

Rajendra Narayan Singh Vs. Emperor

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Court : Kolkata

Decided On : Sep-12-1912

Reported in : 18Ind.Cas.149

Judge : Ashutosh Mookerjee, ;Carnduff and ;Imam, JJ.

Appellant : Rajendra Narayan Singh

Respondent : Emperor

Advocate for Pet/Ap. : Mr. Roy

Judgement :

Carnduff, J.

1. Section 110 of the Code of Criminal Procedure of 1898 provides that, whenever a Sub-Divisional Magistrate receives information that a person within the local limits of his jurisdiction is in the habit of committing such offences as theft, robbery, extortion, breach of the peace and so forth, or is so desperate and dangerous as to render his being at large without security hazardous to the community, he may require him to show cause why he should not be ordered to execute a bond for his good behaviour; and Section 117, Sub-section (3), enacts that the fact that a person is such a habitual offender as aforesaid may be proved by evidence of general repute or otherwise.

2. Under these provisions, the petitioner, who is an Honorary Magistrate of twenty years' standing and a zemindar of good family and position residing in the Supaul Sub-Division of the Bhagalpur District, was, on the 18th May last, called upon to show cause by Babu Satis Chandra Mukerjee, the Sub-Divisional Magistrate of Supaul, acting upon information embodied in a Police report. On the 24th ultimo, he moved this Court to 'quash' these preliminary proceedings and order further proceedings to be 'dropped'; and he obtained a Rule, which sets forth two grounds for our interference, namely, first, that 'it does not appear that the facts alleged against him fall within the scope' of Section 110, and secondly, that 'there appear to have been threats of such proceedings in former years,' which proceedings were 'without any basis whatever' and were 'dropped,' and 'nothing new specifically coming under Section 110 appears in the Police report.' This Rule we are now asked to make absolute.

3. The facts as to which there is, and can be no dispute, are these. The present Sub-Divisional Magistrate, on his appointment as such in April 1911, found that his predecessor (Mr. Bainbridge) had left under consideration the question whether preventive action should be taken against the petitioner and, at his instance, Deputy Superintendent Raghunandan Singh, who had no previous knowledge of the matter, was specially deputed from elsewhere to inquire into it. Under the supervision of this Police Officer, an inquiry was made in the earlier part of the present year, and a Police report in the prescribed form was submitted on the 18th May. In that report, it is stated that 'Two hundred and fourteen witnesses have been found to prove that the oppression of this man (that is, the petitioner) is beyond description, and that he, by his continuous bad character, has made himself liable for prosecution under all the clauses of Section 110. Seventy-one specific instances of overt acts, corroborated by witnesses, have been proved, and there are 119 instances in which the sufferers only will depose to the hardships and thefts, practised on them. These instances are of such a nature that corroboration by other witnesses is practically impossible. Thirty-five witnesses prove the accused's association with proved bad characters, and 165 witnesses will prove his general repute.' The report further alleges that three charges of wrongful confinement and assault--one in 1909 and two in June 1911--were brought against the petitioner and others, each ending in a compromise;' and that

there are--besides these reported cases, which appear to have been of a comparatively trifling character--'many' more offences charged against him personally, the latest said to have been committed on the 9th March last, which were not reported at the time, but 'will be proved by the persons who suffered at his hands.'

4. In my opinion, a complete answer to the Rule is furnished by this report, and, if the decision rested with me alone, I would discharge it without another remark. It is obviously undesirable to prejudge the case, and it is no easy matter to comment on it further without doing so. As, however, I was not a party to the issue of the Rule, and as my learned brother takes a different view, mere courtesy requires that I should explain myself more fully; and I proceed for that purpose as cautiously and succinctly as I can.

5. As regards the first of the grounds upon which the Rule was issued, it cannot be gainsaid that it is, *Prima facie* at least, disposed of by the Police report itself. Information fulfilling the requirements of the section more categorically could hardly have been framed. That the Sub-Divisional Magistrate received it with surprise, I should be prepared to learn. I could imagine his thinking that the reference in it to all the clauses of Section 110' probably involved a certain amount of exaggeration and the straining of the language of some of those clauses. I could understand his anticipating that the Police had undertaken in it to prove too much. But how he could reasonably have refrained from acting on it, in the manner indicated by the section, I am unable to comprehend.

6. The other ground includes two propositions, namely, that proceedings against the petitioner under Section 110 were threatened 'without any basis whatever' and dropped (or rather never actually taken) in 1908, and that the present Police report does not allege that anything has since transpired to justify such proceedings in 1912.

7. Taking the second of these first, I find that it also is met by the Police report. Mr. Roy has, indeed, urged on behalf of the petitioner that the 'oppression,' 'continuous bad character' and 'overt acts' mentioned in it as having been spoken to by the persons examined by the Police this year, should be taken to refer to

what occurred over four years ago, and not to what has occurred more recently. But this, as it seems to me, cannot be conceded without gratuitously misreading the report; and we concurred in refusing to introduce into the record the apparently voluminous notes, made by the investigating Police Officer, of the statements received by him, which the learned Advocate-General had with him in Court and with which he gave us to understand that he was prepared, if permitted, to refute the contention. The proposition that the Police report relates only to the past, therefore, falls to the ground; and that being so, it would seem to be almost supererogatory to discuss the other proposition. For if information of recent conduct bringing the petitioner within the reach of Section 110 be available, it can be material, if at all, only indirectly, whether the 'threat' or proposal to proceed against him in 1908 was well-founded or not. As, however, the petitioner's case is of this indirect character, and as the gravamen of his complaint is that these proceedings are but a revival of his persecution, a persecution begun by the District Magistrate (Mr. Lyall) in 1908, continued by his successor (Mr. Hammond) in 1909 and 1910, promoted through both regimes by the former Sub-Divisional Magistrate (Mr. Bainbridge) and carried on, as if it were a sacred trust, by the present Sub-Divisional Magistrate (Babu Satis Chandra Mukerji, who joined as I have said, in April, 1911) and the present District Magistrate (Mr. Dixon, who joined on the 1st April last), the point must be adverted to. The situation is this. On the one hand, we have the fact that successive Magistrates have, judiciously or injudiciously, rightly or wrongly, wisely or foolishly, it may be, but always with the professed object of securing peace and order in the Supaul Sub-Division, by putting a stop to what they believed to be the oppressive treatment by the petitioner of his tenantry, found fault and interfered with his management of his estate and insisted on his abandoning direct relations with the raiyats and employing a manager approved of by them. I use the word 'insisted' advisedly; for the learned Advocate-General has frankly admitted that the alternative put before the petitioner, both by Mr. Lyall and by Mr. Hammond, was preventive action against him to the necessity for which a preliminary inquiry held by the Sub-Divisional Magistrate in 1908 is said to have pointed. On the other hand, we have the suggestion that the officers mentioned above have throughout been actuated by no such considerations as those professed by them, but by unworthy and

dishonourable motives. In paragraph 2 of the petition before us, it is vaguely stated that, because the petitioner's brother had helped one Babu Rashbihary Mandal at a time when the latter was being prosecuted, or for some other reason which the petitioner could not very well ascertain,' Mr. Lyall proceeded to prosecute and harass him four years ago; and the theory, which has been put forward, is that this persecution and harassment have culminated in the present groundless and vexatious proceedings. In the course of argument, the connection with Babu Rashbihary Mandal has been avoided, and it has been declared that the real and only object of Mr. Lyall was to find employment for a certain individual, Brae by name, on a salary of Rs. 200 or Rs. 250 a month, and that the proposal to take proceedings under Section 110 was revived only when the petitioner rebelled and asserted his independence by appointing an Indian gentleman on a lower salary. It may be that the petitioner will be able to establish this, in whole or in part, and to show that there is no substance in the evidence said to be arrayed against him; and, if he does, his grievance will be great and the case will call for serious consideration. But, so far, that case rests only on inferences and surmises, on the strength of which, as it seems to me, it would be as injudicious as it would be dangerous to act at this juncture. As I had occasion to remark in the course of Mr. Roy's argument at the hearing, I think that officers, be they judicial or executive, whose action is called in question before us, are entitled to expect this at least, that we will assume, until the contrary is proved, not merely suggested, surmised, insinuated or even shown to be within the range of credibility, that they are ordinarily intelligent, reasonable, fair-minded and honest men, who mean what they say and are endeavouring to do their duty. This is the attitude which is sanctioned by the trite and time-honoured maxim as to the presumption to be made regarding official conduct; it is recognised by the statutory provisions of the law of evidence in force in this country; and I can adopt no other Nor would I share the responsibility of giving the petitioner a charter of immunity so to speak, by declaring arbitrarily here and now, not only that we do not accept the statements in the Police report, but also that we will not allow them to be tested and put to the proof. I am, therefore, unable to agree to any further interference with these proceedings at this stage.

8. It remains for me to add that the Rule obtained raises in the alternative the question of transferring the proceedings to some other District. For such a transfer, there is, to my mind, no case whatever; and this part of the Rule was hardly touched by Mr. Roy. Apart from the theory that there is a continuity of policy which Babu Satis Chandra Mukerji and Mr. Dixon are not likely to be strong enough to depart from, nothing has been urged against either of these officers; and it is certainly desirable that a case of this kind should, in accordance with practice, be inquired into in the locality.

9. I would then discharge the Rule and let the proceedings run their natural course.

Imam, J.

10. This is a Rule calling on the District Magistrate of Bhagalpur 'to show cause why the proceedings in this case should not be quashed and further proceedings in this case dropped on the ground that it does not appear that the facts alleged against the petitioner fall within the scope of that section and there appear to have been threats of such proceedings in former years without any basis whatsoever and those proceedings were dropped and nothing new specifically coming under Section 110 appears in the Police report; and in the alternative to show cause why the case should not be transferred to Monghyr or some other District'.

11. The subject of this prosecution under Section 110 of the Code of Criminal Procedure is Rajendra Narain Singh, the petitioner, who is admittedly the owner of a zemindary yielding an income of Rs. 25,000 per year, is an Honorary Magistrate since 1891 or 1892 and belongs to an old and respectable family having very respectable connections in the District of Bhagalpur and elsewhere.

