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last two items as against defendant No. 1, was validly instituted and also that the suit was neither barred under s. 19 of the East Punjab Evacuees' (Administration of Property) Act, XIV of 1947, nor by time under Article 2 of the Limitation Act.

In the result, the appeal is accepted, the decree of Senior Sub-Judge, Karnal, set aside and the case remitted to District Judge, Karnal, for fresh decision in accordance with law and in the light of the above observations. The appellant shall get his costs from the respondents. The parties have been directed, through their counsel, to appear in the said Court on 14th October, 1957. Court-fee paid on the Memo of Appeal shall be refunded to the Appellant.

Gosain, J.

GOSAIN, J.—I agree.

D. K. M.

SUPREME COURT

Before Bhuvaneshwar Prasad Sinha, P. Govinda Menon and J.L. Kapur, JJ.

BAKHSHISH SINGH,—*Appellant*

versus

THE STATE OF PUNJAB,—*Respondent.*

Criminal Appeal No. 205 of 1956.

1957

Sept. 17th

Indian Evidence Act—(I of 1872)—Section 32—Dying declaration—Meaning and contents of—Authenticity and object of a dying declaration—Section 33—Statement of a witness recorded before the committing magistrate transferred to the record of the trial before the Sessions Judge on the ground of non-availability of the witness—Whether proper—Objection as to—Whether can be taken in appeal before the Supreme Court—Section 114—Witness given up as won over—Discretion of the prosecutor—Whether can be interfered with by Court—Adverse inference—Whether can be drawn against the State.

Held, that the dying declaration is the statement made by a person as to the cause of his death or as to any of the circumstances of the transaction which resulted in his death and such details which fall outside the ambit of this are not strictly within the premissible limits laid down by section 32(1) of the Evidence Act and unless absolutely necessary to make a statement coherent or complete should not be included in the statement.

Held, that the authenticity of the dying declaration has to be judged in accordance with the circumstances of each case depending upon factors which would vary with each case but those recording such statements would be well advised to keep in view the fact that the object of a dying declaration is to get from the person making the statement the cause of death or the circumstances of the transaction which resulted in death.

Held, that where the Sessions Judge transferred to the record of the trial before him the statement of a witness made by him in the court of the committing magistrate on the ground of his non-availability, his order does not suffer from any infirmity. The objection as to the admissibility of such a statement cannot be raised in the appeal before the Supreme Court when it was not raised before the trial court or the High Court.

Held, that where a prosecutor gives up a witness having been won over, the court will not interfere with the discretion of the prosecutor as to what witnesses should be called for the prosecution and no adverse inference under section 114 of the Evidence Act can be drawn against the State.

Adel Mohammad v. *Attorney-General of Palestine* (1), *Stephen Servaratne* v. *The King* (2), and *Habbeb Mohammad* v. *The State of Hyderabad* (3), relied on.

Appeal by Special Leave from the Judgment and Order, dated the 30th November, 1955, of the Punjab High Court in Criminal Appeal No. 282 of 1955, arising out of the Judgment and Order, dated the 15th February, 1955, of the Court

(1) A.I.R. 1945 P.C. 42.
(2) A.I.R. 1936 P.C. 289.
(3) 1954 S.C.R. 475.

of the Additional Sessions Judge at Amritsar in Sessions Case No. 64 of 1954 and Trial No. 6 of 1955.

For the Appellant: Mr. R. L. Anand,Senior Advocate, Mr. S. N. Anand, Advocate, with him.

For the Respondent: Mr. Kartar Singh Chawla, Assistant Advocate-General, for the State of Punjab, Mr. T. M. Sen, Advocate, with him.

JUDGMENT

The Judgment of the Court was delivered by—

Kapur, J.

KAPUR, J.—This is an appeal against the judgment and order of the Punjab High Court reversing an order of acquittal by the Additional Sessions Judge, Amritsar. The appellant Bakshish Singh and his brother Gurbaksh Singh were tried for an offence under ss. 302/34 of the Indian Penal Code but were acquitted. Against this judgment the State took an appeal to the High Court. As Gurbaksh Singh was said to be absconding the appeal against the appellant alone was heard and decided by the High Court.

