$750, taking in his own name two promissory notes of $375 each. The defendants knew nothing of the plaintiff, and dealt with M. as the owner. M. afterwards endorsed these notes to the plaintiff. To an action on one of the notes, the defendants set up a counter-claim for breach of warranty. The trial Judge found that M. sold the horse for breeding purposes, and warranted him to be an imported Clydesdale, and that the warranty was untrue. No other warranty was given. The horse proved useless for breeding purposes.

Held, that the plaintiff, by his conduct, clothed M. with the apparent ownership of the horse, and, by so acting, authorized M. to make all such warranties as are usual in the ordinary course of selling horses.

Held, also, that the plaintiff, being an undisclosed principal, by suing on the note, adopted the contract made by M., and must take it subject to all the equities as between M. and the defendants.

Commercial Bank v. *Bissett*, 7 M. R. 586, and *Brady* v. *Todd*, 9 C. B. N. S. 592, distinguished.

Held, also, that, from the circumstance of the horse being sold for breeding purposes, there was no implied warranty of fitness for breeding.

Held, also, that the defendants were entitled to damages for breach of the warranty— that the horse was an imported Clydesdale, and the measure of damages was the difference in value between an imported horse and a Canadian-bred one. *Taylor* v. *Gardiner* . . 310

PRODUCTION OF DOCUMENTS.

Real Property Act—Production of documents—Order for—Barring party in default — Practice.] — Under rule 6 of schedule R. of The Real Property Act, R. S. M. c. 133, the plaintiff in an issue under The Real Property Act, obtained an order for production by the defendant within ten days after service of the order upon him or his attorney. The order was served upon the attorney. The defendant did not comply with the order, but his attorney filed his own affidavit. Upon an application to bar the defendant or commit him for contempt,

Held, that the attorney's affidavit was insufficient.

Held, also, that rule 6 being silent as to the method by which production may be enforced, if the equity rule were adopted, four clear days notice must be given, or if the common law rule were adopted, there must be personal service ; as neither condition was complied with, the summons was dismissed.

Held, also, that an application to bar must be made in the original cause or matter and not in the issue, as in this case.

Semble. It must be within the power of the Court to deal with disobedience of such an order in some way, as by barring the party in default. *Hardy* v. *Desjarlais*, 401.

PROHIBITION.

1. *County Court—Notice of objection to jurisdiction — Dispute note— Costs— Meritorious defence.*] —The plaintiff sued the defendant