

according to the argument of the very party who appears to show cause, upon which an appeal could lie. The only contention is that the proceeding under the arbitration was void, and there was no judgment by the Mconsiff of his own, but only a decree according to the award. Upon this fact alone, however, it seems clear to us that no appeal could lie, because there was no judgment to appeal against.

We think, therefore, that the Judge acted without jurisdiction in this case, and that his judgment must be set aside, and this rule made absolute with costs.

Before Mr. Justice Markby.

DUTT v. CORNELIUS.

1870
IN THE
MATTER OF
THE
PETITION OF
SHEIKH ILAHI
BAX.

1870
August 9.

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

A prisoner was arrested on August 4th, and committed to prison on the evening of the same day. Before his committal, the execution-creditor paid into the hands of the jailor a sum sufficient for his subsistence-money for 27 days, at the established rate of 4 annas per day. On the 5th August, a writ of *habeas corpus* was applied for to bring the prisoner up, and on the 6th, a further sum of 4 annas was paid to the jailor to cover any deficiency in the former payment.

Held, that the requirements of section 276, Act VIII of 1859, had not been fulfilled, and that the prisoner was entitled to his discharge under section 278.

THIS was an application for discharge of the defendant from custody, on the ground that his subsistence-money had not been paid in accordance with section 276 of Act VIII of 1859. The defendant was brought up in obedience to a writ of *habeas corpus* which had been issued to the jailor.

Mr. Kennedy for the prisoner.

Mr. Bonnerjee for the execution-creditor.

MARKBY, J.—I think the applicant is entitled to his discharge. He was arrested on the 4th August, and committed to prison on the evening of that day. Before the committal, the plaintiff paid into the hands of the proper officer the sum of rupees 6-12, which, at the rate established of 4 annas a day, would be his subsistence-money for 27 days. Now the first question that arises is whether that was a compliance with section 276 of Act VIII of 1859. What strictly remained unexpired was 27 days and 6 or 7 hours, and I do not think that the payment for 27 days only is a compliance with what the section requires. Then, it appears that, on the 5th August, application was made for a *habeas corpus* to bring up the body of the prisoner, and on the following day, the sum of 4 annas was paid to the jailor to supply any deficiency in the previous payment. It has been contended that inasmuch as there always was in the hands of the jailor money sufficient for the maintenance of the prisoner, and the deficiency of payment before the com-

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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.