

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 -

1. ROSETTA JAISINGH
(The Personal Representative
of Anthony G. Singh, deceased)
(Defendant) Respondent
 2. CLARENCE EMMANUEL LE BLANC
-
-

RECORD OF PROCEEDINGS

A.L. BRYDEN & WILLIAMS,
20 Old Queen Street
London, SW1.

PHILIP CONWAY THOMAS & CO.,
61 Catherine Place,
London, SW1E 6HB

Solicitors for the Appellant.

Solicitors for the Respondent.

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

Appellant
(Plaintiff)

- and -

1. ROSETTA JAISINGH
(The Personal Representative
of Anthony G. Singh, deceased)
 2. CLARENCE EMMANUEL LE BLANC
- Respondents
(Defendants)

RECORD OF PROCEEDINGS

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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 -

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

2. CLARENCE EMMANUEL LE BLANC

RECORD OF PROCEEDINGS

No. 1.

WRIT OF SUMMONS

R. Persad-Maharaj & Co
Solicitors
(Writ of Summons)

In the High
Court

No. 1.
Writ of
Summons
5th July
1973

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

No. 1714 of 1973

BETWEEN

CORNELIUS BOBB Plaintiff

And

ROSETTA JAISINGH
(the Personal Representative
of Anthony G. Singh,
deceased)

and

CLARENCE EMMANUEL LE BLANC Defendants

ELIZABETH THE SECOND, by the
Grace of God, Queen of
Trinidad and Tobago and of
Her other Realms and
Territories, Head of the
Commonwealth.

TO: ROSETTA JAISINGH CLARENCE EMMANUEL LE BLANC
Belle Eau Road, 25 St Vincent Street,
Belmont. Port of Spain.

In the
High
Court

No. 1

Writ of
Summons

5th July
1973

(continued)

WE COMMAND YOU within eight days after the service
of this Writ on you inclusive of the day of such
service, you do cause an appearance to be entered
for you in Our High Court of Justice, Port of
Spain, in an action at the suit of CORNELIUS
BOBB and take notice that in default of your so
doing, the plaintiff may proceed therein, and
Judgment may be given in your absence.

10

WITNESS: The Honourable Sir Isaac Hyatali,

Chief Justice of Our said Court at Port of Spain,
in the said Island of Trinidad, this 5th day of
July, 1973

20

N.B. This Writ is to be served within twelve
calendar months from the date thereof, or if
renewed, within six calendar months from the
date of the last renewal, including the day of
such date and not afterwards.

The defendant may appear hereto by entering
an appearance either personally or by Solicitor
at the Registrar's Office, at the Court House,
in the City of Port of Spain.

30

THE PLAINTIFF'S CLAIM IS FOR:

1. Damages for wrongful arrest and false
imprisonment of the plaintiff by the defendants
their servants and/or agents on the 30th day of
May, 1973, at Port of Spain, Trinidad.

2. The plaintiff's claim against the second-
named defendant is for damages resulting from a
breach of promise and/or duty and/or trust.

3. Costs

40

4. Such further and other relief as may be just.

This Writ was issued by Messrs. R. Persad-

Maharaj & Co., Solicitors of and whose address for service is No. 14 St. Vincent Street, Port of Spain, Trinidad, Solicitors for the said Plaintiff who resides at No. 92 Lady Young Road, Morvant.

/s/ R. Persad-Maharaj & Co.,
Solicitors for the Plaintiff.

This Writ was served by me on the
on the defendant at on
10 the day of 19 .
Endorsed the day of 19 .

/s/
Marshal's Assistant,
Port of Spain.

No. 2

STATEMENT OF CLAIM

In the
High Court

No. 2

20 STATEMENT OF CLAIM of the above named plaintiff Delivered by his Solicitors Messrs. R. Persad-Maharaj & Co., of No. 14 St. Vincent Street, Port of Spain, this 23rd day of July, 1973.

Statement
of Claim

/s/ R. Persad-Maharaj & Co.,
Plaintiff's Solicitors.

23rd July
1973

1. The plaintiff resides at No. 92 Lady Young Road, Morvant, in the Ward of St. Anns, in the Island of Trinidad. He is over the age of sixty-three (63) years and is a herdsman.
- 30 2. The first named Defendant is the Personal Representative of Anthony G. Singh, deceased, and the second named defendant is a Solicitor of the Supreme Court of Judicature of Trinidad and Tobago, and a money lender with a place of business situated at No. 25 St. Vincent Street, Port of Spain.
3. The Plaintiff has never before been arrested and/or imprisoned and to him at his age, this was very important and of great

In the
High Court

value. This untarnished reputation the plaintiff was entitled to preserve.

No.2

Statement
of Claim

23rd July
1973

(continued)

4. In High Court Action No. 2646 of 1970, in which the first named Defendant was plaintiff and the Plaintiff defendant and the second named defendant was Solicitor for the first named defendant, the first named defendant recovered against the plaintiff Judgment in the sum of \$245.00, with costs to be taxed, this costs was accordingly taxed and allowed at \$1,094.02.

10

5. At the instance of the first-named Defendant a Judgment summons made returnable for the 5th day of January, 1973 was issued against the Plaintiff by the second named defendant, and while this Judgment summons was pending, on the 24th day of January, 1973 at the office of the second named Defendant the plaintiff in writing confessed means and promise to pay off the said judgment debt and costs by monthly instalments as follows:- \$50.00 forthwith and the balance by \$50.00. monthly commencing from the 28th day of February, 1973, and thereafter \$50.00. at the end of each and every month, and accordingly the plaintiff paid the sum of \$50.00. to the second named Defendant on account of the said Judgment debt and costs.

20

6. On the 26th day of January, 1973 at the adjourned hearing of the said Judgment Summons, an order of commitment was by the Court made against the plaintiff (hereinafter referred to as "the said order") which said order was suspended to permit the plaintiff to pay off the sum of \$1,413.42, the Judgment debt and costs by monthly instalments of \$50.00, the first payment to be made on the 1st day of March, 1973 and a similar payment on the first day of each and every month thereafter.

30

7. In compliance with the said Order on the 1st day of March, 1973, the Plaintiff tendered to and was accepted by the second-named Defendant the sum of \$50.00, and again on the 11th day of April, 1973 the Plaintiff tendered the sum of \$50.00. which was accepted by the second-named Defendant which said sums the second-named Defendant promised the Plaintiff he will apply in the satisfaction of the Plaintiff's obligation under the said order.

40

In the
High Court

No. 2

Statement
of Claim

23rd July
1973

10 8. On the said 11th day of April, 1973,
the Plaintiff drew to the notice of the
second-named Defendant the fact that he the
Plaintiff had on the 24th day of January,
1973 paid to the second-named Defendant the
sum of \$50.00. on account of the said Judgment
debt and costs and for which sum he the
Plaintiff was not given credit in the said
order, whereupon the second named Defendant
promised the Plaintiff that he the second-
named Defendant would apply the said sum of
\$50.00. intrusted to him on the 24th day of
January, 1973, in payment of the Plaintiff's
instalment which would have become due and
payable on the first day of May, 1973, and
relying on this promise the Plaintiff did
not pay to the second named Defendant his
instalment which he ought to have paid on the
20 first day of May, 1973, in accordance with
the said Order.

9. The Plaintiff would contend that the
second named Defendant owed him a duty to
apply the said sum of \$50.00. intrusted to him
on the 24th day of January, 1973 together
with all other moneys paid to him by the
Plaintiff in fulfilment of the Plaintiff's
obligations under the said Order.

30 10. The second-named Defendant failed and/
or neglected and/or in breach of his promise
and/or duty to apply the sum or sums intrusted
to him by the Plaintiff in fulfilment of the
Plaintiff's obligations under the said Order,
and in collusion with the first-named
Defendant wrongfully and/or deceitfully moved
the Court to issue the said Order to have the
Plaintiff committed to prison for having made
default in his obligations as ordered by the
Court under the said Order.

40 11. On the 30th day of May, 1973, the
Plaintiff was on his way to the office of the
second-named Defendant to make his payment
which would have become due and payable
on the first day of June, 1973, when he was
arrested on St. Vincent Street and delivered
to the keeper of the Royal Gaol and was
imprisoned for a period of twenty days.

In the
High Court

PARTICULARS OF SPECIAL DAMAGES :

No. 2	Loss of earnings from sale of Cow's milk	\$149.50	
Statement of Claim	Paid for labour to perform the duties of the Plaintiff while in prison	65.00	
23rd July 1973	Loss of 7 young turkeys	24.50	
(continued)	Loss of one 5 months old Calf	165.00	
	Paid car hire for wife to visit Plaintiff while in prison, 5 trips at \$8.00. per trip	40.00	10
		<hr/> \$444.00 <hr/>	

12. As a result thereof, the Plaintiff's freedom was wrongfully taken away, his previous untarnished reputation was destroyed, he wrongfully suffered the humiliation of a prison term, shame, inconvenience and loss;

The Plaintiff therefore claims:-

1. Damages for wrongful arrest and false imprisonment by the Defendants their servants and/or agents on the 30th day of May, 1973, at Port of Spain, Trinidad. 20
2. The Plaintiff's claim against the second-named Defendant is for damages resulting from a breach of promise and/or duty and/or negligence.
3. Costs.
4. Such further and/or other relief as may be just. 30

/s/ J. Camillo Castillo
Of Counsel.

TO: Messrs. Fitzwilliam, Stone & Alcazar,
78 Independence Square, Port of Spain,
Defendants' Solicitors.

DEFENCE OF THE DEFENDANT - ROSETTA JAISINGH

1. The Defendant will object that the statement of claim discloses no cause of action against her.

In the
High Court

No. 3

All the matters hereinafter set out are without prejudice to the foregoing plea.

Defence of
Defendant,
Rosetta
Jaisingh

1st November
1973

10 2. This Defendant admits that she is the Personal Representative of Anthony G. Singh, deceased.

3. Paragraph 1 and 3 of the Statement of Claim are not admitted.

4. This defendant admits paragraph 4, 5 and 6 of the Statement of Claim.

20 5. This defendant admits that the plaintiff on the 1st March, 1973 and on 11th April, 1973 paid the sum of \$50.00. towards the said Judgment debt and costs. Save as aforesaid paragraph 7 of the Statement of Claim is denied.

6. If the second named defendant did make the alleged or any promise (which is denied) this defendant says that he did not have her authority to do so.

30 7. This defendant admits that the plaintiff defaulted in payment of an instalment of the said Judgment debt and costs on 1st May, 1973 but denies that any promise was ever made to the Plaintiff such as is alleged in paragraph 8 of the Statement of Claim or at all or that such default was made in reliance on any promise made by the second named Defendant as alleged or at all.

40 8. If the second defendant did make any such promise as is alleged in paragraph 8 of the Statement of Claim or any promise to a similar effect (which is denied) this defendant says that he did not have her authority so to do.

9. As to paragraph 9 of the Statement of Claim this defendant says that so far (and so far only) as the Plaintiff complied

In the
High Court
 No. 3

with the order made upon the said Judgment summons did he (the plaintiff) fulfil his (the plaintiff's) obligations under the order made thereon.

Defence of
 Rosetta
 Jaisingh

1st November
 1973

(continued)

10. This defendant denies paragraph 10 of the Statement of Claim, and in particular that she ever cause This Honourable Court to be moved in the behalf alleged in the Statement of Claim or at all in respect of the said Judgment debt and costs. The Plaintiff having made default in the payment of the instalment due under the said order, the plaintiff became liable to be committed to prison and this defendant duly and properly instructed the second defendant to request the Registrar of the Supreme Court to issue the warrant of commitment in respect of the said order. The Registrar duly issued the said warrant of commitment in execution.

10

11. This defendant admits so much of the Statement of Claim as alleges that the plaintiff was arrested and says that he was lawfully arrested in execution of the said warrant. Save as aforesaid paragraph 11 of the Statement of Claim is not admitted.

20

12. No admission is made of the alleged or any loss or damage of the Plaintiff or of any of the matters alleged in paragraph 12 of the Statement of Claim.

13. Save as is hereinbefore expressly admitted the defendant denies each and every allegation and/or implication of fact relating to her contained in the Statement of Claim as if the same were herein set forth seriatim and specifically traversed.

30

/s/ R.B. Bahadoorsingh
 Of Counsel.

Delivered this 1st day of November, 1973
 by Messrs. Fitzwilliam, Stone & Alcazar of
 No. 78, Independence Square, Port of Spain,
 Solicitors for the defendant, Rosetta Jaisingh.

40

/s/ Fitzwilliam, Stone & Alcazar,
 Solicitors for Rosetta Jaisingh.

TO; Messrs. R. Persad-Maharaj & Co.,
 14 St Vincent Street,
 Port of Spain
 Plaintiff's Solicitors.

We accept delivery of the defence herein although the time for so doing has expired.

/s/
 Plaintiff's Solicitors.

50

DEFENCE OF THE DEFENDANT - CLARENCE
EMMANUEL LE BLANCIn the
High Court

No. 4

1. This defendant will object that the Statement of Claim discloses no cause of action against him.

Defence of
Defendant,
Clarence E.
Le Blanc

10

All the matters hereinafter set out are without prejudice to the foregoing plea.

18th October
1973

2. This defendant denies that he is a money-lender and says that he is a Solicitor of the Supreme Court of Trinidad and Tobago.

3. Paragraphs 1 and 3 of the Statement of Claim are not admitted.

4. This defendant admits paragraphs 4, 5 and 6 of the Statement of Claim.

20

5. This defendant admits that the plaintiff on 1st March, 1973 and on 11th April, 1973, paid the sum of \$50.00. towards the said Judgment debt and costs. Save as aforesaid paragraph 7 of the Statement of Claim is denied.

