

**Cornelius Bobb** - - - - - *Appellant*

v.

**Rosetta Jaisingh** - - - - - *Respondent*  
**(The Personal Representative of Anthony G. Singh, deceased)**  
**and another**

FROM

**THE COURT OF APPEAL OF TRINIDAD AND TOBAGO**

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF  
THE PRIVY COUNCIL, DELIVERED THE 12TH MAY 1980.

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*Present at the Hearing:*

LORD DIPLOCK  
LORD RUSSELL OF KILLOWEN  
LORD KEITH OF KINKEL  
LORD LANE  
SIR ROBIN COOKE

[*Delivered by* LORD DIPLOCK]

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This is an appeal by the plaintiff in an action brought by him against the two defendants claiming against both of them damages for wrongful arrest and false imprisonment and against the second defendant alone “damages resulting from a breach of promise and/or duty and/or negligence”. It arises out of proceedings on a judgment summons in a previous action brought by the first defendant against the plaintiff in which judgment had been given against the plaintiff.

The first defendant (“the Judgment Creditor”) had recovered judgment on 20th November 1971 against the plaintiff (“the Judgment Debtor”) for \$245 and \$1,094.02 costs in a High Court action in which the second defendant (“the Solicitor”) acted as her solicitor. The judgment remained unsatisfied. In the following year a judgment summons was taken out by the Solicitor on behalf of the Judgment Creditor. This was heard before Hassanali J. on 26th January 1973. Two days before, on 24th January 1973, the Judgment Debtor had been to the Solicitor’s office, had paid to him \$50 on account of the judgment debt and had signed a document in the following terms:

“ 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.”

At the hearing of the judgment summons the Judgment Debtor was examined as to means, the court was told of the payment of \$50 and the above document was read to the court and acknowledged by the Judgment Debtor. Hassanali J. made a committal order for 21 days imprisonment suspended on payment of the outstanding debt by instalments of \$50.00 per month starting from 1st March 1973. His own note of the order that he made reads as follows:

“ 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. ”

By what appears to have been an error in the High Court Registry the figure inserted as the amount due for the judgment in the Committal Order, as drawn up, was taken from the judgment summons and gave no credit for the \$50.00 which, as the judge had been informed, had been paid between the issue of the summons and the hearing. So the Order as drawn up was for \$50.00 too much.

The Judgment Debtor paid the first instalment promptly on 1st March to the Solicitor of the Judgment Creditor in accordance with what the Court of Appeal has described as the usual practice in Trinidad and Tobago. He was late with the next monthly instalment, which he did not pay until 11th April and he made no payment on 1st May. The Solicitor, on 4th May 1973, sent a request to the Registrar for the issue of a Warrant of Committal, for the net sum due after credit against the judgment debt had been given for \$150.00, being the March and April instalments that had been paid under the Committal Order and the \$50.00 paid on 24th January 1973, two days before the committal order had been made. The Warrant of Committal was, however, issued for an amount that gave credit against the judgment debt for \$100.00 only, as an official in the Registry apparently took the view that credit ought not to be given for any payments made before the date of the Committal Order.

Pursuant to the Warrant of Committal the Judgment Debtor was duly arrested by the Marshal on 30th May 1973 and was imprisoned for 21 days.

Shortly after his release from prison he started the present action against the Judgment Creditor and the Solicitor for the relief to which their Lordships have already referred. It is not necessary for their Lordships to say anything about his claim against the Solicitor for “ breach of promise and/or duty and/or negligence ” for this was based upon an allegation by the Judgment Debtor that, when he paid the April instalment belatedly on 11th April 1973, the Solicitor had promised to apply the \$50.00 actually paid on 24th January to payment of the instalment which would fall due on 1st May. At the trial before Cross J. his evidence to this effect was disbelieved by that learned judge. This finding that there was no such promise was upheld by the Court of Appeal. There are thus concurrent findings of fact upon this issue which, in accordance with their usual practice, their Lordships will refuse to re-open.

Accordingly their Lordships now turn to the claim for damages for wrongful arrest and false imprisonment. This too can be dealt with briefly for here again the Judgment Debtor is faced with concurrent findings of fact and on the facts so found the law applicable to them is clear and is accurately stated in the judgment of the Court of Appeal.

The Judgment Debtor was arrested on judicial process by a judicial officer, the Marshal, carrying out an order of the court that was valid on its face. Neither the Solicitor nor the Judgment Creditor played any physical part in the arrest or the imprisonment; all the Solicitor did was to set in motion, on behalf of the Judgment Creditor, the judicial process that led to the Judgment Debtor's arrest. It is hornbook law that no action for wrongful arrest or false imprisonment lies against those who set in motion the

judicial process which results in the court ordering a person's arrest. It may be that a cause of action of a different kind, analogous to the familiar cause of action for malicious prosecution, will lie against a defendant who, maliciously and without reasonable cause, obtains a committal order or a warrant of commitment against a judgment debtor; but no such case was pleaded against the defendant. Even if it had been pleaded the Judgment Debtor (whose case in the light of Cross J.'s findings is utterly devoid of merit) would have been faced by concurrent findings of fact. At the trial before Cross J. the Judgment Debtor gave evidence that, at the hearing of the judgment summons before Hassanali J. on 26th January 1973, he was not examined as to his means and that the judge was told nothing about the payment of \$50.00 on January 24th 1973 or the agreement of that date for payment of the outstanding judgment debt by monthly instalments of \$50.00. Cross J. rejected this evidence, describing the Judgment Debtor as "a most unreliable witness who is prepared to give any evidence on oath which he thinks favourable to his case". So there is no vestige either of malice or of lack of reasonable and probable cause.

Their Lordships can deal even more briefly with the submission made on behalf of the Judgment Debtor that because of the mistake made in the Registry when the Committal Order and the Warrant of Committal were made out for \$50.00 too much, the Order and Warrant were made without jurisdiction and therefore void. A mistake as to the amount of the judgment does not go to jurisdiction; all courts have jurisdiction to be wrong; the remedy is by appeal to a higher court or, in the instant case, by an application to the judge himself to correct it, since by the terms of the order that he made he had adjourned further hearing of the Judgment Summons generally and thereby had retained seizin of it.

In agreement with the Court of Appeal and for the reasons that they give their Lordships dismiss the appeal with costs.

In the Privy Council

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ROSETTA JAISINGH

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DELIVERED BY  
LORD DIPLOCK

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