

## GULL AND KIMPTON LTD. v. CON LOWENTHAL.

HIGH COURT CIVIL CAUSE NO. 8 OF 1936.

*Judgment summons under section 5 of the Debtors Act, 1869—means to pay—evidence of means to pay part of the judgment debt—Order of Commitment made.*

In this case the High Court held that, upon evidence of means to pay part of the judgment debt, an order of commitment may be made in respect of the whole of the judgment debt.

The judgment debt in this case was £361 and the judgment debtor was found to have had means to pay £33 of this amount. The High Court made an order for commitment for ten days such order to be suspended provided the judgment debtor paid the whole amount of the judgment debt, viz., £361, by instalments of £15 per month.

The decision in *ex parte Fryer* (1886) 17 Q.B.D. p. 718 was considered and followed.

The jurisdiction of the High Court and of Subordinate Courts of the first and second class in relation to Judgment Summonses is now governed by the Debtors Ordinance Cap. 14. The effect of section 4 of the Debtors Ordinance is identical to that of section 5 of the Debtors Act, 1869.

See also *R. W. Whitaker v. C. Griffiths* 3 N.R.L.R. 35.

Fitzgerald, A.J.: This is a Judgment Summons taken out under section 5 of the Debtors Act, 1869, directed to one C. Lowenthal for the purpose of examining him touching his means to pay the sum of £361 due under a Judgment of the High Court dated 14th December, 1935, and also to show cause why he should not be committed to prison for such default.

It has been established in evidence that the judgment debtor has not paid any part of the debt in respect of which the judgment was given. I am also satisfied that Lowenthal has since the judgment had means at least to the extent of £33, available to pay and has refused or neglected to do so.

On these facts the creditors, Messrs. Gull and Kimpton Ltd., ask the Court to commit the judgment debtor to prison. Mr. Lloyd Jones on behalf of Lowenthal has submitted firstly, that in accordance with the settled principle of the Courts an order for instalments should be made before Lowenthal is committed, and secondly, that there is no jurisdiction in this Court to make an order for commitment because it has not been shown that the debtor has had the means of paying the whole sum which he was ordered to pay.

the sum then due and payable, and has neglected to pay the same, and the defendant has shown no cause why he should not be committed to prison. Now, therefore, it is ordered that for such default as aforesaid—for the non-payment of £33 which he had the means of paying—that the defendant shall be committed to prison for ten days, but that this order for committal to prison be suspended and not given out for execution on condition that the defendant do pay on the first day of each month commencing the first day of May, 1936, an instalment of £15 until the whole debt of £361 be satisfied.