

14/80

No. 41 of 1977

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N A P P E A L

FROM THE COURT OF APPEAL OF TRINIDAD
AND TOBAGO

B E T W E E N :

CORNELIUS BOBB (Plaintiff)
Appellant

- and -

10

1. ROSETTA JAISINGH
(Personal Representative of Anthony G.
Singh deceased) (Defendant)
Respondent

2. CLARENCE EMMANUEL LE BLANC

CASE FOR THE APPELLANT

RECORD

20

1. This is an appeal from a judgment and order dated 22nd June 1976 of the Court of Appeal of Trinidad and Tobago (Phillips, Corbin and Rees JJA.) dismissing with costs an appeal by the Appellant from a judgment and order dated 4th November 1974, of the High Court of Trinidad and Tobago (Cross J.) by which the Appellant's action was dismissed with costs. The Appeal herein is brought by leave granted by the Court of Appeal of Trinidad and Tobago on the ground that the questions involved are of great general and public importance.

Pages 34-42

p.50

Page 47-9

30

2. The Appellant a man who was then 66 years of age and was employed as a herdsman instituted an action for damages for wrongful arrest and false imprisonment and other relief against Rosetta Jaisingh and Clarence Emmanuel Le Blanc on the 5th June 1973 in the High Court of Trinidad and Tobago following his imprisonment for a period of 21 days under an order of committment made by the High Court (Hassanali J.) on the 26th January 1973.

p.3 1.29

p.2 11.33-41

pp.56-8

40

3. On the 29th November 1971 the High Court Action No. 2646 of 1970 brought by the first

RECORD

pp.52-3
p.54

named Respondent, judgment was entered against the Appellant for the sum of \$245.00 with costs taxed and allowed in the sum of \$1,094.02. The judgment debts and costs were unpaid when further proceedings were taken.

p.51
ex.A

4. On the 30th day of June 1972 a judgment summons was taken out by the first named Respondent against the Appellant to secure his committal and the Appellant was informed by the second named Respondent on the 19th January 1973 by letter that

10

p.13
11.12-18
p.13
11.15-30

On the 24th January 1973 before the judgment summons was heard the Appellant attended at the office of the second-named Respondent who was the solicitor at all material times for the first named Respondent and there the Appellant undertook to pay the entire judgment debt and costs by instalments of \$50.00 per month. At the same time the Appellant signed a document purporting to confess means "Ex.B" and made the first payment of \$50.00 (hereinafter called "the January Payment") to the second named Respondent.

20

p.12
11.10-20

p.73-74

5. On the 26th January 1973 the judgment summons duly came on for hearing in the High Court before Hassanali J., who took evidence from the Appellant and made an order committing the Appellant to prison, the order being directed to be suspended on payment of the judgment debt and costs by monthly instalments of \$50.00 commencing from 1st March 1973. The order directed that the further hearing of the judgment summons was to be adjourned generally. The Judge's entire note of the proceedings in the High Court (Hassanali J.) read as follows :-

30

p.55-58
p.73
11.10-22

p.74

"Cornelius Bobb sworn states:

I live at Morvant. I am a Watchman earning a salary of \$253.00 per month. I am also a farmer selling produce and milk etc. I am offering to pay \$50.00 per month as from the 1st March 1973.

ORDER: Committed to prison for 21 days suspended on payment of \$50.00 as from 1st March 1973".

40

No account was taken of the January payment and the order of commitment was made at the instance of the second-named Respondent in respect of the entire judgment debt and costs.

p.54 1.25
p.73 1.16

p.13 11.40-45
p.13-14

6. The Appellant paid to the second-named Respondent the sum of \$50.00 on the 1st March 1973 and a like sum on 11th April 1973. He made no payment thereafter and on the 30th May 1973 the order of commitment was at the request of the second-named Respondent and without reference back to the Court executed

50

p.14 11.30-35

RECORD

upon him and he was arrested and imprisoned thereunder for twenty-one days.

- 10 7. The Appellant after his release instituted the action herein. In the statement of claim reference was made to the pending judgment summons. The Appellant alleged that on the 24th January 1973 he confessed means in writing and promised to pay the debt owing in instalments of \$50.00 at the end of each and every month the first payment having been made on the said 24th January 1973 at the office of the second-named Respondent. The Appellant further alleged that payments were made by him on the 1st March 1973 and the 11th April 1973. It was also alleged that the second-named Respondent promised on the 11th April to apply the January payment to the instalment which was to become due on the 1st May 1973 as a result of which the Appellant made no payment on that day.
- 20
- 30 8. In his statement of claim the Appellant further alleged that the second-named Respondent in breach of his promise or duty to apply the January payment in fulfilment of the Appellant's obligations under the Order and in collusion with the first-named Respondent wrongfully and/or deceitfully moved the Court for the committal of the Appellant to prison. The Appellant further alleged that he was arrested and imprisoned on the 30th May 1973 and suffered loss and damages for wrongful arrest and false imprisonment and for a breach of the second-named Respondent's promise or duty and/or negligence.
- 40 9. In the first named Defendant's defence she pleaded that the statement of claim disclosed no cause of action against her and without prejudice to that plea she denied making a promise to apply the January payment as the Appellant alleged. She further pleaded that if such promise had been made (which she denied) it was not made with her authority.
- 50 10. The first-named Defendant also denied having moved the Court to secure his committal as the Appellant alleged and pleaded that she instructed the second-named Defendant to request the Registrar to issue the Warrant of Committment against the Appellant whom she alleged became liable to committal for failure to meet instalments due under the order of committal. His arrest was lawful in execution of the warrant.