12. The proceedings drawn up against him set forth all the grounds for such a prosecution that are mentioned in Section 110. It is alleged against him that he (1) is by habit a thief, (2) is by habit a receiver of stolen property knowing the same to have been stolen; (3) habitually protects and harbours thieves or aids in the concealment or disposal of stolen property; (4) habitually commits mischief and extortion by setting fire to houses, illegal seizure of property and cattle; illegal

realization of marriage tax and money for the purchase of horse or for religious ceremonies and other festivities, illegal realization of fees on oil mills and such other ways, or attempts so to do; (5) habitually commits or attempts to commit or abets the commission of offences involving breaches of the peace; (6) is so desperate and dangerous as to render his being at large without security hazardous to the community.

13. It is a long catalogue of charges, and against these proceedings the petitioner has moved this Court. The proceedings are based on a Police report dated the 14th May 1912. In this report he is described as 'being born a poor man suddenly came into possession of the estate of his maternal grandmother yielding an income of about Rs. 25,000 per annum'. It is alleged that 'he with his brother took possession of this estate about 25 years ago and commenced to grind down the ryots by all possible means'. The Police report charges him with associating with proved dacoits and bad characters, gives a list of 16 cases of dacoity, rioting, culpable homicide, grievous hurt, arson, wrongful confinement, theft, etc from 1891 to 1910, in which the petitioner has been suspected to have taken part; and a further list of five cases of dacoity, wrongful confinement, and assault within a period of 20 years ending in 1911, in which the petitioner has been known to have taken part. The Police report further states that 'attention of the authorities was drawn to the atrocities of the accused in the year 1908 and an inquiry by the Sub-Divisional Magistrate of Supaul was set on foot under the orders of the District Magistrate of Bhagalpur, but he was spared the prosecution on his promise to behave properly in future. More than 200 witnesses were examined by the Sub-Divisional Officer, but the matter was dropped and time was given to him to correct himself'. No conviction in any of the cases is alleged against him.

14. The petitioner charges that he incurred the displeasure of Mr. F.F. Lyall, the then District Magistrate, because his brother helped one Rashbehari Mandal at a time when the latter was being prosecuted by the authorities or for some other reason which the petitioner could not very well ascertain. On the 26th of February 1908, Mr. Lyall addressed a letter to the petitioner asking him to resign his post of an Honorary Magistrate owing to 'the present and past tension' between the petitioner and his tenants. The letter goes on to say: 'should good feelings

subsequently be restored and should it also appear to Government that you deserve the post, I shall recommend for your appointment. This, however, will depend on the result of the present litigation and on what further facts may transpire in connection therewith'.

15. In his petition before this Court, the petitioner affirms that the litigation referred to consisted of civil suits for rents etc. between him and some of his tenants. This contention, however, is controverted by the present District Magistrate, Mr. Dixon, who maintains that 'the tension referred to between Rajendra Narain Singh and his tenants was very much more serious than can be described as certain civil suits'. The District Magistrate has not explained in his letter in what sense and how the tension was very much more serious. We have been referred by Mr. Roy, Counsel for the petitioner, to the Bengal District Gazetteer for Bhagalpur at pages 116 to 119 that contain extracts from the Administration Report of Mr. Lyall for 1907-1908 and 1908-1909. These extracts throw considerable light not only on the character of the 'tension' but also on the genesis of the present prosecution. I shall deal with the subject when I discuss the points that arise in the case.

16. It appears that Rajendra Narain did not reply to Mr. Lyall's letter till the 23rd May 1908. In the meanwhile, on 30th March 1908, Mr. Bainbridge, who was then the Sub-Divisional Officer of Supaul, passed his standing order No. 12 to the effect that owing to strained relations between him and his tenants, Rajendra Narain would not be requested to attend meetings of the Bench in future until such time as amicable relations were restored between him and his tenants. The order goes on to say: 'It is not the intention of this order to cast any slur on the Babu Saheb; it is intended to be a temporary measure for the purpose of indicating the dignity and lofty attributes which the title of Honorary Magistrate must always confer upon those who enjoy the high privilege of filling this honourable position'. Yet, if the catalogue of charges set forth in the Police report and the present proceedings is to be believed, Rajendra Narain had been suspected of and had taken part in many crimes, was an associate of proved dacoits and bad characters, was a habitual thief, receiver of stolen property, etc. Though the attention of the authorities was drawn to the atrocities of the petitioner in the year 1908, the Sub-Divisional Officer at that time did not intend to cast any slur on the Babu Saheb'.

17. In reply to Mr. Lyall's above-mentioned letter, the petitioner submitted to him a representation dated the 23rd May 1908. The original representation, with the marginal remarks of Mr. Lyall thereon, has been sent up to us. This document has an important bearing on this case and must be carefully considered. In this representation, the petitioner in one place states 'there is absolutely no dispute or difference between me and my tenants except in villages Tamkulha and Laharnia, the Jamabandis of which are about Rs. 2,000 and 800 respectively for the 16-annas share'. Against this statement, there is no remark in the margin by Mr. Lyall and the same may be taken to have been undisputed at the time. It may, therefore, be taken that the disputes up till then were confined only to these two villages, the rest of the zemindari yielding an income of Rs. 22,000 or more being in a state of peace.

18. In the next paragraph, Rejendra Narain explains that in Tamkulha, there are 103 tenants of whom 14 are Nepali Paharies, and the rest are local men, of whom 15 or 16 are in the service of the 14 Nepali Paharies. He goes on to say: 'I have no dispute with other than these Paharies and their servants, except that they are occasionally forced by the Nepalese to join them, but inspite of the mischievous influence of the latter, the best of feelings subsists between myself and the said local tenants'. Against this passage, Mr. Lyall notes in the margin, 'because they have all been ground down into submission'. This, in other words, is the District Magistrate's explanation of 'the best of feelings,' and the absence of dispute with tenants other than those mentioned by Rajendra Narain.

19. Rajendra Narain, in his representation, proceeds and says that he had used no force or violence against his Nepalese tenants nor had there been any criminal case for the previous seven or eight years except one, the particulars of which he gives as follows:

The Nepali tenants are about 14 in number. Their ancestors were originally Mustajirs of the village, and after expiry of the Mustajri, they fraudulently alleged that they held a very large area on nominal rent'. (Against this passage Mr. Lyall notes in the margin, 'I understand this is not so. They undertook to clear the jungle and were given a large tract at a fixed small rate of rent'. It is difficult to see how

this remark can be justified on the statement that follows that the Settlement Court maintained the rates alleged). 'This dispute was, however, ultimately settled in 1307 Fasli, when I agreed to allow them to hold 200 bighas at the low rate of Re. 1 a bigha and for the rest (about 180 bighas) they agreed to pay at the current rate of the village, i.e., at Rs. 2-2 a bigha, and accordingly kabuliyats were executed and rents paid for 1307, 1308, 1309 and 4 annas kist of 1310. They turned round again and resiled from the settlement, and the Settlement Court in spite of their objection maintained the rates alleged on my behalf; they have withheld payments since 1310 which necessitated the institution of rent suits against them. After decrees were obtained in the said rent suits, they were executed and the jotes of 5 of them were sold, but during delivery of possession, they opposed and used spears and lathies, for which, as stated above, a criminal case was brought against them and they have been convicted'. (Against this passage relating to spears and lathies and the opposition to the delivery of possession, Mr. Lyall notes in the margin thus: 'there has been 22 years of harassing and oppressive litigation against them, and it is in desperation that they took this course.)

Rajendra Narain then goes on to state the circumstances as regards village Laharnia, the gross collection of which is stated to be Rs. 800 between himself, as owner of 8-annas share, and one Bansi Dhar Marwari, owner of the other 8-annas. I again quote here from the same representation of Rajendra Narain: 'the only difference between me and them (the tenants) is that the area of many tenants has been found to be much in excess of what they pay rent for and demand is made for rents of excess area at the rates fixed by the Settlement Authorities which they refuse to pay (against the passage italicised Mr. Lyall notes 'this is true') and neither of the two co-sharers have been paid their rents (against this passage Mr. Lyall notes 'this is not true.') I and the other co-sharers contemplate bringing suits in the Civil Court for the adjudication of this question and nothing has been done to molest them or to interfere with the jotes. (Against this passage Mr. Lyall notes 'this is not true--it is alleged the dacoity committed on this village was solely to terrify the tenants into submission.')

Rajendra Narain then proceeds to complain that Mohammed Sadiq and Bikram Singh, two of his dismissed servants, were trying to spread wrong reports against

him and to dissuade the tenants from paying rents that were legitimately due to him. Against this, Mr. Lyall remarks: 'there has been undoubtedly ill-feeling between the parties; the inquiries would show that the truth is that they have resisted Babu R.N. Singh's oppression successfully.'

After stating that he belongs to an old and respectable family having very respectable connections in Bhagalpur District and elsewhere (which Mr. Lyall admits by his marginal remarks this is true,'), Rajendra Narain goes on to say: 'In connection with my office as an Honorary Magistrate, I am quite willing to abide by such instructions as Your Honour may be pleased to give with a view to my having nothing to do with my tenants and I hope that you will be inclined to change your opinion about the desirability of resigning my post of an Honorary Magistrate'. Against this prayer, Mr. Lyall notes 'I am unable to change my opinion.'

20. Mr. Roy, in contending that the litigation referred to in Mr. Lyall's letter of 26th February 1908, had reference to civil cases only, maintains that this representation of Rajendra Narain completely discloses the circumstances of the tension between him and his tenants, and the marginal remarks of Mr. Lyall, though not favourable to the petitioner, do not show that on the 26th February 'present litigation' could have meant anything but civil suits.

21. The learned Advocate-General on behalf of the Crown supports Mr. Dixon's assertion that the tension was much more serious than merely 'certain civil suits' and draws our attention to the marginal remark of Mr. Lyall that the dacoity committed on the village was solely to terrify the tenants, and he concludes therefrom that Mr. Lyall in his letter could not have meant merely civil litigation. This contention is destroyed by the dates on which the alleged dacoity was committed and on which Mr. Lyall made his marginal notes. On a reference to the Police report, it will be seen that a dacoity is reported to have taken place on 7th April 1908, (item 15, column 4). Mr. Lyall's marginal notes are dated the 25th May 1908, and could only have referred to the alleged dacoity of 7th April. This dacoity, therefore, could have no bearing on the 'present litigation' mentioned in Mr. Lyall's letter of the 26th February--a date earlier than 7th April. Examining the list of criminal cases set forth in the Police report, there is no case that can be within the

meaning of 'present litigation,' and the only conclusion is the one asserted by the petitioner that there were at the time only civil suits between him and his tenants and the 'present litigation' referred to certain civil suits only.

