[HOUSE OF LORDS.]

WILLIAM SMITH . . . . . APPELLANT;

AND

DAVID CHADWICK, JOHN OLDFIELD CHADWICK, EBENEZER ADAMSON, AND EDWIN COLLIER . . . RESPONDENTS.

H. L. (E.) 1884 Feb. 18.

Action of Deceit—Fraudulent Misrepresentation ambiguous in Meaning—Burden of Proof on Plaintiff.

The prospectus of a company which was being formed to take over iron-works, contained a statement that "the present value of the turnover or output of the entire works is over £1,000,000 sterling per annum."

If that statement meant that the works had actually in one year turned out produce worth at present prices more than a million, or at that rate per year, it was untrue. If it meant only that the works were capable of turning out that amount of produce it was true.

In an action of deceit for fraudulent misrepresentation whereby the plaintiff was induced to take shares he swore in answer to interrogatories that he "understood the meaning" of the statement "to be that which the words obviously conveyed," and at the trial was not asked either in examination or cross-examination what interpretation he had put upon the words:—

Held, by the EARL OF SELBORNE L.C. and LORDS BLACKBURN and WATSON, affirming the decision of the Court of Appeal, that the statement taken in connection with the context was ambiguous and capable of the two meanings; that it lay on the plaintiff to prove that he had interpreted the words in the sense in which they were false and had in fact been deceived by them into taking the shares, and that as he had as a matter of fact failed to prove this the action could not be maintained.

Held, by LORD BRAMWELL, that the statement was capable only of the meaning in which it was untrue, and that the plaintiff had proved that he had understood it in that sense; but that there was not sufficient evidence that the statement was fraudulent on the part of the defendants, and that the decision of the Court of Appeal should be affirmed on that ground.

APPEAL by the plaintiff from two orders of the Court of Appeal (Jessel M.R. Cotton and Lindley L.JJ.) reversing an order of Fry J. in favour of the plaintiff. All the facts are set out at length in the report of the decisions below (1). The facts

(1) 20 Ch. D. 27.

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material to this report are stated in the judgment of Lord Blackburn in this House. All the questions argued below were mentioned by the appellant's counsel on the present appeal, but the only one seriously insisted on was that arising upon the representation as to the turnover or output, and the arguments on the other points are therefore omitted.

1883. Nov. 15, 16, 21. *Romer* Q.C. and *Cozens-Hardy* Q.C. (*Chadwyck-Healey* with them) for the appellant:—

The decision of Fry J. was right and the representation as to the turnover or output would to ordinary men of business mean that the works had actually produced the amount stated, and it was so understood by the plaintiff who took shares on the faith of it. That the statement might have another and less natural meaning does not exonerate the defendants. The burden lay on them to shew that the meaning was what they alleged it was. The defendant's counsel should have asked the plaintiff in cross-examination what meaning he put upon the representation. It would not have been admissible for the plaintiff's counsel to ask him that question in examination in chief. The person who makes a false representation in order to induce another to act upon it to his injury makes a primâ facie case against himself that the misrepresentation is material; and the presumption is that the person to whom the representation was made and who acted upon it was in fact deceived by the representation. The man who makes a false representation, even honestly, is liable if the other acts upon it: *Redgrave* v. *Hurd* (1) per Jessel M.R.; *Mathias* v. *Yetts* (2). It is not necessary to shew that the representation is false to the knowledge of the defendant if he makes it without knowing whether it is true or not; *Arkwright* v. *Newbold* (3) per Cotton L.J.; *Western Bank of Scotland* v. *Addie* (4). The questions for the House are questions of fact; in what sense did the plaintiff understand the prospectus? and was he in fact deceived? The conclusion of Fry J. who saw and heard the witnesses is the most likely to be right.

(1) 20 Ch. D. 1, 12, 21.
(2) 46 L. T. (N.S.) 497, 502.
(3) 17 Ch. D. 320.
(4) Law Rep. 1 H. L. Sc. 145.

