

of the proposed appeal has been filed in the inferior court to which the appeal is taken.

2. That objections to the jurisdiction of a court to entertain an appeal may be raised on the hearing will not prevent the granting of a writ of prohibition against such tribunal by a superior court

Mayor of London v. Cox, L.R. 2 H.L. 239, followed.

3. The court hearing a prohibition motion has a discretion to refuse an adjournment for the purpose of cross-examination upon an affidavit, where the adjournment would be against justice.

4. Where a prosecution before a police magistrate for an offence under the Secret Commissions Act, 8-9 Edw. VII. (Can.) c. 33, is brought as for an indictable offence and is tried on the defendant's election under the summary trials clauses of the Cr. Code, 1906 (Part 16), and the charge, while triable in either method, is not brought under the summary convictions clauses of the Code (Part 15), there is no right of appeal by the prosecutor from the dismissal of the charge.

H. W. Whitla, K.C., and *M. Hyman*, for Buchanan. *W. Hollands*, for the informant.

Province of Saskatchewan.

SUPREME COURT.

Johnstone. J.]

[15 D.L.R. 216.

PEACOCK *v.* WILKINSON.

Brokers—Real estate agents—Default in making title—Broker's warranty of ownership.

Real estate agents who, on making a contract of sale, misrepresent to the purchaser that the party whose name is then disclosed by them as being the vendor and with whom the contract purports to be made, has been ascertained by them to be the registered owner of the property, will be held liable not only for the return of the payments made to them on the faith of the contract, but for damages in not carrying out the contract where no effort had been made by them to get in the outstanding title which was in a third party so as, if possible, to carry out the sale.

O'Neil v. Drinkle, 1 S.L.R. 402, applied; see also *Reeve v. Mullen* (Alta.), 14 D.L.R. 345.

J. F. Frame, for plaintiff. *J. F. L. Embury*, for defendant.