22. It appears that, at or about the time of this representation, an inquiry was instituted by the Sub-Divisional Magistrate, it is said under the orders of Mr. Lyall, against Rajendra Narain with a view to his prosecution under Section 110. There is no letter from Mr. Lyall nor any writing of his to show on what terms and conditions the prosecution was dropped. The fact remains that, in spite of the wishes of Mr. Lyall, Rajendra Narain did not resign his post of an Honorary Magistrate, but it would appear a middle course between his resignation of his post and the management of his estate, was found in the appointment of a European Manager, one Mr. Brae. This European Manager was appointed on the 12th of November 1908, for a period of five years on a monthly salary of Rs. 200, which is evidenced by a registered deed dated 21st December 1901, executed by Rajendra Narain Singh and his brother. The petitioner contends that the prosecution threatened in 1908, was dropped on his agreeing to appoint a European Manager. Judging from the circumstance that it was on the 25th of May 1903, that Mr. Lyall definitely noted that he was unable to change his opinion and on the 12th November a European Manager was appointed and in spite of a lengthy inquiry the prosecution was dropped, the inference is apparent that the appointment of a European Manager had smoothed matters. It is worthy of note that neither in the letter of the 26th February nor in the marginal notes of Mr. Lyall is there any suggestion that Rajendra Narain was an habitual thief, receiver of stolen property or the like. But there can be no doubt that for some reason that is not clear from this record, Mr. Lyall was dissatisfied with Rajendra Narain Singh; but the extracts from the Bengal District Gazetteer abundantly show the nature of the dissatisfaction. Before I refer to some passages of the extracts, I may mention that Mr. Roy referred to the Gazetteer in the course of his address when replying to the learned Advocate-General who objected to any reference to this Government publication. On our overruling the objection, it was prayed that it should be noted. On Mr. Roy, completing his reply, we gave an opportunity to the learned Advocate-General to say what he had to say about the extracts. He merely contented himself by submitting that he had taken only formal objection,

because the Gazetteer could not be admissible as evidence under any of the sections of Act I of 1872. I need not discuss the sections of the law under which these extracts are admissible, as we have already held them to be so. A reference to Section 57, and Sections 65(e) and 74, Sub-section 1, Clause 3, as well as to the cases of *Garurudhwaja Pershad v. Sapasandhwaja* 27 I.A. 238 at p. 24,3; 5 C.W.N. 33; 23 A. 37; 10 M.L.J. 267; 2 Bom. L.R. 851 (P.C.) In *re Steamship Drachenfels* 27 C. 860 at p. 867, *Shyamanand Das v. Rama Kanta Das* 32 C. 6 is sufficient for the view we have taken that the Bengal District Gazetteer published by the Government is admissible as evidence in the case. I must, however, remark that considering that there are very serious charges laid by the petitioner against Mr. Lyall, I should have thought that instead of objecting to the extracts, the Crown would have invited us to examine every document that could throw light on the present prosecution and the charges against a District Magistrate.

23. I now proceed to discuss some of the passages from the extracts. At page 116, Mr. Lyall's Administration Report for 1907-1908 runs thus: 'Further acquaintance with the north of the District shows me that though the Settlement may have settled up old standing disputes, it has in many cases only been done by the zemindar having forced the tenants to accept the very rent which the Settlement Department had refused to allow and sometimes much more. Babu Rashbehary Mandal not only forced all his tenants to accept the former cash rent, which was 20 to 33 per cent in excess of what the Survey had fixed, but actually secured in addition in many villages a half share in 2 cottahs in every bigha, the produce of the bigha for purposes of levying his rent being fixed at 12 maunds. The Maharaja of Sonebarsa similarly threw all the demands the Settlement had cut down into miscellaneous and forced the tenants to accept them. Babu Rajendra Narain Singh has been attempting the same game: and inquiries are being made how far he has gone. I mention these names only, but I fear that many landlords not mentioned are in a similar category. The system worked was first to get back practically all rent receipts the tenants had, then to levy rent without giving receipts, then to demand the illegal high rate of rent, and if a man refused, to sue him for four years' rental and use the decree as a threat to force him to accept. I have secured papers of Babu Rashbehary Mandal indubitably proving this. The Maharaja's registers now in the Court of Wards also prove this. This

wholesale oppression could, in my opinion, only have existed owing to rent suits being decided by Munsifs--officers who are bound by a technical Code of Procedure and never have opportunities of going into the mofussil and seeing the evil, their orders bring about.' Then Mr. Lyall goes on to express his opinion that one of the greatest reforms that could be introduced into these Behar Districts is to place all rent suits in the hands of Deputy Collectors, and Mr. Lyall says: 'My plea is for justice and for giving the go-by to all this procedure. No one, who has not heard at first hand such tales as I have, can imagine the utter and cruel injustice now habitually worked in the name of justice through our Civil Courts, simply because all this tangled web of procedure has put the poorer man, the less educated, at the mercy of any unscrupulous man who chooses to ruin him by litigation.' After deploring the unsatisfactory nature of the administration of justice, Mr. Lyall expresses himself thus: 'There would be no stronger advocate of the separation of judicial and executive functions than myself, were any concurrent measures taken to enable the judiciary to hear and know what goes on in the villages, and Judge what comes before them more with a view to what justice demands, and less with an ear to the quibbles that any astute lawyer can put forward to defeat justice; and without the strongest control of the judicial side from an administrative point of view, any change made will only lead to further injustice being perpetrated.'

24. From the above passages it is quite clear that the District Magistrate in his Administration Report of 1907-1908, was deploring the iniquities perpetrated by the zemindars, Rajendra Narain Singh among them, through the Civil Courts. There is no suggestion that Rajendra Narain or the other zemindars were thieves, receivers of stolen property, associates of proved dacoits, etc., and though Mr. Lyall says that inquiries 'are being made how far he (Rajendra Narain) has gone,' we find that even in the Administration Report of 1908-9 nothing is said against Rajendra Narain to bring him within the purview of Section 110. The sentiments of Mr. Lyall as expressed in his Administration Report do not concern us. We have the solid fact that, even according to Mr. Lyall, Rajendra Narayan's guilt lay in civil litigation. That Mr. Lyall is convinced of the necessity of executive control over judicial functions is clear from the last passage that I have quoted, relating to the separation of the judicial and executive functions, and when views are so strongly

expressed, a straining of the law, even unconsciously, is not to be wondered at, for Mr. Lyall has said: 'My plea is for justice and for giving the go-by to all this procedure.'

25. Coming to the Administration Report, I propose to quote a few more passages. After recounting the hardships of the ryot in the Civil Court, Mr. Lyall mentions 'the impudent forgery' committed every day by zemindars, and remarks thus:

When I first came to the District, I never heard of such cases. The action taken on Rashbehari's and Griridhari Marwari's case, now often brings me two or three men a day asking me to redress wrongs thus done them. The matter is one calling for the very serious attention of Government, for what loyalty can there ultimately be to a Government which allows itself to be used as an instrument whereby the strong can oppress the weak? The difficulty is, I am aware, very great. I would suggest, as a temporary palliative, that where the plea set up in a written statement of the defendant is one of forgery, the Magistrate should be informed with a view to an inquiry and to his intervening with any evidence the inquiry secured, before the decree was passed. This, of course, does not reach the many ex parte cases there are.

For the rest, things have now greatly improved between landlords and tenants. Rashbehari Mandal was forced, through the knowledge he could not escape conviction for forgery, to apply to be declared a disqualified proprietor. His prayer was accepted, and now the Court of Wards is managing. Babu Rajendra Narain Singh of Koria Patti, through fear of future similar criminal cases against him, voluntarily appointed a reliable European Manager and cut himself off from all management.

26. Whether the European Manager was voluntarily appointed or not, the fact is apparent from the above, that the presence of the European Manager was a check to criminal prosecution, On the face of the admission contained in the above passage, it is not surprising that Rajendra Narayan Singh now contends that his present prosecution is due to his refusal to have a European Manager. It will be seen that from none of the passages that I have quoted, and indeed from no part of the extracts in the Gazetteer, is there the faintest suggestion that Rajendra

Narayan's character was such as to make him a fit subject for a prosecution of this nature. Mr. Lyall in mentioning Rashbehary Mandal, the Maharaja of Sonebarsa and Babu Rajendra Narayan Singh has candidly said: 'I mention these names only, but I fear that many landlords not mentioned are in a similar category.' So it comes to this, that according to that District Magistrate, this petitioner is no better, nor worse, than the run of zemindars of the District of Bhagalpur. It is hardly necessary to dwell on the futility of indicting a whole class, and the prosecution of the zemindars of Bhagalpur under Section 110, which is the logical sequence to the reasonings expressed in the extracts and adopted as the basis of action in this case, will be a course that no administration can sanction. If the law be thought to be improper or inconvenient, as Mr. Lyall thinks it to be, application to correct it must be made elsewhere, and we must not break down the rules of law or strain them because they cause hardship. It is clear from the quotations I have given that up to 1908, the petitioner did not come within the purview of Section 110. Even granting the allegations of forgery against him to be sustainable in respect of his dealings with his tenants, a prosecution under Section 110 could not lie. I cannot conceive that a District or Sub-Divisional Officer would enter into negotiations with a man who was an habitual thief, receiver of a stolen property, associate of dacoits and was hazardous to the community. I can only assume that they themselves did not believe that the description applied to the man. Mr. Roy has rightly laid emphasis on Mr. Bainbridge's Standing Order No. 12, wherein that officer protests his intention to cast no slur on the Babu Saheb.

27. Reverting to Rajendra Narain's representation and the marginal remarks of Mr. Lyall thereon, I am compelled to observe that that officer was so strongly impressed against the petitioner, as also against zemindars as a class, that his observations lose weight by their forcefulness. Judging by the extracts from his Administration Reports, his temper is manifest, and it was in such a state of mind that he addressed his letter on the 26th February and made his marginal notes on the 25th of May.

