

in Stratford and took him over to Bennock's office, and there stated that he desired to interest him in certain western lands, and produced and read to him a printed report (Ex. 2) describing these lands. He also stated to McCallum that he had examined every foot of the land, and that it was better than as described in the report; that it was first-class land, that you could plow a furrow across any section of it without a break; that you would not have to lift the plow or turn around any obstruction; that it was clear, open land. These representations he repeated to Duncan McCallum.

A careful examination of the evidence satisfies me that the land was not as represented by the defendant to either Armstrong or the plaintiff, McCallum, but, on the other hand, that it was broken up with numerous sloughs and other bodies of water, including a lake of some 70 or 80 acres, bluffs, patches of stone, gravel and holes, including a gorge of from 100 to 150 feet in depth, which ran through one section, and that a very substantial portion of the whole area, estimated by some witnesses as high as 75 per cent., was waste land.

I am also convinced by the evidence that the land fit for agriculture consisted only of small patches of a few acres each, scattered amongst the bluffs, sloughs, etc., and that even these patches are of questionable value as arable land, because of the expense in conducting farming operations on such small and scattered pieces of land.

The evidence abundantly supports the view that, in order to induce the plaintiffs to make the respective purchases in question, the defendant made to them material statements as to the character of the land, which were in fact untrue. He represented himself as speaking from actual knowledge derived from a personal inspection of the whole property. If he made such an inspection, then his misstatements must have been intentionally untrue. If he did not make an inspection, it is clear that he made the mis-statements recklessly and not caring whether they were true or false in order to induce the plaintiffs to purchase.

The defendant did not give evidence in his own behalf and his counsel was warned by each of the Judges who took part in the trial to the effect that his failure to testify might expose him to inferences unfavourable to his innocence. Nevertheless, he chose to offer no explanation as to his mis-