On August 1, 1954, sometime between 7 and 8 p.m. Bachhinder Singh, son of Bhagwan Singh of village Kairon, was shot in the lane in front of their house and as a result of bullet injuries he died the next day in the hospital at Amritsar. He was at the time of shooting accompanied by his younger brother Narvel Singh, a boy of 13 and after getting injured Bachhinder Singh and his brother returned to the house. Bhagwan Singh states that he was informed of the indentity of the assailants by Bachhinder Singh who was, at his own request, carried from the house to the hospital at Kairon but as the injuries were serious, the doctor at Kairon rendered "first aid" and advised the father to take his son to V. J. Hospital at

Amritsar. Bhagwan Singh then took Bachhinder Singh to the Railway Station but before the arrival of the train he went to the Police Post at Kairon which is at a distance of about 100 yards from the Railway Station in order to make a report. As the Assistant Sub-Inspector was away at Sarhali, he returned to the Railway Station and took his son to the Amritsar hospital by the train leaving Kairon at 9-47 p.m. Bhagwan Singh was accompained at that time by his younger son, Narvel Singh, P.W. 12, and by Shamir Singh, Inder Singh and Narinjan Singh. Soon after their arrival at the Amritsar hospital, Bachhinder Singh was examined by Dr. Kanwal Kishore, P.W. 12, at 11-45 p.m. and finding the injury to be of a serious nature the doctor sent information to the Police as a result of which Head Constable Maya Ram Sharam, P.W. 4, arrived at the hospital sometime after midnight and, in the presence of Dr. Mahavir Sud, P.W. 17, recorded the dying declaration of Bachhinder Singh, Exhibit P.H., after getting a certificate from the doctor that the injured person was in a fit state to make a statement. This statement is the basis of the First Information Report, Exhibit P-H 1, which is a copy of Exhibit P-H. This report was recorded on August 2, 1954, at 7-50 a.m. at Police Station Sarhali which we were told, is about 20 miles or so away from Amritsar. In the early hours of the morning Dr. K. C. Saronwala, P.W., performed an operation on Bachhinder Singh and extracted the bullet from the left abdominal wall which was handed over to the Police. But Bachhinder Singh died at 1-35 p.m. on August 2, 1954. An inquest report, Exhibit P-K, was prepared at 2-30 p.m. by Head Constable Maya Ram, P.W.

The case for the prosecution rests on the dying declaration of Bachhinder Singh, Ex. P-H, and

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on the statement of Narvel Singh, P.W. 12, who was an eye witness to the occurrence and on the statement made by the deceased to his father as to his assailant as soon as he (Bachhinder Singh) was brought to the house after receiving the injuries. The prosecution also relied on an extra-judicial confession made to Teja Singh, P.W. 13, but both the courts below have rejected this piece of evidence and it is unnecessary to consider it any further.

The learned Additional Sessions Judge rejected the dying declaration made by Bachhinder Singh on two grounds; that at the time of recording the dying declaration not only Bhagwan Singh, the father and Narvel Singh, the brother of Bachhinder Singh were

> "present but the Police Officer had actually made enquiries from them about the occurrence before he proceeded to record the dying declaration of Bachhinder Singh, deceased. Head Constable Maya Ram P.W. 4, has admitted in cross-examination that Bachhinder Singh gave his statement in Punjabi but the form and the detailed account given in the statement, Exhibit P-H. would show that it was not the product of Bachhinder Singh's creation alone but it was a 'touched up' declaration of the deceased. It is laid down in 1954 Lahore 805 that a dying declaration which records the very words of the dying man unassisted by interested persons is most valuable evidence but the value of a dying declaration altogether disappears when parts of it had obviously been supplied to the dead

man by other persons whether interested or Police Officer. As the dying declaration, Exhibibit P-H, in this case cannot be regarded as the creation of Bachhinder Singh, deceased, no reliance whatsoever can be placed on it and it could not form the basis for the conviction of any of the accused."

