The commitment does not conclude the case, it is merely the first step in the commencement. He must, of course, have a fair trial, but in a preliminary proceeding it is not essential that he should be present, and if by his flight he deprives himself of any advantage which he would gain by his presence, I cannot see that the law is to blame. It seems to me to be an effeminate sentiment which would treat him otherwise than as a felon who had forfeited his civic rights. To require that he should be taken before a Magistrate for a second preliminary inquiry more elaborate than the first, when the witnesses are perhaps dead or dispersed, would be to give him greater advantages than those which he threw away. It would apparently have a tendency to encourage flight.

12. Briefly, therefore, I consider that the Coroner is a Magistrate empowered to commit cases to the High Court; that he is not subordinate to the Presidency Magistrates; that his commitment can be dealt with by the High Court only; that the Presidency Magistrate has no power to enquire into cases committed by the Coroner, and that in cases of violent death the legislature desires a prompt commitment by the Coroner with a view to the execution of speedy justice. If the Magistrate were to enquire into a case committed by the Coroner, he would either commit it or discharge it. If the former, the utility of a double commitment is not apparent and there is nothing which the Magistrate can do which could not be done by the Coroner. If he discharges it, his action would be in direct conflict with the Coroner's commitment."

The Magistrate, however, referred the case for the opinion of the High Court.

Per Curiam:—The Magistrate is not ousted of his jurisdiction because the Coroner has held an inquiry into the cause of death and drawn up an inquisition under Act IV of 1871.

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Candy.

PARSHOTUMDA'S (ORIGINAL APPLICANT), APPELLANT, *v.* ISHVARDA'S (ORIGINAL OPPONENT), RESPONDENT.*

1891. *January* 15.

Company—Indian Companies' Act (VI of 1882), Section 28—Payment in cash—Accord and satisfaction—Contributory, liability of.

One Parshotumdás Bháidás served the Nawáb of Beyla Spinning and Weaving Company, Limited, as a broker, by getting shares subscribed for, collecting money from subscribers, and inducing people to take shares. There was no express agreement to pay him in cash, but there was a tacit understanding that he should get the usual broker's commission. He was given two shares as remuneration for his services. At the time he accepted the shares, the account of his commission as broker had not been settled, and no demand had been made by him for payment of any specified sum. When the Company was wound up under the

* Appeal No. 39 of 1890.

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PARSHOTUMDÁS v. ISHVARDÁS.

orders of the Court, the Liquidators placed his name on list A of the contributories for the value of the two shares. He applied to have his name removed from the list,

Held, rejecting his application, that his name was rightly put on the list of contributories. The fact that the shares were given him as remuneration for his services could not be pleaded as a payment of the calls on shares, as no definite sum had been found due when the shares were accepted by him.

Where the circumstances relied on would, in an action for money due on the shares, be evidence only in support of a plea of accord and satisfaction, it would not be a good defence of "a payment in cash" within the meaning of section 28 of the Indian Companies Act (VI of 1882). But otherwise, if the circumstances would support a plea of payment.

THIS appeal arose out of proceedings in the settlement of the list of contributories to the Nawáb of Beyla Spinning and Weaving Company, Limited, in liquidation.

The appellant Parshotumdás Bháidás served the Company as a broker by getting shares subscribed for, by collecting money from subscribers, and inducing the public to take shares. There was no express agreement between him and the Company about his remuneration, but the understanding was that he was to get the usual broker's commission, viz. Rs. 2-8-0 per share.

On 31st December, 1884, the Company gave Parshotumdás two shares as a reward for his services as a broker.

At the time of issuing these shares to Parshotumdás, it does not appear that there was any ascertained sum of money due by the Company to him. The account of his brokerage had not been settled, nor had any demand been made by him for the payment of any specified sum of money.

Parshotumdás subsequently transferred one of his two shares to another person.

The Liquidators of the Company, in settling the list of contributories, entered Parshotumdás's name in the list A for the one share retained by him.

Thereupon, Parshotumdás applied to the District Judge of Surat to have his name removed from the list.

