

of them anywhere. I find that Andrew McNamara took the position from first to last that the caps alleged to be found were not those of his firm. He said in effect that he was quite sure the caps were not theirs. The case is one of suspicion. The plaintiff fails in his proof. I do not feel myself at liberty to draw the inference that the caps said to be found were those of defendants, McNamara & Son, or that they were guilty of any negligence in the use of any caps on their work.

The case seems to me no stronger, (if so strong) than *Jones v. G. T. R. Co.*, 45 U. C. R. 193. Such caps could have been easily purchased by any one desiring to buy. If upon the evidence plaintiff is entitled to recover, I would assess damages at \$1,200 against McNamara & Son.

The action must be dismissed with costs if demanded.

Thirty days' stay.

SUPREME COURT OF ONTARIO.

SECOND APPELLATE DIVISION.

JUNE 15TH, 1914.

MCALLUM v. PROCTOR.

ARMSTRONG v. PROCTOR.

6 O. W. N. 556.

Fraud and Misrepresentation—Action for Damages—Purchase of Interest in Western Lands—Evidence—Damages—Measure of.

LENNOX, J., 25 O. W. R. 602, 5 O. W. N. 692, *held*, that the measure of damages in an action for damages for false and fraudulent representations by which the plaintiffs were induced to purchase an interest in certain lands was the difference between the price paid and the actual value of such interests.

Storks v. Boulter, 47 S. C. R. 440, referred to.

SUP. CT. ONT. (2nd App. Div.) affirmed above judgment.

Appeal by the defendant from a judgment of HON. MR. JUSTICE LENNOX, 25 O. W. R. 602; 5 O. W. N. 692.

The appeal to the Supreme Court of Ontario (Second Appellate Division) was heard by HON. SIR WM. MULOCK, C.J. EX., HON. MR. JUSTICE MACLAREN, HON. MR. JUSTICE CLUTE, and HON. MR. JUSTICE LEITCH.

R. S. Robertson, for the defendant, appellant.

R. McKay, K.C., and R. T. Harding, for the plaintiffs.

HON. SIR WM. MULOCK, C.J. EX.:—These are two actions of deceit against the same defendant, and were tried together. The evidence was taken in *McCallum v. Proctor*, and by