RECORD
p.9-10

- p.9 11.1-10 11. The second-named Defendant presented the same defence as the first-named Defendant and admitted that upon the instructions of the first-named Defendant he requested the Registrar to issue the warrant of Commitment against the Appellant and alleged that the Registrar had duly issued it in response to the request.
- p.11 11.12-26 12. In his reply to the defence of the second-named Defendant the Appellant pleaded that the second-named Defendant was under a duty to apply the January payment on account of the judgment debt and costs and that the second-named Defendant was deceitful and/or negligent in not advising the first-named Defendant that the January payment had been made and that no account was given for it. 10
- p.11 11.27-30
- p.12 13. At the hearing which commenced in the High Court on the 21st October 1975 the Appellant gave evidence of the interview he had with the second-named Defendant at that Defendant's office on the 24th January 1973 following the Appellant's receipt of notice of the hearing of the judgment summons and tendered the receipt issued to him by the second-named Defendant for the January payment. He further gave evidence concerning the cause of the proceedings in the High Court at the hearing of the judgment summons. He said that neither he nor the second-named Defendant mentioned the January payment at the hearing and of his attendance at the office of the second-named Defendant on the 11th April 1973 when the second-named Defendant informed him that the amount of the January payment would be credited to the instalment due for May 1973. 20
- p.13 11.12-40
- p.13 11.30-39
- p.13 11.44-52 The Appellant also gave evidence of the circumstances of his arrest and of the treatment he received at the prison during his incarceration. 30
- p.13-14
- p.14 11.36-50 14. The Appellant also gave evidence in support of his claim to damages.
- pp.15-16 15. In cross-examination the Appellant was asked about his means and was discredited in respect of a previous examination as to his means in the High Court (Achong J.) on the 6th June 1972. A copy of a lease to the Appellant and a copy of the judge's notes of evidence on that occasion were admitted in evidence. The Appellant said that after the evidence was given before Achong J. the judgment Summons was issued and was served on him on the 5th July 1972. The Appellant further said in cross-examination that the January payment was intended by him to be the first payment of his instalments on account of the judgment debt and costs and that he was not examined in the High 40
- pp.61-70
Ex. CB5 and
CB6
- p.16 11.11-12
p.16 11.15-24
p.16 11.33-39 50

Court before Hassanali J. as to his means on the hearing of the judgment Summons.

16. The second-named Defendant testified concerning the circumstances of the January payment and the proceedings in the High Court on 26th January 1973. He said :-

p.18 11.7-22

10 "On the 30th June 1972 I caused judgment Summons to be issued and it came up for hearing before Hassanli J. On the 24th January 1973 Bobb saw me in my office, signed exhibit 'B' and paid \$50.00. On the 26th January 1973 I mentioned the offer made in 'B'. I had 'B' in my hand and read it to the Court. Bobb gave evidence. I put the offer to him and he accepted. There was examination as to means and the order was made. The payment of \$50.00 on the 24th January, 20 1973 was mentioned by me and Bobb. The \$50.00 was not in satisfaction of any instalment that was to become due under the Order. On the 11th April 1973 I did not see Bobb or have any conversation with him".

17. The second-named Defendant also testified concerning the issue of the warrant. He said :-

p.8 11.44-52
p.19 11.1-23

30 "I made an application for the issue of the warrant on the 4th May 1973. This is the application (C.L.I.) I signed it. Amount due \$1,397.42. Credit was given for the payment on the 24th January 1973. The typed figures are the ones that I put on the document and signed. The next document is the carbon unaltered. Mr. Harold Williams spoke to me about the alteration. I received a telephone call; recognised Mr. William's voice. He mentioned certain things to me. I submitted another request (C.L.2). Those alterations were not made by me. Mr. 40 Williams told me he was in the course of preparing the warrant based on C.L.1. He had observed on request that I had given credit for \$150.00. He said that could not be so because I was giving credit for \$50.00 which was paid before the order was made. I said I had to give credit because the man had made payment on account of the debt. I ought to give him credit. 50 He told me in order for him to process the warrant I would have to submit to him another request showing payments of

p.70-71
Ex. CL1

p.71-72
Ex. CL2

RECORD

\$100.00 being the payments after the order was made. As a result I submitted the second request. (C.L.2.)"