Nov. 22, 23. *R. T. Reid* Q.C. (Sir *H. Giffard* Q.C. with him) for the respondent Adamson, and *Horace Davey* Q.C. (*Russell Roberts* with him) for the other respondents:—

The representation as to the output meant not that the works had produced but that they were capable of producing such a turnover or output: but if not then it was ambiguous, as is manifest from the different interpretations put upon it by the judges below. If the representation be capable of two senses the plaintiff must shew in which sense he understood it, and that it was false in that sense: *Hallows* v. *Fernie* (1) per Lord Chelmsford; *Arkwright* v. *Newbold.* (2) The plaintiff nowhere, in pleadings or evidence, alleges in what sense he understood it. He must also shew that the defendants knew that that sense was false; or made the statement without knowing whether it was true or not. Legal fraud is not actionable without moral fraud: *Weir* v. *Bell* (3) per Bramwell L.J.; though there are some equity dicta to the contrary: *Eaglesfield* v. *Marquis of Londonderry* (4); *Slim* v. *Croucher* (5). Probably the difference has arisen from the equity actions being usually for rescission of contract, where moral fraud need not be proved.

[LORD BLACKBURN:—I have often thought that perhaps the discrepancies between expressions of equity and common law judges are greatly owing to the fact that at common law questions of fact are for the jury and it is necessary for the judge to separate them clearly from the questions of law; whereas in equity the judges have to determine both law and fact, and it is sometimes impossible to understand whether their decisions were meant to be inferences of fact or of law.]

As to the respondent Adamson Jessel M.R. was in error in supposing that he penned the circular.

Romer Q.C. replied.

The House took time for consideration.

(1) Law Rep. 3 Eq. 520; 3 Ch. 467, 478.
(2) 17 Ch. D. 301, 324.
(3) 3 Ex. D. 238, 243.
(4) 4 Ch. D. 693, 706.
(5) 1 D. F. & J. 518, 524.

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My Lords, I conceive that in an action of deceit, like the present, it is the duty of the plaintiff to establish two things; first, actual fraud, which is to be judged of by the nature and character of the representations made, considered with reference to the object for which they were made, the knowledge or means of knowledge of the person making them, and the intention which the law justly imputes to every man to produce those consequences which are the natural result of his acts: and, secondly, he must establish that this fraud was an inducing cause to the contract; for which purpose it must be material, and it must have produced in his mind an erroneous belief, influencing his conduct.

All your Lordships are, I believe, agreed in thinking that, of the several representations in this prospectus, by which the appellant alleges himself to have been deceived, only one is material, viz., that as to "the present value of the turnover or output of the entire works" (stated as being "over £1,000,000 sterling per annum"). Of the materiality of that representation there can be no doubt; and if the appellant was justified in understanding, and did understand it, in the sense insisted upon by his counsel at the bar, it was untrue as well as material. If, in the context in which it stands, it could not be honestly intended or reasonably understood in any other sense, I should think that the appellant's case was made out, although he has contented himself with swearing, in his answer to the defendants' interrogatories, that he understood the meaning of the words to be "that which they obviously convey," and has professed to be "unable to express in other words what he understood to be the meaning thereof." If, for instance, the material statement had been that Mr. Grieve was a director, I should have thought such an answer quite sufficient. But it is otherwise, in my opinion, if the words in the context in which they stand may have been honestly intended to bear another sense (in which they would be true), and might reasonably have been so understood by an intelligent man of business, aware of the current prices at that time of bar and plate iron; and if at the time when that answer was given, the appellant had notice that the defendants, who

made the representation, did in fact allege such other sense to be the true one, and the sense which they intended.

