

ton Boulter the damages which he has suffered by reason of the misrepresentations leading to the rescission of the contract, and to ascertain what would be a reasonable allowance to be made to Wellington Boulter by reason of the use and occupation by the plaintiff of the property in question.

Appeals were taken from this judgment to the Court of Appeal for Ontario, 22 O. W. R. 464; 3 O. W. N. 1397, and the case was only finally determined in the Supreme Court on the 18th February, 1913. See 47 S. C. R. 446; pending these appeals the plaintiff remained in possession of the property.

By his report dated the 8th of August, 1913, the Master has allowed as damages \$9,041.38, and has allowed for rent, use and occupation, \$1,425.

It was in respect of these two allowances that the present appeals were heard by Hon. Mr. Justice Middleton, on 29th September, 1913, in Weekly Court at Toronto.

A. W. Anglin, K.C., and C. A. Moss, for the defendant.  
D. Inglis Grant, for the plaintiff.

HON. MR. JUSTICE MIDDLETON:—At the hearing Mr. Justice Clute found that there had been misrepresentation with respect to three matters, sufficient to justify rescission; the quantity of the land, the number of apple trees in the orchard, and the condition of the farm. So as to avoid difficulty if it should be thought there should not be rescission and that damages alone could be allowed, Mr. Justice Clute assessed the damages with respect to these matters: for the shortage of acreage at \$2,530, for the shortage of trees in the orchard at \$3,100, for the foul condition of the land and shortage of the wheat crop \$2,000, a total of \$7,630, so that if there had been no rescission the plaintiff's damages would have been \$7,630. There having been rescission, these items in great measure disappear, yet the Master has allowed \$9,041.38, a result which immediately suggests that the Master must have fallen into some error.

For the shortage of acreage and the shortage in the orchard the plaintiff has sustained no damage save that he has had less land to crop and fewer trees to bear. These, it seems to me, are factors in fixing the occupation rent with which he is chargeable. He has received back the amount paid for purchase money, and the interest upon it,