- p.31-33 18. In relation to the amounts shown to be due on the face of the judgment Summons and Affidavit sworn by the second-named Respondent in support and in relation to evidence of means he said :-
- p.20 11.5-12 "I see C.B.1.(a). Judgment Summons mentions \$1366.56 and costs of \$30.86 - total \$1,397.42. It is changed. I did not change the figures. I did not see the change before the 26th January 1973. The Plaintiff was examined as his means". 10
19. Of the draft order made on the judgment Summons the second-named Respondent said :-
- p.20 1.1-5 "The order made was that the debtor pay \$50.00 towards the judgment debt and costs from the 1st March 1973 on the 1st of every month. I would say that the draft order is not correct".
- p.72-73
Ex CL3
- p.20 11.19-26 20. The second-named Respondent at the end of his cross-examination said of the warrant :- 20
- "I was not aware that warrant did not include \$50.00 paid on the 24th January 1973. I do not accept the changes on the request". In re-examination he said of the order and warrant :-
- p.21 11.24-32 "Draft order stamped as filed. I filed it. I see folio 53 - figures are not the same as folio 55. I see initials W.S.P. on folio 53 dated 1st February 1973 - Miss Punnett's. This draft - folio 53 - was never submitted to me. I had given Bobb credit for the \$50.00. I did not see the warrant. Never saw it". 30
- p.20-21
Ex.CB16
p.56-57
p.21 1.17-20
p.57 1.40
p.22-23 21. A Marshal's Assistant Fitzgerald Robinson was the only witness called concerning the executing of the warrant and the arrest of the Appellant. He testified that he informed the Appellant that he would have to pay the whole amount shown on the warrant to obtain his release.
22. It was submitted at the close of the evidence led on behalf of the second-named Defendant that :- 40
- (a) no action was maintainable because the warrant was not set aside. The true cause of action would be for malicious abuse of process.

- (b) that the second-named Defendant owed no duty to the Appellant.
- (c) that the judge (Hassanali J.) making the order to commit was by law required to examine the Appellant as to means and the evidence of the second-named Defendant that he did ought to be accepted.
- (d) that the offer to pay in instalment must have been disclosed to the judge (Hassanali J.).
- (e) the Appellant had been in breach of the order of Hassanali J. on the 1st April 1973 and on 1st May 1973 and that was the end of the matter.
- (f) No arrangement as was alleged was made between the Appellant and the second-named Respondent.

10

23. For the first-named Defendant it was submitted that :-

p.23-24

20

- (a) Plaintiffs had not shown that figures on the warrant were wrong;
- (b) Judge (Hassanali J.) would have been in breach of duty if he had not examined as to means because no order for committal could be made without evidence of means.

24. For the Plaintiff it was submitted that :-

p.23 11.10-34

30

- (a) the second-named Defendant had failed to fulfil his duties as far as these affected the Appellant;
- (b) the first-named Defendant was responsible for the acts of the second-named Defendant;
- (c) Appellant was entitled to damages.

25. The High Court (Cross J.) decided that evidence as to means was taken by Hassanali J. and that the order to commit was lawfully made. The trial Judge discredited the Appellant's testimony because of the nature of the evidence he gave before another Judge (Anchor J.) as to means and thought that on this issue the evidence of the second-named Defendant was to be accepted including the evidence that the Judge was informed of the

40

p.26-27

p.26-34 1.10

RECORD

January payment before he made the order to commit.
The trial Judge also said :-

- p.27 11.20-46 "It is common ground that the Plaintiff paid \$50.00 on the 1st March 1973 and \$50.00 on 11th April 1973 when he was, of course, already in breach of the condition upon which the order had been suspended. He made no other payment and on 4th March 1973 the second-named Defendant as Solicitor for the first-named Defendant requested the Registrar to issue a warrant of commitment against the Plaintiff. This request (Exhibit "C.L.1.") stated the amount due on the Judgment Summons and which did not form part of the order of Hasannali J. which was made on the proof that the Plaintiff had had the means since the date of the judgment to satisfy the debt and had refused or neglected to do so. The suspension was on condition that the Plaintiff made certain payments in the future. A payment already made, of which the Court was well aware could hardly have been a condition of the suspension of the order. Indeed this is made abundantly clear from the terms of the Order of Commitment (Exhibit C.B.1. (b))." 10
- p.70-71
Ex. CL1 20
- p.56-57
Ex. CBI(B)
- p.27 11.47-51 In his judgment the Appellant by neglecting to make a payment on 1st May 1973 had failed to keep the condition upon which the order to omit had been suspended and no action lay for wrongful arrest and false imprisonment on account of his incarceration in the Royal Gaol. The trial Judge relied on Bernard v. Thomas (Court of Appeal) (Trinidad) Appeal No. 52 of 1964 and held :- 30
- p.28 1.20-52 (a) the arrest and imprisonment were in execution of a Judge's Order which was enforceable and were a judicial act. In consequence the arrest in pursuance of the order could not be a trespass. The only remedy was an action for procuring the order maliciously and without reasonable and probable cause; 40
- p.29 1.1-10 (b) the action was maintainable if the process was set aside but in this case the order of Hassanali J. was not set aside;
- (c) The Plaintiff had not kept a condition of the suspension of the order and his action for arrest and imprisonment could not succeed.
- p.29 1.31-48 (d) The second-named Defendant made no promise to the Appellant to apply the January payment had neglected no duty because he owed none and had betrayed no trust for he had pledged none. 50

(e) The Court had no evidence from the Appellant upon which to base a conclusion that the execution was in respect of a larger sum than what remained due on the judgment and could not say whether the amount on the warrant was correct or not.