30

6. This defendant admits that the plaintiff defaulted in payment of an instalment of the said judgment debt and costs on 1st May, 1973, but denies that he ever made any promise to the plaintiff such as is alleged in paragraph 8 of the Statement of Claim or at all or that such default was made in reliance on any promise made by him as alleged or at all.

7. As to paragraph 9 of the Statement of Claim this defendant says that so far (and so far only) as the plaintiff complied with the order made upon the said judgment summons did he (the plaintiff) fulfil his (the plaintiff's) obligations under the order made thereon.

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8. This defendant denies paragraph 10 of the Statement of Claim and in particular denies that he ever moved This Honourable Court in the behalf alleged in the Statement of Claim or at all in respect of the said

In the
High Court

No. 4

Defence of
Defendant
Clarence Le
Blanc

18th October
1973
(continued)

Judgment debt and costs. The Plaintiff having made default in the payment of the instalment due under the said order, the plaintiff became liable to be committed to prison and this defendant duly and properly and upon the instructions of the first defendant requested the Registrar of the Supreme Court to issue the warrant of commitment in respect of the said Order. The Registrar duly issued the said warrant of commitment in execution. 10

9. This defendant admits so much of the Statement of Claim as alleges that the Plaintiff was arrested and says that he was lawfully arrested in execution of the said warrant. Save as aforesaid paragraph 11 of the Statement of Claim is not admitted.

10. No admission is made of the alleged or any loss or damage of the plaintiff or of any of the matters alleged in paragraph 12 of the Statement of Claim. 20

11. Save as is hereinbefore expressly admitted this defendant denies each and every allegation and/or implication of fact contained in the Statement of Claim as if the same were herein set forth seriatim and specifically traversed.

/s/ Ewart Thorne.
Of Counsel.

Delivered this 18th day of October 1973
by Messrs. Fitzwilliam, Stone & Alcazar of
No. 78 Independence Square, Port of Spain,
Solicitors for the defendant, Clarence Emmanuel
Le Blanc. 30

/s/ Fitzwilliam, Stone & Alcazar
Solicitors for Clarence Emmanuel
Le Blanc

TO: Messrs. R. Persad-Maharaj & Co.,
14 St. Vincent Street,
Port of Spain
Plaintiff's Solicitors. 40

We accept delivery of the defence herein
although the time for so doing has expired.

/s/
Plaintiff's Solicitors.

No. 5REPLY TO DEFENCE OF CLARENCE EMMANUEL LE BLANCIn the
High Court

No. 5

REPLY to the defence of the above named Defendant Clarence Emmanuel Le Blanc by the above named Plaintiff Cornelius Bobb delivered by his Solicitors Messrs. R. Persad-Maharaj & Co., of No. 14, St, Vincent Street, Port of Spain, this 30th day of October, 1973.

Reply to
Defence of
Clarence
Emmanuel Le
Blanc

30th October
1973

10 /s/ R. Persad-Maharaj & Co.,
 Plaintiff's Solicitors.

20 1. The Plaintiff repeats paragraphs 7, 8
 & 10 of the Statement of Claim and states
 that having regard to the plaintiff's
 payment of \$50.00. on the 24th day of
 January, 1973 as set out in paragraph 5 of
 the Statement of Claim which is admitted, the
 plaintiff will contend that notwithstanding
 the promise made by the defendant to the
 plaintiff as set out in paragraph 8 of the
 statement of claim, as a Solicitor this
 defendant owed a duty to the plaintiff to
 apply the said sum of \$50.00. in fulfilment
 of the plaintiff's obligation for the month
 of May, 1973, under the said order.

30 2. The plaintiff will also contend that
 this defendant was deceitful and/or negligent
 in not advising the first named defendant
 that he (the second named defendant) had
 been previously paid the sum of \$50.00. on
 account of the said Judgment debt and costs
 for which no account was given in the said
 order and as such could not carry out the
 purported instructions given by the first
 named defendant as is set out in paragraph 8
 of the defence of this defendant.

40 /s/ J. Camillo Castillo,
 Of Counsel.

To : Messrs. Fitzwilliam, Stone & Alcazar,
 78 Independence Square,
 Port of Spain,
 Defendants' Solicitors.

NO. 6

In the
High Court

OPENING OF CASE FOR PLAINTIFF

No. 6

Mr. Archbald for the plaintiff; Castillo with him.

Opening of
Case for
Plaintiff

Mr. Dayalsingh for the first defendant.
Mr. Hosein, Thorne with him for the second defendant.

21st October
1975

Archbald addresses:

Castillo reads pleadings:

10

Archbald opens:

The Plaintiff is 64 years of age. He is a Government employee and herdsman. On the 30th day May, 1973 he was arrested by a Marshal.

Case for exemplary damage - 29/12/71. Judgment obtained. Judgment Summons issued returnable on 5th January, 1973 and adjourned 3 weeks. On 19th January, 1973 the Plaintiff received a letter from the second defendant. Letter produced - admitted and marked Exhibit "A" by agreement.

20

Plaintiff went to see Le Blanc - agreed to pay \$50.00. per month. Agreement drawn up and signed by plaintiff- produced admitted and marked exhibit "B" by agreement.

Paid \$50.00. but never given credit for it.

Nocton v Lord Ashburton (1914) A.C. 932 P.946

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NO. 7

Plaintiff's
Evidence

EVIDENCE OF CORNELIUS BOBB

CORNELIUS BOBB sworn states :

No. 7

Cornelius Bobb
Examination

I am 68 years old - married. Self and wife live together at Morvant, Port of Spain. Employed by Sub-Intendant of Crown Lands for Morvant, Malick etc. So employed for 19 years as watchman. Own cows, I know Mr. Le Blanc for many years. On --- 29th November,

40

1971, judgment was obtained against me in the High Court by the first defendant for \$245.00 with costs. Le Blanc was the plaintiff's Solicitor in that action. Costs taxed, later judgment summons taken out against me. (Proceedings in 2646/70 - Jaisingh v Bobb - tendered - no objection - admitted and marked "C.B.1") Judgment summons dated 30th June, 1972. This is the Judgment summons - marked "C.B.1a." amount is \$1,413.42 including costs of summons.

In the
High Court

No. 7

Cornelius Bobb
Examination
(continued)

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On the 5th January, 1973 it was called and adjourned for 3 weeks. I see exhibit "A". I received this from Mr. Le Blanc. As a result I went to Mr. Le Blanc's office on the 24th January, 1973 - two days before the summons was due for hearing. He said I was offering \$25.00. per month and he would not accept that. He showed me documents from the Warden's office showing water rates and taxes for a house paid in my name and he would accept \$50.00. per month. I said "you know me for many years, the money is not yours, why you holding me by my throat?" I agreed to pay \$50.00. per month, and to pay the first month's instalment then and now. He agreed and I paid \$50.00. for which I obtained a receipt (tendered no objection - admitted and marked "C.B.2"). Two days later I appeared in Court. Le Blanc told me to come to Court and make the same offer and he would accept it. I did so. Mr. Le Blanc was present. The Judge asked me how I was going to pay the debt. I said \$50.00. per month and Mr. Le Blanc got up and accepted. He did not say anything else. He did not mentioned the \$50.00. I had paid nor did I. The Judge said to make my payments on the 1st March. I paid \$50.00. at Mr. Le Blanc's office on the 1st March. I obtained a receipt. This is the receipt. Tendered - no objection - admitted and marked "C.B.3".

On the 11th April, 1973, I went and made a payment of \$50.00. This is the receipt. Tendered - no objection - admitted and marked C.B.4. On that day I saw Mr. Le Blanc and asked him about the \$50.00. I had paid on the 24th January, 1973. He replied that he would give me credit for it in May, so that my next payment would be in June. I did not go back to the office. On the 30th May, 1973, I was going to Mr. Le Blanc's office to make my

In the
High Court

No. 7

Cornelius Bobb
Examination
(continued)

payment for June. On reaching Knox Street I saw the Marshal of the Court, Police and Mr. Le Blanc's clerk. The Marshal said he had a warrant for my arrest. I asked what for, he said there is a committal order Mr. Le Blanc had taken out and that I defaulted in paying a month's instalment, I said "Take me to Mr. Le Blanc's office", but he refused. I said if he took me to Mr. Le Blanc's office everything would be cleared up. I had \$107.18 on me at the time. I said I could pay two months instalments but the Marshal said I would have to pay off the whole thing. The Marshal put me in his car and I said, "Look at Mr. Christopher there, he would mortgage my house and I would pay the debt. He said he had no time to run around with me. The Marshal took me to the Royal Gaol and delivered me to the keeper. The \$107.18 was taken from me together with my ring and everything. I was taken to a room with 19 other people. I was sick due to being in Gaol. I had never been there before. I sat up all night because there was neither bed nor mattress to sleep on. The floor was concrete. Next morning I was taken to Remand Yard in the prison, they took me to the prison Superintendent. There were about 500 to 600 men there. I was taken from the yard at about 3.30 p.m. to a cell, there were 7 men there. The Prison Superintendent asked about my family to get word to them. I remained in Gaol for 21 days. I came out on the 19th June, 1973.

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20

30

I lost one of the Cows - 6 months old - valued \$165.00 I used to sell milk from the animals. Two of the cows were giving milk. I was getting 24 bottles a day, selling price was .30c per bottle I used to get a hundred and forty dollars sometimes per month from milk. While I was away 7 Turkeys died for want of care - they were valued at \$3.50 each. During my absence a man called James, called George Roberts - nick named Sookie looked after the animals for me. I paid him \$180 for doing this during my absence in prison. My wife made 5 trips to visit me in prison - \$8.00 each trip. I am claiming damages against both defendants. (Order of Committal marked C.B.1b) dated 29th May, 1973. The defendant Rosetta Jaisingh is the lady who got the Judgment against me.

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CROSS-EXAMINED BY HOSEIN Q.C.

I have owned the house at Morvant for a number of years, - about 10 years. I have been rearing animals for quite a long time. I have fowls, turkeys, etc. I earn \$278.00 per month as a watchman, I was earning \$80.00 a month at one time. In 1970 - \$130.00 per month, plus money from milk etc.

In the
High Court

No. 7

Cornelius Bobb
Cross-
Examination

21st October
1975

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The action brought by the first defendant against me was filed on the 23rd December, 1970. Her claim was for \$245.00. on a promissory note. Mr. Maharaj was my Solicitor in that case. This is the Judgment of the Court (C.B.1c). I had filed a counterclaim. Defence marked C.B.1d. In my defence I did not deny the note.

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On the 11th February, 1972, I wrote a letter to the Prime Minister - marked C.B.1e. I was examined as to my means before the Judgment Summons. Mr. Le Blanc cross-examined me before Achong J on 6th June, 1972.

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I said in cross-examination I lived with my son and that the house I lived in was owned by my son. I told the Judge that I did not know when my son became owner of the property and that I never owned the house. I said that I paid money for expenses. I said I live in the house with my wife. I said it was owned by Knolly Bobb - my son. I can't remember if I told the Judge that I came up to live with my son from La Brea. I did not in fact come from La Brea to live with my son.

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I can't remember if I said my son paid rates and taxes. I told the Judge I had property - Bethel Village, Tobago. I got a lease in my name in 1966 for the house. This is the lease - C.B.5. I have mortgaged this property in 1967 and 1968 on three occasions to one Sooknanan.

I admit that when I told the Judge that the property was owned by my son it was not true. I told the Judge that I had no other form of employment but my job was a watchman. I can't remember if I said I had a pig farm. I remember that I didn't tell the Judge that I did not own cows. I told the Judge that

In the
High Court

No. 7

I sold milk and made \$2.00 a day. I told the Judge I was minding 2 cows for Mr. Christopher. I did not tell him that I minded no other cows. I told the Judge I had no pigs on the premises.

Cornelius Bobb
Cross-
Examination
(continued)

I have never had a bank account anywhere. I remember telling the Judge I had no bank account. Certified copy of Judge's notes tendered and marked C.B.6. On the 30th June, 1972, a Judgment Summons was issued after my examination as to means.

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I was served with the Judgment Summons on the 5th July, 1972. I know I was not on terms with Mr. Le Blanc so I didn't want to go to his office. I see C.B.2. When I went to pay this I know how much I owed. At that time the Judgment Summons was not yet heard. I did understand that my payment of \$50.00 would reduce the amount I owed. The matter came on two days after the payment. I did not mention to the Judge on the 26th January, 1973, that I had paid \$50.00. I did not tell him that I had paid an instalment already. I was under the impression that I had paid the first instalment already. I was not on good terms with Le Blanc at the time. When March came (on the 1st) I paid the instalment for March. I did not tell Le Blanc after the order was made that I had already paid the first instalment.

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ADJOURNED TO 22nd OCTOBER - 9.00 a.m.

22nd October
1975

CORNELIUS BOBB (cross-examination continued) :

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I paid \$50.00 on the 24th January, 1973 was intended to be the first instalment (shown "B"). I did sign this. Exhibit "B" was not produced and it was not explained. I say now that the contents of this was not mentioned to the Judge on the 26th January, 1973. I had not mentioned to the Judge that I had paid \$50.00. I was not examined as to means before Hassanali J.

On the 11th April, 1973, I took \$50.00. to Le Blanc's office to pay. I paid it to a young lady. After I paid Le Blanc came out of his office and I spoke to him as I was going down the stairs. I ask him what about the first instalment I had already paid. I did not ask for Mr. Le Blanc (asked why the plaintiff does not answer). It was around 12.00 o'clock. Mr. Le Blanc was in the office. At the time of arrest I had \$107.18 in my pocket. I drew my salary on the 28th May, 1973, in Port of Spain. I offered to pay the Marshal

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two months' instalments - he didn't ask me. At the time I was in arrears for May. I can't remember if I told the Marshal, about the arrangement of the 11th April, 1973. I don't think I did. I know Mr. Joseph Le Blanc - the defendant's brother. His office is at No. 8 St Vincent Street, next door to Carib Hotel. It was opposite Mr. Le Blanc's office on the east side of the road: I meant Hart Street when I said Knox Street (Hosein draws attention to endorsement on C.B.1b). I was not walking south when I was arrested. I was not standing in front of Mr. Castillo's office. I was not in the Bar at the corner of Queen and St Vincent Streets that morning before I was arrested. I did not tell the Marshal that I had \$50.00 for the whole week in my pocket to pay but I had not yet paid. I did not ask the Marshal to go to Mr. Le Blanc's office. The Marshal told me that I had to pay the full amount when I offered \$100.00. The Marshal's car was parked in the Red House compound. I asked him to let me go to Mr. Christopher. He refused, but he sent Mr. Le Blanc's clerk to Mr. Christopher. Mr. Le Blanc's clerk went. The clerk came back and said that Mr. Christopher said he was tired paying money for me and they could take me down.