28. Rajendra Narayan's tale of how his Napalese tenants opposed the delivery of possession and used spears and lathies which resulted in their conviction, drew from the District Magistrate the remarks that 22 years of harassing and oppressive

litigation drove the tenants to desperation and thus they took such a course. Comment here is needless. With a District Magistrate so disposed to Rajendra Narain, even expressing justification for the lawlessness of the tenants, it is no wonder if the entire District Administration from rank to file felt disposed to range themselves against him. In such a state, it would indeed be a matter for wonder if his tenantry, with the impulse derived from the prevailing atmosphere, failed to think of their own interest. They would, of course, rush with their grievances, real or invented, to the District Magistrate or his Subordinate Officer. The attitude of Mr. Lyall's mind could not fail to have its effect on the tenants.

29. The next document in point of time that we have on the record is a letter from Mr. Hammond, the successor of Mr. Lyall, addressed to Babu Rajendra Narain Singh. It is dated the 16th of April 1910. In this letter, Mr. Hammond says that he is informed that Rajendra Narain was interfering with Mr. Brae in the management of the estate which was contrary to the promise that had been given to Mr. Lyall and that this interference must cease. Mr. Hammond goes on to say that he is anxious to assist Rajendra Narain in getting his estate into order and that to restore peace is that part of the District, there must be complete abstention on the part of Rajendra Narain, from any communication with the ryots and the staff of the Manager. Mr. Hammond goes on to say: 'Please understand clearly that if you do this, I shall do all in my power to assist you both in the management of your estate and personally.' It is difficult to believe that a District Officer, alive to the responsibilities of his position, could have been making proposals of assistance to an habitual thief, receiver of stolen property, associate of proved dacoits, etc. It cannot be urged that on the 16th of April 1910, Mr. Hammond did not know that some time in 1903, prior to the appointment of Mr. Brae, more than 200 witnesses had been examined by the Sub-Divisional Officer and proceedings for bad livelihood had been threatened against the man. The question is very pertinent: Did Mr. Hammond believe that the man deserved a prosecution under Section 110? I should be unjust to Mr. Hammond if I said that he did.

30. The next document is a letter from Mr. Hammond to Rajendra Narain Singh, dated the 10th of May 1910. It is in reply to a letter dated the 27th of April 1910, from Rajendra Narain Singh, making complaints against the Manager, Mr. Brae.

Neither the original nor a copy of this letter has been supplied to me, but the District Magistrate's letter is explicit in terms. In paragraph 2, he says that when he saw Rajendra Narayan in January and February last, the latter assured him that Mr. Brae was all that could be desired in his methods of management. The letter proceeds: Such complaints, therefore, as relate to occurrences prior to March 1910, are either without foundation or else show that your statements made to me in camp (on not one but several occasions) were for reasons best known to yourself devoid of truth.' The learned Advocate-General, relying on this passage, has dwelt at some length on the untruthful character of the petitioner. I need not take any time in discussing his observations, as, if it took same months for the petitioner to discover the character of his Manager, it took many years for the District Officers to discover the character of their Honorary Magistrate.

31. In the 3rd paragraph, Mr. Hammond says that having called for a report from the Manager he had satisfied himself from the Manager's reply that the latter was doing his best for the petitioner and his property and to bring his zemindari into a state of peaceful order. Then runs the 4th paragraph: 'You are fully aware of the circumstances which led to Mr. Brae's appointment.' To my mind, this passage hardly supports, if it does not contradict, Mr. Lyall's Administration Report in respect of Rajendra Narayan 'voluntarily appointing a reliable European Manager.' This paragraph of the letter proceeds to say that the District Magistrate had been personally seeing the tenants and concludes by saying: 'I told him (Mr. Brae) that I consider it desirable that he should be careful to let the ryots (is whose interest as well as your own he was appointed) know that he was entirely dissociated from and independent of you and your brother and his action in limiting his relations with you to correspondence has my entire approval.' To my mind, the action of the District Magistrate, expressed in this passage, made it impossible for any harmonious relation to be established between the landlord and the tenants and the existence of a third person, be he European or Indian, became a necessity for all time. This passage, in addition, proves to my mind the involuntary nature of the appointment of the European Manager.

32. The 5th paragraph deserves to be quoted at some length. His action in wishing to settle lands purchased in execution with ryots instead of adding further to your

Kamat lands has also my approval. Kamat lands mean (except under a very considerate and sympathetic landlord) a source of friction, and the Kamat lands you now already hold at Koria Patti are more than sufficient. You appear to forget that the sole reason for Mr. Brae's appointment and the dropping (for the time being) of proceedings against you under Section 110, Criminal Procedure Code, was that causes of friction might be removed and that you yourself need not be brought into contact with any angry tenantry. For this reason, too, I am averse to your living at Gamharia. This is directly designed to promote, not reduce, the strained relations existing between you and your tenants.' We thus see that Rajendra Narayan's property was being disposed of against his will under the dictation of the District Magistrate, he was being told not to live at Gamharia and that he was not to hold any communication with his angry tenantry, and all this under the threat of a prosecution under Section 110.

33. In the 6th paragraph, Mr. Hammond says that he does not propose to enter into a discussion of the details of management and it is sufficient to remind Rajendra Narayan that he made a definite promise to Mr. Lyall in consequence of which proceedings, which the latter had contemplated, were held in abeyance and that if Rajendra Narayan failed to keep his promise, those proceedings would at once be revived. This letter discloses nothing more than strict insistence on Rajendra Narayan not interfering with the management. There is no suggestion in it that he was a bad character. On receipt of the above letter, Rajendra Narayan, by a letter dated 3rd June 1910, asked Mr. Hammond to let him have a copy of Mr. Brae's report to which the District Magistrate replied by his letter of the 6th June 1910, that he did not propose to enter into a discussion with the petitioner regarding the merits or demerits of Mr. Brae's management and that it was under his advice that Mr. Brae was dealing directly with the tenants, and refused to send to the petitioner a copy of Mr. Brae's report. To refuse him a copy of the report and at the same time to condemn him without a hearing, hardly points to an open mind and I may aptly quote here an observation of an eminent English Judge of olden days: 'The laws of God and man both give the party an opportunity to make his defence, if he has any. I remember to have heard it observed by a very learned man upon such an occasion, that even God himself did not pass sentence upon Adam before he was called upon to make his defence.'

34. On the 23rd of June 1910, the petitioner wrote a letter to the Sub-Divisional Officer informing him that his houses at Korla Patti were over-flooded by the Kosi water and his family were in great distress' and that the Manager had been informed of this, but the latter took no notice of it. The letter concludes by requesting the Sub-Divisional Officer to make an inquiry into the matter and to see that the distress is removed. On the same day, Mr. Bainbridge replied asking to be informed definitely what Rajendra Narayan wanted and wrote: 'I cannot remove the flood, that will subside gradually.' It appears that on receipt of this letter from Mr. Bainbridge, Rajendra Narayan Singh, on the 24th of June, wrote to him praying that his family might be allowed to remove from Korla Patti to Gamharla Cutchery. The reply to this was not given till the 5th of July; that ran as follows:

With reference to your letter of the 24th ultimo, I have the honour to say that I am unable to help you. Your conduct recently has been highly improper. You have only to behave yourself and carry out the Collector's instructions to receive every help and assistance from me. Until you do so, a sympathetic hand cannot be extended to you. You must not interfere with the management. It is obvious that your anxiety to reside at Gamharla cannot have any other motive.

35. Mr. Roy has described the Sub Divisional Magistrate's letters as unsympathetic and sarcastic. Speaking for myself, I am not prepared to say that Mr. Roy is not right in this. The learned Advocate-General has submitted that Mr. Bainbridge probably was not much impressed with the excuse of the floods and he must have thought that it was a mere excuse to get back to Gamharla with an ulterior motive. This explanation, to my mind, is not sustainable, because the petitioner had complained in his letter against the Manager's inaction. When it was notified to the Magistrate that the petitioner's family were in distress, his first duty was at least to ascertain whether there were floods and whether the house was really threatened. To brush aside the complaint with a remark suggesting an ulterior motive on the part of the petitioner, was dealing with a serious position in an off-hand manner. It was an obvious disregard of obligation towards the women and the children who were in the house. In this last letter also, the theme 'You must not interfere with the management' is repeated. It is not alleged by the Crown that the petitioner, is disobedience of the wishes of the authorities, removed from

Koria Patti to Gamharia or elsewhere. We thus have an instance of his obedience to official wishes in very difficult circumstances. Some time after the floods, it appears that on the 4th of October 1910, Mr. Brae went away to Bhagalpur without rendering account of his charge and sent a letter of resignation of his appointment from Madhepura en route. The petitioner made a complaint of this against Mr. Brae to the Sub-Divisional Officer, which resulted in that officer writing to one Mr. Musselback on the 7th October 1910, asking him or his brother to proceed to Gamharia to make an inventory of the papers and property without delay. On 20th October 1910, Mr. Brain-bridge wrote to Rajendra Narayan a letter from which the following is an extract: 'Payments of rents have been stopped as there is no Manager, and the ryots say that they will not pay until a Saheb is appointed. It is, therefore, of the last importance that a Manager should be nominated at once. I am of opinion that Mr. Musselback is the proper person.' Here we see the necessity of the appointment of a Saheb pointed out as due to the attitude of the tenants. The insistence on the appointment of a European Manager is explained by the learned Advocate-General by his suggesting that it might have been thought that a European Manager would be firmer in his dealings with the tenants, and in respect of Mr. Brae it has been urged that he was appointed because Mr. Lyall had confidence in him. This Mr. Brae, admittedly, suddenly left the estate without even rendering an account. Such was this 'reliable European Manager.' And we have it from the correspondence that I have already quoted that complaints that the petitioner made against this Manager were treated with indifference and that in one instance the petitioner was even told that his statements must be devoid of truth. It may here be remarked that the record of this case does not show that the District authorities took any steps to compel this Manager to render accounts after he so improperly gave up the management.

