on the 22nd day of October, 1864, the above named plaintiff, by the judgment of the said Court, in a certain suit wherein the Court had jurisdiction, recovered against the above named defendant the sum of $54.14 for his debt and costs, which were ordered to be paid at a day now past. And whereas, the defendant not having made such payment, upon application of the plaintiff a summons was duly issued from and out of this Court against the said defendant, by which said summons the defendant was required to appear at the sittings of this Court holden at the village of Bayfield aforesaid, on the 31st of May, 1865, to answer such questions as might be put to him touching his estate and effects, and the manner and circumstances under which he contracted the said debt which was the subject of the action in which the said judgment was obtained against him, and as to the means and expectations he then had, and as to the property and means he still has of discharging the said debt, and as to the disposal he may have made of any of his property. And whereas the defendant having duly appeared at the said Court pursuant to the said summons, was examined touching the said matters; and whereas it appeared on such examination to the satisfaction of the Judge of the said Court, that Leonard Peck, the defendant, incurred the debt the subject of this action under false pretences; and then thereupon the said Judge ordered the defendant to pay the claim and costs in full in nine weeks or be committed to the common jail for thirty days. And whereas the said defendant did not pay as ordered, and upon application of the plaintiff on the 16th day of September, 1865, a summons to shew cause was duly issued out of this Court, and served upon the defendant, requiring him to appear at the Court to be holden on the 9th of October, 1865, and on application of the defendant, and by consent of the Court, the time was enlarged to the 4th day of December, 1865.

And whereas on the said 4th day of December, 1865, the defendant did not appear as required, nor allege any cause for not so appearing.

Thereupon it was ordered by the said Judge that the said defendant should be committed for the term of thirty days to the common jail of the said United Counties, according to the form of the Statute in that behalf, or until he should be discharged by due course of law.

These are therefore to require you, the said bailiff and others, to take the said defendant and to deliver him to the jailer of the common jail of the said United Counties, and you, the said jailer, are hereby required to receive the said defendant, and him safely keep in the said common jail for the term of thirty days from the arrest under this warrant, or until he shall be sooner discharged by due course of law, according to the provisions of the Act of Parliament in that behalf, for which this shall be your sufficient warrant.

Given under the seal of the Court, this 4th day of December, 1865.

(Signed) D. H. RITCHIE, *Clerk.* [L.S.]

That the said defendant caused the said warrant of commitment to be delivered to the said Bernard Trainor, who took and arrested the said plaintiff and conveyed him to the said jail, and delivered him to the keeper thereof, and the plaintiff was detained in prison on said warrant for the space of thirty days, which are the same trespasses in the declaration mentioned.

To this replication the defendant demurred, as being no answer.

The plaintiff joined in demurrer, and excepted to the plea on various grounds, which are sufficiently stated in the judgment.

C. Robinson, Q. C., for the defendant, cited *Baird* v. *Story*, 23 U. C. R. 624; *Bullen* v. *Moodie*, 13 C. P. 126; *Tay*, Ev. 5th Ed., p. 1405-8; Division Courts Act, Consol. Stat. U C. ch. 19, secs. 160–168.

John Paterson, contra.

HAGARTY, J., delivered the judgment of the Court.

The first objection is, that the plea does not shew the necessary proceedings before judgment or facts to give the Division Court jurisdiction. 2. That it is not shewn that the necessary time elapsed between the entry of judgment and issue of execution, nor any order for immediate execution, nor that the execution was under seal. 3. That the warrant against goods should have been directed to a bailiff of the Seventh Division Court, and no proper return was made thereto.

We think the judgment is sufficiently stated, and that the prior proceedings need not be set out. We think that when it is stated that the judgment was for a debt in amount clearly within the statutable jurisdiction, we may assume it to be sufficient on exceptions, as these are, to a prior pleading.

The warrant, which the plaintiff sets out in full in his replication, expressly avers that the judgment was recovered "in a certain suit wherein the Court had jurisdiction."

As to the lapse of time before execution, we think it sufficiently pleaded that the execution issued on the judgment in due course of law, and that the delivery of the execution to the bailiff of the First Division Court of the County, within whose division the plaintiff then resided (as averred), and the return thereto, are sufficient.

Sec. 79 speaks of bailiffs executing all warrants, orders, and writs, delivered to them by the clerk for service, whether bailiffs of the Court out of which the same issued or not, and directs that they shall so soon as served return the same to the clerk of the Court of which they are respectively bailiffs.

The objection in the form in which it is taken cannot, we think, prevail; and it may not be necessary to discuss it, as the clauses allowing the examination of a defendant do not seem to make the issue and return of an execution a condition precedent, but merely say, "any party having an unsatisfied judgment or order in any Division Court, for the payment of any debt, damages or costs," may procure a summons, &c. —Sec. 160.

The fifth objection is, that it is not shewn that when the summons of the 16th of September was issued, served or returnable, the plaintiff lived or carried on business in the Counties of Huron and Bruce, under Sec 160.

To this the defendant answers, that he does aver that when the first summons of the 6th of May was issued the plaintiff was a resident of the county, and that till the contrary is shewn he will be presumed to have continued so resident. We think this answer sufficient.