(f) The request for the issue of the warrant C.L.1. had been altered by someone in the Registry and the second-named Defendant was not to be blamed for the alteration and that where execution was issued out for a larger sum than remained due on a judgment.

p.70-71
Ex. CL1

p.30 11.14-22

(g) The action was only maintainable upon proof of malice or want of reasonable or probable cause (Churchill v. Siggers 118 ER 1389). There was no such proof in the action. In the result the Appellant's claim was dismissed.

p.30 11.23-31

p.30-31

26. It is respectfully submitted that the second-named Defendant on the evidence was persistent in carrying out his instructions to have the Appellant committed to prison to the point at which he was prepared to omit the January payment from the document C.L.2. in order to secure the issue of the warrant by the Registrar even though the result would have been to have the warrant issued in respect of a sum greater than was due. It is further submitted that the second-named Defendant took an order from Hassanali J. which was not validly made or authorised under the Debtors Ordinance and Rules because it was not made in respect of the sum due and that the committal order could not in the circumstances operate in terms of section 4 of the Debtors Ordinance to remove the statutory bar to imprisonment for non-payment of money.

p.71-72

27. It is also submitted that the trial judge ought to have held that credit ought to have been given to the Appellant for the January payment to avoid the issue of warrant and that in any event the question whether the warrant ought to have issued was one which ought to have been decided by the Court after the Court had found the amount which was to be inserted in the warrant as that owing immediately before its execution and which would have been payable by the Appellant to secure his release.

28. It is also submitted that the trial judge ought to have considered the case on

RECORD

the basis that there is in terms of section 3 of the Debtors Ordinance a bar in Trinidad and Tobago against imprisonment for debt and that the statutory provisions creating exceptions to the rule had not been satisfied in the Appellant's case with the result that his imprisonment was contrary to statute and he was entitled to redress thereafter.

- p.31-34 29. On the 4th December 1974 the Appellant instituted an appeal to the Court of Appeal against the decision of the High Court dismissing his claim with costs. The grounds of appeal were that the judgment was unreasonable or against the weight of evidence and that the trial judge had misdirected himself in law and in relation to the findings of fact which were made. Upon the hearing of the Appeal the Court having been satisfied that all the material evidence was before it and with the consent of Counsel for all parties, having examined the notes of Hassanali J. on the hearing of the judgment summons to ascertain whether evidence was taken as to means admitted and considered the following arguments on behalf of the Plaintiff - Appellant :- 10
- p.31 11.46-48
- p.32-33
- p.36 11.1-39
- p.74
- p.62 11.34-45
- p.63-64 1.7 (1) Imprisonment for debt was abolished by section 3(1) of the Debtors Ordinance Ch. 6 No. 3 and no imprisonment for debt was justified except where there was strict compliance with provisions of the Debtors Ordinance and Rules made thereunder: Bernard v. Thomas Civil Appeal No. 52 of 1964. 30
- (2) The order of commitment as made and executed was invalid for non-compliance with the provisions of the said Ordinance and rules because :-
- p.37 1.40-49 (a) The order was originally made for a higher amount than the sum due at the time having regard to the January payment and was therefore made without jurisdiction the authority or power to commit a person to prison being granted only in respect of the non-payment of the sum due; 40
- (b) The order of commitment executed on the Appellant was bad because it required payment to secure the Appellant's release of a greater sum than was due;
- (c) The order of committal had been suspended by Hassanali J. and in any event could not be executed or enforced without a further order of the court;

(d) In any event there was no default because the creditor was obliged to apply the January payment towards an instalment of the debt so that at no material time was any instalment owing;

10 (3) The second-named Respondent who made two requisitions to the Registrar to secure the committal of the Appellant to prison by the issue of the order to commit was jointly liable with the first-named Respondent for the wrongful arrest and false imprisonment of the Appellant.

20 (4) The Respondents could not in the premises rely upon the act of the judge in making the order of committal or upon the issue of the order by the Registrar to justify the affect and imprisonment of the Appellant and the action was properly brought in trespass.

30. The Debtors Ordinance Ch. 6 No. 3 provides in section 3 as follows :-

Section 3(1) With the exceptions hereinafter mentioned, no person shall be arrested or imprisoned for making default in payment of a sum of money.