36. In spite of the Sub-Divisional Officer's approval of Mr. Musselback's name for the managership, the petitioner appointed one Mr. Landale to manage the estate, the result of which was that on the 21th of January 1911, the Sub-Divisional Officer wrote to the petitioner thus: 'I understand that you have appointed Mr. Landale of Dumaria as your Manager, and this has been done with out the sanction or authority of the Collector Please explain this at once. You will further show under what circumstances and under whose orders this appointment has

been made Please treat this as most urgent.'

37. This communication, like the others, clearly imports that Rajendra Narayan was to be a cipher in the matter of the management of his estate. We are told by the petitioner that after the above letter from Mr. Brainbridge, the Collector (Mr. Hammond) asked the petitioner to get the names of his sons registered in place of his own in the Collectorate and to retina altogether, to which the petitioner agreed, and on the 26th August 1911, the petitioner wrote the following letter to the Collector:

Sir, beg to represent that according to Your Honour's order I have no objection in getting the names of my sons registered in the place of my name in the Collectorate Office. I only fear that both of my sons have just come out from the school and my enemies may not make any false complaint against them. I don't know what will be its result. However, as Your Honour is malik, all the cares lie upon you. On receipt of the reply of this letter, I shall petition for the registration to Your Honour.

After this the petitioner says the matter was referred to the Government Pleader for opinion, and on receipt of that opinion, the petitioner declined to convey his interest to his sons. It does not appear why the Collector ordered the petitioner to transfer his properties to his sons. The motive behind the order might have been good, but that it was harsh and injudicious it is difficult to deny. In November 1911, the petitioner dismissed Mr. Landale and appointed Babu Taij Narayan Singh, a retired Inspector of Police, as Manager. We are informed that since the dismissal of Mr. Landale, no European has had charge of management. The petitioner complains that on the 6th March 1912, the present Sub-Divisional Magistrate, Babu Satis Chandra Mukerjee, sent for Babu Nogendra Narayan Singh, a nephew of the petitioner, and according to the petitioner's information, there was a conference between Mr. Landale, Nogendra Narayan and the Sub-Divisional Magistrate as to what action could be taken against him. The Sub-Divisional Magistrate denies the charge of his granting an inter view to Nogendra Narayan with a view to action against the petitioner, but he admits that on the 21st of January, Mr. Landale wrote a letter to him forwarding a letter from Nogendra

Narayan Singh and requesting that the latter might be granted an interview to enable him to state his grievances in connection with the management of the estate. The Sub-Divisional Magistrate says that he was not inclined to grant the interview as he considered it to be a purely private matter. He had, however, instructions from the authorities to see Nogendra Narayan and to ascertain whether the facts were as reported, and so on the 6th of March, he sent for him and on the 9th March, had the interview. Nogendra Narayan admitted having written the letter forwarded by Mr. Landale, but represented that he had no troubles with his uncle (the petitioner) for two or three months. We see here the dismissed Mr. Landale interesting himself, as it appears, officiously, in the affairs of this family. It would be difficult to believe that he was also concerned with the peace of this portion of the District. It never the less is patent that even he could make a report to the District authorities.

All these incidents that I have related above culminated in a report of the Police dated the 14th May 1912, on which the Sub-Divisional Officer thought fit to draw up proceedings under Section 110, Criminal Procedure Code, against the petitioner. The proceedings were drawn up on 18th May 1912. And it is on the numerous allegations of misconduct contained in the Police report and the present proceedings that the prosecution of the petitioner is sought. It has been contended that for the purposes of proceedings under the section, a report from the Police is sufficient in itself and an inquiry into allegations against the subject of the prosecution should not be stifled. We are asked not to look into previous history. If previous history contradicts a Police report, it is our duty to examine it.

I now proceed to examine the Police report. In it there are 16 cases from 1891 to 1910 that are shown as cases in which the accused has been suspected to have taken part. Of these 16, there are only two that are of the years 1908 and 1910 and all the rest are of the previous years. The one of 1908, is Case No. 4, dated 7th April 1908, under Section 395 of the Indian Penal Code, that is, of a date prior to the decision to drop the 110 proceedings that were threatened in that year. The other case is Case No. 3, dated 28th December, 1910 Section 395 of the Indian Penal Code. Thus, since 1908, this is the only one case in which it is alleged that the petitioner had been suspected to have taken part. Cases in which the

petitioner has been known to have taken part are according to the Police report five in number. The first case is of dacoity alleged to have taken place 20 years ago in which he was tried and acquitted. The second case is dated the 26th of July 1905, in which he was sent up and tried under Sections 342, 347 and 341, but was let off with a warning. The third case is one under Section 342, Indian Penal Code, in 1909 when he was an accused along with his servants but the case was compromised. The 4th and 5th case are under Section 352, Indian Penal Code, both of the same date, i.e., 2nd June 1911. Both these cases were compromised. Thus a careful examination of the Police report discloses only one case since 1908 in which the petitioner is alleged to have been suspected of taking part and only three cases since 1908 in which the petitioner has been known to have taken part. We must not overlook the fact that one of these latter was a case of wrongful confinement only, and the remaining two were cases of simple assault. The fact that all these three cases were compromised goes very far in favour of the petitioner to show that none of these cases was serious. Indeed it is difficult to conceive how cases under Section 352 could be serious. Of the cases alleged against him, the most serious is the first in which he was tried 20 years ago and acquitted. Apart from the fact that the incident of that case is of a far distant date, I have far too much respect for judicial decisions, of what so ever Court they may be, so long as they are not reversed, to hold contrary to them in respect of the facts they have decided, and I for my part cannot ascribe any turpitude to the petitioner in respect of that case. In *R. v. Plummer* (1902) 2 K.B. 339 at p. 349; 71 L.J.K.B. 805; 66 J.P. 647; 86 L.T. 836 18 T.L.R. 659; 51 W.R. 137; 20 Cox. C.C. 243 Bruce, J., held: 'I think it is a very dangerous principle to adopt to regard a verdict of not guilty as not fully establishing the innocence of the person to whom it relates.' The second case is in respect of offences relating to wrongful confinement or wrongful restraint, but obviously they were of so trivial a nature that the petitioner, according to the Police report itself, was let off with a warning. In respect of the three cases that are said to have been compromised, the learned Advocate-General asks us to hold that compromise connotes admission, on the part of the petitioner, of his guilt. In support of this proposition, he urges that no man who is innocent would agree to compromise a case as from the dictates of morality; if innocent, he would demand a trial and an honourable acquittal. This

argument, I am sure, the learned Advocate-General would never have advanced if he had taken the trouble to find out cases in which prosecutions under Section 211, Indian Penal Code, had been sanctioned against the complainants with whom the accused had compounded. One such case, I may mention here, is *Queen-Empress v. Atar Ali* 11 C. 79. But, even without a reference to any such cases, I do not hesitate to say that it is contrary to principles of administration of criminal justice to hold that the accused is guilty without the prosecution proving his guilt. The learned Advocate-General in the proposition he has enunciated asks us to presume where presumption is forbidden. In *King v. Brett* (1806) 5 Esp. 259 at p. 261 Lord Ellenborough said: 'In a criminal case, I can presume nothing.' Section 345 of the Code of Criminal Procedure lays it down that the composition of an offence under this section shall have the effect of the acquittal of the accused. We cannot alter the law; we are bound to proceed according to it as it at present is.

Besides the cases in which the petitioner is alleged to have either been suspected or taken part, the Police Officer making the reports asserts that 'there is overwhelming evidence of general repute to prove such clauses of Section 110 as admit evidence of repute as relevant and further says that besides the reported cases there are many unreported cases in which the petitioner himself took part and all those cases will be proved by examining the parsons who suffered at his hands.

38. It is further alleged in the report that 71 instances of overt acts corroborated by witnesses have been proved and there are 119 instances in which the sufferers only will depose to the hardships and thefts practised on them. The reported cases mentioned in the Police report do not make a case for proceedings under Section 110 against the petitioner, and the Crown is compelled to rely on the 71 instances of 'overt acts' and the 119 instances of sufferers who will depose to the hardships and thefts practised on them, making a total of 190 instances. The report is silent as to whether these instances are of dates prior to 1908 or since. If the latter, they are contradicted by the documents in the case, for in none of the correspondence has it been expressed by either Mr. Hammond or Mr. Bainbridge that the petitioner was interfering with the tenants. The refrain then was: 'You must not interfere with

the Manager.' Nor can it be reasonably believed that during the time when he was restricted to residence at Korla Patti with a European Manager placed over him, when every act of his was being reported to the authorities and watchful criticism would not relax her vigilance, he persisted in misconduct. Without its previous history, the case may on the Police report appear to deserve to proceed, but with that history I have no doubt that this is not a case that fitly comes within the purview of Section 110. Judging of Rajendra Narayan from Mr. Lyall's Administration Report and his letter and the marginal remarks of 25th May 1909, and from the letters of Mr. Hammond and Mr. Bainbridge, it is impossible for me to hold that anything was disclosed and believed then to justify this prosecution. After the threatened prosecution of 1908 was dropped, the documents are clear that in the time of Mr. Brae, the petitioner's offence, if believed, lay in his interfering with the Manager and his staff, the interference being the version of Mr. Brae, whose conduct in going away without rendering account takes away much of the weight that we might otherwise have been inclined to attach to his reports. After the disappearance of Mr. Brae, the petitioner farther offended the District authorities by appointing a Manager, though a European, without the previous approval of the Collector. However, so long as this second European Manager continued, no prosecution against the petitioner was contemplated and the old proceedings of 1908 were not revived. On the dismissal of this European Manager, an Indian is appointed to have charge of management, and we see the dismissed European Manager interesting himself in the concerns of this family, and it is during the incumbency of the Indian Manager that we see the revival of the old prosecution in the form of the present proceedings. On these facts, the unpleasant impression remains, and indeed the petitioner is entitled to ask us to draw the inference, that had there been a European Manager, the present proceedings would not have come into existence. This view is strongly supported by Mr. Lyall's own remark that for fear of criminal cases, Rajendra Narayan appointed a European Manager. I do not for my part at this stage question the intentions of either Mr. Lyall or Mr. Hammond in their attitude towards Rajendra Narayan. The former was strongly impressed with the necessity of removing the supposed oppressions of zemindars, the petitioner being one amongst them, while Mr. Hammond as the successor of Mr. Lyall continued the work of reform in consonance with such official records as

he had received. But we cannot allow the rules of law to be broken down because the best of motives sanctify the means. In *Yates v. Hall* (1785) 1 T.R. 73 at p. 80 Bailer, J., declared that 'all arguments on the hardship of a case, either on one side or the other, must be rejected when we are pronouncing what the law is; for such arguments are only quicksands in the law, and, if indulged, will soon swallow every principle of it.' A plea for giving a go-by to rules of law because of the plea for justice is not entertainable in Courts that are bound to administer the law. Thus the question to my mind is: Whether a zemindar, who is alleged to have been oppressive and has disobeyed the District Officer in choosing his Manager, is to have Section 110 applied against him? And I unhesitatingly answer that the provisions of Section 110 were never intended to be so applied. In my view of this case, I would make the present Rule absolute and quash the proceedings.

