

ald, a prisoner confined in the common jail at Amherst, under an execution to take the body under the Collection Act (R. S. N. S. c. 182) issued by J. Alder Davis, Esq., a stipendiary magistrate for the county of Cumberland. The judgment was obtained before said stipendiary and he made an order for payment of \$1.50 per month against the debtor. The debtor was not present when the order was made but it was presented to him and he was required to sign the following waiver on the face of the order: "I hereby waive all irregularities herein and consent to the foregoing order for payments." This order was signed as a Justice of the Peace. In default of payment an execution to take the body was issued by the same magistrate. This execution was directed to a constable. It was argued on behalf of the prisoner that the order in the absence of the debtor was irregular, that under section 29 (4) of the Collection Act the execution must be directed to the sheriff, that the words "warrant or process" in section 7 (a) did not include execution to take the body, and that under section 6 (c) only a stipendiary or a commissioner can be such examiner. It was pleaded on behalf of the creditor that the memorandum of waiver waived all irregularities and that the debtor need not appear, that under section 7 (b) any warrant or process may be directed to a constable, and that a justice may be the examiner, sec. 6 (d).

J. A. Ralston, for the prisoner.

C. R. Smith, K.C., for the creditor.

PATTERSON, Co. C.J.:—I feel obliged to grant the order applied for in this matter. I greatly regret that I have not had an opportunity to look into the authorities and examine the question as to whether a debtor can consent to an order for payment by instalments being made against him in his absence. Under the circumstances I cannot take him to do so. I desire it to be distinctly understood that I am expressing no opinion on this point. I grant the order for discharge because I think sec. 29, sub-sec. (4) of The Collection Act makes it perfectly clear that the execution issued for failure to comply for an order for payment by instalments must be directed to the sheriff. In this matter the execution is not directed to the sheriff and McDonald is in consequence entitled to his discharge.