

Then a series of items are allowed for some changes made in the operation of the factory. If these operations had been shewn to result in any permanent improvement to the property, I think the amount by which the value of the property was increased might be allowed as an allowance under clause 2 of the judgment. It is clearly not damages sustained by reason of the misrepresentation; and there is no evidence to shew that any permanent improvement has resulted. While I allow the appeal upon this ground, I would allow the plaintiff to have a reference back at his own expense to shew whether the value of the property has been increased by reason of any of the matters set forth in these particulars.

Then the plaintiff seeks to charge, and has been allowed, the sum of \$400 as loss in operating the property. It is not shewn that this loss was caused by the misrepresentation alleged. Possibly part of it might be attributable to the foul condition of the land, but I think the proper place to deal with this is in the adjustment of the occupation rent.

Their then remains the question of the occupation rent. It seems to me that the Master has approached this from the wrong standpoint, and that the sum with which he has charged the plaintiff is altogether inadequate. Yet it would not be fair to charge him with the full rental payable under normal conditions. After the judgment at any rate, possibly after his repudiation of the contract, the retention of possession by the plaintiff was purely voluntary; but the precarious nature of the holding and the bad condition of the ground owing to the weeds are factors to be considered. Giving the best weight I can to the evidence, and giving the plaintiff the benefit of every doubt, and making the most generous allowance to him in respect of all matters which can be allowed, I have come to the conclusion that he ought to pay at least \$2,000 net for the time during which he was in occupation of the property.

The result is that subject to the plaintiff's right to a further reference as to any increased value by reason of the matters included under the head of outlays, the appeal is allowed to the extent of reducing the damages to \$458.05, and the occupation rent is increased to \$2,000.

The defendant should have the costs of both appeals.

No claim was made in respect of an item of damages which one would have expected to have been put forward,