I paid a man - George Roberts - \$165.00 to look after animals. My wife did. The calf was mine. The calf had been tied in Caledonia Road.

NOT CROSS-EXAMINED BY MR. DEYALSINGH

NO RE-EXAMINATION

CASE FOR PLAINTIFF CLOSED

Deyalsingh does not wish to call any witnesses:

NO. 8

40 EVIDENCE OF CLARENCE EMMANUEL LE BLANC

CLARENCE LE BLANC sworn states :

Solicitor - office at No. 25 St Vincent Street. Not a money lender. The money lending business associated with my office is by Le Blanc Investment Trust. I am the Solicitor for the first defendant. In action

In the
High Court

No. 7

Cornelius Bobb
Cross-
Examination
(continued)

Defendants
Evidence

No. 8

Clarence
Emmanuel Le Blanc
Examination

In the
High Court

No. 8

Clarence
Emmanuel
Le Blanc

Examination
(continued)

2646/70 Bobb was represented by a Solicitor - Ramesh Maharaj. I was never his Solicitor. I filed the writ for the plaintiff. Judgment obtained. Defendant consented to Judgment. Inquiry as to means by Achong J. This is a certified copy of the notes of evidence (C.B.6). On the 30th June, 1972 I caused Judgment Summons to be issued and it came up for hearing before Hassaneli J. On the 24th January, 1973, Bobb saw me in my office, signed the 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 day of January, 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. The first two payments were paid to my client - one on 24th January, 1973, and one on 1st March, 1973. This was done before the April payment. I was planning a vacation in the United States on the 18th of April, 1973. I had already made arrangements that no matter be placed on the Court list during the week of the 9th April, 1973. I had one uncontested divorce fixed for the 11th April, 1973. My Counsel was Mr. Ainsley Lucas. I had made arrangements to go on in my absence. I was not in Court on the 11th April, 1973. I was at home. I did not go to the office but was in touch by telephone. I spoke to Mr. Charles Roberts, a witness for the petitioner in Gonzales v. Gonzales. I phoned him at my office where he was. I was at home.

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I would not have made the arrangements alleged by Bobb in any case - after Achong J's examination. I made inquiries and found out that Bobb was in fact the owner of the house in which he lived. I made an application for the issue of the warrant on the 4th May, 1973. This is the application (C.L.1). I signed it. Amount due \$1,397.42 Credit was given for the payment on the 24th January, 1973; 1st March, 1973 and 11th April, 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 of the Registry

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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. (Folio 58) C.L.2. - Those alterations were not made by me.

In the
High Court

No. 8

Clarence
Emmanuel
Le Blanc

10 Mr. 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 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. He told me in order for him to process the warrant I would have to submit to him another request showing payments of \$100.00 being the payments after the order was made. As a result I submitted the second request (C.L.2).

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Examination
(continued)

CROSS-EXAMINED BY CASTILLO :

Cross-
Examination

I made request for warrant. That request was made on the 4th April, 1973 (C.L.1). I claim that the amount due is \$1,397.42. That was typed by my office. That is crossed and \$1,413.42 an order made by Hassanali J. was in respect of \$1,397.42 on the 26th January 1973 (C.L.3). Amount stated is \$1,382.56 and costs \$30.68 - aggregate \$1,413.42. This is a draft note signed by the Registrar. C.L.1 was crossed and \$1,413.42 was substituted.

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I did not make an amended request. I see C.L.2 at the top is written request. It is undated. The amount there is \$1,397.42. That figure is crossed out and \$1,413.42 is substituted. The credit given to the Plaintiff was \$100.00. No credit was given for \$50.00. This was never filed.

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Amount on warrant (C.B.1b) - \$1,413.42; deduct amount paid since order \$100.00. No credit was given on the warrant for \$50.00 paid on the 24th January, 1973.

I informed the Court on the 26th January, 1973 that \$50.00. had been paid but the Court did not take into account the \$50.00. paid on the 24th January, 1973.

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In the
High Court

No. 8

Clarence
Emmanuel
Le Blanc

Cross-Examination
(continued)

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. I see C.B.1a. Judgment Summons mentions \$1,366.56 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 to his means. I did leave on the 18th April, 1973, for the U.S. I was away for 8 days. I was in my office only on the Friday 13th April, Judgment Summons day. I often travel out of the island. I sometimes stay home. He never discussed the question of using \$50.00 as an instalment. 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.

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Re-Examination

RE-EXAMINED BY HOSEIN :

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 the 1st February, 1973 - Miss Punnett's. This draft order - 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.

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NO QUESTION BY DEYALSINGH :

NO. 9.

No. 9

EVIDENCE OF FITZGERALD ROBINSON

Fitzgerald
Robinson

Examination

Marshal's Assistant - 7 years - High Court, Port of Spain. On the 30th May, 1973, I executed a warrant. I see C.B.1b. I executed this warrant on the person of Bobb. I endorsed the place at which I executed the warrant. This is my endorsement. I was with Mr. Scott - the defendant's agent and a Police Constable. When I first saw Bobb he was going south on the eastern side of the pavement on St. Vincent Street. I know the

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10 plaintiff personally - from the time I was
 a lad. I identified myself and showed
 precept. I know of Le Blanc's office
 directly opposite the Racing Pool. When I
 arrested him he asked me to allow him to go
 to Mr. Joseph Le Blanc's office because the
 warrant was already executed. My car was
 parked in the Red House compound. Bobb said
 he would like to go to Mr. Christopher. I
 refused. Mr. Scott went to Mr. Christopher
 whom I saw sitting under a tree - St. Vincent
 Street. He is a well known money lender.
 Mr. Scott returned and spoke to all of us.
 He said Mr. Christopher told him he is tired
 paying money for Mr. Bobb and as far as he
 was concerned they could take him to Gaol.
 Mr. Bobb told me he had \$50.00 to pay for whole
 week but he hadn't had time to pay. I said
 I could not accept it, he would have to pay
 20 the whole amount.

In the
High Court
 No. 9
 Fitzgerald
 Robinson
 Examination

CROSS-EXAMINED :

30 I know Mr. Le Blanc as a solicitor.
 I know his office. I know Mr. Scott works
 for Mr. Le Blanc. Mr. Bobb did not ask me
 to go to Mr. Clarence Le Blanc's office.
 He never asked me to take him to Mr. Clarence
 Le Blanc's office. He pointed to Mr.
 Joseph Le Blanc's office. He did not say
 anything about Clarence Le Blanc. I took
 Bobb personally to the Gaol. I was not
 present when he was searched. He told me he
 had \$50.00.

Cross-
 Examination

TO COURT :

He said he had done some work for Mr.
 Joseph Le Blanc and he would like to go to
 collect some money.

NO. 10

EVIDENCE OF CHARLES ROBERTS

40 I am a private investigator. On the
 11th April, 1973 I was a witness in Gonzales
v Gonzales an undefended divorce heard on that
 day. I got to Mr. Le Blanc's office at
 8.35 a.m. that day. I tried to see him. I
 did not see him; while there, there was a
 phone call. Mr. Persad answered and told me

No. 10
 Charles Roberts
 Examination

In the
High Court
No. 10
Charles Roberts
Examination
(continued)

something. I went to the telephone and spoke to Mr. Le Blanc, whose voice I recognised. He said he was preparing to go to Miami and he was not coming to the office that day.

Cross-
Examination

CROSS-EXAMINED

I attended Court and returned to the office at about 11.10 and stayed there about 15 minutes. I left the office and went about my business. I did not return to Mr. Le Blanc's office that day.

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Re-Examination

RE-EXAMINED

Mr. Le Blanc was not there at 11.00 to 11.10 when I went back.

CASE FOR DEFENDANT NO 2 CLOSED

CASE FOR DEFENDANT NO 1 CLOSED

NO. 11

No. 11

ADDRESS BY COUNSEL FOR SECOND DEFENDANT

Address by
Counsel for
2nd Defendant

HOSEIN ADDRESSES :

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If first claim is good then second claim is bad.

22nd October
1975

Warrant no set aside - no action maintainable until warrant set aside - Clark & Lindell on Torts - 13th Edn. 352; 691 Williams v. Smith 1863, 14 C.B. 596 - p. 622, p. 1143 ER. Second Claim was promise made by Le Blanc. Does Le Blanc owe the plaintiff any duty? Was he negligent?

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1. No duty owed - he was not solicitor for the plaintiff. No independent liability on the part of Le Blanc. Para 6 of the Statement of Claim accepts that the order was made for payments of \$1,413.42. Offer must have been disclosed to the Judge. The Judge must have examined as to means. 3rd Edn. Hals. Vol. 3 p. 8. By law he has to and therefore evidence of Le Blanc should be

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accepted. Ex. B would have been mentioned - order explicit. Committal is immediate commitment for past default but suspended if he pays.

In the
High Court

No. 11

Stonor v. Fowler (1887) 13 A.C. 20.

The Plaintiff was in breach of the order on the 1st April, 1973 and the 1st May, 1973.

Address by
Counsel for
2nd Defendant
(continued)

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Church's Trustees v. Hibbert (1902)
2 Ch. 784 at 791.

Arrangement alleged - never made. True cause of action is malicious abuse of process of Court - can be done without setting aside warrant. Salmond on Torts - 15 Edn. p. 550. Critical issue - Was Plaintiff in breach of the order? If he was, that is the end of the matter.

Foth v. O'Hara (1959) 12 Dominion
Law Report, 2nd Series P. 332.

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NO. 12

ADDRESS BY COUNSEL FOR PLAINTIFF

ARCHBALD ADDRESSES :

36 Hals. 3rd Edn. p. 201, 274. Failure on Le Blanc's part to fulfil duties in the matter in so far as it affected Bobb. P. 99 No. 135 was the \$50.00. ever credited? Bobb says no examination as to means if Bobb's evidence accepted shows Le Blanc grossly mislead.

No. 12

Address by
Counsel for
Plaintiff

22nd October
1975

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Sebro v. O'Brien (1965) W.I.R. Vol. 7;
Pt. 1 p. 192 -

Damages. First defendant responsible for acts of her Solicitor.

NO. 13

ADDRESS BY COUNSEL FOR FIRST DEFENDANT

DEYALSINGH ADDRESSES :

Warrant issued out for larger amount than owing.

Churchill v. Siggers - 118 E.R. p
1389 - 1392.

No. 13

Address by
Counsel for
1st Defendant

22nd October
1975

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In the
High Court

Plaintiff has not shown that any
of the figures are wrong:

No. 13

Medina v. Grove - 116 E.R. p. 59.

Address by
Counsel for
1st Defendant

Saxon v. Castle - 112 E.R. p. 251

22nd October
1975

If no examination as to means,
Judge would have been in breach of duty
because he cannot make a committal order
without examining means.

Riddle v. Pakerran (1835) 2 Ch. 30

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Prenties v. Harrison - 114 E.R. 1118

ADJOURNED TO THE 4th NOVEMBER, 1975, for
JUDGMENT.

No. 14

NO. 14

Judgment

J U D G M E N T

4th November
1975

The Plaintiff's claim is for damages
for wrongful arrest and false imprisonment
by the defendants, their servants and/or
agents on the 30th May, 1973 and against
the second named defendant for damages for
breach of promise and/or duty and/or trust.
The undisputed facts are as follows:

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On 29th of November, 1971 in High
Court Action No. 2646 of 1970 the
first named defendant obtained a
Judgment against the plaintiff
for the sum of \$245.00 and taxed
costs amounting to \$1,094.02.
The second named defendant acted
as Solicitor for the first named
defendant in that action. Those
proceedings have been admitted in
evidence and marked "C.B.1."

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An examination of the plaintiff
on oath as to means was held before
the late Mr. Justice Achong on 27th
June, 1972 and a certified copy
of the plaintiff's evidence on that
occasion has been admitted as an
exhibit in this action and marked
"C.B.6".

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On 30th June, 1972, a Judgment Summons
was issued against the plaintiff returnable
on 5th January, 1973 on which date it was

adjourned to 26th January, 1973. Two days before that date, that is, on 24th January, 1973, the plaintiff attended at the office of the second named defendant and signed a document (exhibit "B") which reads as follows :

In the
High Court

No. 14

Judgment
(continued)

10 "I the undersigned CORNELIUS BOBB hereby admit means and hereby promise to pay off the Judgment debt and costs herein in the following manner, that is to say \$50.00. forthwith and the balance by monthly instalment of \$50.00 commencing the 28th day of February, 1973 and thereafter at the end of each and every month."

20 The Plaintiff there and then paid the \$50.00 for which he obtained a receipt.

30 At the hearing of the Judgment Summons on 26th January when the plaintiff appeared in person before Hassanali J. an order (exhibit "C.B.1b") was made committing him to prison for 21 days, suspended upon his paying the amount of the Judgment debt and costs and the cost of the Judgment Summons by monthly instalments of \$50.00, the first of such payments to be made on the 1st day of March, 1973, and a similar payment on the 1st day of each month thereafter.

The plaintiff in his evidence before this Court asserted that there was no inquiry as to his means before the order was made and exhibit "B" was neither read nor shown to the Court and neither he nor the second named defendant mentioned its contents.

