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APPELLATE DIVISION.

FEBRUARY 13TH, 1914.

STOCKS v. BOULTER.

Damages—Fraud and Misrepresentation—Rescission of Sale of Farm—Damages Suffered by Purchaser—Loss of Income from Investment—Quantum—Loss in Operating—Allowance to Vendor—Occupation Rent—Other Items.

Appeal by the plaintiff from the order of MIDDLETON, J., upon appeal by the defendant and cross-appeal by the plaintiff from the report of the Local Master at Picton upon a reference to assess damages: ante 129.

The appeal was heard by BOYD, C., MACLAREN, MAGEE, and HODGINS, J.J.A.

R. McKay, K.C., and D. Inglis Grant, for the plaintiff.

A. W. Anglin, K.C., and C. A. Moss, for the defendant.

The judgment of the Court was delivered by BOYD, C.:—In a difficult and unusual case, the Master has fairly considered and applied the law as to the items allowed by him, with one exception, i.e., the item of \$7,500. This should be reduced to \$2,000, representing the value of interest at five per cent. lost on the moneys paid by the plaintiff to Boulter, i.e., as found by the Master, \$16,109, which was withdrawn from British Columbia, where it produced ten per cent. The repayment of the part of the price paid, with statutory interest at five per cent., does not satisfy the claim for damages which the plaintiff has for the fraudulent misrepresentations which induced him to withdraw the money from British Columbia. He was assured by the defendant that the investment in the farm would yield at least ten per cent., and that is to be made good, on the rescission of the contract.

As to the allowance for occupation rent at \$1,425 no appeal has been taken from it by the plaintiff, and it has to stand,