that it had probably no greater area than the 70 or 74 acres mentioned to him by Barkley, if not the similar area stated by Merkeley, Sullivan, and Mrs. Davidson. The defendant's advertisement represented the farm as having a far greater area than he had been told it contained, and a far greater area than a half lot in a concession known to him to be only three-quarters of a mile in length could possibly contain. This was a false representation, made with knowledge of its falsity.

The admittedly false representation in the advertisement, not corrected in a very material particular, when inquiry was made, induced the plaintiff to purchase the farm—the sale of the farm to the plaintiff was induced by the defendant's fraud.

The case was not one for rescission, owing to the fact that, even when action was brought, it was practically impossible to restore the parties to their original position: Clarke v. Dickson (1858), E.B. & E. 148. A contract cannot be rescinded in part and stand good for the residue. If it cannot be rescinded in toto, it cannot be rescinded at all; but the party complaining of the fraud must resort to an action for damages: per Lush, J., in Sheffield Nickel Co. v. Unwin (1877), 2 Q.B.D. 214, 223.

The plaintiff was not without a remedy. Having charged and proved fraud, he was entitled, in an action founded on the fraud, to the true amount of the damages sustained: Urquhart v. Macpherson (1878), 3 App. Cas. 831.

The land, as of its true area, cost the defendant $75 an acre, and had not diminished in value. The damages might be fairly estimated at that price, at least for the 16 acres' difference between the actual acreage and the acreage the plaintiff would have been content with—$1,200.

The appeal should be allowed, and judgment should be entered for the plaintiff for $1,200 damages with costs of the action and appeal.

RIDDELL and MIDDLETON, JJ., agreed with LATCHFORD, J.

MEREDITH, C.J.C.P., agreed in the result, for reasons stated in writing.

Appeal allowed.