The learned Judges of the High Court did not agree with this criticism. Bishan Narain, J., who delivered the main judgement, said :

"This criticism appears to me to be without any substance. The statement was recorded by Head Constable Maya Ram who was posted in Amritsar and was not posted in village Kairon and therefore had no knowledge of the parties nor had any interest in them. Thus there was no reason why he should record the statement falsely or irregularly. Throughout the time that the statement was recorded Dr. Mahavir Sud of the Amritsar hospital was present. He has appeared as P.W. 17 in the present case. He is a respectable and disinterested person and he is positive in his testimony before the court that the statement was made by the deceased voluntarily and that there was nobody present to prompt him . He has further stated that he did not allow any person to be present at that time. There is absolutely no reason for doubting the correctness of this statement.....

.....

Coming to the other objection of the Additional Sessions Judge, it is difficult to

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understand the significance attached by him to the fact that the deceased spoke in Punjabi while the statement was recorded by Maya Ram in Urdu. The court language is Urdu and the Police generally records statements in Urdu if they are made in the Punjabi language. I have no doubt in my mind that the dying declaration recorded in the present case is a voluntary one and was made without any prompting from anybody."

The High Court in our opinion correctly appreciated the evidence and was right in accepting the authenticity of the dying declaration. The statement of Maya Ram, P.W. 4, does not support the criticism of the learned trial judge. And he had read more in the statement of Narvel Singh, P.W. 12, made before the Committing Magistrate, than it really contains. It is unfortunate that the criticism has proceeded on the English record of the Magistrate's Court which does not appear to have been correctly recorded as the Urdu record is in many parts materially different. The fact that the statement contained in Exhibit P-H was made without any prompting is also supported by the testimony of a wholly disinterested witness, Dr. Mahavir Sud, whose statement made before the Committing Magistrate was transferred at the trial stage under s. 33 of the Evidence Act. He stated:

> "The statement of Bachhinder Singh was voluntary and there was none to prompt it. I did not allow any attendant on Bachhinder Singh then."

In cross-examination he made it clearer that there was no relation or friend of the deceased person

when the statement was recorded. Some criticism was levelled against the dying declaration based on a sentence in the statement of Dr. Mahavir Sud, P.W. 18 that the Head Constable put certain questions to clarify the ambiguities and these questions and answers do not find place in Exhibit P-H, the record of the dying declaration. No such question was put to the Head Constable who recorded the statement. The Head Constable stated that the dying declaration was written at the declarant's own dictation without any addition or omission. In cross-examination nothing was asked as to any questions having been put to the deceased by this witness. Therein the witness also stated:

> "It is not correct that I first made the inquiry from the father of the deceased and other persons before I proceeded to record his statement."

He also made it clear that before he allowed the statement to be made he satisfied himself that Bachhinder Singh was in a fit state to make the statement. We are of the opinion that the High Court rightly held the dying declaration to be a statement made by the deceased unaided by any outside agency and without prompting by any body. The declarant was free from any outside influence in making his statement.

Another reason giving by the Additional Sessions Judge for rejecting the dying declaration was that the deceased gave the narrative of events in Punjabi and the statement was taken down in Urdu. In the Punjab that is how the dying declarations are taken down and that has been so ever since the courts were established and judicial

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authority has never held that to be an infirmity in dying declarations making them inefficacious. As a matter of fact in the Punjab the language used in the subordinate courts and that employed by the Police for recording of statements has always been Urdu and the recording of the dying declaration in Urdu cannot be a ground for saying that the statement does not correctly reproduce what was stated by the declarant. This, in our opinion was a wholly inadequate reason for rejecting the dying declaration.

Exhibit P-H, the dying declaration is a long document and is a narrative of a large number of incidents which happened before the actual assault. Such long statements which are more in the nature of First Information Reports than recital of the cause of death or circumstances resulting in it are likely to give the impression of their being not genuine or not having been made unaided and without prompting. The dying declaration is the statement made by a person as to the cause of his death or as to any of the circumstances of the transaction which resulted in his death and such details which fall outside the ambit of this are not strictly within the permissible limits laid down by s. 32(1) of the Evidence Act and unless absolutely necessary to make a statement coherent or complete should not be included in the statement. We are informed that, in the Punjab, no rules have been made in regard to the recording of dying declarations which, we are told, has been done in several other states. We think it would be desirable if some such rules were framed and included in the Rules and Orders made by the High Court for the guidance of persons recording dying declarations. Of course the authenticity of the dying declaration has to be judged in accordance with the circumstances of each

case depending upon many factors which would vary with each case but those recording such statements would be well advised to keep in view the fact that the object of a dying declaration is to get from the person making the statement the cause of death or the circumstances of the transaction which resulted in death.

