

they knew to be untrue, and likely to influence persons reading it; therefore they were fraudulent. It was not necessary for him to consider whether a *prima facie* case was made out by the plaintiff. The alleged untrue statement was that 'the company has the right to use steam or mechanical power instead of horses,' and that a saving would be thereby effected. That was certainly untrue, because it was stated as an absolute right, when in truth it was conditional on the approval of the Board of Trade and the sanction or consent of two local boards; and a conditional right was not the same as an absolute right. It was also certain that the defendants knew what the truth was, and, therefore, knew that what they said was untrue. But it did not follow that the statement was fraudulently made. In the view of Lord Bramwell there are various kinds of untruth. There is an absolute untruth, an untruth in itself, that no addition or qualification can make true; as, if a man says a thing he saw was black, when it was white, as he remembers and knows. So, as to knowing the truth. A man may know it, and yet it may not be present to his mind at the moment of speaking; or, if the fact is present to his mind, it may not occur to him to be of any use to mention it. These passages from Lord Bramwell's opinion give all the facts and law of the case as they presented themselves to the House of Lords. It only remained to deal with the conflict of opinion that had arisen on the subject. This conflict was represented by the unanimous judgment of the Court of Appeal, reported 57 Law J. Rep. Chanc. 347, of Lord Justice Cotton, Sir James Hannen, and Lord Justice Lopes in the case before the House, and by views expressed in various cases by the late Master of the Rolls. Lord Bramwell cites from Lord Justice Cotton's judgment the statement 'that where a man makes a statement to be acted on by others which is false, and which is known by him to be false, or is made by him recklessly, or without a care whether it is true or false, that is, without any reasonable ground for believing it to be true,' he is liable to an action for deceit. He agrees to all before the 'that is' and to what comes after it if it is taken as

equivalent to what goes before—viz., 'recklessly or without care whether it is true or false,' understanding 'recklessly' as explained by 'without care whether it is true or false,' and admits that a man who makes a statement without care and regard for its truth or falsity commits a fraud. It seemed, however, to Lord Bramwell, with great respect, that the learned Lord Justice lost sight of his own definition, and glided into a different opinion when he added: 'There is a duty cast upon a director who makes that statement to take care that there are no statements in it which in fact are false; to take care that he has reasonable grounds for the material statements which are contained in that document (prospectus), which he intends should be acted on by others. And although, in my opinion, it is not necessary there should be what I should call fraud, there must be a departure from duty, and he has violated the right which those who receive the statements have to have true statements only made to them.' Lord Justice Cotton here appears to have expressed what may be called the equity view—viz., that a director issuing a prospectus is in a different position from an ordinary merchant vending his wares. With Sir James Hannen's statement that 'if a man takes upon himself to assert a thing to be true which he does not know to be true, and has no reasonable ground to believe to be true,' it is sufficient in an action for deceit, Lord Bramwell agrees, if he knows he has no such reasonable ground; otherwise, with great respect, he differs. Lord Herschell, in his opinion, dealt with the *dictum* of the late Master of the Rolls in *Smith v. Chadwick*, 51 Law J. Rep. Chanc. 597, that a false statement, made through carelessness, which the person making it ought to have known to be untrue, would sustain an action of deceit, carried the matter still further than the dissentient judgment of Lord Justice Cotton in *Weir v. Bell*. But, that such an action could be maintained, notwithstanding an honest belief that the statement made was true, if there were no reasonable grounds for the belief, was, he points out, for the first time decided in the case now under appeal. In his opinion, making a false statement