The sentence is, beyond question, unhappily expressed; and I think its more natural primâ facie meaning is that which takes the verb "is" literally, as affirming a present fact, and the words "the present value of the turnover or output" as equivalent to "the present value of the present turnover or output." I cannot however consider the words, in the context in which they stand, to be clear or unambiguous. In any point of view I do not think that they sufficiently explain themselves. Some reference, at least, to current prices as a basis of valuation must be implied in them. Even on the appellant's construction, "the turnover or output" is a term requiring some further definition. Does it mean the rate of production then actually going on, if extended over a whole year; or the total production of the past twelve months, estimated at the then present prices; or the actual yearly production on a series or an average of years? If the demonstrative article "this" had preceded the words "turnover or output" (instead of the definite article "the") the sense would clearly be that which the defendants say they intended. After repeatedly considering the words in connection with their context and with the evidence, I think the soundest conclusion is that this sentence was honestly intended to be understood as a statement of the value, at the then current prices, of *that* "turnover or output" of which the works were in the immediately preceding context stated to be "capable;" and that, to an intelligent man of business, who knew what those current prices actually were, and who took the trouble of comparing them with the figures given, they would really convey that meaning. The appellant was an intelligent man of business; and it does not appear to me to be a hypothesis inconsistent with anything to which he has sworn, that he may have had the requisite knowledge, and may have made use of it, and may have himself understood the representation in this sense, and have intended (in that sense) to challenge its truth. He did expressly challenge the truth of part of the representation, in the antecedent context, as to the capacity of the works. That the defendants would offer that explanation of it, he had (to my mind) clear notice, by their answers to his own

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interrogatories, sworn or filed on the 12th of June, 1877. Having such notice, and afterwards answering the defendants' interrogatories in the way that he did, and not attempting in any other way to prove that he was deceived by the representation, I cannot think that he has satisfied the burden of proof which, under those circumstances, was incumbent upon him. The Court of Appeal have so decided; I cannot say that they were wrong. It ought not to be forgotten that the appellant has sworn in precisely the same way as to *all* the representations which in his pleadings he alleges to be false; as to some of which your Lordships do not accept his construction, and as to others of which it is certain that he was not deceived by, and did not rely on them.

I do not think it necessary to add more; because I agree generally with the view of this case which I know will be explained to your Lordships, in greater detail, by one of my noble and learned friends (Lord Blackburn). My conclusion is, that the appeal ought to be dismissed, with costs.

LORD BLACKBURN:—

My Lords, in this case Fry J., who tried the action, gave judgment for the plaintiff, and ordered and adjudged that the plaintiff should recover £5000 by way of damages, and that the defendants David Chadwick, John Oldfield Chadwick, Ebenezer Adamson, and Edwin Collier should pay the same.

The defendants David and J. O. Chadwick and Edwin Collier appealed, and the defendant Adamson separately appealed. In each case the Court of Appeal, consisting of the late Master of the Rolls (Sir George Jessel) and Cotton and Lindley L.JJ., made an order reversing the judgment and dismissing the action with costs. The appeal to your Lordships is against those two orders.

It is not contended that there is any room for a distinction between the cases. If the order reversing the judgment against one set of defendants is right, the order to reverse the judgment against the other is also right.

The action is brought in the Chancery Division, the indorsement on the writ being that "the plaintiff's claim is for damages sustained by him, by his having been induced to take and pay

for shares in the Blochairn Iron Company (Limited) by the fraudulent misrepresentations of the defendants." The statement of claim does not depart at all from this, though stating it at more length.

I agree in what is said by Cotton L.J. in *Arkwright* v. *Newbold* (1): "An action of deceit is a common law action, and must be decided on the same principles, whether it be brought in the Chancery Division or any of the Common Law Divisions; there being, in my opinion, no such thing as an equitable action for deceit." But though this is, I think, quite accurate, the different mode in which cases are tried makes, I think, a difference in the province of a Court of Appeal, which I wish to notice, for, in the view I take of this case, it is important. Had this action been brought on the old system before a judge and a jury, and the same evidence given as has been given here, the judge would have had to direct the jury, pointing out to them what it was necessary for the plaintiff to prove in order to support his case, and what evidence there was from which an inference of facts sufficient to support the plaintiff's case might be drawn, leaving it to the jury, with proper comment, to draw or to refuse to draw that inference. And if the jury had found for the plaintiff, on a proper application on behalf of the defendant, a Court of Appeal could have inquired whether the proper direction was given, and, if it was, whether the verdict drawing the inference was so unsatisfactory that a new trial should be granted and the opinion of another jury taken. But the Court of Appeal, however strongly convinced that the jury drew the wrong inference, could not find the verdict for the defendant.