The Ordinance also contains in section 4 the following:-

30 Section 4(1) Subject to the provisions hereinafter contained and to the rules made under this Ordinance, any civil Court may commit to the Royal Gaol for a term not exceeding six weeks or until payment of the sum due any person who makes default in payment of any debt or instalment of any debt due from him in pursuance of any order or judgment of that or any other competent Court;

40 Provided that the jurisdiction by this section given of committing a person to prison shall, in the case of a Petty Civil Court, be exercised only subject to the following restrictions, that is to say -

RECORD

- (a) by an order made in open court and showing on its face the ground on which it is issued;
- (b) in respect of a judgment of the court making the order, or in the case of a judgment of another court, where the amount actually due does not exceed two hundred and forty dollars or is reduced to that amount by abandonment of excess and the judgment debtor is resident within the district of the court; 10
- (c) a summons to a judgment debtor residing out of the district of any such court shall not issue for service without the leave of the Judge thereof:

Provided further that such jurisdiction shall only be exercised where it is proved to the satisfaction of the court that the person making default has, or has had since the date of the order or judgment, the means to pay the sum in respect of which he has made default and has refused or neglected, or refuses or neglects, to pay the same. 20

- Section 4(2) Proof of the means of the person making default may be given in such manner as the court thinks just; and for the purposes of such proof, the debtor and any witnesses may be summoned and examined on oath according to the rules made under this Ordinance. 30
- Section 4(3) Any jurisdiction by this section given to the Supreme Court may be exercised by a Judge sitting in Chambers or otherwise in the prescribed manner. 40
- Section 4(4) For the purpose of this section, any civil court may direct any debt due from any person in pursuance of any order or judgment of that or any other competent civil court to be paid by instalments and may from time to time rescind or vary such order.

31. The relevant Rules and Forms in the Debtors Ordinance Ch. 6 No. 3 (subsidiary) are as follows :-

R U L E S

10 17. (1) On the hearing of a judgment summons the Judge if he is of opinion that an order of committment need not be made, may refuse to make an order or may make an order for payment of the amount remaining due and unpaid under the judgment or order either at a specified time or by instalments.

(2) If an order of committment is made the Judge may direct the execution of such order to be suspended to enable the debtor to pay the amount in respect of the non-payment of which the order is made by instalments or otherwise.

20 19. Where an order of committment for non-payment of money is issued, the debtor may at any time before his body is delivered into custody of the Gaoler pay to the Marshal the amount indorsed on the order as that on payment of which he may be discharged and on receiving such amount the Marshal shall discharge the debtor.

30 20. Where a prisoner has been delivered into custody of the Gaoler the sum indorsed on the order of committment as that upon payment of which the prisoner may be discharged may at any time be paid into Court or to the Gaoler in whose custody the prisoner is. And where payment is made to the Gaoler he shall, upon payment to him of such amount together with costs sufficient to pay for transmitting such amount forthwith to Court, transmit such amount forthwith to the Marshal and he shall sign a certificate of such payment and discharge the prisoner and such costs of transmission shall be part of the prescribed costs.

F O R M S

Form 6

The Debtors Ordinance

No.

In the

Between

Plaintiff,

and

Defendant.

50

RECORD

To the Marshal or his deputies or Assistants (or
to the Bailiff of the Court of
) and to the Keeper of the Royal
Goal.

WHEREAS the plaintiff (defendant) obtained a
Judgment (or order) against the in the
Court on the day of
for the payment of §
for debt or damages and costs, payable by
instalments as follows, namely: and 10
subsequent cost have been incurred in pursuance
thereof amounting to §

And whereas the hath made default in
payment of § payable in pursuance of
the said judgment (or order).

And whereas a Judgment Summons was at the
instance of the plaintiff (defendant) duly issued
out of this Court by which the defendant (plaintiff)
was required to appear personally at this Court on
the day of to be examined 20
on oath touching the means he had then or had since
the date of the judgment (or order) to satisfy the
sum then due and payable in pursuance of the
judgment (or order) and to show cause why he should
not be committed to prison for such default, which
summons has been proved to this Court (or the Judge)
to have been personally and duly served on the
Defendant (Plaintiff).

And whereas at the hearing of the said Judgment
Summons it was ordered that the defendant (plaintiff)
do pay the sum of § by instalments as follows, 30
Namely: And the further hearing of the said
Summons was adjourned.

And whereas at the (further) hearing of the said
Judgment Summons it has now been proved to the
satisfaction of the Court (or Judge) that the
defendant (plaintiff) now has (or has had since the
date of the judgment (or order)) the means to pay
the sum then due and payable in pursuance of the
judgment (or order) (or one of such instalments as
aforesaid) or part thereof, and has refused (or 40
neglected) (or then refused or neglected) to pay
the same and the defendant (plaintiff) has shown
no cause why he should not be committed to prison.

Now therefore it is ordered that for such
default as aforesaid the plaintiff (defendant) shall
be committed to prison for days unless he
shall sooner pay the sum stated below as that upon
the payment of which he is to be discharged.

These are therefore to require you the said Marshall (or bailiff), Deputies, Assistants or others to take the plaintiff (defendant) and to deliver him to the Keeper of the Royal Gaol, and you the said Keeper of the Royal Gaol to receive the plaintiff (defendant) and him safely keep in the said Gaol for _____ days from the arrest under this order or until he shall sooner be discharged by due course of law.