The admissibility of the statement of Dr. Mahavir Sud was assailed by counsel for the appellant on the ground that the conditions laid down for the admissibility of statements under s. 33 had not been complied with and several decided cases were relied upon. This question does not seem to have been raised at any previous stage of the proceedings, neither before the Additional Sessions Judge nor before the High Court, and this criticism seems to be without much substance. At the trial the prosecution produced Foot Constable Kartar Singh, P.W. 14, who deposed that he took the summons for this witness to the hospital where he was previously employed and the Superintendent of the hospital made a report that he was no longer in service and it was not known where he was. This witness also stated that "from the inquiries made by me, I learnt that his whereabouts are not known". In cross-examination he again stated that he made enquiries but he could not discover the whereabouts of this witness. After the statement of Kartar Singh, P.W. 14, the Public Presecutor made a statement that Dr. Mahavir Sud's whereabouts were not known and prayed that his statement be transferred under s. 33 of the Evidence Act on the ground that there was no likelihood of the witness being available without unreasonable delay and expense and no objection is shown to have been taken by the defence at that stage. Thereupon the learned trial judge ordered the statement to

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be transferred under section 33 of the Evidence Act. He might have been well advised to give fuller reasons for making the order transferring the statement. It appears to us that the learned judge transferred it on the ground of unreasonable delay and expense and we do not find any infirmity in this order of transfer.

Counsel then contended that for the efficacy of the dying declaration, corroboration was essential. In the present case there is the statement of Narvel Singh, P.W. 12, who is an eye witness to the occurrence which is relied upon by the prosecution as corroboration of the dying declaration. The learned Additional Sessions Judge rejected the testimony of this witness on the ground that there were discrepancies between his statement made in the commitment proceedings and at the trial. We have already pointed out that the cross-examination of this witness was based on somewhat inaccurate English record of his statement in the Committing Court, the statement in Urdu record puts a different complexion on it. But even if this were not so the High Court, in our opinion, has taken a correct view of the testimony of this witness and has accepted it for cogent reasons. Besides Narvel Singh there is the statement of Bhagwan Singh, the father who stated that as soon as Bachhinder Singh came into the house he mentioned the names of his assailants to him. The incident took place just outside the house of Bhagwan Singh and it was never disputed that he was present in the house when the incident took place. It is only natural that as soon as the injured son came into the house he would be asked as to who had injured him or would himself state who had caused him the injury. He was in his senses at that time and no reason has been suggested why the son

would not disclose to his father the names of his assailants. There is no adequate reason for rejecting this portion of the testimony of Bhagwan Singh and merely because the dying declaration does not mention it, is hardly a reason for not accepting it.

The non-production of Sucha Singh who is stated in the dying declaration and in the statement of Narvel Singh, P.W. 12, to have witnessed the occurrence was commented upon by counsel as a very serious omission. The Public Prosecutor stated at the trial that he was giving up Sucha Singh as he had been won over. Therefore, if produced, Sucha Singh would have been no better than a suborned witness. He was not a witness "essential to the unfolding of the narrative on which the prosecution was based" and if examined the result would have been confusion, because the prosecution would have automatically proceeded to discredit him by cross-examination. No oblique reason for his non-production was alleged, least of all proved. There was therefore no obligation on the part of the prosecution to examine this witness: See *Abdul Mohammad* v. *Attorney-General of Palestine* (1); *Stephen Servaratne* v. *The King* (2); *Habeeb Mohamad* v. *The State of Hyderabad* (3). In the circumstances the court would not interfere with the discretion of the prosecutor as to what witnesses should be called for the prosecution and no adverse inference under s. 114 of the Evidence Act can be drawn against the State.

The High Court, in our opinion, have kept in view correct principles governing appeals against acquittals and have rightly applied them to the

(1) A.I.R. 1945 P.C. 42.
(2) A.I.R. 1936 P.C. 289.
(3) 1954 S.C.R. 475.

