

NOVA SCOTIA.

COUNTY COURT FOR DIST. No. 7.

JULY 29TH, 1909.

McKENZIE v. CURRY.

Debtor and Creditor—Judgment—Refusal by Commissioner to Commit. Debtor—Circumstances showing Debtor's Ability to Pay—Lack of Income—Debt Due for Board.

A. D. Gunn, for plaintiff.

John A. McKinnon, for defendant.

FINLAYSON, Co.C.J.:—This was an appeal from a decision of a commissioner refusing to commit the judgment debtor under sub-section (c) of section 27 of the Collection Act, "where the debtor at the time he contracted the debt had no reasonable expectation of being able to pay the same." (R. S. N. S. c. 182).

The debt is for a board bill extending over a period of forty-nine weeks, from July 31st, 1907.

The debtor boarded at the same house previously to that date and had paid all claims for board up to that time. For forty-nine weeks from that date he paid nothing.

I agree with the contention of Mr. Gunn in support of the appeal that the circumstances of the debtor at the time he contracted the debt is evidence whether or no he had reasonable expectation of being able to pay the same, and I apprehend that in the majority of cases such evidence would be the only kind available in proceedings under this sub-section. The debtor in this case was a bankrupt. He was working with his son without any stated salary or wages. He was in receipt of no income nor had he a source of any income. Had nothing to pay his board except what his son saw fit to give him, and if all these circumstances stood alone the inference might well be drawn that he was within sub-section (c). In this case, however, the debtor boarded at this house before, when his circumstances were the same, and the son advanced him the money for his board; in fact he swears in this case that his son would have given him the money to pay this bill had he asked for it.