

case prohibition will be after sentence, when it appears on the face of the proceedings that the matters are not within the jurisdiction of the tribunal. *Hickson et al. v. Wilson et al.* (Ct. 1897), p. 426.

QUANTUM MERUIT.

See CONTRACT.

RECOGNIZANCE.

See BAIL.

SALE OF LAND.

Sale of Land—Vendor's Title—Title in Third Party—Incumbrance—Repudiation—Penalty—Forfeiture—Practice—Evidence—Commission—Order for Commission—Irregularities—Suppression of Commission Evidence—Waiver—Postponement of Trial to Supply Defect in Evidence.—Where at the time of an agreement for sale and purchase of land, the title to the land stood in the name of the vendor's wife, but the vendor obtained and tendered a transfer from his wife to the purchaser before the purchaser repudiated the agreement:—Held, following *Paisley v. Wills*, 19 O. R. 303; affirmed 18 O. A. R. 210; that the purchaser was liable in an action for balance of purchase money. Right to repudiate discussed. If a thing be agreed to be done, though there be a penalty annexed to secure its performance, yet the very thing itself must be done, and the Court will not permit the person on whom the penalty rests to resist specific performance by electing to pay the penalty. Where a commission to take evidence was issued without a formal order therefor, but merely on an informal memorandum of a Judge, containing no direction as to the commissioner's name or the time, place or manner of taking the evidence, but the commission, before being sent out, had been shown to the advocate for the opposite party, and due notice of the time and place of taking the evidence under the commission had been served on him, and on the return of the commission it had been opened at his instance:—Held, (1) that the irregularities in connection with the issue of the

commission, which might at an earlier stage have been taken advantage of by motion to suppress, were waived by the advocate for the opposite party, with knowledge of the irregularities, causing the commission to be opened; that being a fresh step within the meaning of s. 541 of the Judicature Ordinance. (2) That in any case, the trial Judge having received the evidence and s. 501 of the Judicature Ordinance providing that a new trial shall not be granted on the ground of the improper admission or rejection of evidence unless on the opinion of the Court to which application is made, some substantial wrong or miscarriage has been thereby occasioned in the trial, and the Court being of the contrary opinion, no effect should be given to the objection. Trial of action adjourned to enable plaintiff to supply defect in the evidence in the support of his case under s. 236 of the Judicature Ordinance. *Hamilton v. McNeill*, (Wetmore, J., 1894), p. 31.

See JUDICIAL SALE OF LAND—PRINCIPAL AND AGENT.

SET-OFF.

See BILLS, NOTES AND CHEQUES.

SHERIFF.

See LAND TITLES ACT.

SMALL DEBT PROCEDURE.

See CONSTITUTIONAL LAW.

SOLICITOR AND CLIENT.

Taxation of Advocate's Bill more than Twelve Months after Delivery—Special Circumstances—Receipt of Client's Moneys—Commission.—An order for the taxation of an advocate's bill of costs ought not to be granted on the ex parte application of the client, where the bill has been rendered more than twelve months before the application to tax. Orders of course defined. *Semble* (1) on an application to set aside an ex parte order to tax, if special circumstances are shewn by the