40 A committal order in these circumstances would be dereliction of duty on the part of the learned Judge.

As Lord Herschell said in Stonor v. Fowler 1887 13 A.C. (H.L.) 20 at p 30:

50 "I think a Judge would very much neglect his duty if, in order to save himself the trouble of inquiring whether there was default and whether the man had possessed the means of making payment of the instalments down to that time ordered, he were to issue a warrant of

In the
High Court

No. 14

Judgment

4th November
1975
(continued)

commitment with a stipulation for suspension if some smaller sums were paid, without having really arrived at the conclusion that there had been default. I think that that would be a most irregular and improper proceeding

Mr. Le Blanc's evidence is quite the opposite. He says that at the hearing the plaintiff gave evidence. He, Le Blanc, had exhibit "B" in his hand and read it to the Court. He put the offer to the plaintiff and he accepted. There was examination as to means and the order was made.

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I accept Mr. Le Blanc's evidence. It seems to me inconceivable that with the presence of the Plaintiff and the existence of exhibit "B" signed by him, the solicitor, for the Judgment Creditor, would not be impelled to advance and the Court to receive evidence as to means. The plaintiff has shown himself to be a most unreliable witness who is prepared to give any evidence on oath which he thinks favourable to his case. He has admitted to this Court that the sworn evidence he gave before Achong J. was untrue both as to ownership of his house, which he then said belonged to his son, and to his possession of livestock, which he had then denied. It is as near an admission to perjury as I have heard.

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Sub-section (1) of Section 4 of the Debtors Ordinance Chapter 6 No. 3 empowers the Court to commit to prison 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 Court but such jurisdiction is only exercisable 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 to pay the same. A committal order therefore cannot be made without proof of means.

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Sub-section (2) of the same section provides that proof of the means of the

person making default may be given in such manner as the Court thinks fit. Further, Rule 17 (2) of the rules made under the Debtors Ordinance gives the Court power to suspend the execution of a commital order on payment of the debt upon which the summons is brought by instalment.

In the
High Court

No. 14

Judgment

4th November
1975
(continued)

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I find that the order of Hassanali J. was lawfully made and that it was, therefore, a valid commital order suspended on the conditions stated therein, that is, that the plaintiff should pay \$50.00 per month on the 1st day of every month commencing on the 1st day of March, 1973.

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It is common ground that the plaintiff paid \$50.00 on the 1st March 1973 and \$50.00 on the 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 May, 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 gave the plaintiff credit for the \$50.00 paid on 24th January, 1973 before the hearing of the Judgment Summons and which did not form part of the order of Hassanali J which was made on 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.1b").

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By neglecting to pay \$50.00 on 1st May, 1973 the plaintiff had not kept the condition on which the order had been suspended and the warrant was executed by the arrest of the plaintiff at the corner of Queen and St. Vincent Streets,

In the
High Court

No. 14

Judgment

4th November
1975
(continued)

Port of Spain on 30th May, 1973. He was taken to the Royal Gaol where he was lodged until his release on 19th June, 1973.

On these facts can the plaintiff maintain an action for wrongful arrest and false imprisonment?

In Bernard v. Thomas (CA) (Trinidad) No. 52 of 1964 the Learned President of the Court said:

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"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 not thereafter duly kept, then obviously, the committal order can and may be enforced."

The arrest and imprisonment of the plaintiff was in execution of a Judge's order, it is, therefore, a judicial act. In the words of the author of Clerk & Lindsell on Torts (12th Edition, paragraph 564):

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"Therefore, however wrongfully and fraudulently the Judge's order may have been obtained, it is, nevertheless, a purely judicial act and, consequently, an arrest in pursuance of it cannot be a trespass, and the injured party must sue the defendant for procuring the order maliciously and without reasonable and probable cause."

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Again, in the same treatise, paragraph 1731, the following statement occurs:

"Arrest on civil process must therefore now always be a purely judicial Act, and it is but seldom that any cause of action can arise in respect of it."

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It seems to me on the authorities, that a person who has been deprived of his liberty by judicial process may maintain an action for trespass to the person if the process has been set aside. In Williams v. Smith 1863 14 C.B. (N.S.) 596 at p. 624 Wille J. said ".....in order to entitle the party against whom the process issues to maintain an action for any intermediate acts done under it, he must show that the

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process has been set aside by reason of some misconduct or at least some irregularity, on the part of the person suing it out."

In the
High Court

No. 14

Judgment

4th November
1975
(continued)

In the instant case the committal order of Hassanali J. has not been set aside, the plaintiff has not kept the condition attaching to its suspension and his action for wrongful arrest and imprisonment cannot succeed.

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Alternatively, if the process has not been set aside, it would seem that an action will lie for procuring the order maliciously and without reasonable or probable cause. This however, does not appear to be the cause of action against the second defendant alone which is stated to be a claim for damages for breach of promise and/or duty and/or trust.

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In purported support of this claim, whatever it means, the plaintiff testify that when he paid the second instalment on 11th April, 1973 he asked the defendant about the \$50.00 paid on 24th January. The defendant told him that he would give him credit for it in May so that his next instalment would be due in June. On the strength of that promise he did not pay the instalment due on the 1st May and was on his way to the defendant's office to pay the June instalment when he was arrested.

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I do not believe a word of the Plaintiff's story. I can see no reason why the question of the \$50.00 paid on the 24th January should arise at all in relation to the terms on which the committal order was suspended and even less why it should arise only after the plaintiff has already paid two instalments. In any case exhibit "B" makes it quite clear that it was the plaintiff who offered to pay \$50.00 forthwith on 24th January, which he did and \$50.00 per month from the end of February, the latter offer being slightly modified by the terms of the suspension of the Judge's order of committal so that the instalments should commence on 1st March. For the second named defendant to have made the promise alleged would be contrary to the plaintiff's own offer, the Court's order and the interest of his client, the first named defendant.

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In the
High Court

No. 14

Judgment

4th November
1974
(continued)

I hold that the second defendant has broken no promise for he made none; had neglected no duty for he owed none, and had betrayed no trust for he had pledged none.

Finally, I turn to the suggestion that the execution was sued out for a larger sum than remained due on the judgment. No evidence was given by the plaintiff as to the amount remaining due. The Court is, therefore, unable to say whether the amount on the warrant is correct or not. What it can say is that the amount stated on the request for the issue of the warrant (exhibit "C.L.1.") signed by the second defendant was for a smaller sum than appears on the warrant, the alteration having been made by someone in the High Court Registry, so that if anyone is to be blamed it is certainly not the defendant.

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In Churchill v. Siggers 118 E.R. p. 1389 Lord Campbell C.J. said :

"Where execution is sued out for a larger sum than remained due on the judgment an action is only maintainable upon proof of malice or want of reasonable or probable cause."

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There is no such proof here.

For the reasons I have given this action must fail. There will be judgment for the defendants with costs to be taxed. Certified fit for two counsels in the case of the second defendant.

Dated this 4th day of November, 1974.

/s/ P.L.U. Cross
Judge.

No. 15

NO. 15

40

Order

ORDER

Entered and dated the 4th day of November, 1974. Before the Honourable Mr. Justice Urban Cross.

This action having on the 21st and

22nd days of October, 1975 being tried before the Honourable Mr. Justice P. L.U. Cross in the presence of Counsel for the Plaintiff and for the defendants and the said Judge having this day ordered that the plaintiff's claim be dismissed and that Judgment be entered for the defendants with costs.

In the High Court

No. 15

Order continued)

IT IS THIS DAY ADJUDGED

10 THAT the defendants recover against the plaintiff their costs of this action to be taxed. Fit for two Counsels in respect of the second named defendant.

Leave to write up Order.

/s/ S. Cross
Asst. Registrar.

NO. 16

NOTICE OF APPEAL MOTION

No. 16

20 TAKE NOTICE that the plaintiff-appellant being dissatisfied with the decision of the High Court of Justice contained in a judgment of His Lordship Mr. Justice P.L.U. Cross dated the 4th day of November, 1974, set out in paragraph 2 hereof doth hereby appeal to the Court of Appeal on the grounds set out in paragraph 3, and will at the hearing of the appeal seek the relief set out in paragraph 4.

Notice of Appeal Motion

4th December 1974

40 AND the plaintiff-appellant further states that the names and addresses including his own of the persons directly affected by the appeal are those set out in paragraph 5.

2. The plaintiff-appellant appeals against the whole of the decision and judgment.

3. GROUND OF APPEAL :

1. The Judgment of the Learned Trial Judge is unreasonable and/or against the weight of the evidence and/or cannot be supported having regard to the evidence.

In the
Court of
Appeal

No. 16

Notice of
Appeal Motion

4th December
1974
(continued)

2. The Learned Trial Judge
misdirected himself :

(1) by drawing the wrong conclusion as to the plaintiff-appellant's action against the second named defendant and thereby failed to discern and/or became confused as to the difference between an action in tort where the plaintiff claims that he was imprisoned as a result of a breach of duty by the defendant and that action in trespass, where the plaintiff claim is for damages for unlawful arrest and false imprisonment. 10

(2) in holding that prior to the request of the second named defendant to the Registrar for the issue of the warrant and/or at the time of making of the committal order the Court was well aware of the fifty dollars (\$50.00) paid by the plaintiff-appellant on the 24th January, 1973. 20

(3) in coming to the conclusion and holding that the second named defendant "broke no promise for he made none, had neglected no duty for he owed none, and betrayed no trust for he pledged none." 30

3. From the evidence adduced, the Learned Trial Judge failed to recognise and/or appreciate:

(1) That from the commencement of the High Court action No. 2646 of 1970, the second named defendant acting as Solicitor for the first named defendant, dealt with malice and/or ill will towards the plaintiff-appellant who is the defendant in that action and that such malice and/or ill will continued up to and after judgment was recovered against the plaintiff-appellant and the drawing and taxing the bill of costs of that action. 40

(2) That at the time of the hearing of the judgment summons if the existence of exhibit "B" was disclosed to the Court the Court would have refrained from giving effect to its contents and instead make an order committing the plaintiff-appellant to prison and suspended such committal order on condition that the plaintiff-appellant pay the total sum for which the judgment summons was issued.

In the
Court of
Appeal
No. 16
Notice of
Appeal Motion
4th December
1974
(continued)

(3) That as the \$50.00 paid by the plaintiff-appellant to the second-named Defendant on the 24th January, 1973, was not deducted from the amount of the Judgment summons, the sum remained in the hands of the second named defendant for account of the plaintiff-appellant.

(4) That the question of the \$50.00 paid by the plaintiff-appellant to the second named Defendant on the 24th January, 1973, arose on the 11th April ----- to settle the outstanding account with the second named defendant of the \$50.00 paid by the plaintiff-appellant on account of the judgment debt and costs and which was not accounted for up to that date.

(5) That even if the second named defendant did not actually procure the irregular alterations of Court documents after being filed he certainly knew of such alterations, condoned and actually acted on them.

4. RELIEF SOUGHT FROM THE COURT OF APPEAL:

1. That the judgment of the Learned Trial Judge be set aside and judgment be entered for the plaintiff-appellant with costs of this Court and in the Court below.

2. That exemplary damages be awarded the plaintiff-appellant.

3. Such further and/or other relief as the Court of Appeal may seem just.

In the Court
of Appeal

No. 16

Notice of
Appeal Motion

4th December
1974
(continued)

5. PERSONS DIRECTLY AFFECTED BY THE APPEAL
- | | | | |
|-------------------------------|----|--|----|
| CORNELIUS BOBB | of | Lady Young Road,
Morvant. | |
| ROSETTA JAISINGH | of | Belmont Valley
Road, Port-of
Spain. | |
| CLARENCE EMMANUEL
LE BLANC | of | 25 St. Vincent
Street, Port-
of-Spain. | 10 |

Dated this 4th day of December, 1974.

/s/ R. Persad-Maharaj & Co.,
Solicitors for the Plaintiff-
Appellant.

To : The Registrar, Court of Appeal,
Trinidad House, Port-of-Spain.

And to

Messrs. Fitzwilliam, Stone and Alcazar
Independence Square, Port-of-Spain.

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No. 17

Judgment of
Rees, J.A.

22nd June,
1976

NO. 17

JUDGMENT OF REES, J.A.

DELIVERED BY REES, J.A.

On November 29, 1971 Rosetta Jaisingh, the personal representative of Anthony G. Singh, deceased, recovered a judgment against Cornelius Bobb in High Court Action No. 2646 of 1970. The judgment remained wholly unsatisfied and on June 29, 1972 an application was made by the judgment creditor for the issue of a judgment summons supported by an affidavit of her solicitor, Clarence Le Blanc, stating inter alia that the sum of \$1,366.00 was due and payable. On January 24, 1973 the debtor went to the solicitor's offices and signed a document admitting means and promising to pay off the amount due by making a payment of \$50.00 forthwith and the balance by monthly instalments of \$50.00 commencing on February 28, 1973.

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Two days later on January 26, 1973 the judgment summons was heard by Hassanali J., but no mention was made of the \$50.00 paid to the solicitor on January 24, 1973 although the solicitor swore that he read to the Court the document admitting means which the debtor had signed, and sworn testimony was given as to the debtor's means. On the evidence adduced the judge made an order committing the debtor to prison for 21 days but directed that its execution be suspended if the balance of what remained due on the judgment summons was paid by instalments of \$50.00 on the 1st day of each month, the first of such payments to be made on March 1, 1973 and similar payments on the first day of each month thereafter.

In the Court
of Appeal

No. 17

Judgment of
Rees, J.A.