38. Owing to this difference of opinion, the case was heard by Justice Sir Asutosh Mookerjee, Kt.

39. Messrs. J.N. Roy, P.K. Sinha and Babus Manmatha Nath Mookerjee, for the Petitioner.

40. Mr. Kenrick, K.C., Advocate-General, Mr. Orr, Deputy Legal Remembrancer and Babu Srish Chandra Chowdhury, Junior Government Pleader, for the Crown.

41. The Court is invited in this Rule to quash a proceeding instituted against the petitioner Rajendra Narayan Singh under Section 110 of the Criminal Procedure Code, 1898. That section is in the following terms:

Whenever a Presidency Magistrate, District Magistrate, or a Sub-Divisional Magistrate, or a Magistrate of the first class specially empowered in this behalf by the Local Government receives information that any person within the local limits of his jurisdiction, (a) is by habit a robber, house-breaker or thief, or, (b) is by habit a receiver of stolen property knowing the same to have been stolen, or, (c) habitually protects or harbours thieves or aids in the concealment or disposal of stolen property, or (d) habitually commits mischief, extortion or cheating or counterfeiting coins, currency notes or stamps, or attempts so to do, or (e) habitually commits, or attempts to commit, or abets the commission of, offences

involving a breach of the peace, or (f) is so desperate and dangerous as to render his being at large without security hazardous to the community, such Magistrate may, in manner here in after provided, require such person to show cause why he should not be ordered to execute a bond, with sureties, for his good behaviour for such period, not exceeding three years, as the Magistrate thinks fit to fix.

In the present case, the proceedings were instituted on the 18th May 1912, by the Sub-Divisional Magistrate of Supaul, in the District of Bhagalpore, on the basis of a Police report in the prescribed form dated the 14th May 1912. The first column of this report describes the general manner of living and the ostensible means of subsistence of the person against whom the proceedings have been instituted. He is described there as born a poor man who suddenly came into possession of the estate of his maternal grandfather, yielding an income of about Rs. 25,000 per annum; it is further stated that he, with his brother Pancham Narain Singh, took possession of the estate about 25 years ago, and commenced to grind down the ryots by all possible means. The second column describes the habit of the accused. The allegations under this head are divided into seven classes as follows:

Class I.--He habitually commits extortion by impounding cattle, by levying fines, by seizure of property, by realizing marriage tax, by realizing money to meet the expenses of festivities and religious ceremonies, and by realizing fees at the rate of 8 annas per oil mill.

Class II.--He habitually commits mischief by sending cattle to the pound wrongfully and by setting fire to houses.

Class III.--He habitually protects and harbours thieves or aids in the concealment or disposal of properties.

Class IV.--He habitually commits or abets the commission of offences involving breach of the peace.

Class V.--He habitually receives stolen properties.

Class VI.--He habitually commits petty thefts.

Class VII.--He is a desperate and dangerous character.

The third column of the Police report names 16 persons as associates of the accused, who are described either as proved dacoits or proved burglars or men of proved bad character. The fourth column furnishes a list of 16 criminal cases in which the accused had been suspected to have taken part, The earliest in point of time goes as far back as the 27th July 1891, and the latest is quite as recent as 1910. The first fourteen cases, however, are anterior to 1908; the fifteenth is dated the 7th April 1908 and the last was on the 28th December 1910. The fifth column, which requires a statement of the previous conviction, if any, is blank. The sixth column sets out details of cases in which the accused has been known to have taken part; these are five in number. The first item states that the petitioner was sent up and tried in a case of dacoity about 20 years ago; he was, however, acquitted. The second states that he was tried for wrongful restraint and was let off with a warning on the 26th July 1905. The third item is to the effect that the petitioner was a co-accused with his servants in a case for wrongful restraint which was compromised. The fourth item relates to a case, dated the 2nd June 1911 in which the petitioner was charged with assault, and the matter was compromised. The fifth item is dated the 2nd June 1911, and also relates to an assault case which was compromised After this specific enumeration, a significant note is added that there are many unreported cases in which the accused took part, and it could be proved by examining the persons who suffered at his hands; the last of these is stated to have taken place on the 9th March 1912, but no details are furnished. The seventh column of the Police report contains what are called remarks, and the entry therein must be set out in full detail: 'Attention of the authorities was drawn to the atrocities of the accused in the year 1908, and an inquiry by the Sub-Divisional Magistrate of Supaul was set on foot under the orders of the District Magistrate of Bhagalpore, but he was spared the prosecution on his promise to behave properly in future. More than 200 witnesses were examined by the Sub-Divisional Officer, but the matter was dropped and time was given to him to correct himself. He apparently did not profit by the leniency thus shown to him, and continued his evil ways, with the result that the present inquiry had to be started this year again. Up till now, 214 witnesses have been found to prove that the oppression of this man is beyond description and that he, by his

continuous bad character, has made himself liable for prosecution under all the clauses of Section 110, which are described in the second column of this report. Seventy-one specific instances of overt acts, corroborated by witnesses, have been proved, and there are 119 instances in which the sufferers only will depose to the hardships and threats practised on them. These instances are of such a nature that corroboration by other witnesses is practically impossible. Thirty-five witnesses prove the accused's association with proved bad character and 165 witnesses will prove his general reputation. Besides these 214 witnesses, there will be about 50 witnesses more on different points, many of whom have not been yet found out, and as a supplementary list can be filed at any time before the close of the proceedings, it has not been considered desirable to delay the institution of the case for them. The report is, therefore, submitted with the prayer that the accused, after such inquiry as the Court thinks fit, be bound down for good behaviour for a period of one year and be called on to furnish personal recognizance of Rs. 10,000 with two sureties of the like amount for the same period. The list of witnesses is under preparation and will be submitted later on.

42. On receipt of this Police report, the Sub-Divisional Magistrate of Supaul, on the 18th May 1912, drew up proceedings under Section 110 of the Criminal Procedure Code, and called upon Rajendra Narayan Singh to show cause why he should not execute a bond of Rs. 10,000 with two sureties of Rs. 10,000 each to be of good behaviour for one year. The case was adjourned from day to day, and on the 17th June 1912, Rajendra Narayan Singh applied to the Magistrate for time to move the High Court, with a view to have the case transferred, and, if possible, to have the proceedings quashed. On the 24th June 1912, on the application of Rajendra Narayan Singh, Mr. Justice Holmwood and Mr. Justice Hassan Imam granted this Rule, by which the District Magistrate of Bhagalpore was called upon to show cause why the proceedings should not be quashed and further proceedings under Section 110 dropped, on the ground that it does not appear the facts alleged against the petitioner fall within the scope of that section, and there appear to have been threats of such proceedings in former years without any basis whatever and those proceedings were dropped, but nothing new specifically coming under Section 110 appears in the Police report. The Rule also calls upon the District Magistrate, in the alternative, to show cause why the case should not be

transferred to Monghyr or some other district. The Rule came to be heard in the first instance before Mr. Justice Carnduff and Mr. Justice Hassan Imam, and the arguments addressed to them are fully set out in their opinions. The learned Judges disagreed as to the course to be pursued; Mr. Justice Carnduff was of opinion that the Rule ought to be discharged, while Mr. Justice Hassan Imam came to the conclusion that the Rule should be made absolute and the proceedings quashed. The matter has been laid before me in pursuance of the provisions of Section 439, Sub-section (1), of the Criminal Procedure Code read with Section 429. The questions which arise for consideration have been elaborately re-argued before me on behalf of the accused as also on behalf of the Crown, and in view of the fact that two of my learned colleagues have taken diametrically opposite views in this matter, I have taken time to peruse every single paper on the record and have given the case anxious and earnest consideration.

43. Section 110 provides that a Magistrate of the description mentioned therein may, on receipt of information, institute proceedings with a view to take security for good behaviour from what may be briefly described as habitual offenders. The object of the section is preventive and not punitive, and, as pointed out in *Queen-Empress v. Nawab* 2 A. 835 the purpose which the Legislature had in view was to afford protection to the public against the repetition of crimes in which the safety of property is menaced and not the security of persons alone is jeopardised. The preventive jurisdiction, with which the Magistrate is thus vested, is a powerful means to secure the interest of the community from, injury at the hands of hardened offenders of the most dangerous classes. This very fact, however, renders it necessary that the powers should be exercised with caution and discretion. The Magistrate may initiate proceedings on information from any source; the statute does not impose any restriction as to the quarter from which the information may be derived. The Magistrate is further not bound to reveal the source of his information; it is sufficient if he states the substance thereof, and the Crown is not bound at the initial stage even to name the witnesses who will support the case by their evidence. *Alimuddin Howladar v. Emperor* 29 C. 392; *Chintamon Singh v. Emperor* 35 C. 243; 12 C.W.N. 299; 7 C.L.J. 177; 7 Cr. L.J. 146. Prima facie, therefore, the Police report, on which the Magistrate has taken

action in the present case, furnishes an adequate foundation for the institution of the proceeding's. The petitioner contends, however, that the proceedings are not bona fide, that they have been instituted for the attainment of an ulterior object, and, that, consequently, they ought to be quashed. The question, therefore, arises whether it is competent to this Court to interfere with the proceedings at the initial stage when the Magistrate has before him a Police report prima facie sufficient to justify the commencement of the proceeding's. In my opinion, there can be only one answer to this question: if it is established to the satisfaction of this Court that the proceedings are not bona fide and that in substance their continuance would mean an abuse of the statutory provisions on the subject, it is not only competent to this Court but it is its obvious duty to interfere. I desire to repudiate most emphatically the theory that the production of the Police report is in every case a complete answer to the allegation that the proceedings are not bona fide. An allegation of that character has, no doubt, to be established conclusively, either by direct evidence or by evidence of surrounding circumstances which leave no room for reasonable doubt as to the true nature of the proceedings. But once the allegation has been made good, no controversy is possible as to the course to be adopted by this Court. I must, therefore, now proceed to examine the circumstances antecedent to the submission of the Police report upon which the proceedings have been founded.