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circumstances of this case. The erroneous view that the learned Sessions Judge took of the dying declaration and of the oral evidence were compelling enough reasons for the reversal of that judgment

We therefore dismiss this appeal.

B. R. T.

SUPREME COURT.

Before Sudhi Ranjan Das, C. J. and T. L. Venkatarama Aiyar, Bhuvaneshwar Prasad Sinha, J. L. Kapur, A. K. Sarkar, JJ.

UNION OF INDIA,—*Appellant.*

versus

T. R. VARMA,—*Respondent.*

1957

Sept., 18th

Civil Appeal No. 118 of 1957.

Constitution of India (1950)—Article 226—Writ petition under—Whether appropriate proceeding for adjudication of disputed facts—Person wrongfully dismissed—Whether should file a suit and not a writ petition—Alternative remedy —How far a bar to a writ petition—Evidence Act (I of 1872)—Whether applicable to inquiries by tribunals—Principles of natural justice indicated—Dispute as to what happened before a Court or tribunal—Statement of Presiding Officer—Whether to be taken as correct.

Held, that a writ petition under Article 226 of the Constitution is not the appropriate proceeding for the adjudication of disputes facts. Under the law a person whose services have been wrongfully terminated, is entitled to institute an action to vindicate his rights, and in such an action, the Court will be competent to award all the reliefs to which he may be entitled, including some which would not be admissible in a writ petition. It is well-settled that when an alternative and equally efficacious remedy is open to a litigant, he should be required to pursue that remedy and not invoke the special jurisdiction of the High Court to issue a prerogative writ. It is true that the existence of another remedy does not affect the jurisdiction of the Court to

issue a writ; but the existence of an adequate legal remedy is a thing to be taken into consideration in the matter of granting writs. And where such remedy exists, it will be sound exercise of discretion to refuse to interfere in a petition under Article 226, unless there are good grounds therefor.

Held, that the Evidence Act has no application to enquiries conducted by tribunals, even though they may be judicial in character. The law requires that such tribunals should observe rules of natural justice in the conduct of the enquiry, and if they do so, their decision is not liable to be impeached on the ground that the procedure followed was not in accordance with that, which obtains in a Court of Law. Stating it broadly and without intending it to be exhaustive, it may be observed that rules of natural justice require that a party should have the opportunity of adducing all relevant evidence on which he relies, that the evidence of the opponent should be taken in his presence, and that he should be given the opportunity of cross-examining the witnesses examined by that party, and that no materals should be relied on against him without his being given an opportunity of explaining them. If these rules are satisfied, the enquiry is not open to attack on the ground that the procedure laid down in the Evidence Act for taking evidence was not strictly followed.

Held, that when there is a dispute as to what happened before a court or tribunal, the statement of the Presiding Officer in regard to it is generally taken to be correct.

Appeal by Special Leave from the Judgment and Order, dated the 31st January, 1956, of the Circuit Bench of the Punjab High Court at Delhi in Civil Writ No. 243-D of 1954.

For the Appellant: Mr. C. K. Daphtary, Solicitor-General of India (M/s. R. Ganapathy Iyer and R. H. Dhebar, Advocates, with him).

For the Respondent: Mr. Purshottam Tricumdas, Senior Advocate. (M/s. T.S. Venkataraman and K. R. Chaudhury, Advocates, with him).

JUDGMENT

The Judgment of the Court was delivered by—

VENKATARAMA AIYAR, J.— This is an appeal by special leave against the judgment and order of

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the High Court of Punjab in an application under Article 226 of the Constitution setting aside an order dated September 16, 1954, dismissing the respondent herein, from Government service on the ground that it was in contravention of Article 311 (2) of the Constitution.