10 Dated this day of 19 .

Registrar.

This order remains in force but for one year from the date thereof unless such time is extended under Rule 8 of the Debtors Rules.

(The time during which this order is to remain in force was on the _____ day of _____ extended by order of the Judge to the _____ day of _____).

Form 7

20 Order of Commitment on a Judgment Summons on a Judgment or order against a Firm, or a person carrying on business in a name other than his own.

The Debtors Ordinance.

No. of Judgment Summons

No.

In the

Between

Plaintiff,

30

and

Defendants.

(a) To the Marshal or his Deputies or Assistants (or to the bailiff of the Petty Civil Court of _____) said Court, and to Keeper of the Royal Gaol.

(a) State name, address and description, as in the original summons, with any amendment made by the Courts.

Whereas the plaintiff obtained a judgment (or an order) against the defendants by and in the name of _____ above described in this Court on the _____ day of _____ 19 _____, for the sum of \$ _____ (and costs), and there is now due and payable under the said judgment (or order) from the said defendants to the said plaintiff the sum of \$ _____

40

RECORD

And whereas the said Plaintiff having filed an affidavit in this Court, wherein it was alleged that (b) was liable as one of the partners in (or the sole member of) the said firm of) (or as the Person carrying on business on his own behalf in the name of) to pay the sum payable under the said judgment (or order) a summons was, at the intance of the said plaintiff, duly issued out of this Court, by which the said was required to appear personally at this Court on the day of 19 , to be examined on oath touching the means he had then or had had since the date of the said judgment (or order) to pay the sum due and payable under the said judgment (or order), and also to show cause why he should not be committed to prison for default in payment of the said sum and notice was thereby given to the said that if he denied that he was liable as one of the partners in (or the sole member of) the said firm of (or as the person carrying on business on his own behalf in the name of) to pay the sum payable under the said judgment (or order) he must appear in this Court on the day above mentioned, and that in default of his so appearing he would be deemed to admit his liability as aforesaid to pay the amount due under the said Judgment (or order).

10

20

And whereas the said summons came on for hearing this day, and the said summons has been proved to this Court to have been personally and duly served on the said

And whereas the said did not appear at the hearing of the said summons: 30

(or And whereas the said appeared at the hearing of the said summons and admitted his liability as one of the partners in (or the sole member of) the firm of (or as the person carrying on business on his own behalf in the name of) to pay the sum payable under the said Judgment (or order):

(or And whereas the said appeared at the hearing of the said summons and denied that he was liable as one of the partners in (or the sole member of) the said firm of (or as the person carrying on business on his own behalf in the name of) to pay the sum payable under the said judgment (or order), but proof has been made to the satisfaction of the Court at the said is liable as one of the partners in (or the sole member of) the said firm of (or as the person carrying on business on his own behalf in the name of) to pay the said sum): 40 50

And whereas at the hearing of the said summons it has now been proved to the satisfaction of the Court that the said now has (or has had since the date of the said judgment (or order), the means to pay the sum due and payable under the said judgment (or order), and refuses or neglects) (or has refused or neglected) to pay the same, and the said has shown no cause why he should not be committed to prison:

10 Now, therefore, it is ordered that for such default as aforesaid the said shall be committed to prison for days, unless he shall sooner pay the sum stated below as that upon payment of which he is to be discharged.

20 These are therefore to require you the said marshal (or bailiff) deputies assistants or others, to take the said and to deliver him to the Keeper of the Royal Gaol, and you the said Keeper to receive the said and him safely keep in the said Goal for days from the arrest under this order, or until he shall be sooner discharged by due course of law.

Given under the seal of the Court, this (insert date of order) day of 19 .

Registrar.

Amount.

		£
30	Amount remaining due under judgment (or order) at time of issue of judgment summons	
	Fees and costs on issue on hearing of judgment summons	
	Deduct amount paid into Court since issue of judgment summons	
	Poundage on this order	
	Sum on payment of which the debtor is to be discharged	

40 This order remains in force for one year only from the hereof, unless such time is extended under Rule 8

RECORD

And when so ordered: The time during which
this order is to remain in force was on the
day of extended by
order of the Judge to the day of
19 .

Registrar.

Form 8

Notice to debtor where Order of Commitment
made, but directed to be suspended

The Debtors Ordinance.

10

No. of Judgment Summons

No.

In the

Between

A.B.,

Plaintiff,

and

C.D.,

Defendant.

Take notice, that an order of committment for
your imprisonment for days was this day
made by the Judge of this Court.

20

The order will not be put in force if the sum
stated below be paid into Court on or before the
day of 19 , (or by
instalments of \$ for every days,
the first payment to be made on the
day of 19 .)

In default of payment within the time
above-mentioned (or of any instalment) an order
may issue for your imprisonment for the period
above-mentioned unless you shall sooner pay the
whole amount remaining due under the said order.

30

Dated this day of
19 .

Registrar.

