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HON. MR. JUSTICE MIDDLETON.

OCTOBER 16TH, 1913.

STOCKS v. BOULTER.

5 O. W. N. 129.

Damages—Fraud and Misrepresentation—Rescission of Sale of Farm—Damages Suffered by Purchaser—Shortage in Acreage and in Fruit Trees—Loss of Income from Investment—Remoteness of Damage—Improvements to Property—Loss in Operating—Expenses of Moving—Expenses of Searching Title—Occupation Rent—Quantum.

See reports of S. C. in 20 O. W. R. 421, 22 O. W. R. 464; 47 S. C. R. 440.

Reference was ordered to Local Master to assess damages suffered by reason of misrepresentations leading to the rescission of a contract to purchase land. Master reported damages at \$9,041.38 and allowed for rent, use and occupation \$1,425.

MIDDLETON, J., varied above report, reducing damages to \$458.05 and allowing for rent, use and occupation \$2,000. Plaintiff to have right to further reference as to any increased value of land by reason of matters included under the head of outlays.

Chaplin v. Hicks, [1911] 2 K. B. 786, and *Goodall v. Clarke*, 44 S. C. R. 284, discussed.

Appeal and cross-appeal from the report of the Master at Picton, argued on 29th September, 1913.

The action was brought to rescind an agreement by which the defendants sold a farm to the plaintiffs. By the judgment of Hon. Mr. Justice Clute, dated 24th November, (1911), 20 O. W. R. 421; 3 O. W. N. 277, the agreement, and deed and mortgage executed in pursuance thereof, were rescinded and the property, real and personal, was directed to be reconveyed and returned; and the vendor was directed to repay the sum paid on account of the purchase price together with interest. There was a reference to the Master to ascertain the value of any chattels which could not be returned or replaced. No question arises in respect to any of these matters. The judgment then declared that the plaintiff was entitled to recover from the defendant Welling-