The respondent was, at the material dates, an Assistant Controller in the Commerce Department of the Union Government. Sometime in the middle of March, 1953, one Shri Bhan a representative of a Calcutta firm styled Messrs Gattulal Chhaganlal, Joshi, came to Delhi with a view to get the name of the firm removed from black list in which it had been placed, and for that purpose, he was contacting the officers in the Department. Information was given to Sri Tawakley an assistant in the Ministry of Commerce and Industry (Complaints Branch), that Sri Bhan was offering to give bribe for getting an order in his favour. He immediately reported the matter to the Special Police Establishment, and they decided to lay a trap for him. Sri Bhan, however, was willing to pay the bribe only after an order in his favour had been made and communicated, but he offered that he would get the respondent to stand as surety for payment by him. The police thereafter decided to set a trap for the respondent, and it was accordingly arranged that Sri Tawakley should meet, by appointment, Sri Bhan and the respondent in the Kwality Restaurant in the evening on March 24, 1953. The meeting took place as arranged, and three members of the Special Police Establishment were present there *incognito*. Then, there was a talk between Sri Tawakley, Sri Bhan and the respondent, and it is the case of the appellant that during that talk, an assurance was given by the respondent to Sri Tawakley that the amount would be paid by Sri

Bhan. After the conversation was over, when the respondent was about to depart, one of the officers, the Superintendent of Police, disclosed his identity, got from the respondent his identity card and initialled it, and Sri Bhan also initialled it.

On March 28, 1953, the respondent received a notice from the Secretary to the Ministry of Commerce and Industry charging him with aiding and abetting Sri Bhan in offering illegal gratification to Sri Tawakley and attempting to induce Sri Tawakley to accept the gratification offered by Sri Bhan, and in support of the charges, there were detailed allegations relating to meetings between the respondent and Sri Tawakley on March 17, 1953, on March 21, 1953, a telephonic conversation with reference to the same matter later on that day, and the meeting in the Kwality Restaurant already mentioned. The respondent was called upon to give his explanation to the charges, and he was directed to state whether he wished to lead oral or documentary evidence in defence. The enquiry was delegated to Mr. J. Byrne, Joint Chief Controller of Imports and Exports. On April 10, 1953, the respondent submitted a detailed explanation denying that he met Sri Tawakley either on the 17th or on the 21st March, or that there was any telephonic conversation that day with him, and stating that the conversation which he had in the Kwality Restaurant on the 24th related to an insurance policy of his, and had nothing to do with any bribe proposed to be offered by Sri Bhan. The respondent also asked for an oral enquiry and desired to examine Sri Bhan, Sri Fateh Singh and Sri Jai Narayan in support of his version. On April 17, 1953, Mr. Byrne gave notice to the respondent that there would be an oral enquiry, and pursuant thereto, witnesses were examined on

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April 20, 1953, and the following days, and the hearing was concluded on April 27, 1953.

On July 28, 1953, Mr. Byrne submitted his report, and therein, he found that the charges against the respondent had been clearly established. On this, a communication was issued to the respondent on August 29, 1953, wherein he was informed that it was provisionally decided that he should be dismissed, and asked to show cause against the proposed action. Along with the notice, the whole of the report of Mr. Byrne, omitting his recommendations, was sent. On September 11, 1953, the respondent sent his explanation. Therein, he again discussed at great length the evidence that had been adduced, and submitted that the finding of guilt was not proper, and that no action should be taken against him. He also complained in this explanation that the enquiry was vitiated by the fact that he had not been permitted to cross-examine the witnesses, who gave evidence against him. The papers were then submitted to the Union Public Service Commission in accordance with Article 320, and it sent its report on September 6, 1954, that the charges were made out, that there was no substance in the complaint of the respondent that he was not allowed to cross-examine the witnesses, and that he should be dismissed. The President accepting the finding of the Enquiring Officer and the recommendation of the Union Public Service Commission, made an order on September 16, 1954, that the respondent should be dismissed from Government service.

The respondent then filed the application out of which the present appeal arises, in the High Court of Punjab for an appropriate writ to quash the order of dismissal dated September 16, 1954,

for the reason that there was no proper enquiry. As many as seven grounds were set forth in support of the petition, and of these, the learned Judges held that three had been established. They held that the respondent had been denied an opportunity to cross-examine witnesses, who gave evidence in support of the charge, that further he was not allowed to make his own statement, but was merely cross-examined by the Enquiring Officer, and that likewise, his witnesses were merely cross-examined by the Officer without the respondent himself being allowed to examine them. These defects, they observed, amounted to a denial of reasonable opportunity to the respondent to show cause against his dismissal, and that the order dated September 16, 1954, which followed on such enquiry, was bad as being in contravention of Article 311(2). In the result, they set aside the order, and directed him to be reinstated. The correctness of this order is challenged by the Solicitor-General on two grounds: (1) that the finding that the respondent had no reasonable opportunity afforded to him at the enquiry is not supported by the evidence; and (2) that even if there was a defect in the enquiry, that was a matter that could be set right in the stage following the show-cause-notice, and as the respondent did not ask for an opportunity to cross-examine the witnesses, he could not be heard to urge that the order dated September 16, 1954, was bad as contarvening Article 311(2).