§

Amount payable under the
order

To the judgment debtor
(naming him)... ..

32. The Court of Appeal (Rees J.A. with whose judgment Phillips and Corbin JJA. agreed) held that the Appellant was in default of payment of the original judgment debt and that he gave no evidence before Hassanali J. that the amount stated in the judgment summons was in excess of that due and owing. In the words of Rees J.A.:-

p.38 1.1-14

10 "The main question then for the consideration of Hassanali J. was not what measures the court should adopt to enforce payment of the judgment debt remaining due for the benefit of the judgment creditor but whether there was sufficient proof of means on the part of the debtor to pay and because of his fraud or dishonesty in refusing or neglecting to comply with the order of the court he should be sent to prison. The material before the judge was that at the time the judgment summons was issued there was an effective judgment in pursuance of which a debt was due from the judgment debtor to the creditor and in payment of which the debtor has made default. The debtor gave evidence of means but made no mention that the amount stated on the judgment summons was in excess of what was due and owing. The judge found the debtor had the means to pay the amount in respect of which it was stated he was in default and made an order of commitment under S.5 of the Ordinance".
20 Further the Court of Appeal held that it could not interfere with the decision of Mr. Justice Hassanali in making the order of committal
30 Rees J.A. said:

p.37 11.40-57

p.37 11.40-54

p.38 11.1-14

p.38 11.27-45

40 "In the present case I am unable to say that Hassanali J. who clearly had jurisdiction to hear the summons omitted to direct his mind to the questions to be considered. He found that the debtor was able to pay and this Court ought not readily to interfere with the conclusion of the Court below as to a debtor's ability of inability to pay (see Esdaile v. Visser (188) 13 Ch. D. 421. He made the order which he did in the exercise of his discretion and I do not think it can be said that he gave insufficient or no weight to the considerations that ought to have weighed with him, or has in any way been influenced by considerations which ought not to have weighed with him. In the circumstances this
50 Court is unable to say that he exercised his discretion wrongly".

RECORD

p.39 11.25-51

The Court of Appeal also held that there was no provision in the law of Trinidad and Tobago for payment of instalments of a judgment debt into Court and that a practice had grown up whereby payment was made to the creditor or his solicitor who moved the Registrar to issue the order of committment when default was made by the debtor. Since the debtor had defaulted in making payment of instalments due on the 1st April and 1st May 1973 the order of committal was properly enforced by application to the Registrar in accordance with the decision of the Court in Bernard v. Thomas civil Appeal No. 52 pf. 1964.

10

p.59 11.12-24

p.59 11.35-39

Further the Court of Appeal held that the Appellant could have paid the amount endorsed on the order of committment to secure his release but had not done so. Finally, the Court of Appeal held that there was no trespass by the Respondents because they both took no active part in the arrest and detention of the Appellant who was imprisoned under an order made by a Court of competent jurisdiction. The Court expressly found no necessity to rule on the other arguments advanced in favour of the Appellant. The Court agreed with the decision of the High Court (Cross J.) and dismissed the appeal with costs.

20

p.60 11.1-13

p.60 11.28 & 29

33. It is respectfully submitted that the Court of Appeal also fell into error for failure to consider the Appellant's case on the basis that there is a statutory bar to imprisonment for debt in terms of the provisions of section 3(1) of the Debtors Ordinance Ch. 6 No. 3 and that an exception to the application of those provisions only arises where the imprisonment is strictly justified under the other provisions of the Ordinance and the Rules made thereunder. It is further submitted that the order of committment was not valid because it is evidence of means although sufficient to support the direction of suspension of the order did not support the conclusion that the previous default was contumacious and so justified the making of the order itself. It is also submitted that the order was made de hors the statute not only on that account but also because the High Court (Hassanali J.) had no power jurisdiction or authority under the Debtors Ordinance to make an order of committment for a sum other than the sum due payment of which entitled the debtor to immediate release. It is further submitted that the onus at all times rested upon the Respondents to ensure by amendment of the judgment summons or otherwise that the order of committment was made by the judge in respect of the sum due since an order which required payment of a greater sum than was due to secure the release of the debtor was not made under

30

40

50

section 4 of the Ordinance. It could therefore be no bar or answer to proceedings for redress for wrongful arrest and false imprisonment made or done in contravention of section 3(1) of the Debtors Ordinance.

10 34. It is further submitted that because payments were made to the solicitor Respondent and not into court the execution of the order of
20 commitment was improper without further order of the High Court in proceedings in which the Appellant was entitled to be heard on the issue of default and in respect of the sum then due and that the suspension of the order of commitment had in the premises never ceased. It is also submitted that Form 8 of the Debtors Rules assumes that the imprisonment after failure to pay instalments follows the issue of a further order of the Court. It is further submitted
30 that the Debtors Rules contemplate in terms of Forms 6 and 7 therein payment of instalments into court. It is further submitted that where payment direct to the creditor or his solicitor was permitted or ordered as an alternative to payment into court, the suspension of the order of commitment could not in any event be made to cease on the mere application by a creditor in person or his solicitor to the Registrar without a further order of the Court specifying or declaring the sum then due and payable to
secure the debtor's release.

