

SECOND DIVISIONAL COURT.

DECEMBER 23RD, 1915.

## \*CAMERON v. McINTYRE.

*Sale of Animal—Warranty—Breach—Damages—Findings of Jury—Contract—Waiver—"Unsoundness."*

Action for damages for breach of a warranty upon sale of a stallion.

The action was tried by BOYD, C., and a jury, at Guelph.

Questions were put to the jury, which they answered as follows:—

1. On or before the date of the sale, the 6th February, 1915, did the defendant represent that the horse was sound and right in every way? A. He did.

2. Did he then state that he would give a written warranty that it was sound and right in every way? A. Yes.

3. Did the defendant say that the horse was a sure foal-getter, and that he had made a good season the preceding year? A. Yes.

4. Did the defendant offer to give anything more than his own guaranty that the horse was a 50 per cent. foal-producer, the certificate of the veterinary surgeon that it was sound, and its pedigree? A. Yes.

5. If he said he agreed to give more, say what it was? A. His personal guaranty that the horse was sound and right in every way.

6. If you think the plaintiff should get damages, say how much? A. \$1,200.

7. Was the horse reasonably fit to travel the country road as a stallion? A. No.

8. If there was any warranty, was there any breach of it, and what was the breach? A. He didn't get a sound horse.

The defendant referred to in the answers was the defendant McIntyre.

Judgment was entered for the plaintiff for \$1,200 and costs against both defendants; and they appealed.

The appeal was heard by FALCONBRIDGE, C.J.K.B., RIDDELL, LATCHFORD, and KELLY, JJ.

D. L. McCarthy, K.C., and George Bray, for the appellants.  
J. B. Clarke, K.C., for the plaintiff, respondent.