At the very outset, we have to observe that a writ petition under Article 226 is not the appropriate proceeding for adjudication of disputes like the present. Under the law, a person whose services have been wrongfully terminated, is entitled to institute an action to vindicate his rights, and in such an action, the Court will be competent

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to award all the reliefs to which he may be entitled, including some which would not be admissible in a writ petition. It is well-settled that when an alternative and equally efficacious remedy is open to a litigant, he should be required to pursue that remedy and not invoke the special jurisdiction of the High Court to issue a prerogative writ. It is true that the existence of another remedy does not affect the jurisdiction of the Court to issue a writ; but, as observed by this Court in *Rashid Ahmed* v. *Municipal Board, Kairana* (1), "the existence of an adequate legal remedy is a thing to be taken into consideration in the matter of granting writs". Vide also *K. S. Rashid and Son* v. *The Income-tax Investigation Commission* (2). And where such remedy exists, it will be a sound exercise of discretion to refuse to interfere in a petition under Article 226, unless there are good grounds therefor. None such appears in the present case. On the other hand the point for determination in this petition whether the respondent was denied a reasonable opportunity to present his case, turns mainly on the question whether he was prevented from cross-examining the witnesses, who gave evidence in support of the charge. That is a question on which there is a serious dispute, which cannot be satisfactorily decided without taking evidence. It is not the practice of Courts to decide questions of that character in a writ petition, and it would have been a proper exercise of discretion in the present case if the learned Judges had referred the respondent to a suit. In this appeal, we should have ourselves adopted that course, and passed the order which the learned Judges should have passed. But we feel pressed by the fact that the order dismissing the respondent having been made

(1) (1950) S.C.R. 566.
(2) (1954) S.C.R. 738, 747.

on September 16, 1954, an action to set it aside would now be time-barred. As the High Court has gone into the matter on the merits, we propose to dispose of this appeal on a consideration of the merits.

The main ground on which the respondent attacked the order dated September 16, 1954, was that at the enquiry held by Mr. Byrne, he was not given an opportunity to cross-examine the witnesses, who deposed against him, and that the findings reached at such enquiry could not be accepted. But the question is whether that allegation has been made out. In para 7 of his petition, the respondent stated:—

> "Despite repeated verbal requests of the petitioner, the Inquiry Officer did not permit him to cross-examine any witness, who deposed against him."

But this was contradicted by Mr. Byrne, who filed a counter-affidavit, in which he stated:—

> "(4) That it is incorrect that no opportunity was given to the petitioner at the time of the oral enquiry to cross-examine the witnesses who had deposed against the petitioner.
>
> (5) That all witnesses were examined in petitioner's presence and he was asked by me at the end of each examination whether he had any questions to put.
>
> (6) That the pretitioner only put questions to one witness Shri P. Govindan Nair, and to others he did not."

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On this affidavit, Mr. Byrne was examined in Court, and he repeated these allegations and added:—

> "I have distinct recollection that I asked Shri T. R. Varma to put questions in cross-examination to witnesses."

It was elicited in the course of his further examination that he did not make any note that he asked Shri T. R. Varma to put questions in cross-examination to witnesses, and that that might have been due to a slip on his part.

