

RECENT ENGLISH DECISIONS

these instructions the solicitor spoke, as directed, of "all" the said shares; but, by some accident unaccounted for, the counsel introduced the word "forty" before "shares" in the draft. The testator really owned four hundred shares. Though the solicitor saw the word "forty" in the draft, it never attracted his attention, and he did not realize its effect, nor did he inform the testator in any way that the word "forty" had been introduced; and the actual will as executed was never read over to the testator, who never even heard of the introduction of the word "forty," but executed the will believing that it carried out his instructions. Under these circumstances, the President held that the word "forty" which had been introduced without the authority of the testator, might be struck out. He said he did so on the same principle as that on which in *Fulton v. Andrew*, L. R. 7 H. L. 448, where a residuary bequest was introduced into a will *without the knowledge and authority of the testator*, the clause containing that bequest was rejected. It may be observed that in his instructions to the jury in this case, the President remarks that there is no difference between the case of a testator referring it to a particular person to express his wishes, who makes the mistake, and himself, knowing what his own wishes are, and setting about to express them, making the mistake. If he trusts to anybody else to express his wishes, and *adopts* the words used by that person as his own, then that alone can remain as the evidence of his intention. But in *Morrell v. Morrell*, the jury found as a matter of fact that the testator did not approve of the word "forty" being used, *i.e.*, that he instructed his solicitor as to the whole of the shares, and only approved of the draft upon the supposition that the solicitor had carried out his wishes.

Proceeding now to the June number of the Chancery Division (20 Ch. D. 1229), the first case (*Redgrave v. Hurd*), has been already noted, *supra* p. 174, as reported in the Law Journal Reports for February last.

ACTION FOR DECEIT—COMPANY—FRAUDULENT PROSPECTUS.

Next comes a long report of the case of *Smith v. Chadwick*, p. 27, a case similar to the recent case of *Petrie v. Guelph Lumber Co.* in our own courts, *supra* p. 176; that is to say, it was an action brought for damages alleged to have been sustained by the plaintiff by his having been induced to take shares in a certain company, by the fraudulent misrepresentations of the defendants, an action which used to be called an action of deceit. The following are certain propositions of law which are illustrated by the judgments of the Court of Appeal in this case of *Smith v. Chadwick*:—(i) Such an action as this, although brought in the Chancery Division, is a mere common law action of deceit. In order to entitle the plaintiff in such an action to relief, it must be shown first, that representations, which in fact were not true, had been made by the defendants; that these representations were made by the defendants, either with a knowledge that they were not true, or recklessly, in which case, although they knew not of the untruth, they would be liable as if they had known that the statements were untrue. But that is not all. It must be shown, also, that the plaintiff was deceived, and induced by the deceit that was practised upon him to do something to his prejudice in respect of which prejudice he claims damages. In an action for deceit there must be a misstatement; mere omission is not sufficient to maintain that action, unless the omission makes that which is stated untrue. (ii) On the question of the materiality of the statement or representation, if the Court sees on the face of it that it is of such a nature as would induce a person to enter into the contract, or would tend to induce him to do so, or that it would be a part of the inducement to enter into the contract, the inference is, if he entered into the contract, that he acted on the inducement so held out, and you want no evidence that he did so act; but even then you may show that in fact he did not so act in one of two ways, either by showing that