22nd June
1976
(continued)

The debtor paid \$50.00 to the solicitor on March 1, 1973 and \$50.00 on April 11, 1973 but nothing was paid on May 1, 1973. On May 4, 1973 the creditor's solicitor in accordance with the general practice, requested the Registrar of the Supreme Court to issue the warrant of committment. The Registrar complied and on May 30, 1973 the Marshal of the Court arrested the debtor and delivered him into custody of the gaoler at the Royal Gaol where he was detained for 21 days. On July 5, 1973 the debtor commenced this action against the judgment creditor and her solicitor for wrongful arrest and false imprisonment which is an action for trespass. A claim was also made against the solicitor for damages for a breach of promise and/or duty and/or trust. Cross J. dismissed the action and the debtor appealed.

At the very outset of the hearing in this court counsel for the debtor admitted that credit was not given for the sum of \$50.00 which had been paid to the judgment creditor's solicitor on January 24, 1973 and therefore when Hassanali J. made the order, it was for a larger sum than what was due whereupon the question as to jurisdiction immediately arose. Both counsel for the judgment creditor and counsel for the solicitor submitted that since the whole case had proceeded on the basis that the committal order made by Hassanali J. was a good and valid order the debtor ought not now to be permitted to argue the point of jurisdiction for the first time when it was not taken at the

In the Court
of Appeal

No. 17

Judgment of
Rees, J.A.

22nd June
1976
(continued)

trial before Cross J. It is a well-known rule of practice that if a point was not taken at the trial, it is not usually permitted to be taken for the first time on appeal unless this Court is in possession of all the material necessary to enable it to dispose of the matter fully and without recourse to a further hearing. The principle is stated in Lord Herschell's statement in The Tasmania (1890) 15 A.C. at p. 255 which was approved in Karanaratne v. Ferdinandus (1902) A.C. 405. He said that "a Court of Appeal ought to decide in favour of an appellant on a ground there put forward for the first time, if it be satisfied beyond doubt, first that it had before it all the facts bearing upon the new contention as completely as would have been the case if the controversy had arisen at the trial; and next, that no satisfactory explanation could have been offered by those whose conduct is impugned if an opportunity for explanation had been afforded them in the witness box." But in the present case the point which was not taken at the trial and is being put forward for the first time at this hearing is a point of jurisdiction and there is clear authority for saying that a point of jurisdiction may be taken at any stage if all the facts are before the court. See Norwich Corporation v. Norwich Electrical Tramways Ltd. (1906) 2 K.B. 129, and Westminster Bank Ltd. v. Edwards (1942) A.C. 529/. In the instant case all the facts are before this Court and we ought to decide whether or not Hassanali J. had the jurisdiction to make the order which he made.

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The Judgment summons was issued by the judgment creditor under the Debtors Ordinance Ch. 6 No. 3, the local counterpart of the Debtors Act, 1869 (U.K.) which abolished imprisonment for debt, with certain exceptions. Section 4(1) of the Ordinance is in terms similar to s.5 of the Debtors Act, 1869. So far as material, it reads:

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"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

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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
civil court:.....

In the Court
of Appeal

No. 17

Judgment of
Rees, J.A.

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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."

22nd June
1976

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That section appears to contemplate that
when a judgment summons is taken out under the
Debtors Ordinance the judgment creditor can only
ask the judge to commit the debtor to prison for
failing to pay a sum of money which the Court had
ordered the debtor to pay in which case the
court is given jurisdiction to commit him to
prison. However, that jurisdiction is fettered
by the proviso which prohibits the making of a
committal order unless it is proved to the
satisfaction of the court that the debtor has
since the date of the judgment possessed the
means to pay the sum in respect of which he
has made default. In Marris v. Ingram 13 C.D.
338 Jessel M.R. stated what is, to my mind, the
core of the matter when he said that the Act
of 1869 was intended for the punishment of
fraudulent or dishonest debtors. There is no
doubt that that is also the intention of
the Debtors Ordinance, the local counterpart
of the Act.

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The main question then for the consider-
ation 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 debtor 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 had made default. The

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In the Court
of Appeal

No. 17

Judgment of
Rees, J.A.

22nd June
1976
(continued)

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 committal under S.5. of the Ordinance.

In Re: a Judgment Summons (1953) 10
1 All E.R. 424 Jenkins L.J. stated at page 433 that the questions to be considered by the court when hearing a judgment summons under S. 5 of the Debtors Act 1869 are:

- "(i) Is there a judgment or order against the debtor for the payment of money in respect of which he is in default. If so, 20
- (ii) has he now or had he since the date of the judgment or order had the means to pay the amount in respect of which he is in default. If so,
- (iii) has he refused or neglected to pay such amount."

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 30
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 or inability to pay. (See Esdaile v. Visser (1880) 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 40
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 court is unable to say that he exercised his discretion wrongly.

It was submitted that in practice the court in the first instance normally makes an instalment order estimated to

be within the means of the debtor, but whatever the practice, there is no law which says that a judge has no jurisdiction to make an order for committal at the first hearing if in his discretion the facts and circumstances of the particular case show that the proper order should be one of immediate committal.

In the Court
of Appeal

No. 17

Judgment of
Rees J.A.

10 Rule 17(2) of the Rules made under S.3 of
the Ordinance provides that if an order of
committal 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. This rule undoubtedly assists
a creditor to obtain satisfaction and at the
same time gives the debtor an opportunity to
avoid a term of imprisonment for his
20 imprisonment for his dishonesty by paying on
certain conditions. Hassanali J. invoked that
rule by suspending the order of committal
which he had validly made on the condition
that the debtor pay \$50.00 per month on the 1st
day of every month commencing on March 1, 1973.

22nd June
1976
(continued)

30 There is unfortunately no provision in
this country for such payments to be made
through the court. As a result a practice
has grown up whereby payments are made by the
debtor to the creditor's solicitor. If the
debtor makes default the creditor or his
solicitor brings it to the attention of the
Registrar of the Supreme Court who issues the
order of commitment bearing the date of the
day on which the order was made. In the
present case as the debtor defaulted in
paying \$50.00 on April 1, 1973 and \$50.00
on May 1, 1973 the condition attaching to
40 the suspension was not duly kept and the
creditor through her solicitor requested the
Registrar to enforce the order of commitment
made by Hassanali J. on January 26, 1973.
That this was the proper course is clear from
the unreported decision given on June 20,
1966 in Bernard v. Thomas (Cr. App. No. 52
of 1964) where it was held by this court that
if there is a valid committal order which
has been suspended on any stated condition
and the condition attaching to its suspension
50 is not thereafter duly kept, then obviously
the committal order can and may be enforced.

In this case, on May 30, 1973 when the
marshal arrested the debtor under the order
of commitment the debtor could have tendered
the amount endorsed on the order before his

In the Court
of Appeal

No. 17

Judgment of
Rees, J.A.

22nd June
1976
(continued)

body was delivered to the Royal Gaol and by Rule 10 of the Rules made under S.5 of the Debtors Ordinance the marshal would have been under a duty to accept such amount and discharge the debtor. But the debtor made no such tender or payment to the marshal. Therefore after his arrest he at no time acquired a right to his discharge and was accordingly delivered to the Gaoler.

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The arrest was carried out by the marshal in the ordinary course of procedure following an order made by Hassanali J. a judicial officer in the exercise of his functions. The judgment creditor initiated the proceedings but neither he nor his solicitor took any active part in the arrest. Even if he or his solicitor took out execution for a sum in excess of the amount due, as alleged, the debtor may have had an action against them for procuring the order of the court maliciously and without reasonable cause but not an action for trespass. It is a well-settled principle that when a debtor is arrested and imprisoned under the order of the court which has jurisdiction to make the order, that protects all proceedings taken in pursuance of that order. In para. 562 at p.294 of Clerk & Lindsell on Torts (12th Edn.) the learned author in referring to imprisonment under a judge's order states as follows:

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"The power of imprisonment in respect of debt whether before or after judgment, depends on the provisions of the Debtors Act, 1869. It can only be exercised judicially and upon sworn information. Therefore, however, wrongfully and fraudulently the judge's order may have been obtained, it is nevertheless a purely judicial act and consequently an arrest in pursuance of it cannot be a trespass."

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I am fully aware that I have not touched upon every point raised by counsel for

the debtor but I think I have dealt with enough of the material points to conclude that there was no trespass by the creditor or her solicitor.

In the Court
of Appeal

No. 17

10 The questions as to whether the solicitor broke a promise made to the debtor or neglected a duty or betrayed a trust were all matters of fact, for Cross J. who tried the action. The appellant has not, in my opinion, discharged the burden of showing that the judge was wrong when he found that the solicitor had broken no promise for he made none, had neglected no duty for he owed none, and betrayed no trust for he had pledged none.

Judgment of
Rees, J.A.

22nd June
1976
(continued)

For these reasons, I would dismiss this appeal with costs.

20 /s/ E.A. Rees
Justice of Appeal.

PHILLIPS, J.A. /s/ C.E. Phillips
I agree. Justice of Appeal.

CORBIN, J.A. /s/ M.A. Corbin
I also agree. Justice of Appeal.

NO. 18

No. 18

ORDER

Order

30 DATED AND ENTERED the 22nd day of June, 1976
BEFORE the Honourable Mr. Justice C. Phillips
Mr. Justice M. Corbin
Mr. Justice E. Rees

UPON READING the Notice of Appeal filed herein on behalf of the above-named appellant dated the 4th day of December, 1974 and the Judgment hereinafter mentioned

AND UPON READING the Judge's Notes herein

AND UPON HEARING Counsel for the appellant and Counsel for the Respondents

AND MATURE DELIBERATION THEREUPON HAD

40 IT IS ORDERED

that this appeal do stand dismissed and the Judgment of His Honourable Mr. Justice P.L.U. Cross dated the 4th day of November, 1974, be

In the Court
of Appeal

affirmed and that the costs of this appeal
be taxed and paid by the appellant to the
respondents.

No. 18

/s/ S. Cross
Asst. Registrar.

Order

22nd June 1976
(continued)

No. 19

NO. 19

Petition for
Leave to Appeal
to H.M. in
Council.

PETITION FOR LEAVE TO APPEAL
TO HER MAJESTY IN COUNCIL

10

THE HUMBLE PETITION OF CORNELIUS BOBB
SHEWETH:

2nd July 1976

1. The Petitioner on the 5th day of July
1973, instituted in the High Court, Action
No. 1714 of 1973 against the Respondents
claiming damages for wrongful arrest and
false imprisonment, and against the second-
named Respondent, only, damages resulting
from a breach of promise and/or duty and/or
trust and/or negligence, the Petitioner
having been arrested and imprisoned for
twenty-one days for an alleged failure to
comply with the terms of a purported order
of committal made in High Court Action No.
2646 of 1970 by Hassanali J., on the 26th
day of January, 1973 after the said order
had been suspended by the High Court to
allow for the payment by the Petitioner
of the sum of \$1,413.42 by monthly
instalments of \$50.00, commencing on the
1st March, 1973.

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2. The Action was heard and judgment
was delivered by the High Court (Cross J.)
which dismissed the Petitioner's claim
with costs. At the trial in the High Court
it was established that a judgment for
\$245.00 and costs allowed in the sum of
\$1,078.40 and interest amounting in all to
\$1,382.56 had been obtained by the first-
named Respondent against the Petitioner
pursuant to an order of the High Court made
on the 29th day of November, 1971, and that
the amount was unpaid by the Petitioner
except for a sum of \$50.00 which had been
paid by the Petitioner to the second-named
Respondent as Solicitor for the first-
named Respondent on the 24th day of January,
1973 at a time when a judgment summons

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10 seeking an order to commit the Petitioner to prison for non-payment had already been issued but not yet determined. The Judgment Summons came on for hearing on the 26th day of January, 1973 before Hassanali, J., and an order was made in the first instance committing the Petitioner to prison for non-payment of the entire sum due as judgment and costs together with the costs of the judgment summons making a total of \$1,413.42, and directed the suspension thereof on the terms set out above. It was further established that the Petitioner made two further payments of \$50.00, on the 1st day of March, and 11th April, 1973. The Petitioner was arrested on the 30th May, 1973 under a Warrant which did not take into account the sum of \$50.00 paid on the 24th January, 1973 and which required the Petitioner to pay a higher sum than was due to secure his release.

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3. On appeal to the Court of Appeal (Phillips, Corbin and Rees, JJ.A.) the Court dismissed the appeal with costs and the Petitioner desires to appeal to Her Majesty in Her Majesty's Privy Council against the judgment and/or order of the Court of Appeal.

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4. At the hearing in the Court of Appeal the Court being satisfied that it had all material evidence before it and having examined with the consent of Counsel the notes made by Hassanali J., at the time when the Judgment Summons came on for hearing, allowed arguments on the following points of law on behalf of the Petitioner in support of his claim and the reply of the Respondents thereto:

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- (1) that imprisonment for debt was abolished by the Debtors Ordinance Ch. 6 No. 3 and that no imprisonment for debt could be justified except where there was strict compliance with the provisions of the Debtors Ordinance and the Rules made thereunder;

In the Court
of Appeal

No. 19

Petition for
Leave to
Appeal to H.M.
in Council

2nd July 1976
(continued)

In the Court
of Appeal

No. 19

Petition for
Leave to
Appeal to H.M.
in Council

2nd July 1976
(continued)

- (2) that the order of committal and Warrant made and executed against the Petitioner were bad for non-compliance with the said Debtors Ordinance and Rules and could not be relied upon to justify the arrest and imprisonment because:
- (a) the order was made for a higher amount than that due at the time it was made having regard to the payment of \$50.00 made on the 24th January, 1973, and was therefore made without jurisdiction, the authority to commit to prison being granted only in respect of the non-payment of the sum due having regard to the provisions of the Rules made under the Debtors Ordinance; 10 20
 - (b) the Warrant of committment executed on the Petitioner was bad because it required payment of a higher amount than was due to secure the Petitioner's release;
 - (c) the order of committal was suspended and could not be executed or enforced without a further order of the Court; 30
 - (d) that in any event there was no default because the creditor was obliged to apply the payment of \$50.00 made on the 24th January, 1973 towards an instalment of the debt so that at no material time was any instalment owing; 40
 - (e) that the second-named Respondent who made two requisitions to the Registrar to secure the committal of the Petitioner to prison by the issue of a Warrant was jointly liable with the first- 50

named Respondent for the wrongful arrest and false imprisonment of the Petitioner;

In the Court
of Appeal

No. 19

(f) that imprisonment for debt having been barred by the Debtors Ordinance the Petitioner was not lawfully imprisoned within the forms of the exceptions created by the Ordinance and the Rules made thereunder for the reasons above stated;

Petition for
Leave to
Appeal to H.M.
in Council

2nd July 1976
(continued)

(g) 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 warrant by the Registrar to justify the arrest and imprisonment of the Petitioner and the action was properly brought in trespass.