We have thus before us two statements, one by Mr. Byrne and the other by the respondent, and they are in flat contradiction of each other. The question is which of them is to be accepted. When there is a dispute as to what happened before a court or tribunal, the statement of the Presiding Officer in regard to it is generally taken to be correct, and there is no reason why the statement of Mr. Byrne should not be accepted as true. He was admittedly an officer holding a high position, and it is not suggested that there was any motive for him to give false evidence. There are moreover, features in the record, which clearly show that the statement of Mr. Byrne must be correct. The examination of witnesses began on April 20, 1953, and four witnesses were examined on that date, among them being Sri C. B. Tawakley. If, as stated by the respondent, he asked for permission to cross-examine witnesses, and that was refused, it is surprising that he should not have put the complaint in writing on the subsequent dates on which the enquiry was continued. To one of the witnesses, Sri P. Govindan Nair, he did actually put a question in cross-examination,

and it is difficult to reconcile this with his statement that permission had been refused to cross-examine the previous witnesses. A reading of the deposition of the witnesses shows that the Enquiring Officer himself had put searching questions, and elicited all relevant facts. It is not suggested that there was any specific matter in respect of which cross-examination could have been but was not directed. We think it likely that the respondent did not cross-examine the witnesses because there was nothing left for him to cross-examine. The learned Judges gave two reasons for accepting the statement of the respondent in preference to that of Mr. Byrne. One is that there was no record made in the depositions of the witnesses that there was no cross-examination. But what follows from this? That, in fact, there was no cross-examination, which is a fact; not that the request of the respondent to cross-examine was disallowed. Then again, the learned Judges say that the respondent was present at the hearing of the writ petition before them, that they put questions to him, and formed the opinion that he was sufficiently intelligent, and that it was difficult to believe that he would not have cross-examined the witnesses. We are of opinion that this was a consideration which ought not to have been taken into account in a judicial determination of the question, and that it should have been wholly excluded. On a consideration of the record and of the probabilities, we accept the statement of Mr. Byrne as true, and hold that the respondent was not refused permission to cross-examine the witnesses, and that the charge that the enquiry was defective for this reason cannot be sustained.

The respondent attacked the enquiry on two other grounds which were stated by him in his

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petition in the following terms:—

"(C) That the petitioner was cross-examined and was not enabled to make an oral statement on his own behalf.

(D) That the defence witnesses were not given an opportunity to tell their own version or to be examined by the petitioner as their depositions were confined to answers in reply to questions put by the Inquiry Officer."

In substance, the charge is that the respondent and his witnesses should have been allowed to give their evidence by way of examination-in-chief, and that only thereafter, the officer should have cross-examined them, but that he took upon himself to cross-examine them from the very start and had thereby violated well-recognised rules of procedure. There is also a complaint that the respondent was not allowed to put questions to them.

Now, it is no doubt true that the evidence of the respondent and his witnesses was not taken in the mode prescribed in the Evidence Act; but that Act has no application to enquiries conducted by tribunals even though they may be judicial in character. The law requires that such tribunals should observe rules of natural justice in the conduct of the enquiry, and if they do so, their decision is not liable to be impeached on the ground that the procedure followed was not in accordance with that, which obtains in a Court of Law. Stating it broadly and without intending it to be exhaustive, it may be observed that rules of natural justice require that a party should have the opportunity of adducing all relevant

evidence on which he relies, that the evidence of the opponent should be taken in his presence, and that he should be given the opportunity of cross-examining the witnesses examined by that party, and that no materials should be relied on against him without his being given an opportunity of explaining them. If these rules are satisfied, the enquiry is not open to attack on the ground that the procedure laid down in the Evidence Act for taking evidence was not strictly followed. Vide the recent decision of this Court in *New Prakash Transport Co.* v. *New Suwarna Transport Co.* (1), where this question is discussed.

We have examined the record in the light of the above principles and find that there has been no violation of the principles of natural justice. The witnesses have been examined at great length, and have spoken to all relevant facts bearing on the question, and it is not suggested that there is any other matter, on which they could have spoken. We do not accept the version of the respondent that he was not allowed to put any questions to the witnesses. Indeed, the evidence of Sri Jai Narayan at page 188 of the Paper Book shows that the only question on which the respondent wished this witness to testify was put to him by Mr. Byrne. The evidence of Sri Bhan and Sri Fateh Singh was, it should be noted, wholly in support of the respondent. The finding of Mr. Byrne are based entirely on an appreciation of the oral evidence taken in the presence of the respondent. It should also be mentioned that the respondent did not put forward these grounds of complaint in his explanation dated September 11, 1953, and we are satisfied that they are wholly without substance, and are an afterthought. We

(1) [1957] S.C.R. 98.