

1870
 DUTT
 v.
 CORNELIUS.

mittal was immediately supplied, the prisoner ought not be released. I do not think that this has been decided by the cases of *Speyer v. Janssen* (1) *In re Konoyloll Doss* (2), and *Aga Ali Khan v. Joydoyal Persaud* (3), to which reference has been made; but there are expressions in those cases which show how Mr. Justice Phear would have decided it if it had come before him. He says generally, and I concur with him, that section 276 must be construed strictly, and we are not to consider whether the prisoner suffered; and I am bound to hold the creditor to section 278 of the Act, and to say that the defendant should be released on the detaining creditor omitting to pay the allowance as above directed,—that is, as directed by section 276. I have already held that the creditor did not pay as directed, and I find nothing to authorize me to say that the payment on a subsequent date would be sufficient. As to whether the original arrest was illegal, I do not think the question is before the Court, and I refrain from expressing any opinion upon it.

Before Mr Justice Markby.

HALADHAR DEY v. AMBIKA CHARAN BOSE.

1870
 November 8.

Subsistence-money—Discharge—Act VIII of 1859, ss. 276, 278.

On the 30th of September, the plaintiff, a detaining creditor, paid to the jailor of the Calcutta Jail subsistence-money for 30 days, for a prisoner confined at the suit of the plaintiff, the jailor then having a balance of 4 annas over from the subsistence-money for September.

Held, a sufficient compliance with section 276 of Act VIII of 1859.

This was an application for a rule *nisi* calling on the plaintiff to show cause why the defendant, a prisoner in the Calcutta Jail, should not be discharged from custody. The defendant was confined in execution of a decree obtained against him by the plaintiff in the above suit.

It appeared that the prisoner's subsistence-money had been paid up to the end of September; on the 30th of which month, the jailor had a balance of 4 annas in favor of the detaining creditor, the plaintiff. On that day a further sum of rupees 7-8, being subsistence-money for 30 days at the rate of 4 annas a day, was handed over to the jailor as the diet-money for October.

Mr. Hyde, in support of the application, contended that, as the provisions of section 276, Act VIII of 1859, had not been complied with by the plaintiff, the defendant was entitled to his discharge under section 278. By section 276, "sufficient" subsistence-money must be supplied "by monthly payments, in advance, before the first day of each month." Here subsistence money for only 30 days had been paid instead of 31. The balance of 4 annas from the September payment could not be treated as part of the October payment,

(1) Bourke's Rep., 28.

(3) Bourke's Rep., 52.

(2) *Id.*, 51.

without some arrangement with the jailor to transfer it to that account, which had not been made. The prisoner was therefore entitled to his discharge.

MARKBY, J.—No doubt the section ought to be construed strictly, but I am of opinion that this application should be refused. Section 276 of Act VIII of 1859 says that sufficient subsistence-money must be paid to the jailor before the commencement of the month for which it is paid. The plaintiff in this case had paid sufficient money for the month of October into the hands of the jailor prior to the commencement of that month. It is in fact admitted that the jailor had, on the 30th September, sufficient money for the month of October. This being so, I do not think the prisoner is entitled to his discharge.

Attorneys for the prisoner : Messrs. *Ghose and Bose*.

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HALADHAR
DEY
v.
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CHARAN BOSE

Before Mr. Justice Loch and Mr. Justice Glover.

THE QUEEN v. RAI LACHMIPAT SING.*

Code of Criminal Procedure (Act XXV of 1861), s. 62—Prohibitory Order.

1870

July 9.

Under section 62 of the Code of Criminal Procedure, a Magistrate cannot pass a Prohibitory order, without having previously issued a rule to show cause why the order should not be passed.

This case was submitted, for the opinion of the High Court, by the Sessions Judge of Rungpore.

In the district of Bogra, a dispute arose between two zemindars, about two neighbouring *hàts*. A serious breach of the peace occurred, and a Deputy Magistrate investigated the case on the spot. The Magistrate of the district afterwards took up the matter, and bound down certain of the parties under recognizances to keep the peace. On the same day, without giving the parties any formal notice, or any opportunity of showing cause against the order, he passed an order, under section 62, directing that the market-day in one *hàt* should be changed.

The Magistrate's order was :—“ I direct, under section 62, Criminal Procedure Code, that a written order be served upon the defendants prohibiting them from holding the *hàt* at Muradpur on Mondays and Thursdays.”

In support of his opinion, that the Magistrate's order was illegal, the Sessions

* Reference, under section 434 of the Code of Criminal Procedure, by the Sessions Judge of Rungpore, in his letter No. 361, dated 17th June 1870.