Now when the case is, as it was here, tried before a judge both of law and of fact, he draws the inference of fact. If he finds in favour of the defendant, it may be because he thinks the evidence such that, as a matter of law, no inference of what was necessary to support the plaintiff's case could properly be drawn from the evidence before him, or it may be because, though he thinks such an inference might be drawn, he does not, as a matter of fact, draw it. The result would be the same. If he

(1) 17 Ch. D. 320.

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finds in favour of the plaintiff, it must be because he not only thinks that an inference might be drawn from the evidence, but that he does draw it.

The Court of Appeal ought to give great weight, but not undue weight, to the opinion of the judge who tried the cause, and saw the witnesses and their demeanour. That gives him considerable advantages over those who only draw their information from perusing the notes. But still, though the Court of Appeal ought not lightly to find against the opinion of the judge who tried the cause, I think that the Court of Appeal, if convinced that the inference in favour of the plaintiff ought not to have been drawn from the evidence, should find the verdict the other way.

In the present case I think there were four statements by the defendants, alleged to be fraudulent and to have induced the plaintiff to buy the shares, on which the finding of the judge below in favour of the plaintiff was based. Two were disposed of in the course of the argument. Two remain. One, that which stated that Mr. Grieve was a director, was, I think, proved to be untrue to the knowledge of the defendants when they made it, and any one who took shares, induced by the belief that Mr. Grieve would not lend his name to a company without ascertaining that it was a solid one, would, I think, be entitled to maintain an action of deceit. I can very well believe that there might be persons in Greenock or elsewhere who would be influenced by his name to that extent. But the plaintiff in his evidence on cross-examination says that he had never heard of Mr. Grieve before, and (Appendix p. 95) on the counsel saying, "Then I suppose seeing Mr. Grieve's name on the prospectus had not much effect on you," he said nothing, but we are informed that he shook his head. I suppose that the shorthand writer whose eyes would be naturally fixed on his pen did not see this shake of the head. He certainly has not written down that there was such a shake; but it is plain that the cross-examining counsel was satisfied with this mute answer; and on re-examination nothing is said more about Mr. Grieve. I certainly think it proved that the plaintiff was not induced to take the shares by this deceit. And I believe all your Lordships agree so far. But

there is a much more difficult question behind, depending upon the confused statement as to the turnover and output, which I would examine more in detail afterwards.

I have come to the conclusion that whatever be the meaning of that statement the plaintiff has *not* sufficiently proved that it did influence him. I do not say that there is no evidence on which a verdict for the plaintiff might be found. I certainly think that, if trying this cause with a jury, I should not be justified in withdrawing it from the jury. I do not even say that a verdict for the plaintiff if found by a jury would be so unsatisfactory that there should be a new trial. But I should have accompanied my direction to the jury with the same observations which I shall hereafter submit to your Lordships as justifying the conclusion to which the Court of Appeal have come and to which I myself come, and to which I ask your Lordships to come; and I think that the jury would, on hearing them, have probably found for the defendants.

Before going further I wish to make some observations; for though I very nearly agree in what is said by the late Master of the Rolls (1), he does not quite state what I conceive to be the law. I do not mean to go through the numerous decisions on the subject of an action of deceit. All those which were decided before the date of the last edition of Smith's Leading Cases are to be found collected in the notes to *Chandelor* v. *Lopus* (2) and *Pasley* v. *Freeman* (3).

In *Pasley* v. *Freeman* (3) Buller J. says: "The foundation of this action is fraud and deceit in the defendant and damage to the plaintiffs. And the question is whether an action thus founded can be sustained in a court of law. Fraud without damage, or damage without fraud, gives no cause of action, but where these two concur an action lies, per Croke J. (4)."