44. The petitioner, Rajendra Narayan Singh, an elderly gentleman, about 51 years of age, has been an Honorary Magistrate for twenty years, and is a zemindar of considerable means; he asserts that his annual income is about Rs. 30,000, the Police report estimates his income at Rs. 25,000. For some years past, there have been differences between him and the District Officers as to the management of his properties, which lie in the Madhipura and Supaul Sub-Divisions. The petitioner believes that he had the misfortune to incur the displeasure of the District Magistrate because his brother had helped one Babu Rashbihari Mandal, when the latter was prosecuted by the authorities. This suggestion has been repudiated by the Crown as unfounded; it is, as a matter of fact, wholly immaterial for the purposes of the case before me. I shall assume that the petitioner lost the confidence of the District Magistrate, because the Magistrate was not satisfied as to the management of his properties. This is clear from the letter addressed by the

District Magistrate on the 26th February 1908 to the petitioner, in which the Magistrate expressed the opinion that the petitioner should resign the post of Honorary Magistrate, because it was most undesirable that in view of the past and the then existent tension between the petitioner and his tenants, he should continue to hold the post. In reply to this letter, the petitioner submitted a representation and prayed that the Magistrate might reconsider the matter and change his opinion. The representation, however, had no effect, and on the 30th March 1908, the Sub-Divisional Officer of Supaul recorded an order to the effect that in view of the strained relation existing between Babu Rajendra Narayan Singh and his tenants, it was undesirable that he should attend the sittings of the Bench till amicable relations were restored between himself and his tenants. This order explicitly stated that there was no intention to cast any slur on the 'Babu Saheb'; the intention, it was added, was to take a temporary measure for the purpose of indicating 'the dignity and lofty attribute which the title of Honorary Magistrate must always confer upon those who enjoy the high privilege of sitting in that honourable position.' After this order, the petitioner submitted a representation to the District Magistrate, in which he wanted to establish that the charge of oppression of his tenants, brought against him, was, if not wholly unfounded, at least grossly exaggerated. The original representation, dated the 22nd May 1908, together with the marginal notes made thereon by the District Magistrate, has been produced in this Court. A great deal of comment appears to have been made on the representation and the notes, before the learned Judges who heard the case in the first instance; a suggestion was made that the allegations of the petitioner against which nothing was noted by the Magistrate at the time, should be assumed as correct. I am of opinion that any such inference would be wholly unjustifiable. The Magistrate made such marginal notes as he considered necessary at the time; he had not the remotest idea then that omission to controvert any specific allegation might be treated as an admission of its accuracy. The only fair way to deal with this representation and the marginal notes of the Magistrate thereon, is to take the allegations of the petitioner for what they are worth and to regard the comments of the Magistrate as an expression of his views on the matter at that stage. The District Magistrate, at this time, it is said, suggested to the petitioner that he should appoint an European Manager of his

properties; this is repudiated, and it is suggested on behalf of the Crown that the proposal first came from the advisers of the accused. Mean-while, steps had been taken, as we now know, for the institution of proceedings against the petitioner under Section 110 of the Criminal Procedure Code. In fact, the Police report on which the present proceedings are founded states explicitly, in the seventh column, that at that time more than 200 witnesses were examined by the Sub-Divisional Officer for this purpose, but the matter was dropped and time was given to the petitioner to correct himself. The petitioner suggests that the intended proceedings were dropped on condition that he should appoint an European Manager and place the management of all his properties in his hands. This is borne out by the statement of the present District Magistrate who, in the fourth paragraph of the letter addressed by him to the Registrar of this Court on the 8th July 1912, in answer to this Rule, states that Mr. Brae was appointed Manager by Rajendra Narayan Singh, because 'the appointment of a competent European Manager was made the condition of the droppings of proceedings under Section 110, which Rajendra Narayan Singh's treatment of his tenants had then made necessary.' In my opinion, it is clear beyond the possibility of dispute that in 1908 proceedings under Section 110 were about to be taken against Rajendra Narayan Singh, that, as now stated in the Police report, 200 witnesses had been examined for the purpose, and, that the proceedings contemplated were dropped because Rajendra Narayan Singh, on whose suggestion it is not very material to inquire, agreed to appoint a competent European Manager. This view is sought to be supported by extracts from the volume of the Bengal District Gazetteer which deals with Bhagalpore. A question was raised as to the admissibility in evidence of extracts from the Gazetteer, but I do not think there is really any room for discussion as to the admissibility of an extract from a book of this character, if the extract itself is relevant for the purposes of the inquiry before the Court. It is worthy of note that in the case of *Fanindra Deb Raikat v. Rajeswar Das* 11 C.463; 13 I.A. 72 their Lordships of the Judicial Committee relied upon Hunter's Statistical Account of Darjeeling upon the question of the history of the aboriginal tribe of Kochs. See also *Dino Nath v. Chundi Koch* 16 C.L.J. 14; 16 Ind. Cas. 349. Similarly, in *Garurudhwaja v. Suparanadhaja* 27 I.A. 238 at p. 243; 5 C.W.N. 33; 23 A. 37; 10 M.L.J. 267; 2 Bom. L.R. 851 (P.C.) their Lordships relied upon

Atkinson's Gazetteer upon a historical question as to the foundation of Hatras Estate. Again, this Court, in *In re Drachefels* 27 C. 860 at p. 867, relied upon Hunter's Gazetteer upon a question of the course of the River Hoogly, while in *Shyamanand Das v. Rama Kanta Das* 32 C. 6 reliance was placed upon Hunter's Statistical Account upon a question relating to the history of Orissa. There can be no question that the Court may resort for its aid to a book of this character, under Section 57 of the Indian Evidence Act, on all matters of public history, literature, science or art. In the case before me, the petitioner relies upon extracts from the Bengal District Gazetteer to show that his treatment by the Magistrate in 1908 is in harmony with the views forcibly stated by the Magistrate in his Administration Reports for the years 1907-3 and 1908-9. The extracts in question give expression to opinions as to the strained relations between landlords and tenants, the alleged oppression of the former upon the latter, and the supposed failure of the ordinary Courts to afford adequate protection to the weak and the ignorant. I am not directly concerned in the present case with the question of the correctness or propriety of the views of Executive Officers frankly and emphatically expressed, and it is plainly beyond the province of this Court to comment upon opinions, on what must be deemed political and administrative matters of a highly controversial character, set out in official publications; but what does concern the present case, is to be found in two passages, one in the report for 1907-8 and the other in the report for 1908-9. In the former report, reference is made to exactions from tenants by landlords amongst whom are mentioned Babu Rashbihari Mandal and the Maharajah of Sonebarsa; this is followed by the observation that Babu Rajendra Narayan Singh has been attempting the same game and inquiries have been made how far he has gone. In the report for the following year, it is stated with reference to Babu Rashbehari Mandal that he was forced, through the knowledge that he could not escape conviction for forgery, to apply to be declared a disqualified proprietor, and reference is made to the decision in *Rash Behary Lall Mondal v. King-Emperor* 35 C. 1076; 12 C.W.N. 1075; 8 Cr. L.J. 235; it is added that his prayer was accepted and 'now the Court of Wards is managing.' Then follows the significant sentence that 'Babu Rajendra Narayan Singh of Korla Patti, through fear of future similar criminal cases against him, voluntarily appointed a reliable European Manager and put himself off from all management.' These

extracts are clearly relevant for the purposes of the present inquiry. They confirm the view that in 1908 Rajendra Narayan Singh appointed a reliable European Manager, through fear of future criminal cases against him, similar to those instituted against Babu Rashbehari Mandal. Let us now turn back and take up the thread of the story as we left it, after the representation of the petitioner to the District Magistrate, dated the 22nd May 1908. On the 12th November 1903, Rajendra Narain Singh placed the management of his property in the hands of one Mr. H. Brae who was appointed Manager with the approval of the District authorities. In connection with this appointment of Mr. Brae, it was suggested on behalf of the petitioner that the District Magistrate, Mr. Lyall, allowed the intended proceedings under Section 110 to be dropped, because he was anxious that Mr. Brae should be appointed Manager. In my opinion, there is no foundation for this imputation; there is no material on the record to show that Mr. Lyall was in any way interested in Mr. Brae or was anxious to secure a suitable berth for that gentleman. The action of the Magistrate admits of an obviously different and prima facie reasonable interpretation. The District Magistrate believed, rightly or wrongly, that the petitioner harassed his tenantry, and he thought that the interposition of a strong European Manager alone could afford adequate protection to the latter. There is not the remotest ground to doubt that the District Magistrate acted honestly and with the best of motives. Whether he ought to have dropped the intended proceeding under Section 110, if there was, at the time, any real foundation for the institution of such a proceeding, and what the legal effect may be of the course the District Magistrate deliberately adopted, is an entirely different question which I shall consider later on. After the appointment of Mr. Brae as Manager, matters went on with apparent smoothness for about a year. On the 14th September 1909, however, the Sub-Divisional Magistrate wrote to the petitioner a letter in which he complained that reforms introduced by the Manager had been nullified by his intrigues, and warned him as to the consequences of a revival of the old friction. The petitioner interviewed the Sub-Divisional Magistrate, Mr. Bainbridge, and the new District Magistrate, Mr. Hammond, and matters proceeded as before till (he 16th April 1910. On that date, the District Magistrate wrote to him alleging his interference with the tenantry and with the management of the estate by Mr. Brae, who, it was said, was not allowed a free hand. The

