

was charged against any of the parties to the former action, yet in a probate action a fraud by a beneficiary though not a party, in obtaining probate would render the grant impeachable in a subsequent action for revocation. See 112 L. T. Jour. 523.

PRACTICE—PROBATE—MISTAKE IN WILL—REVOCATION—REVIVAL

In the goods of Reade (1902) P. 75, is an instance of the exercise of a jurisdiction by the Probate Court, which has not been often, if ever, invoked in our Probate Courts, viz., the correction of a mistake in a testamentary paper. The mistake in the present case was the reference contained in a codicil made in 1900 to a will made in 1895 which had been revoked by another will made in 1898, and which latter will was still unrevoked in 1900, though its existence was unknown to the solicitor who drew the codicil of 1900, he having drawn the will of 1895, which he supposed to be still in existence. The codicil purported to confirm the will of 1895, and made certain charitable bequests. After the testator's death the will of 1898 and two codicils (one of them that of 1900) were the only testamentary papers found among his papers. Upon motion of the executors of the will of 1898 (three of them were also executors of the will of 1895), Barnes, J., granted probate of the will of 1898 and codicils omitting from that of 1900 the words referring to the will of 1895.

PROBATE — PRACTICE — COSTS — EXECUTORS UNSUCCESSFULLY PROPOUNDING WILL.

Twist v. Tye (1902) P. 92, was a probate action in which the executors named in a will in which they were also named residuary legatees, propounded the will for probate after having ample opportunities of forming an opinion as to the testamentary capacity of the alleged testator. The will was pronounced against by the jury for want of testamentary capacity and want of knowledge and approval on the part of the alleged testator. Barnes, J., under these circumstances, considered the costs must follow the event, and that the executors must pay the costs of the defendant, but not of any of the parties cited whose interests were identical with those of the defendant; and that the executors were not entitled to costs out of the estate.