5. The Court of Appeal in a judgment read by Rees J.A., with which Phillips and Corbin JJ.A., agreed, was delivered on the 22nd day of June 1976. The said judgment substantially agrees with submissions made in reply to the arguments presented by the Petitioner. The Court of Appeal held that the judgment creditor could only ask the Judge to commit the debtor for failing to pay a sum of money which the Court had ordered the debtor to pay in which case the Court is given jurisdiction to commit the debtor to prison so long as the Court is satisfied with proof of his name. The Court of Appeal held that the committal order which was discretionary was properly made by Hassanali J., further the Court held that the Petitioner had made default on the 1st April, 1973 and on the 1st May, 1973 in payment of the instalment of \$50.00, and that the committal order was properly enforced on the request of the first-named Respondent through her Solicitor the second-named Respondent and that the debtor could have paid the amount endorsed on the Warrant of committal to secure his release but he had not done so. The Court also held that neither the judgment creditor nor her Solicitor took any acting part in the arrest and since

In the Court
of Appeal

No. 19

Petition for
Leave to
Appeal to H.M.
in Council

2nd July 1976
(continued)

the arrest and imprisonment of the Petitioner was in pursuance of an order of the Court even where such order was wrongfully and fraudulently procured an action in trespass could not lie. The appeal was accordingly dismissed with costs and the judgment of the High Court affirmed.

6. The Petitioner submits that the decision of the Court of Appeal is wrong and that the judgment of Cross J., ought to have been reversed and damages assessed in favour of the Petitioner.

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7. The action involves a civil right to liberty the value of which cannot be properly estimated in money, but compensation for the loss of which and the special damages suffered is estimated by the Petitioner to be upward of three hundred pounds £300.00 in value and the Petitioner prays that The Court of Appeal will so hold. The Petitioner in any event submits that the appeal raises questions of general and public importance concerning the proper construction, meaning and effect of the Debtors Ordinance and the Rules made thereunder and that these are proper for submission to Her Majesty in Council for decision.

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8. The Petitioner further submits that the Court of Appeal ought not to direct that the judgment be carried into execution pending the hearing and determination of the appeal to Her Majesty in Council.

9. WHEREFORE the Petitioner PRAYS that This Honourable Court in the exercise of all powers vested in it by the Trinidad and Tobago (procedure in appeal to the Privy Council) Order in Council 1962 and in pursuance of all other powers vested in the Court in this behalf grant to the Petitioner leave to appeal to Her Majesty in Council on such terms and conditions as may be just, and make such further and/or other order as may be just;

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AND THE PETITIONER IN DUTY BOUND WILL EVER
PRAY

In the Court
of Appeal

/s/ David Chin
Of Counsel

No. 19

/s/ Kenneth Sagar
Of Counsel

Petition for
Leave to
Appeal to H.M.
in Council

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/s/ Capildeo & Capildeo
Solicitor and Agent for R.
Persad-Maharaj & Co.
Solicitors for the Petitioner

2nd July, 1976
(continued)

Dated the 2nd day of July, 1976.

TO: The Registrar of the Supreme Court
of Judicature

and

TO: Messrs. Fitzwilliam, Stone & Alcazar,
78 Independence Square,
Port-of-Spain,
Solicitors for the Respondents.

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This Petition will be heard on Monday the
18th day of July, 1976, at the hour of
9.30 o'clock in the forenoon, at the Court
of Appeal, Trinidad House, Port-of-Spain.

NO. 20

No. 20

ORDER GRANTING CONDITIONAL
LEAVE TO APPEAL TO HER MAJESTY IN COUNCIL

Order granting
Conditional
Leave to
Appeal to H.M.
in Council

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DATED the 12th day of July, 1976
ENTERED the 12th day of July, 1976
BEFORE the Honourable Mr. Justice Clement
Phillips,
Mr. Justice Maurice Corbin,
Mr. Justice Evans Rees.

12th July 1976

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UPON the Petition of the above-named
Petitioner dated the 2nd day of July, 1976,
for leave to appeal to Her Majesty in
Council against the Judgment of the Court
comprising the Honourable Mr. Justice
Clement Phillips, the Honourable Mr.
Justice Maurice Corbin and the Honourable
Mr. Justice Evans Rees, Justices of Appeal
delivered herein on the 22nd day of June,
1976;

In the Court
of Appeal

No. 20

Order granting
Conditional
Leave to Appeal
to H.M. in
Council

12th July 1976
(continued)

AND UPON READING the said Petition and the affidavit in support thereof sworn by Cornelius Bobb on the 1st day of July, 1976, and filed herein;

AND UPON HEARING Counsel for the Petitioner and Counsel for the Respondents.

THE COURT DOTH ORDER that subject to the performance by the said Petitioner of the conditions hereinafter mentioned and subject to the final order of this Honourable Court upon due compliance with such conditions leave to appeal to Her Majesty in Council against the said Judgment of the Court of Appeal be and the same is hereby granted to the Petitioner in pursuance of Section 82 sub-section (2) (a) of the Trinidad and Tobago (Constitutional) Order in Council, 1963. 10 20

AND THIS COURT DOTH FURTHER ORDER that the Petitioner do within ninety days from the date hereof enter into good and sufficient security to the satisfaction of the Deputy Registrar of this Court in the sum of £500.00 with one or more sureties or deposit into Court the said sum of £500.00 for the due prosecution of the said appeal and for the payment of all such costs as may become payable by the Petitioner in the event of the Petitioner not obtaining an order granting him final leave to appeal or of the appeal being dismissed for non-prosecution or for the part of such costs as may be awarded by the Judicial Committee of the Privy Council to the Respondents on such appeal as the case may be. 30 40

AND THIS COURT DOTH FURTHER ORDER that all costs of and occasioned by the said Appeal shall abide the event of the said appeal to Her Majesty in Council if the said appeal shall be allowed or dismissed or shall abide the result of the said appeal in case the said appeal shall stand dismissed for want of prosecution. 50

AND THIS COURT DOTH FURTHER ORDER that the Petitioner do within four (4) months from the date of this Order in due course take out all appointments that may be necessary for settling the record in such appeal to enable the Deputy Registrar of this Court to certify that the said record has been settled and that the provisions of this Order on the part of the Petitioner has been complied with.

10

In the Court of Appeal

No. 20

Order granting Conditional Leave to Appeal to H.M. in Council

AND THIS COURT DOTH FURTHER ORDER that the Petitioner be at liberty to apply at any time within five (5) months from the date of this Order for final Leave to appeal as aforesaid on the production of a certificate under the hand of the Deputy Registrar of this Court of due compliance on his part with the conditions of this Order.

12th July 1976

20

AND THIS COURT DOTH FURTHER ORDER that the said Judgment for the costs in this Court delivered on the 22nd day of June 1976 be carried into execution upon the Respondents entering into good and sufficient security to the satisfaction of the Deputy Registrar of this Court for the due performance of such Order as Her Majesty in Council shall think fit to make thereon.

30

AND THIS COURT DOTH FURTHER ORDER that the costs of and incidental to this application be the costs in the cause.

LIBERTY TO APPLY.

BY THE COURT

/s/ S. Cross
Ag. REGISTRAR

NO. 21

ORDER GRANTING FINAL LEAVE TO APPEAL TO THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

40

No. 21

Order granting Final Leave to Appeal to the Judicial Committee of the Privy Council

TRINIDAD AND TOBAGO

IN THE COURT OF APPEAL

8th March 1977

C.A. No. 71 of 1974

In the Court
of Appeal

BETWEEN

CORNELIUS BOBB

Petitioner

No. 21

And

Order Granting
Final Leave to
Appeal to the
Judicial
Committee of
the Privy
Council

ROSETTA JAISINGH and
CLARENCE E. LE BLANC

Respondents

8th March 1977

Dated and Entered the 8th day of March
1977.

10

Before The Honourable :

Mr. Justice C. Phillips
Mr. Justice M. Corbin
Mr. Justice E. Rees

UPON READING the Petition of
Cornelius Bobb filed on the 10th day
of December 1976 seeking final leave
to Her Majesty's Privy Council, the
Affidavit of Cornelius Bobb sworn to
on the 10th day of December 1976 and
the exhibit attached thereto and
marked C.B.1. the Affidavit of Carlyle
Bharath sworn to on the 17th day of
December 1976 and the exhibits attached
thereto and marked 'A', 'B', 'C', 'D'
and 'E' respectively, the Affidavit
of Carlyle Bharath sworn to on the
4th day of January 1977 and the exhibit
attached thereto and marked "A" and the
Affidavit of Dwarka Ramkissoon sworn
to on the 28th day of February 1977
and the exhibit attached thereto and
marked "A" all filed herein

20

30

AND UPON HEARING Counsel for the
Petitioner and Counsel for the
Respondents

IT IS ORDERED

that final leave be and the same is
hereby granted to the said Petitioner
to appeal to The Judicial Committee
against the Judgment of this Court
dated the 22nd day of June 1976 and
that the costs of this Petition be
costs in the cause

40

AND IT IS FURTHER ORDERED

that the costs of the day 15th February
1977 which was reserved for consideration
be also costs in the cause.

50

REGISTRAR

EXHIBITS

"A" LETTER, CLARENCE E.
LE BLANC TO CORNELIUS BOBB

CLARENCE E. LE BLANC

SOLICITOR & CONVEYANCER

25 St. Vincent Street,
(Upstairs)
Port-of-Spain,
Trinidad, W.I.,

19th January, 1973

10

EXHIBITS

"A"

Letter,
Clarence E.
Le Blanc to
Cornelius
Bobb

19th January
1973

Dear Sir/Madam,

re: Your High Court Action with
Le Blanc Investment Trust Limited

20

I wish to inform you that a Judgment Summons
in the above matter is listed for hearing
before a Judge at the Red House, Port-of-Spain,
on FRIDAY, the 26th day of January, 1973, at
9 o'clock in the morning.

You are required to attend Court on this day
or failing to do so an Order will be sought
thereon committing you to prison for your
default.

If however you wish any further consideration
you should call in to see me immediately.

Yours faithfully,

30

/s/ Clarence E. Le Blanc

Cornelius Bobb, Esq.,
92 Lady Young Avenue,
MORVANT.

"B" WRITTEN OFFER BY
CORNELIUS BOBB

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

No. 2646 of 1970

"B"

Written Offer
by Cornelius
Bobb

24th January
1973

EXHIBITS

BETWEEN

"B"
Written offer
by Cornelius
Bobb

24th January
1973

ROSETTA JAISINGH
(The Legal Personal Representative
of Anthony G. Singh, deceased)
Plaintiff

And

CORNELIUS BOBB Defendant

I, the undersigned CORNELIUS BOBB
hereby admit means and hereby promise
to pay off the Judgment debt and costs
herein in the following manner, that is
to say, \$50.00 forthwith and the balance
by monthly instalments of \$50.00
commencing the 28th day of February, 1973
and thereafter at the end of each and every
month.

10

DATED this 24th day of JANUARY, 1973.

/s/ Cornelius Bobb

20

.....

CORNELIUS BOBB.

"C.B.1."
Order of
McMillan J.
in Action
2646 of 1970

"C.B.1" ORDER OF McMILLAN J.,
IN ACTION 2646 of 1970.

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

29th November
1971

NO. 2646 of 1970

BETWEEN

30

ROSETTA JAISINGH
(The Legal Personal Representative
of Anthony G. Singh, deceased)
Plaintiff

And

CORNELIUS BOBB Defendant

Before the Honourable Mr. Justice
McMillan.

Dated and Entered the 29th day of
November, 1971.

40

This Action and Counterclaim having been called for hearing this day before the Honourable Mr. Justice McMillan and the parties by their Counsel stating that they have agreed to terms of settlement and consenting to this order.

EXHIBITS

"C.B.1."

Order of
McMillan J.
in Action
2646 of 1970

29th November
1971

10

It is adjudged that on the claim the defendant do pay the plaintiff \$245.00 plus interest and costs to be taxed.

And it is Ordered that the Counterclaim be dismissed with costs to be taxed and paid by the defendant to the plaintiff.

/s/ Wendy-Sandra Punnett
Asst. Registrar.

"C.B.1a"

"C.B.1a"

JUDGMENT SUMMONS

Judgment
Summons

20

Conduct Money Paid -25c-

/s/ Clarence E. Le Blanc
Plaintiff's Solicitor.

30th June
1972

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

No: 2646 of 1970

BETWEEN

ROSETTA JAISINGH
(The Legal Personal Representative
of Anthony G. Singh, deceased)
Plaintiff

30

And

CORNELIUS BOBB Defendant

WHEREAS the Plaintiff obtained a Judgment against the defendant in this Honourable Court on the 29th day of November,

EXHIBITS

"C.B.1a"

Judgment
Summons

30th June
1972

1971, for the sum of \$245.00. with the sum of ~~\$4,078.40~~ \$1094.02 for taxed costs and there is now due and payable upon the said judgment, costs and interest the sum of ~~\$4,366.56~~ \$1,382.56 to the 29th day of June, 1971.

