

Com. L. Cham.]

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ONTARIO REPORTS.

COMMON LAW CHAMBERS.

(Reported by HENRY O'BRIEN, Esq., Barrister-at-Law.)

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Bail—Power of Judge in Chambers to rescind order for, when bail fictitious—New sureties.

Where a prisoner charged with felony had been admitted to bail upon an order of a judge in Chambers, and an application was subsequently made to rescind such order, and to re-commit the prisoner to gaol, on the ground that he had not been committed for trial at the time such order was granted, and also upon the ground that the bail put in was fictitious,

Held, that a judge in Chambers had power to make the order asked for; but the order in this case was conditional upon the failure of the prisoner to find new sureties within a specified time.

[Chambers, 16th August, 1869.]

On the 27th July, *McKenzie, Q.C.*, on the part of the private prosecutor *Nichol*, and with the assent of the Attorney-General obtained a summons, calling on the accused *Mason* to shew cause why the order made by Mr. Justice *Morrison*, on the 22nd of May, ordering *Mason* to be admitted to bail for his appearance to answer a charge of stabbing *Robt. Nichol* with intent, &c., should not be rescinded, and set aside and vacated on the ground that *Mason* was not committed for trial by any justice of the peace, at the time the said order was applied for and granted, and that there was no warrant against *Mason* for the offence, and that no notice of intention of such application was given to the prosecutor or his counsel, and that the County Attorney had no right to consent to the said order, and that the order was improperly obtained, and why the recognizance of bail and the warrant of deliverance under such order should not be set aside and *Mason* should not be committed for trial, and why he should not furnish the place of residence of *John Patterson* and *Robert Peck*, the alleged sureties, and the description of the freehold mentioned in the recognizance of bail, and why such order should not be made, and such direction given as might be lawful and just in the premises or grounds disclosed in affidavits and papers filed.

The affidavits and papers filed upon which this application is based shew in effect: that *Mason*, on the 8th May last, was charged upon an information laid by a police officer, and arrested for a felonious assault upon one *Nichol*, by stabbing him with a knife which penetrated his lungs; that the case was heard before the police magistrate of this city, and witnesses examined for and against the prosecution; that on the 19th May, the police magistrate stated that he had decided upon committing *Mason* for trial, refusing to take bail, and intimating that *Mason* would have to apply to a judge; that *Nichol*, through his counsel, Mr. *McKenzie*, assuming that *Mason* would be committed, notified the late Mr. *Bethune, Q.C.*, acting agent for the Attorney-General; that he desired to oppose the admission of *Mason* to bail, and requested to be informed of any application for that purpose; that an application, of which no notice was given to the private prosecution, was made before the Honorable Mr. Justice *Morrison*, sit-

ting in chambers, on the 22nd May, to bail *Mason*; that an order was granted, admitting *Mason* to bail, himself in \$600 and two sureties of \$400 each, for his appearance at the next assizes; that the same having come to the knowledge of *Nichol*, and *Mason* being at large, an application was made to the police magistrate, to see the order and to inspect the recognizance of bail; that the first was refused, and the counsel of *Nichol* was referred to the office of the clerk of the peace, where the police magistrate said it was filed; that the same could not be found there; eventually it was brought and shewn to *Nichol's* counsel; that by the copy of the recognizance filed, it appears to have been taken on the 29th May before the police magistrate, the two sureties being *John Patterson* and *Robert Peck*, who are both described as of the township of *York*, Yeomen, and endorsed on which is a memorandum signed by the police magistrate, that both of the sureties deposed on oath, that they were freeholders in the township of *York*, and worth \$400 each over and above their liabilities; that these sureties are not known and cannot be found; that the assessment rolls of the township of *York* and village of *Yorkville* were carefully searched, and no such persons were found entered therein, the same being certified under the hands of the township clerks; and the prosecutor *Nichol* swears, that he made enquiry, and caused diligent enquiry to be made in the township of *York* and in the village of *Yorkville* and elsewhere in the county of *York*, and that he could get no intelligence or information whatever about the said *John Patterson* or *Robert Peck*; that he has reason to believe, and doth verily believe that the names *John Patterson* and *Robert Peck* are fictitious names, or if such persons exist, they are obscure and unknown persons without standing or substance and of no worth whatever; he also states that he was informed, and believes, that *Mason* stated since his liberation, that persons of the names of *Sheely* and *McFarlane* were his bail. It appears that *Mason* was in custody from the 30th of April until the 29th May, under a warrant of remand, dated 30th April, signed by the police magistrate, a copy of which is filed (the original being produced to me by the officers from the gaol), upon which warrant there are indorsements of further remands to the 14th May, 19th May, 20th, 21st, then to the 26th May, 27th, to the 29th, then to the 2nd June, and to the 3rd June. That no warrant of commitment was ever placed in the hands of the keeper of the gaol against *Mason*, but that he was detained in custody at the time of the application before me for bail, upon such remanding warrant, and until he was liberated under a warrant of deliverance signed by the police magistrate on the 29th of May; and *Nichol* swears that he was informed by the officers at the gaol, that the warrant of deliverance was brought to the gaol by some person while *Mason* was there in custody, and that no person was at the gaol to take the recognizance of bail before the delivery of the warrant of deliverance. A copy of the depositions, &c., taken upon the charge by the police magistrate was also filed. By it, it appears that the information was laid against *Mason* on the 29th April; that on the 8th May, witnesses