

PELTON, Co. C.J.:—Appeal by defendant from Commissioner's order under The Collection Act requiring defendant to pay to plaintiff fifteen dollars monthly on the judgment in this action.

After hearing evidence of plaintiff and defendant and other witnesses on the appeal and carefully reading the evidence taken by the Commissioner on the examination before him, and after argument of counsel, I have now to give my decision on the appeal.

I have nothing before me but the Commissioner's order to indicate what his conclusions were from the evidence, but as the order is for merely monthly payments, I take it for granted that his only finding against the defendant apart from his verbal order for assignment was that the defendant had sufficient means or income to pay the judgment by instalments. This verbal order made under sub-section 2 of section 28 of the Act would shew that he had determined not to commit the defendant under any of the provisions of section 27.

I must assume that so far as section 27 applies the findings were in favour of defendant, and it would seem, strictly speaking, where there is no appeal by plaintiff, as if I were confined to a consideration of the grounds set out in the notice of appeal, viz., the question as to the possession of means or income by defendant. Mr. Miller was allowed to contend on the hearing of the appeal that defendant was liable to commitment under sub-section b or section 27 for having contracted the debt without any reasonable expectation of paying the same.

I find, and in fact Mr. Miller in his argument admitted, that the debt was not fraudulently contracted (sub-section (a), the credit was not obtained under false pretences (b), there were not any other fraudulent circumstances in connection with the contracting of the debt (d), the debtor did not make any fraudulent disposition of his property (e).

As to the contracting of the debt without having at the time any reasonable expectation of paying same, I cannot find anything in the evidence that would in my opinion warrant me in sustaining plaintiff's contention or in committing the defendant on that ground. It is true the defendant had difficulty in financing his affairs, but when he contracted the debt he had a large credit at the bank and was floating his business along as usual, and it was only when the bank with-