YOU are hereby summoned to appear personally at the Court House, Port-of-Spain, on Friday the 5th day of January 1973, at the hour of 9 o'clock in the forenoon to be examined on the oath by the Court touching the means you have, or have had since the date of the said Judgment to pay the said sum in payment of which you have made default. AND ALSO to show cause why you should not be committed to prison for such default.

10

DATED this 30th day of June, 1972.

REGISTRAR.

20

	1,382.56
Amount due on this summons	\$4,366.56
Costs of this Summons.....	<u>\$ 30.86</u>
	1,397.42
	\$4,392.42-
	<hr/> 1,413.42

NOTE: In default of your attendance, you will if at the time of service of this Summons upon you payments of your expenses is made be liable to be dealt with as guilty of contempt of Court.

30

TO: CORNELIUS BOBB, ESQ.,
92 LADY YOUNG AVENUE,
MORVANT

"C.B.1aa"

"C.B.1aa"

Affidavit of
C.E. Le Blanc
in Support of
Exhibit
"C.B.1a"

AFFIDAVIT OF C. E. LE
BLANC IN SUPPORT OF EXHIBIT "C.B.1a"

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

40

30th June
1972

NO: 2646 of 1970

EXHIBITS

BETWEEN

"C.B.1aa"

ROSETTA JAISINGH
(The Legal Personal Representative
of Anthony G. Singh, deceased)
Plaintiff

Affidavit in
Support of
Exhibit "C.B.1a"

And

30th June
1972

CORNELIUS BOBB Defendant

10

I CLARENCE EMMANUEL LE BLANC of No.
25 St Vincent Street, in the City of Port-
of-Spain, in Trinidad, Solicitor make oath
and say as follows :-

1. I am Solicitor for the Plaintiff
herein.

20

2. That is within my personal knowledge
that the abovenamed Plaintiff did on the
29th day of November, 1971, in this Honourable
Court recover against the above-named
defendant a Judgment for the sum of \$245.00
with costs taxed and allowed in the sum of
\$1,078.40

3. That the sum of \$1,366.56 is now due
and payable upon the said Judgment debt,
costs and interest thereon to the 29th day
of June, 1972.

SWORN to No. 27 St. Vincent)
Street, Port-of-Spain, this) /s/ Clarence E.
30th day of June, 1972) Le Blanc

30

Before me,

Commissioner of Affidavits

FILED ON BEHALF OF THE PLAINTIFF HEREIN.

"C.B.1b"

"C.B.1b"

WARRANT OF ARREST

Warrant of
Arrest

CH. 6 NO 3

TRINIDAD & TOBAGO

30th May
1973

40

IN THE HIGH COURT OF JUSTICE

EXHIBITS

NO. 2646 of 1970

"C.B.1b"

BETWEEN

Warrant of
ArrestROSETTA JAISINGH
(The Legal Personal Representative
of Anthony G. Singh, deceased)30th May 1973
(continued)

Plaintiff

And

CORNELIUS BOBB

Defendant

TO: The Marshal or his deputies or
assistants and to the keeper of the
Royal Gaol.

10

WHEREAS the Plaintiff obtained a
Judgment against the Defendant in this
Court on the 29th day of November, 1971
for the sum of \$245.00 and \$1,094.02
costs.

AND WHEREAS the Defendant hath made
default in payment of \$1,339.02 payable
in pursuance of the said judgment and
WHEREAS a Judgment Summons was at the
instance of the Plaintiff duly issued
out of this Court by which the Defendant
was required to appear personally at this
court on the 5th day of January, 1973 to
be examined on oath touching the means
he had then or had since the day of
Judgment to satisfy the sum then due,
and payable in pursuance of the
judgment and to show cause why he should
not be committed to prison for such
default, which summons has been proved
to this Court to have been personally
and duly served on the Defendant.

20

30

AND WHEREAS on the 26th day of January,
1973 at the adjourned hearing of the said
Judgment Summons it has been proved to
the satisfaction of the Court that the
Defendant has and has had since the
obtaining of the judgment herein the
means to pay the said sum due and
payable in respect of the said Judgment
and costs and has failed or refused
or neglected to pay the same and has shown

40

no cause why he should not be committed to prison.

EXHIBITS

"C.B.1b"

NOW THEREFORE IT IS ORDERED that the Defendant shall be committed to prison for 21 days unless he shall sooner pay the sum stated below as that upon payment to which he is to be discharged.

Warrant of Arrest

30th May 1973
(continued)

10

THESE ARE THEREFORE TO REQUIRE you the said Marshal, Deputies, Assistants or others to take the Defendant and to deliver him to the keeper of the Royal Gaol and you the said keeper of the Royal Gaol to receive the said Defendant and safely keep in the said Gaol for 21 days from the arrest under this order or until he shall sooner be discharged by due course of law. But this order is to lie in the office and not to issue if the Defendant do pay the sum of ~~£~~1,413.42 by monthly instalments of ~~£~~50.00 the first of such payments to be made on the 1st day of March, 1973 and a similar payment on the 1st day of each month thereafter.

20

Dated this 26th day of January 1973.

Assistant Registrar.

30

Amount of instalments remaining due.....	£1,382.56
Cost of Summons	£ 30.86
	<hr/>
	£1,413.42
	<hr/>
Deduct amount paid since October.....	100.00
	£1,313.42
Costs of this order	20.16
	<hr/>
Amount upon payment of which the Defendant shall be discharged.....	£1,333.58

40

EXHIBITS

"C.B.1b"

Warrant of
Arrest

30th May 1973
(continued)

This order remains in force but for one year from the date hereof unless such time is extended under Rule 13 of the Debtors Rules.

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

Assistant Registrar.

10

This Warrant was executed on the Defendant Cornelius Bobb at the corner of Queen & St. Vincent Streets, Port of Spain, at 10.05 a.m. by the on Wednesday the 30th day of May 1973

He was taken and handed to the keeper of the Royal Gaol for safe keeping.

/s/ F.C. Robinson
Marshal P.O.S.
Red House.

20

"C.B.1c"

Defence and
Counterclaim
in Action No
2646 of 1970

28th January
1971

"C.B.1c"

DEFENCE AND COUNTERCLAIM

IN ACTION NO. 2646 of 1970

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

No. 2646 of 1970

BETWEEN

30

ROSETTA JAISINGH
(The Legal Personal Representative
of Anthony G. Singh, deceased)

and

CORNELIUS BOBB

DEFENCE

1. The Defendant denies that he is indebted to the Plaintiff in the sum

claimed or at all.

EXHIBITS

2. The Defendant denies being the maker of a promissory note dated the 21st day of April, 1967 in favour of Anthony G. Singh since deceased.

"C.B.1c"

Defence and Counterclaim in Action No 2646 of 1970

10

3. The Defendant denies receiving from the said Anthony G. Singh the sum of \$8.50 on the 6th day of June, 1967 and the sum of \$60.00 on the 22nd day of June, 1967 and denies signing any I.O.U. as alleged in the statement of claim.

28th January 1971
(continued)

COUNTERCLAIM

4. The Defendant claims against the plaintiff as legal personal representative of Anthony G. Singh, deceased, the sum of \$360.00 being due to the Defendant as his share in a Chitty operated by the said deceased.

20

5. The deceased operated a Chitty consisting of twelve share holders each paying the sum of \$30.00 per month to the deceased who collected the money from the shareholders and paid the total sum collected monthly to each shareholder.

6. The said Chitty commenced in January, 1967 and the deceased kept a note book with the names of the shareholders.

30

7. The defendant had two shares in the said Chitty and was paid one share sometime in the month of March, 1967 and the said deceased died before paying the other share to the defendant.

8. The plaintiff denies he received money from the shareholders after the death of the deceased and has failed and/or refused to pay the defendant the sum of \$360.00 due to him inspite of her repeated requests to the plaintiff to do so.

40

/s/ J. Camillo Castillo
OF COUNSEL

Delivered this 28th day of January, 1971 by Mr. Ramesh Persad-Maharaj of 14, St. Vincent Street, Port of Spain, Solicitor for the Defendant.

/s/ R. Persad-Maharaj
DEFENDANT'S SOLICITOR

EXHIBITS

TO: Mr. Clarence Emmanuel Le Blanc
25 St. Vincent Street, Port of
Spain,
Plaintiff's Solicitor

"C.B.2"

"C.B.2"

Receipt \$50

RECEIPT \$5024th January
1973

No. 10070

24/1/73

Received from Cornelius Bobb the sum
of fifty dollars on a/c Judgment debt
Costs. Re: H.C. for No. 2646/70.
Rosetta Jaisingh V.S. Self.

10

/s/ I, Phillips
(for) CLARENCE E. LE BLANC
Solicitor & Conveyancer
25 St. Vincent Street,
Port of Spain.

\$50.00

"C.B.3"

"C.B.3"

Receipt \$50

RECEIPT \$501st March
1973

No. 10996

1/3/73

20

Received from Cornelius Bobb the sum
of fifty dollars on a/c judgment debt
& Costs Re: H.C. for No. 2646/70
R. Jaisingh v.s. C. Bobb

/s/ I, Phillips
for CLARENCE E. LE BLANC
Solicitor & Conveyancer
25 St. Vincent Street, P.O.S.

\$50.00

"C.B.4"

"C.B.4"

30

Receipt \$50

RECEIPT \$5011th April
1973

11.4.73

Received from Cornelius Bobb the sum
of Fifty dollars on a/c of judgment debt
& Costs Re: H.C. for No. 2646/70
R. Jaisingh v.s. C. Bobb

_____ /s/ J. Rambhajan
\$50.00 for CLARENCE E. LE BLANC
_____ Solicitor & Conveyancer
25 St. Vincent Street P.O.S.

EXHIBITS

"C.B.4"

Receipt \$50

11th April
1973

"C.B.5"

Deed of Lease

7th May 1966

"C.B.5"

DEED OF LEASE

10

TRINIDAD AND TOBAGO

LEASE OF CROWN LAND

This Deed was prepared by me,
/s/ Samuel A. Huggins.
Conveyancer.

THIS DEED made the 7th day of May, in the
Year of Our LORD

20

One thousand nine hundred and sixty-six
Between HIS EXCELLENCY SIR SOLOMON HOCHOY,
C.C.N.C., O.B.E., Governor General and
Commander - in - Chief of Trinidad and
Tobago and Intendant of Crown Lands
(hereinafter called "the Lessor" which
expression where the context so admits
includes the Governor-General or other
Officer for the time being administering
the Government of Trinidad and Tobago
and their Assignees) of the One Part and
30 CORNELIUS BOBB of Morvant in the Ward
of St. Anns in the Island of Trinidad
(hereinafter called "the Lessee" which
expression where the context so admits
includes his personal representatives
and permitted assigns) of the Other part:

30

WITNESSETH as follows:-

40

1. IN CONSIDERATION of the rent
covenants conditions and agreements
hereinafter reserved and contained and
on the part of the Lessee to be paid
observed and performed the Lessor doth
hereby demise unto the Lessee All that
parcel or lot of land described in the
Schedule hereto and hereinafter
referred to as "the Demised Premises"
TO HOLD the premises hereby demised
unto the Lessee from the 1st day of May
One thousand nine hundred and sixty-six
50 for the term of Thirty Years yielding

50

EXHIBITS

"C.B.5"

Deed of Lease

7th May 1966
(continued)

and paying to the Supervisor/Warden District Revenue Services, County of St. George, at his office in Port -of-Spain for the use of the Lessor during the said term hereby granted an annual rent of TWELVE DOLLARS without any deduction in advance on the Second day of January in each and every year the first of such payments to be made on the execution of these presents in respect of the proportionate part of the year ending on the Thirty-first day of December One thousand nine hundred and sixty-six. 10

2. The Lessee for himself and his assigns and to the intent that the obligations may continue throughout the term hereby created hereby covenant with the Lessor as follows:- 20

- (a) To pay the reserved rent on the days and in manner aforesaid.
- (b) From time to time and at all times during the said term to pay and discharge all rates and taxes duties charges assessments and outgoings whatsoever which are now or may any time hereafter be assessed charged or imposed upon or payable in respect of the demised premises or any building or other structure at any time standing thereon of upon the owner or occupier in respect thereof. 30
- (c) To execute all such works as are or may under or in pursuance of any Ordinance or Act already or hereafter to be passed be directed or required by any local or public authority to be executed at any time during the said term upon or in respect of the demised premises whether by the landlord or tenant thereof. 40

50

EXHIBITS

"C.B.5"

Deed of Lease

7th May 1966
(continued)

10

- (d) At all times during the said term to keep and maintain all buildings and other structures standing upon the demised premises in a good and substantial state of repair and condition and in the event of destruction through any cause to rebuild and maintain the same in like manner or in the alternative immediately thereafter at his sole costs to execute a surrender of the lease.

20

- (e) Not to do or suffer to be done upon the demised premises anything which may be to the annoyance damage or disturbance of the Lessor or of the Tenants of the Lessor or the occupier of any adjoining or neighbouring house and will not use any or occupy or permit to be used or occupied the demised premises or any part thereof for any purpose except as a single private dwelling house.

30

- (f) Not at any time during the said term without the licence in writing of the Sub-Intendant on behalf of the Lessor first had and obtained to erect or suffer to be erected any additional building on the demised premises or make any alteration or addition whatsoever in or to the same or any building which may be erected thereon or make any alteration in any boundary and that in case at any time during the said term there shall be occasion to rebuild the said messuage and buildings or any part thereof or any permitted new building alteration or addition whether by reason of destruction by fire or through

40

EXHIBITS

"C.B.5"

Deed of Lease

7th May 1966
(continued)

decay from any other cause whatsoever to rebuild the same according to such drawings and specifications and in such position as shall be previously approved in writing by the National Housing Authority and or other body duly authorised by law and/or by the Lessor so to do and not otherwise.

