terms of his employment, spend time and money in the hope of earning the commission agreed on.

Aldous v. *Swanson,* 20 M.R. 101, followed.

Verdict for half the amount of the commission the plaintiff would have earned if the sale had been carried out.

Galt, K.C., for plaintiffs. *Stacpoole* and *Lorne Elliott,* for defendant.

Mathers, C.J.] LA FLECHE *v.* BERNARDIN. [March 30.

BERNARDIN *v.* LA FLECHE.

Warranty—Fraudulent representations—Action on promissory notes—Counterclaim—Principal and surety—Damages for breach of warranty—Consolidation of cross actions—Set-off of verdicts.

Held, 1. It is no defence to an action on a promissory note that it was given for the price of an article sold by the payee to the maker with a warranty which has been broken, unless the vendor was guilty of a fraudulent or reckless misrepresentation in making the sale; the maker's proper remedy being either to counterclaim or bring a cross action for damages for the breach of warranty.

2. A party who has signed such a note as surety for the maker may, if sued along with the maker, set off against the plaintiff any damages which the maker would be entitled to recover against him for the breach of warranty. *Bechervaise* v. *Lewis,* L.R. 7 C.P. 372, followed.

When the maker of the note brought a cross action for the breach of warranty, instead of counterclaiming in the action brought against him, and recovered a verdict for damages exceeding the amount due on the note, the two actions, having been tried together, were consolidated, one verdict was set off against the other, and final judgment ordered to be entered in the consolidated action in favour of the maker of the note for the difference only. Illustration of the proper assessment of damages for breach of a warranty that a stallion sold was a sixty per cent. foal getter.

Hagel, K.C., and *Cutler,* for La Fleche. *Blackwood* and *Manahan,* for Bernardin. *Hull* and *Sparling,* for sureties on note.