35. It is also submitted that the decision of the Court of Appeal itself in Bernard v. Thomas Civil Appeal No. 52 of 1964 was authority for the opinion that an order of commitment is invalid for want of jurisdiction where it is made without evidence that the debtor had means to pay the judgment debt and he had nevertheless refused or neglected to do so. Further the Court of Appeal did not decide that a request
40 by a creditor to the Registrar to enforce an order of commitment was sufficient to make the order operative without further order of the Court. In Bernard's case Sir Hugh Wooding CJ. delivering the judgment of the Court of Appeal said :-

50 "When one is exercising a jurisdiction whereby any person may be deprived of his liberty it is essential that the procedure prescribed by statute should be closely adhered to. Here there was no inquiry whatever as to what means were available to the appellant to pay off the judgment before the committal order was made, nor was there any when there was default in paying the

RECORD

instalments under the instalment order and when for that reason it was sought to enforce the committal order. There was just an assumption of an ability to pay and of a neglect or refusal so to do.

I must not be misunderstood, however. If there is in being a valid committal order which has however been suspended on any stated condition and the condition attaching to its suspension is thereafter not duly kept, then obviously the committal order can and may be enforced. That is why in this case it became so necessary to consider whether at the time the order was made the court could validly exercise the jurisdiction to make it. We hold that the order was not validly made since it was not an order which the petty civil court judge made in the due exercise of his jurisdiction in that behalf. So it was not enforceable for any non-observance of the condition which he attached to its suspension".

10

20

The Court of Appeal of Jamaica in Harris v. Seaga and Maxwell (1936) 3 Jamaica Law Reports 8 was of the opinion that evidence was necessary to establish default where instalments during suspension were payable to the judgment creditor and it is submitted that their view is correct.

36. It is further submitted that the Respondents were under a legal duty to apply the January payment in satisfaction of an instalment due instead of setting in motion proceedings for the arrest and detention of the Appellant because the application of the January payment would have operated to preserve the Appellant's liberty.

30

It is further submitted that even if the High Court (Hassanali J.) made an order of committment which was valid under section 4 of the Debtors Ordinance and Rules in the first instance the order was invalid when it was executed because it was then expressed to be in respect of non-payment of a sum in excess of what was due and that the rulings of the High Court and the Court of Appeal to the effect that the Appellant had failed to establish that the sum was in excess of that due are contradicted by the pleadings and undisputed evidence before both Courts. It is further submitted that Forms 6, 7 and 8 of the Debtors Rules contemplate that all amounts paid since the issue of the judgment summons are to be taken into account in computing the amount for which the debtor is committed and which he is obliged to pay to secure his release.

40

50

10 37. It is further submitted that the Court of Appeal ought to have held the Respondents liable in trespass for setting in motion the arrest and detention procedures against the Appellant and ought also to have held that the arrest and detention were in any event not properly made or done under the order of Hassanali J. because there was no default in complying with the conditions for suspension of the order if the January payment was taken into account and no further order of the Court had been made directing the imprisonment of the Appellant for the term specified by the suspended order.

20 38. The Appellant hereby submits that this appeal should be allowed with costs in the Privy Council and in the Courts below, that the judgment of the Court of Appeal ought to be reversed and the orders for costs made against the Plaintiff-Appellant in the Courts below set aside and that damages be awarded to the Appellant or alternatively that the matter be remitted to the Court of Appeal or the High Court for the assessment of damages for the following, among other :-

R E A S O N S

1. BECAUSE the order of committment was invalid and unenforceable.
- 30 2. BECAUSE the imprisonment of the Appellant was effected at the request of the Respondents without application having been made to the High Court to establish default in compliance with the conditions of suspension of the order of committment on the part of the Appellant so as to give him an opportunity to be heard and because no further order of the Court was made directing imprisonment of the Appellant for the period specified in the suspended order of committment.
- 40 3. BECAUSE the Respondents ought to have applied the January payment made by the Appellant to instalments payable after the order of committment was made by Hassanali J.
- 50 4. BECAUSE the total of the Appellant's payments to the Respondents was sufficient to satisfy the conditions of suspension of the order of committment, made by Hassanali J. and he was not in default at the time of his imprisonment.

RECORD

5. BECAUSE the Appellant's imprisonment was a trespass caused by the acts of the Respondents in setting the arrest and detention procedures in motion.
6. BECAUSE the statutory bar under section 3(1) of the Debtors Ordinance to imprisonment for failure to pay money operated in favour of the Appellant at all material times, and was never removed.
7. BECAUSE credit was never given by the Respondents to the Appellant in respect of the January payment when the order was made or executed. 10
8. BECAUSE the judgment of the High Court (Cross J.) and of the Court of Appeal (Rees J.A. with which Phillips and Corbin JJ.A. concurred) were wrong and ought to be reversed.

FENTON RAMSAHOYE S.A.

KENNETH SAGAR

20