10

(g) To permit the Lessor and his duly authorised agents in that behalf at all reasonable times to enter into and upon the demised premises and/or any building or other erection standing thereon and will immediately at his own cost and expense rectify and make good and defects which may be found therein or otherwise pointed out to him by the Lessor or by his said duly authorised agents.

20

(h) To use the Demised and any building or other erection at any time standing thereon solely as a residence for himself and his immediate family and for no other purpose whatsoever.

30

(i) Not to assign, sublease, underlet or otherwise part with the possession and/or dispose of the whole or any part of the demised premises and/or any building or other structure at any time standing thereon or any right or privilege in relation thereto conferred by this present lease without the consent in writing of the Sub-Intendant on behalf of the

40

Lessor for such purpose first had and obtained: PROVIDED HOWEVER that no consent shall be required in respect of any assignment by way of mortgage to the National Housing Authority.

EXHIBITS

"C.B.5"

Deed of Lease

7th May 1966
(continued)

- 10 (j) To install and keep
installed in the building
and other erections already
erected and standing on
the demised premises (so
long as the same is available)
the sewage service
supplied by the National
Housing Authority in that
area and will from time to
20 time and at all times during
the continuance of the said
term pay and discharge, in
addition to the rates, taxes
and other charges provided
for in and by Clause 2(b)
hereof, all rates and other
charges, annual or otherwise,
from time to time levied by
30 the said Authority in respect
of the said sewerage service.
- (k) At the expiration or sooner
determination of the said
term hereby granted to
quietly yield up unto the
Lessor the Demised Premises
and all additions and
improvements made thereto in
such condition as shall be
40 in accordance with the
Lessee covenants herein
contained: PROVIDED HOWEVER
that the Lessee shall be
at liberty within ninety
days after the expiration
or sooner determination of
the said term hereby
created to remove and to
take away for his own use
and benefit all buildings
50 and other erections already
or hereafter erected and/

EXHIBITS

"C.B.5"

Deed of lease

7th May 1966
(continued)

- or owned by him upon the Demised Premises or upon any part thereto and will immediately upon such removal at his own cost and expense level off and restore the Demised Premises to its former state and condition making good to the Lessor any damage done thereto as a result of such removal provided that upon the expiration of the said ninety days all buildings and other erections still standing upon the Demised Premises shall become the property of the Crown and may not then or thereafter be removed by the Lessee without the written consent of the Sub-Intendant for and on behalf of the Lessor the Lessor being at liberty however if he so desires to remove the said buildings and other erections from the Demised Premises and to restore the Demised Premises to its former state and condition and all costs and expenses incurred by the Lessor in so doing shall constitute a debt due to the Crown by the Lessee and shall be recoverable by the Lessor from the Lessee by action in any court of competent jurisdiction and time shall be in all respects of the essence of this clause.
- 10
- 20
- 30
3. The Lessor hereby covenants with the Lessee as follows :- 40
- (a) That the Lessee paying the rent hereby reserved and observing and performing the several covenants and stipulations herein on his part contained shall and may peaceably hold and enjoy the premises liberties and powers hereby demised and granted during the said term without any 50

interruption by the Lessor
or any person rightfully
claiming from or under him
and

EXHIBITS

"C.B.5"

Deed of Lease

7th May 1966
(continued)

10

- (b) That if the Lessee shall be desirous of taking a new lease of the Demised Premises for a further term of thirty years to commence from and after the expiration of the term hereby granted and shall at least six calendar months before the expiration of the said term signify such desire by a notice in writing to be delivered to the Lessor and if at the expiration of the said term no rent due hereunder shall be in arrear nor shall there be existing any breach of any of the covenants herein contained and on the part of the Lessee to be observed and performed then and in such case the Lessor shall at the sole cost and expense of the Lessee grant to the Lessee a new lease of the Demised Premises for a further term of thirty Years to commence from and after the expiration of the term hereby granted at the like rent and subject to the life covenants and provisions as are herein contained except this present covenant for a renewal.

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40

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4. PROVIDED ALWAYS AND IT IS HEREBY EXPRESSLY AGREED AND DECLARED and these are upon this condition, that if the said yearly rent hereby reserved or any part thereof shall at any time be in arrear and unpaid for twenty-one days after the same shall have become due (whether any formal or legal demand shall have been made or not) or if the

EXHIBITS

"C.B.5"

Deed of Lease

7th May 1966
(continued)

Lessee shall at any time fail or neglect to perform or observe any of the covenants conditions of agreements herein contained and on his part to be performed and observed then and in any such case it shall be lawful for the Lessor or any person or persons duly authorised by him in that behalf into and upon the demised premises or any part thereof in the name of the whole to re-enter and the said premises peaceably to hold and enjoy thenceforth as if these presents had not been made and without making to the Lessee any allowance or compensation whatsoever whether in respect of the buildings (if any) erected on the demised premises or otherwise and without prejudice to any right of action or remedy of the Lessor in respect of any antecedent breach of any of the covenants by the Lessee hereinbefore contained.

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5. PROVIDED FURTHER AND IT IS HEREBY ALSO AGREED AND DECLARED THAT all communications and notice intended for the Lessor shall be deemed to be properly and sufficiently served if delivered at or forwarded by registered post to the office of the Sub-Intendant of Crown Lands, Port-of-Spain and all notices and communications intended for the Lessee shall be deemed to be properly and sufficiently served if delivered to him personally or left addressed to him on the Demised Premises or forwarded to him by post or left at his last known place of abode or business in the Island. A notice sent by post shall be deemed to be given at the time when in due course of post it would be delivered at the address to which it is sent.

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IN WITNESS WHEREOF Frederick Ernest Farrell Sub-Intendant of Crown Lands, for and on behalf of the Lessor has hereunto set his hands the 16th day of May in the Year of Our Lord One thousand nine hundred and sixty-six and the Lessee has hereunto set his hand the day and year first herein written.

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THIS IS THE SCHEDULE ABOVE REFERRED TOEXHIBITS

10 ALL AND SINGULAR that certain piece or parcel of land situate at Morvant in the Ward of St. Anns in the Island of Trinidad comprising FOUR THOUSAND EIGHT HUNDRED AND FORTY SUPERFICIAL FEET be the same more or less delineated and with the abuttals and boundaries thereof shown on the Plan or Diagram marked "A" annexed to a certain Deed of Lease dated the 10th day of March, 1964 registered as No. 9118 of 1964 and thereon numbered "192" and which said parcel of land is known as LOT NO. 192 LADY YOUNG AVENUE, MORVANT.

"C.B.5"

Deed of Lease

7th May 1966
(continued)"C.B.6"COPY NOTES OF EVIDENCE OF C. BOBB

No. 71 of 1974

"C.B.6"

Copy of Notes
of Evidence of
C. Bobb

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2646/1970

6th June, 1972

6th June 1972

J. Creditor - C. Le Blanc
Debtor - In person.

CORNELIUS BOBB s/s

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Morvant 192 Lady Young Avenue.
I live at my son. Living there about 12 years. Owned by my son. I don't know when son became owner of premises. Premises never owned by me. I pay son some money towards expenses. I give him \$10 to \$12 per month. Son is in America now. There for years. I live there with my wife. My sons' wives. House is owned by Knolly Bobb. Cannot remember when he brought house. I am living there about 10 years I was living at La Brea and came up to live with him. I do not know value of premises. Son pays rates and taxes. House stands on about 1/2 lot land. I have property in Bethel Village, Tobago. I Acre. I bought land in 1921. I am in occupation. Fruit trees, land today valued at \$14,000.00 Lands in my name. No mortgages. No other

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EXHIBITS

"C.B.6"

Copy Notes of
Evidence of C.
Bobb

6th June 1972
(continued)

property. Watchman for Crown lands. \$253.00 per month. No overtime. No other form of employment. I didn't carry on pig farm. I didn't own cows. I sell milk. I have been selling milk for 10 years. I make about \$2 per day selling milk. I am minding these cows. They belong to Mr. Christopher of 25 St. Vincent Street, Two cows. I mind no other animals for Christopher. I mind no other animals for no other person. I have no pigs on premises where I live. No other cows. I have no Banking Account I never had any Banking Account. I don't owe any one at present time. Mr. Singh owes me \$360.00 I mind cows for half of the increase. 10

I have children at school and I have to pay \$50 every three months for their schooling and \$2 per day for transportation and food I am not in any Sou Sou. 20

Court declared me to be owner of property. Cannot remember when order made. Papers in Tobago with my sister. Mrs. Helen Manswell. I have no receipts for rates and taxes in connection with this property.

/s/ C. Bobb 30
27th June 1972

"C.L.1"

"C.L.1"

Request for
Warrant of
Committal

REQUEST FOR WARRANT OF COMMITTAL

TRINIDAD AND TOBAGO

4th May 1973

IN THE HIGH COURT OF JUSTICE

NO. 2646 of 1970

BETWEEN

ROSETTA JAISINGH
(The Legal Personal Representative
of Anthony G. Singh, deceased) 40
Plaintiff

and

CORNELIUS BOBB Defendant

PLEASE issue the Warrant of
Committment against the above named
CORNELIUS BOBB, 92 Lady Young Avenue,
Morvant, in Trinidad.

EXHIBITS

"C.L.1"

Amount due on J.S. issued 30/6/72 ~~81,413.42~~
~~84,397.42~~

Request for
Warrant of
Committal

Amount payable on 24th day of
January, 1973..... 50.00.

4th May 1973
(continued)

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Amount payable on the 28.2.73 and
thereafter at the end of each
and every month..... 50.00

Amount paid between 24/1/73 and
11/4/73..... 150.00

Amount for which Warrant is to
be issued..... 1,247.42

Costs of this Summons..... 20.16

DATED this 4th day of May, 1973.

/s/ Clarence E. Le Blanc
Plaintiff's Solicitor

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TO: THE REGISTRAR OF THE SUPREME COURT OF
JUDICATURE.

"C.L.2"

"C.L.2"

AMENDED REQUEST FOR WARRANT
OF COMMITTAL

Amended Request
for Warrant
of Committal

TRINIDAD AND TOBAGO

May 1973

IN THE HIGH COURT OF JUSTICE

No: 2646 of 1970

BETWEEN

30

ROSETTA JAISINGH
(The Legal Personal Representative
of Anthony G. Singh, deceased)
Plaintiff

And

CORNELIUS BOBB Defendant

EXHIBITS

"C.L.2"

Amended Request
for Warrant of
Committal

May 1973
(continued)

PLEASE issue the Warrant of
Committment against the above-named
CORNELIUS BOBB, 92 Lady Young Avenue,
Morvant, in Trinidad.

Amount due on J.S. issued	£1,413.42	
30/6/72.....	£1,307.42	
Amount payable on 1/3/73 and thereafter on the 1st day of each and every month.....	50.00	10
Amount paid between 1.3.73. and 11.4.73.....	100.00	
Amount for which Warrant is to be issued.....	1,313.42	
	4,343.42	
Costs of this Warrant....	<u>20.16</u>	
	<u>£1,333.58</u>	

Dated this day of May, 1973

/s/ Clarence E. Le Blanc
Plaintiff's Solicitor.

TO: THE REGISTRAR OF THE SUPREME 20
COURT OF JUSTICE.

"C.L.3"

Order of
Hassanali J.

26th January
1973

"C.L.3"

ORDER OF HASSANALI J.

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

No. 2646 of 1970

BETWEEN

ROSETTA JAISINGH 30
(The Legal Personal Representative
of Anthony G. Singh, Deceased)
Plaintiff

And

CORNELIUS BOBB Defendant

Entered and dated the 26th day of January,

1973.

Before the Honourable Mr. Justice N. Hassanali.

On the return of the Judgment Summons issued out of this Court at the instance of the Plaintiff on the 30th day of June, 1973 upon hearing Solicitor for the Plaintiff and the Defendant appearing in person.

EXHIBITS

"C.L.3"

Order of Hassanali J.

26th January 1973 (continued)

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IT IS ORDERED that the Defendant CORNELIUS BOBB BE and he is hereby committed to prison for 21 days but the same is hereby suspended upon the said Defendant CORNELIUS BOBB paying the sum of \$1,382.56 the amount due for a Judgment debt and costs and \$30.68 the cost of the said Summons making a total of \$1,413.42 by monthly instalments of \$50.00 the first of such payments to be made on the 1st day of March, 1973 and a similar payment on the 1st day of each month thereafter and the further hearing of the said Summons adjourned generally.

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/s/ S. Cross
Assistant-Registrar.

"C.A."

NOTES OF EVIDENCE OF C. BOBB

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

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No. 2646 of 1970

BETWEEN

ROSETTA JAISINGH
(The Personal Representative
of Anthony G. Singh, deceased)
Plaintiff

And

CORNELIUS BOBB Defendant

"C.A."

Notes of Evidence of C. Bobb

EXHIBITS

"C.A"

Notes of
Evidence of
C. Bobb.

Before the Honourable Mr. Justice N.
Hassanali

Mr. C. Le Blanc for Judgment Creditor.

Judgment Debtor in person.

NOTES OF EVIDENCE

Cornelius Bobb sworn states :

I live at Morvant. I am a
watchman earning salary of \$253.00 per 10
month. I am also a farmer selling
produce and milk etc. I am offering
to pay \$50.00 per month as from 1st
March, 1973.

Order: Committed to prison for 21 days
suspended on payment of Judgment debt and
costs by monthly instalments of \$50.00
as from 1st March, 1973.

/s/ N. Hassanali 20
Judge.

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

1. ROSETTA JAISINGH
(The Personal Representative
of Anthony G. Singh,
deceased) (Defendant)
Respondent
2. CLARENCE EMMANUEL LE BLANC

RECORD OF PROCEEDINGS

A.L. BRYDEN & WILLIAMS,
20 Old Queen Street,
London SW1.

Solicitors for the Appellant

PHILIP CONWAY THOMAS & CO.,
61 Catherine Place,
London SW1E 6HB

Solicitors for the Respondent