

naturally, inquiry was made and suspicion was directed towards McNamara & Son, and that suspicion was strengthened because the senior of the firm was on one or more occasions intoxicated when at work. I accept the evidence of Andrew McNamara that he did not see any of the caps at Renzoni's house after the accident nor did he see any 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 that 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 the 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. Grand Trunk R.W. Co.*, 45 U.C.R. 193. Such caps could have been easily purchased by any one desiring to buy.

If, upon the evidence, the plaintiff is entitled to recover, I would assess the damages at \$1,200 against McNamara & Son.

The action must be dismissed, and with costs, if demanded.

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ROYAL BANK OF CANADA V. LEVINSON—KELLY, J.—JUNE 1.

*Guaranty — Fraud — Undue Influence — Finding of Trial Judge.*—Action upon a guaranty of certain debts and liabilities of a firm of Galt & Mackey, given to the Traders Bank of Canada and transferred to the plaintiffs. The guaranty was signed by the defendant; he did not deny his signature; but he alleged that it was obtained by the fraudulent representations of the manager of the Traders Bank at Kenora, or by undue influence arising from a confidential relationship, without knowledge on the defendant's part of what he was signing. The learned Judge reviews the evidence, and finds that the defendant, knowingly and willingly and without any undue influence or fraud or misrepresentation on the part of the manager, signed the guaranty; and that the defendant has not established any ground for escaping liability for the amount claimed. Judgment for the plaintiffs with costs. J. H. B. Coyne and A. McLennan, for the plaintiffs. R. M. Dennistoun, K.C., and J. F. MacGillivray, K.C., for the defendant.