

the said Court, returnable on the 9th of October, in the year last aforesaid, directed to the said plaintiff, to shew cause why pursuant to the said order he, the said plaintiff, should not be committed to the common gaol of the said United Counties of Huron and Bruce, for not complying with the said order to pay in full in nine weeks or be committed to the common gaol for thirty days, which said order was duly served on the said plaintiff, Peck, on the 29th of September, in the year last aforesaid.

That upon the 9th of October, in the year last aforesaid, John Bell Gordon, Esquire, then being a barrister of Upper Canada, and then presiding in said Seventh Division Court as Deputy Judge, having been pursuant to the Statute in such case, made and provided, duly appointed so to act by the said R. C., he being then ill or unavoidably absent, at the request of the said plaintiff enlarged said summons until the holding of the next Seventh Division Court.

That upon the next holding of said Seventh Division Court, that is to say, on the 4th of December, in the year last aforesaid, the said judgment still remaining in full force and unsatisfied, the said Leonard Peck did not appear in pursuance of said summons, or allege any sufficient reason for not attending, or shew any cause why he should not be committed to the said gaol, whereupon the said R. C., as such Judge as aforesaid, endorsed upon the said summons an order for the committal of the said Leonard Peck, in the words and figures following, that is to say, "Order for committal for thirty days for non-appearance and disobedience of order. Dated the 4th day of December, 1865.

R. COOPER, Judge."

And thereupon, to wit on, &c., and under and by virtue of a warrant of commitment duly issued by and upon the authority of said order, and under the seal of said Court, and pursuant to the Statute in such case made and provided, upon said Judgment, directed to the said T., then being a bailiff of said First Division Court, commanding him to take and deliver the said plaintiff to the gaoler of the common gaol of the said United Counties, who was thereby required to receive the said plaintiff, and him safely keep in the said common gaol for the term of thirty days from the arrest under said warrant, or until he should be sooner discharged by due course of law, the said order to commit and the said warrant of commitment being in full force and unrescinded, he, the said T., as such bailiff, by virtue of the said warrant of commitment took the said plaintiff, and delivered him into the custody of the said gaoler of the said common gaol, which is the alleged trespass.

Replication. That before the committing of the trespasses in the declaration mentioned, and before the commencement of this suit, the defendant, on a judgment alleged to have been recovered against the plaintiff in the Seventh Division Court for the United Counties of Huron and Bruce, by application under his hand requested the clerk of the said last mentioned Court to summon the said plaintiff to answer according to the Statute in that behalf touching such judgment debt in the said Court against the plaintiff; that on the 6th day of May, A. D. 1865, the clerk of the said Division Court, in pursuance of the said request of the defendant, issued under

his hand and the seal of the said Court a certain judgment summons against the said plaintiff, at the suit of the said defendant, in the words and figures following, that is to say, &c. (setting out the judgment summons verbatim, returnable on the 31st May).

That on the said 31st of May, at the village of Bayfield, the said plaintiff appeared before the Judge presiding at the sittings of the said Division Court then held, ready and willing to be examined according to the statute in that behalf and the exigency of the said summons; that the said Judge before whom the said summons came on for hearing did not examine the said plaintiff according to the statute in that behalf, although he was ready and willing to be examined; and without any witnesses being examined on oath before him on said last mentioned day touching the subject matter of said judgment summons, made an order, endorsed on the said judgment summons, in the words and figures following, (setting it out):

That on or about the said 31st of May last aforesaid the clerk of the said Division Court entered in the procedure book of the said Court, the same being a book kept by the said clerk under the provisions of rule No. 4 of the rules of the Upper Canada Division Courts, the said order for the commitment of the plaintiff for the term of thirty days aforesaid, according to the Statute and rule of the Division Courts in that behalf duly made according to the provisions of the Division Courts Acts for Upper Canada; that more than three calendar months from the entry of the said order for commitment as aforesaid in said procedure book of the said Division Court for the plaintiff's committal as aforesaid, to wit, on the 16th of September, 1865, the said defendant, acting on the said supposed judgment, caused a certain proceeding to be taken against the plaintiff, by causing to be issued a summons in the words and figures following (setting out the summons to commit, returnable on the 9th October):

That on the said ninth day of October, the said plaintiff appeared on the said supposed summons before John Bell Gordon, Esquire, presiding in said Division Court as Deputy Judge, when the said summons was at the request of the plaintiff adjourned until the next sittings of the said Division Court, when, in the absence of the plaintiff, the Judge of the said Court then presiding made the following order, indorsed on said summons (setting out the order of commitment):

Whereupon the said defendant, on or about the 4th of December, 1865, caused a warrant of commitment to be issued against the now plaintiff, which was in the words and figures following:

#### WARRANT OF COMMITMENT.

*In the Seventh Division Court for the United Counties of Huron and Bruce.*

No. 147, A. D. 1865. Between Peter A. McDougall, plaintiff, and Leonard Peck, defendant. To Bernard Trainor, bailiff of the First Division Court, and to all constables and peace officers of the United Counties of Huron and Bruce, and the jailer of the common jail for the said United Counties.

Whereas, at the sittings of this Court holden at the village of Bayfield in the County of Huron,