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Hickey v. *Morrell*, decided by the New York Court of Appeals, is an important case on the law as to mis-statement of material facts in circulars or advertisements. The question was as to the liability of a warehouseman who had made a statement in his circular that the exterior of his building was fireproof. The plaintiff was thereby induced to store her furniture in his warehouse, and the property was destroyed by a fire. The Court say: "We think the appellant's ground of complaint a just one. It was proven that in fact the window-frames in the warehouse were of wood; that at the outside of the windows there were no shutters; that the cornices were of wood, covered with tin. The fire occurred in the evening. It originated in other buildings across the street, and from them communicated to the wooden window-frames on the defendant's building. An architect and a builder, examined as experts, testified that a building constructed, as was the one in question, 'with wooden window-frames and sashes, and no outside shutters,' could not be deemed fire-proof, and that in October, 1881, it was practical to erect a storage warehouse which would be fire-proof on the exterior. At the close of the plaintiff's evidence she was nonsuited, upon the ground that the statement in the circular, as to the character of the exterior of the building, was a mere expression of an opinion, and not the statement of a fact. Upon the same ground the judgment was affirmed at the general term. In such a circular, obviously intended as an advertisement, high coloring and exaggeration as to the advantages offered must be expected and allowed for; but, when the author descends to matters of description and affirmation, no misstatement of any material fact can be permitted, except at the risk of making compensation to whoever, in reliance upon it, suffers injury. Here the allegation is that the exterior of the building is fire-proof. It necessarily refers to the quality of the material out of which it is constructed, or which forms its exposed surface. To say of any article, it is fire-proof, conveys no other idea than that the material out of which it is formed is incombustible. That statement, as regards certain well-known substances usually employed in the construction of buildings, while it might in some final sense be deemed the expression of an opinion, could, in practical affairs, be properly regarded only as a representation of a fact. To say of a building that it is fire-proof, excludes the idea that it is of wood, and necessarily implies that it is of some substance fitted for the erection of fire-proof buildings. To say of a certain portion of a building, it is fire-proof, suggests a comparison between that portion and other parts of the building not so characterized, and warrants the conclusion that it is of a different material. In regard to such a matter of common knowledge, the statement is more than the expression of opinion."

Another remarkable ruling upon the same subject comes from England. In *Edgengton* v. *Fitzmaurice*, 55 L. J. Rep. Chan. 650, the facts were that a joint stock company, limited, being in want of money, issued circulars asking subscriptions for debenture bonds to the amount of £25,000. The circulars stated the object of the company to be to enlarge its facilities for doing business, and, by diminishing expenses, to increase its profits, and stated in detail how these desirable objects could be accomplished. The result showed that the true object of raising the money was to prop a failing concern, and tide over an emergency. In a few months after the plaintiff had taken the bonds and paid the money, the company failed and paid a very scanty dividend. The suit was brought to charge the directors personally, because in their circular they had made misrepresentations, whereby plaintiff had been induced to become a subscriber. The case turned upon two questions, first, whether the objects for which the money was required by the company were "existing facts" within the meaning of the phrase when applied to the action of deceit. The second question was whether it was necessary that the statement should be the primary inducement to the plaintiff to