

merely colorable, although he does not succeed in it: *Att.-Gen. v. Butcher*, 4 Russ, 180; *Fitzgibbon v. Scanlan*, 1 Dow, 261. *Scarry v. Wilson* 216

See PRACTICE, 7.

ULTRA VIRES.

See CORPORATION.

See MUNICIPALITY, 1, 8.

UNSETTLED ACCOUNT.

See COUNTY COURTS, 3.

VENDOR AND PURCHASER.

Sale under order of Court — Possession — Effect of taking — Ex parte order.] — This was an application, under Rules 685 and 691 of The Queen's Bench Act, 1895, for an order to issue execution against David Milne, who had, in September, 1896, made a written offer for the purchase of the property in question in this action at \$2,700 cash after an abortive sale by auction. The offer contained a stipulation for a clear deed. Milne went into possession pending the completion of the title and made some alterations in the buildings. Great delays occurred in completing the title, and the purchaser, after having several times requested the vendor to make the title good, finally, on the 30th August, 1897, notified

the vendor's solicitors that, unless title was made to him within two weeks from that date, the offer should be considered as withdrawn, and that he would have nothing more to do in the matter. Two weeks afterwards the purchaser accordingly gave up possession of the property and returned the key. The vendor's solicitors, however, procured a report from the Master, dated 18th September, 1897, approving of the sale to Milne and, on 29th September, an order *ex parte* from the Chief Justice dispensing with payment into court of the purchase money, and that the payment be made to the Imperial Loan and Investment Company, mortgagees, within ten days after service of a copy of the order, and upon the purchaser receiving a conveyance of the property. No conveyance had been tendered to the purchaser before this application; but it appeared that, on being served with a copy of the order, he stated that he had withdrawn his offer and given up possession of the property, and would have nothing more to do with the matter.

Held, that while the order of the Chief Justice remained in force it must be obeyed, although if all the circumstances had been made known to him, he might have refused it; and that the purchaser must pay the purchase money into court within two weeks, and, in default, that the order for execution should go.