi Alizagan, deceased Sessions clerk, Judge's Court, Noakhali, at present residing in the Hotel Continental, Ca'cutta, do hereby solemnly affirm that on Monday at about 3-30 P. M. I accompanied Mr. Pennell, District and Sessions Judge, Noakhali, to the house of the Chief Justice of the High Court, No. 14, Loudon Street. We took the records of the Sessions case *Empress vs Sadakali* and others with us and the Sheristadar of the Judge's Court, Noakhali, Babu Chandra Mohon Guha was also with us. Mr. Pennell sent a card writing something on it and another card writing something on it. After a long delay a letter came but no interview was allowed. I do hereby affirm that the above statement is correct to the best of my knowledge.

Babu Chandra Mohan Guha son of Ram Kumar Guha, deceased Sheristadar of Judge's Court, Noakhali, also sought to file an affidavit to the above effect, but both of them were, however, refused.

## HIGH COURT PROCEEDINGS.

FEB., 21.

### CRIMINAL BENCH.

( Before Justices Amir Ali and Pratt. )

#### ORDER FOR BAIL.

ABOUT noon to-day Mr. Hill, Barrister-at-law, suddenly appeared in Court and asked their Lordships' indulgence to an interruption of the regular business of the Court, in order to mention a matter of extreme urgency, Mr. Hill said that he had just received a telegram from Noakhali which read as follows:—"Judge gone to Sandwip to-day; kindly arrange release."

Mr. Hill.—My Lords, as the Judge has left the station nothing could be done to obtain the release of Mr. Reily from jail. Mr. Reily is already in jail for about a week.

Pratt, J.—Surely there is some body to do the current duties of the Judge.

Mr. Hill.—That is unfortunately not the case, my Lords.

Amir Ali, J.—Mr. Hill, you better put in an affidavit that you have received this telegram and that the Judge has left the station and we will consider the matter.

Mr. Hill.—As you Lordship pleases.

Mr. Hill then went away and that about half past 3 o'clock came with an affidavit and submitted it to their Lordships. He said that he had telegraphed to Noakhali to make further enquiries into the matter and waited for a reply. But he could not get it as yet, so he had stated in the petition all that he could possibly get within the time available.

Their Lordships after reading the affidavit made the following order:—

Amir Ali J.—It appears from an affidavit made by the clerk of the pleader instructing the learned Counsel on behalf of the petitioner that the Sessions Judge has left the station and that therefore effect has not been given to our order admitting the petitioner to bail, which we made yesterday. Under the circumstances we direct the District Magistrate to admit the petitioner to bail on his own recognisance of Rs. 1,000 and one surety for Rs. 1,000 as we directed yesterday. Effect should be given to this order as soon as possible. Let this order be conveyed to the District Magistrate by telegraph at once.

FEB. 22.

#### PROCEEDINGS AGAINST MR. REILY STAYED.

ABOUT 4 P. M. to-day Mr. Hill, Barrister-at-law, instructed by Babu Kritanta Kumar Bose, Vakil, moved their Lordships for a Rule calling upon the Sessions Judge of Noakhali, to show cause why the proceedings drawn up against the petitioner, Mr. W. V. Reily, the District Superintendent of Police, Noakhali, for alleged perjury and forgery, at present pending before the Sessions Court of Noakhali, should not be transferred and further proceedings stayed. It was stated in the petition that on the 16th instant the Sessions Judge of Noakhali drew up proceedings under Sections 193, 466 and 471, Indian Penal Code, against the petitioner and fixed the 25th instant for holding a preliminary enquiry and ordered the petitioner to be sent to *kyat*. Thereupon the petitioner sent his local pleader, Babo Rojoni Kanta Bose, and his local Muktear, Babu Dwarka Nath De, with a certified copy of the proceedings and of the order refusing bail, to Calcutta to move the High Court for bail and on

the 20th instant an application for bail was made. The said Muktear swore to an affidavit in support thereof. The said Muktear having been entrusted with Census work at Noakhali was compelled to leave Calcutta and the petitioner asked the permission of their Lordships to use that affidavit along with this application, no fresh copies of the proceedings being available at present. The petitioner had applied for copies of the proceedings and the judgment in the murder case but he had not been supplied with them as yet. On the 20th instant their Lordships directed by a telegram that the petitioner be released on bail but he was not released till 4-45 P. M. on the following day as appeared from a telegram sent by the petitioner to Sir Griffith Evans.

Mr. Hill said that from what had happened the petitioner did not expect a fair and impartial enquiry from the present Sessions Judge at Noakhali. Further the petitioner having been detained in jail, from Friday the 15th to Thursday the 21st instant, was altogether unable to take proper and necessary steps for his defence and if their Lordship were not pleased to stay the proceedings the petitioner would not be able to get proper legal advice.

Their Lordships issued a Rule in the following terms:—

AMIR ALI, J.—Let a rule issue on the Sessions Judge and also on the District Magistrate to show cause why the proceedings instituted by the Sessions Judge against the petitioner under Sections 193, 466 and 471, Indian Penal Code, should not be transferred to such other Court as to this Court may deem fit and proper on the ground that it is expedient for the ends of justice, or why such other order be not made which to this Court may seem fit and proper. In the meantime and pending the hearing of the Rule all proceedings be stayed.

#### ORDER FOR SUSPENSION.

The following order was published in the *Calcutta Gazette* of 6th March 1901.

"On the recommendation of the Hon'ble the Chief Justice and the Judges of the High Court, Mr. A. P. Pennell, District and Sessions Judge of Noakhali, is suspended from his office under Section 86 of the Code of Criminal Procedure and also under Section 46 of Act XII of 1887, the Bengal, North-Western Provinces and Assam Civil Courts Act."