

CRIMINAL REFERENCE.

Before Mr. Justice Birdwood and Mr. Justice Parsons.

QUEEN-EMPRESS v. MAHOMED RAJUDIN AND OTHERS.*

1890.

December 13.

*Coroner's Act (IV of 1871), Section 25—Committal to the High Court by a Coroner
—Presidency Magistrate's power to inquire into a case committed by the Coroner.*

A Presidency Magistrate is competent to hold a preliminary inquiry into the case of an accused person who has been committed to the High Court by the Coroner under section 25 of Act IV of 1871.

THIS was a reference under section 432 of the Code of Criminal Procedure (Act X of 1882) by W. R. Hamilton, Second Presidency Magistrate.

The accused were committed to the High Court by the Coroner under section 25 of Act IV of 1871 on a charge of culpable homicide not amounting to murder.

The accused were subsequently placed by the police before the Presidency Magistrate for the purpose of a preliminary inquiry into the charge.

The Magistrate was of opinion that he had no jurisdiction to inquire into cases committed by the Coroner. His reasons were stated as follows :—

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6. It is obvious that after a case has been committed by the Coroner it might lead to a conflict of orders if the Magistrate should take a different view from that of the Coroner. Not only is this a possible case, but it has occurred on more occasions than one. The case which I have referred to in paragraph 5 is a case in point. The Government Prosecutor wished me to discharge the accused after he had been committed, and I agreed that the case should not have been committed. But if I had discharged him I should have been exercising an appellate or revisional jurisdiction over the Coroner's proceedings, with which I have not been invested.

7. The Coroner's Act is a special and local law which is not affected by the Code (see section 1, Criminal Procedure Code), and there is no specific provision that after a commitment by the Coroner the case must be again inquired into and committed by a Magistrate. The Code did not originally apply to the High Court and to the Presidency towns, and it is to these towns that the Coroner's duties are confined. Similar duties in the mofussil are performed by the Police, who hold a summary enquiry into the cause of death, but who have never had the power to commit to the Sessions. When the Code was extended to the Presidency towns,

* Criminal Reference No. 144 of 1890.

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the Coroner's duties were left untouched and his procedure was left unaffected by the saving clause in section 1. This procedure is regulated by the Consolidating Act of 1871 (Act IV), and there is nothing in that Act which requires the accused persons to be placed before a Magistrate for the purpose of commitment. The Act distinctly gives the Coroner a power of commitment and the subsequent proceedings must be regulated by the High Court (see section 29). There the commitment may be altered or quashed, or the trial may be proceeded with.

8. The Act is evidently framed on the principles and on the forms of a regular inquiry by a Magistrate. Evidence is given on oath before a jury, who may question the witnesses, and evidence on behalf of the accused must also be received. Confessions also to a Coroner are to be considered as confessions to a Magistrate, the evidence is recorded in writing and submitted to the High Court (section 25), and the Coroner has also the power to arrest the accused after verdict.

9. There is nothing in the Act which makes the proceedings of the Coroner subject to the orders of the Magistrate or which requires that the case must be again placed before a Magistrate for enquiry and commitment. It is obvious, as I have said, that, if such were the case, conflicts would arise between the Magistrate and the Coroner. On the other hand, technical defects may be amended by the High Court (section 29), and this power includes the amendment of the order of commitment. It appears to me to be clear that the interference of the Magistrate is entirely excluded by the Act.

10. The Criminal Procedure Code, section 194, empowers the High Court to take cognizance of commitment made according to the Code, but the provisions of certain letters patent are not affected. In the High Court Act (X of 1875), section 145, these provisions appear to be that charges may be preferred by the Advocate General, or by any Magistrate or other officer specifically empowered by the Government in this behalf. Apparently the Coroner's Act specifically empowers the Coroner to commit certain cases. Historically this power is a relic of the large jurisdiction at one time held by that officer.

11. It is a principle that a person committed to the Sessions should have full information of the charge against him and the evidence by which it is supported. In ordinary cases the accused is present at the Coroner's inquiry and possesses this knowledge. He may also examine the witnesses. In some cases, however, he is not present, but if the evidence before the jury justifies it, he can be committed and the Coroner may issue a warrant for his arrest. Such a person would be under a certain disadvantage in not having heard the witnesses or had the opportunity to examine them. He could of course obtain copies of the depositions, although this would not remove the disadvantage altogether. The Act, however, has not made any provision for such cases, and on the other hand, it had in view that certain persons would not be present who should be arrested afterwards, that is, although the difficulty was present to the minds of the legislature, they did not think proper to provide for it. It must be recollected, however, that in the cases before the Coroner, the cause of death by violence generally is so obvious, and the perpetrator so well known, that in committing him for trial in his absence the law does not work any injustice. If the offender flies from justice, it is not an injustice to him to say that when caught, he must be tried by the High Court.

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.

ISHIVARDA'S (ORIGINAL OPPONENT), RESPONDENT.*

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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January 15.