The District Judge rejected this application, holding that as Parshotumdás had not paid in cash for the share, and no ascer-

tained sum of money was due to him by the Company at the time the shares were given to him, his name was properly entered in the list A.

The following extract from the judgment of the District Judge states his reasons for the order :—

"It appears from the evidence that Parshotumdás had assisted the formation of the Company by going round and inducing people to take shares, and it has been stated that he was instructed to do so by the promoters, who told him that he would get the usual broker's commission on all shares which were subscribed through his agency. It is also stated that he collected moneys due on the shares taken by subscribers, and that he was employed by the Company to raise loans for the Company. It also appears from the Company's books that he was paid one sum of Rs. 50, and another of Rs. 14, on account of commission fees.

"On the other hand, it is shown that Parshotum never submitted a bill in writing to the Company, stating what sum was due to him. It does not appear that the amount of his claim was ever ascertained, or that he ever applied verbally to the Board of Directors or to the Managing Director for the payment of any specified sum. Parshotum has no account in the Company's books, and there is nothing in the books to show that anything was due to him except that his name has been noted as the broker in certain share and loan transactions effected through him. The former Secretary to the Company, Mr. Balvantráí, says that Parshotumdás had told him that upwards of Rs. 4,000 was due to him. But he admits that he never accurately specified the sum. He also says that he had heard Parshotumdás say to the Managing Director—'Settle what is due, and give it to me.'

"It is therefore apparent that at or before the time when the share was given to Parshotumdás, he had never formulated any definite claim against the Company. But where no definite claim is made or account rendered, it cannot be said that a debt is due ; and payment of a debt before it is due, is not payment in its strict legal effect. In the present case there was not a debt due to Parshotumdás and immediately payable, so that the demands could be set off against each other—Buckley, p. 45, 5th edition. There was no cash payable by the Company which was set off against the cash payable by Parshotumdás.

"I therefore hold that Parshotumdás was properly put on the list A of contributories, and I direct that his name be retained thereon."

Against this order Parshotumdás appealed to the High Court.

Mánekshán Jehángirshán for the appellant.

Pándurang Balibhadra and *Ganpat Sadáshiv Ráo* for the respondent.

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The following authorities were referred to in argument:—*Spargo's case*[1], *White's case*[2], *In re Regent United Service Stores*[3], *and Barrow's case*[4].

SARGENT, C. J.:—The question in this case turns upon the true meaning and application of section 28 of the Companies' Act VI of 1882. That section provides that "every share in any company shall be deemed and taken to have been issued and to be held subject to the payment of the whole amount thereof in cash". The language of this section is the same as that of section 25 of the English Companies' Act of 1867, and what amounts to "payment by cash" within the meaning of that section is discussed in *Fothergill's* case[5], *Spargo's* case[6] and *White's* case[7]. Those cases establish, as stated by Lord Justice Mellish in *Spargo's* case, that if the circumstances relied on would in an action for money due on the shares be evidence only in support of a plea of accord and satisfaction, the section would prevent their being a good defence; but if they would support a plea of payment, then the section would not prevent their being a good defence. In the present case the evidence of the Managing Director and Secretary of the Company leaves it doubtful whether there was any distinct arrangement between the appellant and the Company that he was to be paid in cash; but assuming that he was to be paid commission as a broker, it is clear that he had delivered no account of what was due to him, still less had any account been settled and a definite sum found due when the shares were accepted by him. Although, therefore, what may have occurred might amount to accord and satisfaction, it could not be pleaded as payment of the calls on the shares. The transaction did not, to use Lord Justice Mellish's language, "resolve itself into paying money by A to B and then handing it back again by B to A". We must, therefore, confirm the order, with costs.

Order confirmed.

(1) L. R. 8 Ch. 407.
(2) L. R. 12 Ch. D. 511.
(3) L. R. 12 Ch. D. 850.
(4) L. R. 14 Ch. D. 432.
(5) L. R. 8 Ch. 271.
(6) Ibid, 407.
(7) L. R. 12 Ch. Div. 511.