

of the Assembly thereafter, "by reason of the death or other of the causes aforesaid."

Held, that the "other of the causes aforesaid" were the two other causes besides death mentioned in sec. 13; and that a voluntary resignation, therefore, did not create a vacancy within sec. 14.—*In re the Election for the West Riding of Durham*, 6 U. C. R. 404.

MORTGAGE—PRIORITY.

An assignee of a mortgage cannot as against a prior equity set up the plea of purchase without notice.

The registered owner of land mortgaged the same, and afterwards conveyed the property absolutely to a purchaser, who registered before such mortgage, giving back a mortgage to secure purchase money; and subsequently the vendor assigned his mortgage to a purchaser who had no notice of the prior mortgage.

Held, that the purchaser's mortgage in the hands of the assignee was subject to the lien or charge of the vendor's mortgagee.—*Smart v. McEwan*, 18 Chan. Rep. 623.

CANADA REPORTS.

ONTARIO.

QUEEN'S BENCH.

MCDONALD v. STUCKEY.

Notice of Action—Necessity for quashing conviction.

Held, following *Neill v. McMillan*, 25 U. C. R. 485, that a notice of action describing the plaintiff's residence as of the township of B., in the county of P., was sufficient.

Held, also, following *Haacke v. Adamson*, 14 C. P. 201, that an order or conviction not under seal need not be quashed, under C. S. U. C. ch. 126, sec. 3, before action brought, for any thing done under it.

The alleged conviction in this case was made under the supposed authority of C. S. U. C., ch. 75; but nothing appeared on the proceedings to shew the relation of master and servant, or any offence punishable under the Act.

[31 U. C. R., 577.]

The first count of the declaration charged that defendant, on the 2nd December, 1870, caused the plaintiff to be assaulted and imprisoned, and kept him in prison for a long time.

Second count: that defendant, being a Justice of the Peace, without any authority, and maliciously, and without reasonable or probable cause, caused the plaintiff to be assaulted, and to go and be conveyed through divers public streets, &c., to defendant's residence, and there imprisoned and kept him in custody, without any reasonable or probable cause, for a long time, at the expiration whereof defendant caused the plaintiff to be conveyed in custody to the common gaol, and there again imprisoned for, to wit, five hours, under a false charge that the plaintiff had committed an offence, to wit, that he did owe to James Thompson the sum of \$51.08 for labour, and would not pay or settle

the same, and that James Thompson swore that he believed the plaintiff was about leaving the country, whereby, &c. Damages laid at \$1,000.

Plea, not guilty, by statute 16 Vic., ch. 180, sections 1 to 18, both inclusive; Consol. Stat. U. C. ch. 126, sections 1 to 20, both inclusive. Public Acts.

The case was tried at Guelph, before Hagarty, C.J., C.P., in March, 1871.

It was proved that the plaintiff was committed to the county gaol at Guelph, on a warrant under the hand and seal of the defendant, which recited that the plaintiff was charged before the defendant, for that he "did owe to James Thompson the sum of \$51.08 for labour, and would not pay or settle the same, and that the said James Thompson swears that he believes that the said Alexander McDonald is about leaving the country." Dated 2nd December, 1870.

The plaintiff swore that he was brought under a warrant before defendant, at Fergus, and kept in that place in custody all night. Defendant told the constable to take him (plaintiff) to Guelph, to gaol, on the following day. The constable had defendant's warrant to take him there. The constable delivered the warrant and the plaintiff to the turnkey. Defendant said it was for his owing \$50 the plaintiff was to go to gaol. Plaintiff said he would pay it, but not till pay-day. Plaintiff was five or six hours in gaol.

On the defence the Clerk of the Peace produced certain papers, which had been transmitted to him by the defendant on the 20th of January, 1871. On the morning of the day of trial, a conviction was filed with him. The papers returned on the 20th of January were, 1. An information; 2. An order for the payment of money; and 3. Examination of witnesses before the defendant. This last paper contained little more than the reiterated statement of the defendant that he did not owe Thompson so much as he claimed by \$5: that he had offered Thompson a note on Ellice, the Engineer, for his pay, and Thompson would not take it; and now that he would sooner go to gaol than pay Thompson one cent.

The order for payment stated that on the 1st of December, 1870, complaint was made before the defendant (not saying by whom) that the plaintiff owed to James Thompson the sum of \$51.08, and refused to pay, "and the said Thompson swears that he believes him to be leaving the country?" that the parties aforesaid appeared before the defendant, and that defendant did adjudge the plaintiff to pay to James Thompson the sum of \$51.08" (a blank was left as to costs, and no adjudication thereof,) "and if the said several sums be not paid" (another blank) "then I adjudge the said Alexander McDonald to be imprisoned in the common gaol of the said county of Wellington (and there kept to hard labour) for the space of" (another blank) "unless the said several sums, and all costs and charges of the commitment and conveying of the said" (another blank) "to the said common gaol shall be sooner paid." This instrument was not under seal.

It was admitted that a sum of \$10 was tendered by defendant's attorney to the plaintiff's