

Present: Pereira J.

1913.

COSTA *v.* PERERA *et al.*

196—C. R. Colombo, 17,669.

Arrest—Warrant issued without compliance with the requirements of section 298, Civil Procedure Code—No jurisdiction to commit to jail.

Where an execution-debtor was arrested on a warrant issued without compliance with the requirements of section 298 of the Civil Procedure Code and brought before the Court,—

Held, the Court had no jurisdiction to commit him to jail even though he had been notified to show cause why he should not be committed, and had shown none.

THE facts appear in the judgment.

A. St. V. Jayewardene, for second defendant, appellant.

Arulanandam, for plaintiff, respondent.

Cur. adv. vult.

1913. July 1, 1913. PEREIRA J.—

*Costa v.
Perera*

This is an appeal by the second defendant from an order of the Commissioner committing him to jail for default of payment of the amount of the judgment entered against him. Such an order could ordinarily be made only under section 304 of the Civil Procedure Code; but before such an order is made the Code lays down certain preliminaries to be observed. Such an order can only be made if the debtor had been arrested and brought before the Court on a warrant duly issued under section 298, and such a warrant can only be issued where there is a return by the Fiscal of *nulla bona* to the writ against property issued to him for execution, or where the judgment-creditor has satisfied the Court of the existence of any one of the four conditions mentioned in the section. The Court's jurisdiction to issue a warrant is dependent upon compliance with the requirements of section 298, and as those requirements have not been complied with in the present case the warrant was bad, and no commitment thereon could be justified. It has been said that the debtor was notified to show cause why he should not be committed to jail, and he showed none. Clearly, the Court could not substitute this rough and ready method of procedure for that laid down in section 298. Penal laws are even at the present day, in many senses, to be construed strictly, and it has been held that an enactment giving a power of committal for non-payment of debt is a "highly penal one" (see *Scott v. Morley*¹ *In re Gardner*²). In the former case Lord Esher M.C. observed: "If you treat the Debtors Act as an Act which authorizes the Court to commit people to prison, then, you must construe it strictly. It is a highly penal act, affecting the liberty of the subject."

I set aside the order appealed from, with costs.

Set aside.

¹ 20 Q. B. D. 120.

² 20 Q. B. D. 249.