The plaintiff as sole acting executor propounded the last will, dated the 8th of May, 1874, of John Payne, late of Sleaford, in the county of Lincoln, who died on the 13th of April, 1882.

On the 18th of July, 1882, an application had been made to the court on motion, on behalf of the plaintiff, for probate, this having been refused in the registry in common form, owing to certain erasures in the will, which were not initialed, or in any way authenticated by the testator. Over these erasures the word "five" had been written in every instance which occurred in the gifts or limitations in favor of the testator's grandchildren, and referred to the age at which their shares in certain trust legacies and the residue of his estate should become payable, the word "five" so appearing on the erasures being immediately preceded by the word twenty, which did not appear on any erasure. The word "five" so written on the erasures, filled the place of a word scratched out and rendered wholly illegible.

When the motion for probate had come before the judge, he had held that the question of the erasures could not be disposed of by him in a summary way without the consent of all parties interested, and that failing such consent the will must be propounded. It having proved impracticable to obtain that consent, this action had been commenced on 22d of July, 1882. The statement of claim which alleged the due execution of the will was delivered on the 9th of August, and no statement of defence had been filed by any of the defendants, but all parties interested under the will in the erasures had been cited and had entered an appearance. They were all willing that probate should be granted in the form prayed for by the plaintiff.

It was proved in evidence, that when giving instructions for his will the testator had expressed his wish to be that the requests to his grandchildren should not take effect until the latter were twenty-five years of age; that the solicitor, who had prepared the will for him, had explained to him that such bequests would be void as being made to come into operation more than twenty-one years beyond the lives of persons living at the time of the execution of the will, and that the testator had thereupon directed the insertion of the words twenty-one in all such cases. It was further proved in evidence that the will, as drafted and engrossed, had had the words twenty-one inserted wherever the word five had been substituted for one in the instrument as found on the death of the testator, and one of the attesting witnesses swore, that to the best of his belief, no erasure had been made in the will previously to the date of its execution.

Inderwick, Q. C. (with him *Bayford*), for plaintiff, asked the court to presume that the erasures had been made and the world "five" inserted after the execution of the will, and to direct that probate should be granted with the word "one" inserted instead of "five" wherever the erasures had been made. The best information as to the document before its execution was that the words "twenty-one" had been written in it. The presumption would be that the testator had made the erasures after executing it, even if the evidence did not warrant such presumption. *In the Goods of McCabe*, L. Rep. 3 P. & D. 94.

Dundas Gardiner and *J. W. Evans*, for defendants and parties cited, contended that the word "twenty" only should stand.

The PRESIDENT (Sir James Hannen):—I have no doubt from the evidence that what was originally written was "twenty-one;" that is, that when the will left the solicitor's office it contained those words. The question is whether the ordinary presumption arises that the erasures were made afterward? I arrive at the conclusion that I ought to act on the presumption that the testator made the alteration after the will had been executed. If the word "five" only were struck out, leaving the "twenty," I might do that which in the cases of some of the bequests the deceased had never intended. In this case I need not merely strike out the erasures. The case of *In the Goods of McCabe, ubi sup.*, is, in my opinion, applicable. If the testator made the alterations after he had executed his will, he must have done so under the impression that he had the power, for if he had known that he had not, he would not have done it. The extrinsic evidence satisfies me that the original words were "twenty-one," and I therefore allow the word "one" to be restored, and grant probate of the will in that form. —48 L. T. Rep. (N.S.) 237.