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APPELLATE DIVISION.

SECOND DIVISIONAL COURT.

NOVEMBER 28TH, 1919.

MORRISON v. CONNOR.

Fraud and Misrepresentation—Sale of Farm—Representation as to Acreage—Proof of Fraud Inducing Contract—Evidence—Finding of Trial Judge—Appeal—Remedy—Rescission—Damages—Measure of.

Appeal by the plaintiff from the judgment of LENNOX, J., 16 O.W.N. 166.

The appeal was heard by MEREDITH, C.J.C.P., RIDDELL, LATCHFORD, and MIDDLETON, JJ.

G. A. Stiles, for the appellant.

J. A. Macintosh, for the defendant, respondent.

LATCHFORD, J., in a written judgment, said that he was convinced that the defendant knew that the area of his farm was not "97 acres" or "97 acres more or less," as expressed in the respective advertisements offering it for sale, but at the most less than 80 acres. It was unquestionable that the defendant had not measured his property, and consequently did not know its *exact* area; but, upon the uncontradicted evidence of three witnesses, the defendant had no reason to suppose that the farm had any greater area than the area stated by them. Moreover, he had reason to believe that its area was about 60 acres. The finding that the defendant did not know the quantity of land he was selling to the plaintiff must be taken to mean nothing more than that the defendant, because he did not measure the land, did not know its exact, or even perhaps its approximate, area. From the finding, so regarded, the learned Judge did not dissent. But the conclusion seemed also inevitable that the defendant did know