

MIDDLETON, J.:—The action was brought to rescind an agreement by which the defendants sold a farm to the plaintiff. By the judgment of Mr. Justice Clute, dated the 24th November, 1911 (3 O.W.N. 277), the agreement, and deed and mortgage executed in pursuance thereof, were rescinded, and the property, real and personal, was directed to be reconveyed and returned; and the vendor was directed to repay the sum paid on account of the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 Wellington Boulter the damages which he (the plaintiff) had 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.

The defendants appealed from this judgment, and their appeal was dismissed (3 O.W.N. 1397); and the case was finally determined in the Supreme Court only on the 18th February, 1913 (Boulter v. Stocks, 47 S.C.R. 440). Pending these appeals, the plaintiff remained in possession of the property.

By his report, dated the 8th August, 1913, the Master has allowed as damages \$9,041.38, and has allowed for rent, use, and occupation \$1,425. It is in respect of these two allowances that the present appeals are had.

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