petitioner thereupon complained to the District Magistrate about the conduct and management of Mr. Brae. M Brae apparently submitted an explanation to the Magistrate, who thereupon wrote to the petitioner again on the 10th May 1910. In this letter, the Magistrate reminded the petitioner that the sole reason for Mr. Brae's appointment and the dropping for the time being of proceedings under Section 110, was that the causes of friction might be removed and the petitioner not brought into contact with an angry tenantry. The Magistrate, Mr. Hammond, farther reminded the petitioner in this letter that the petitioner had made a definite promise to his predecessor Mr. Lyall, in consequence of which the proceedings contemplated were held in abeyance; then followed a threat that should the petitioner fail to keep his promise, those proceedings would at once be revived. On receipt of this letter, the petitioner asked for a copy of the report of Mr. Brae; this met with a prompt refusal from the Magistrate on the 6th June 1910. Then followed an incident which has no direct bearing upon the question raised before me, but which indicates that the relation between the petitioner and the authorities was considerably strained. During the rains of 1910, the river Kosi was flooded and the houses of the petitioner inundated; he appealed and prayed in vain to the Manager and to the Sub-Divisional Magistrate that he might be allowed to remove from Koria Patti to Gamharia Kutcheri; the request was refused on the 5th July 1910. This incident has no direct bearing, as I have said, upon the question raised before me, and I shall leave the facts alone, with the remark that tact, sympathy and discretion, in circumstances like these, on the part of those placed in authority, often serve a more useful purpose than threats and angry letters. Shortly after this incident, Mr. Brae suddenly resigned his appointment, and the petitioner states that accounts have not yet been rendered to him. On the 20th October 1910, the Sub-Divisional Magistrate asked the petitioner to appoint Mr. Musselback in place of Mr. Brae. The petitioner did not accept the suggestion, and appointed one Mr. Landale as his Manager. The result was that on the 24th January 1911, the Sub-Divisional Magistrate wrote to him a letter, remarkable for its tone, and called upon him to explain at once why Mr. Landale had been appointed Manager without the sanction or authority of the Collector. What followed, does not appear; but we know this that the petitioner was asked by the Collector to retire from his estate and to get the names of his sons registered in place of his own name in the

Collectorate. The suggestion of compulsory abdication could not, however, be carried into effect, because the legal advisers of the Crown apparently pointed out difficulties in the way. Matters continued in this state till the closing months of 1911, when the petitioner found it necessary to dismiss Mr. Landale on the 30th November 1911 and appointed Babu Tej Narain Singh, a retired Police official, as his Manager. The petitioner believes that this has seriously offended the authorities, and that on false information supplied by the dismissed manager, Mr. Landale, and by his own nephew, Nogendra Narain Singh, the present proceedings have been instituted. The story just narrated indisputably establishes the following facts:

1. The District authorities were dissatisfied with the management of the estate of the petitioner by himself and believed that he harassed and oppressed his tenantry.
2. In 1908, steps were taken by the authorities to compel him to resign the post of Honorary Magistrate, but as he did not agree to do so he was not invited to sit on the Bench, because it was thought most undesirable that in view of the tension between him and his tenants, he should continue to hold office as Honorary Magistrate; this order, however, was not, as stated expressly, intended to cast any slur upon him.
3. In 1908, just about the time mentioned, an inquiry was set on foot and 200 witnesses were examined with a view to institute proceedings against him under Section 110 of the Criminal Procedure Code.
4. The intended proceedings were dropped, because the petitioner agreed to appoint a competent European Manager. Whether the appointment was made 'voluntarily' by him, or, whether that is an euphemistic expression for what he did under the orders of the District Magistrate, is not a matter of much importance for the purpose of the decision of the questions raised before me.
5. During the managership of the first European Manager, Mr. Brae, the petitioner was carefully watched and was so absolutely under the control of the authorities that, when his house was inundated by the flood of the river Kosi, he was not

allowed to remove to another place.

6. After the sudden resignation of Mr. Brae, the petitioner, in defiance of the wishes of the authorities, appointed a European Manager of his own choice; for this, he was peremptorily called upon to submit an explanation.

7. In November 1911, the petitioner dismissed the European Manager whom he himself had appointed, and replaced him by a retired Indian Police official; he thereby contravened what is stated by the present District Magistrate to have been 'the condition of the dropping of proceedings under Section 110 of the Criminal Procedure Code' in 1908, namely, 'the appointment of a competent European Manager.

45. On these facts, the substantial accuracy of which cannot be seriously assailed, the petitioner contends that the proceedings now instituted are not bona fide, that they have an ulterior purpose, and that they are designed to force him to adopt such mode of management of his properties as may commend itself to the District authorities. This imputation has been vigorously repudiated on behalf of the Crown, and it has been contended that there are ample grounds now, as there were in 1908, for the institution of proceedings under Section 110 against the petitioner. It is impossible for me to pronounce an opinion upon the question, whether there were or were not sufficient grounds for the institution of proceedings under Section 110 against the petitioner in 1908; but one circumstance does seem to me to be very remarkable. If the petitioner was in 1908 a man who habitually committed extortion and mischief, protected and harboured thieves, aided in the concealment and disposal of stolen property, committed offences involving breach of the peace, indulged in petty thefts, received stolen property and was so desperate and dangerous a character that he could not be left at large without serious hazard to the community--if he was a man of this type, and proved to be so by 200 witnesses examined by the Crown, how is it that the District authorities not only dropped the proceedings under Section 110, but dealt with him as an estimable gentleman for more than three years under the control and guidance of a European Manager? This circumstance, in my opinion, hopelessly discredits the case for the Crown. But let me assume for a moment that in 1908, there were

good grounds for the institution of proceedings under Section 110 against the petitioner; the District authorities deliberately made their choice and decided, wisely or unwisely, not to take proceedings against him at that time if a competent European Manager was appointed. There was an approved European Manager, competent or incompetent it is not for me to judge, for a period of at least two years; during this time, the petitioner was carefully watched, and, for a considerable time, was under complete and absolute control. What, then, has happened since 1908 to justify the institution of these proceedings under Section 110? An analysis of the fourth column of the Police report shows that there is only one case, since the appointment of the European Manager, in which the accused is even suspected to have taken part. When we analyse the sixth column, which purports to give details of cases in which the accused is known to have taken part, we find three cases mentioned of assault and wrongful restraint, the gravity whereof is indicated by the fact that each of them was allowed to be compromised; indeed, notwithstanding the fact that they were compounded, they might have been deliberately false: *Queen-Empress v. Atar Ali* 11 C. 79. It cannot be seriously suggested that these cases by themselves would justify the institution of proceedings under Section 110. It is hardly necessary to add that no weight can be attached to the circumstance that more than 20 years ago, the accused was tried and acquitted in a case of dacoity; because, it cannot be disputed for a moment that the judgment of not guilty fully establishes his innocence: *R. v. Plummer* (1902) 2 K.B. 339 at p. 349; 71 L.J.K.B. 805; 66 J.P. 647; 86 L.T. 836 18 T.L.R. 659; 51 W.R. 137; 20 Cox. C.C. 243; *Emperor v. Noni Gopal Gupta* 15 C.W.N. 593; 10 Ind. Cas. 582; 12 Cr.L.J. 286; *Pulin Behary Das v. King-Emperor* 15 C.L.J. 517 at p. 596; 13 Cr. L.J. 609; 16 C.W.N. 1105; 16 Ind. Cas. 257. In fact, if we leave alone the general condemnatory words and epithets in the Police report, and carefully analyse the materials set out therein, it becomes evident that there is nothing of real importance definitely alleged against the petitioner after the appointment of the European Manager in 1908; indeed, it is striking how the so-called data for the institution of these proceedings, turn out, on scrutiny, to be of the most unsubstantial character. Is it, then open to the Crown to rely upon incidents before the appointment of the European Manager to justify the institution of the present proceedings? In my opinion, the answer must plainly be in the

negative. I assume, for the present purpose, what has not yet been established, namely, that there were good grounds for the institution of proceedings in 1908. On what principle, can those proceedings be indefinitely kept in abeyance, the alleged incidents kept in reserve, as it were, to be used against the petitioner whenever occasion may arise? It has been repeatedly ruled that even in cases where an order has been made against a person under Section 110, he cannot rightly be required to furnish fresh security upon the expiry of the original term and that he must be allowed a sufficient locus penitentiae; *In re Juswunth Singh* 6 W.B. 18 Cr.; 1 Ind. Jur. (N.S.) 301, *In re Haidar Ali* 12 C. 520, *Junab Ali v. Emperor* 31 C. 783; 8 C.W.N. 909; 1 Cr. L.J. 801; *Emperor v. Ranjit* 28 A. 306; (1906) A.W.N. 30; 3 A.L.J. 29; 3 Cr. L.J. 96; 1 M.L.T. 58 and *Emperor v. Husain Ahamad Khan* A.W.N. (1905) 34; 2 Cr. L.J. 86. The present case is very much stronger than that of a man, against whom an order under Section 110 has actually been previously made. The very fact that in 1908 the District authorities were of opinion that, if he appointed a competent European Manager, proceedings under Section 110 might safely be abandoned, indicates plainly that at that time, there could not have been anything against him of a really serious character, and this view is confirmed by the treatment accorded to him by the authorities during the time which followed--a period of more than three years of strict discipline, as it were, passed under the control and guidance of an European Manager. The fact that he has recently appointed a retired Indian Police Official as his Manager undoubtedly does not render him liable to proceedings under Section 110, and in view of what has happened since 1908, it is clearly not open to the Crown to resuscitate old incidents, even if it be assumed that there is any substance in them. The salutary provisions of Section 110 were enacted by the Legislature with the purpose of protecting society from habitual offenders; they were unquestionably never intended to be applied to coerce landlords, however recalcitrant they might be, to adopt methods of management of their estate, the efficacy of which, very indiscreetly, perhaps, they might not appreciate, though pressed upon them with the best of intentions. Finally, I observe that it is stated in the seventh column of the Police report that over 284 witnesses are proposed to be examined to establish the formidable catalogue of misdeeds imputed to the petitioner, most of which, if true at all, must now be matters of ancient history. The conclusion

appears to me to be irresistible that this Court would fail in its duty if it did not forthwith arrest the further progress of these extraordinary proceedings which veritably threaten to be of interminable length. The Rule is, accordingly, made absolute and the proceedings quashed in their entirety; the petitioner is discharged from his bail.

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