TEETZEL, J.:—I have no difficulty in finding, upon the evidence and from the appearance and manner of the plaintiff in the witness-box, that the plaintiff is a man of a lower degree of intelligence than most men: he is unacquainted with and unskilled in business matters, and could easily be persuaded and deceived, and would be very much like wax in the hands of the witnesses Baker and Connors, who are exceedingly bright and intelligent men, employed by the defendant to sell vacant lots in a subdivision adjoining the city of Brandon.

The plaintiff owned six lots in a subdivision in the city of Calgary.

I also find that, in the exchange of properties between the plaintiff and defendant, negotiated and effected by Baker and Connors, the plaintiff was overmatched and overreached by them, without proper information and without advice; and that, as affecting the plaintiff, the exchange was a most improvident one; and, apart from any question of actual fraud, I think the facts bring the case within the principle of Waters v. Donnelly (1884), 9 O.R. 391, and that the plaintiff is entitled to have the transaction rescinded.

But I further find, upon the evidence, that many of the representations made to the plaintiff, both with respect to the plaintiff's property and to the property given in exchange for it, and as to Baker having been sent to the plaintiff by his brother Charles, as to all which representations I accept the plaintiff's evidence, were untrue and were made recklessly and without honest belief in their truth, and under such circumstances as entitle the plaintiff to relief under Derry v. Peek (1889), 14 App. Cas. 337; White v. Sage (1892), 19 A.R. 135; and other well-known cases in the same line.

The transaction should be rescinded, and the property retransferred; but, as the defendant had sold four of the lots obtained from the plaintiff before the plaintiff repudiated the exchange, it is impossible to place the parties in statu quo, so that the judgment will be in favour of the plaintiff awarding damages against the defendant, which I fix at $825; and the judgment will further direct that the defendant shall protect the plaintiff against any liability to the Alliance Investment Company under his agreement of the 1st August, 1911, to purchase the Calgary lots; and, upon payment of $825 and the costs of action to the plaintiff, he must transfer to the defendant the lots obtained from the defendant.