Whatever difficulties there may be as to defining what is fraud and deceit, I think no one will venture to dispute that the plaintiff cannot recover unless he proves damage. In an ordinary action of deceit the plaintiff alleges that false and fraudulent representations were made by the defendant to the plaintiff in

(1) 20 Ch. D. 44.
(2) 1 Sm. L. C. 183 (8th ed.).
(3) 2 Sm. L. C. 66, 73, 86 (8th ed.).
(4) 3 Bulst. 95.

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order to induce him, the plaintiff, to act upon them. I think that if he did act upon these representations, he shews damage; if he did not, he shews none. And I think the plaintiff in such a case must not only allege but prove this damage. It is as to what is sufficient proof of this damage that I wish to make my remarks. I do not think it is necessary, in order to prove this, that the plaintiff always should be called as a witness to swear that he acted upon the inducement. At the time when *Pasley* v. *Freeman* (1) was decided, and for many years afterwards, he could not be so called. I think that if it is proved that the defendants with a view to induce the plaintiff to enter into a contract made a statement to the plaintiff of such a nature as would be likely to induce a person to enter into a contract, and it is proved that the plaintiff did enter into the contract, it is a fair inference of fact that he was induced to do so by the statement. In *Redgrave* v. *Hurd* (2) the late Master of the Rolls is reported to have said it was an inference of law. If he really meant this he retracts it in his observations in the present case. I think it not possible to maintain that it is an inference of law. Its weight as evidence must greatly depend upon the degree to which the action of the plaintiff was likely, and on the absence of all other grounds on which the plaintiff might act. I quite agree that being a fair inference of fact it forms evidence proper to be left to a jury as proof that he was so induced. But I do not think that it would be a proper direction to tell a jury that if convinced that there was such a material representation they ought to find that the plaintiff was induced by it, unless one of the things which the late Master of the Rolls specified was proved; nor do I think he meant to say so. I think there are a great many other things which might make it a fair question for the jury whether the evidence on which they might draw the inference was of such weight that they would draw the inference. And whenever that is a matter of doubt I think the tribunal which has to decide the fact should remember that now, and for some years past, the plaintiff can be called as a witness on his own behalf, and that if he is not so called, or being so called does not swear that he was induced, it adds much weight to the

(1) 2 Sm. L. C. 66, 73, 86 (8th ed.). (2) 20 Ch. D. 21.

doubts whether the inference was a true one. I do not say it is conclusive.

The principal facts are not now much in controversy. The defendants were employed by Messrs. Hannay & Co. to assist in getting up a limited company to take over their works, and they were to receive a commission (amounting to some thousands of pounds) if they succeeded in floating such a limited company. They prepared a prospectus, and on the 27th of May 1873 circulated that prospectus with a lithographed letter, which are to be found at page 397 of the appendix. On the 31st of May 1873 the defendants circulated a second letter with what is called an abridged prospectus. These are to be found at page 407 of the appendix.

Pausing here I may say that I do not think it can admit of dispute that the defendants intended by those letters and prospectus to induce those to whom they sent them to apply for shares in the projected limited company. Amongst others they sent them to the plaintiff. He was not a customer or client of the defendants (I do not know that it would have made any difference if he had been), but he was a man of business, who had himself turned his own business into a limited company and had taken shares in other companies, and was quite competent to form an opinion for himself. He was, however, in my opinion entitled to consider the letters and prospectus as amounting to a representation to him that all stated in that prospectus was true. He did a day or two after receiving the second letter and the abridged prospectus apply for 100 shares, expecting, as he says, that he might get 20, but the whole 100 were allotted to him. He paid the calls amounting to £5000, and the limited company having completely failed he lost the whole; and if he is entitled to recover on the ground that he was by fraudulent representations induced to take the shares, he is entitled to recover £5000 as damages.

Nothing that happened after he applied for the shares could have had a share in inducing him to apply for them, and therefore I think that the circular subsequently issued by the defendants can have no bearing on this part of the case, whatever bearing it may have on other questions.

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And now, after this perhaps too long preamble, I proceed to state why I think that the finding that the plaintiff was induced to buy the shares by that passage relating to the turnover and output, cannot be supported. The passage is short, and though it probably is present to the minds of your Lordships, I will for convenience of reference read it once more: "The ironworks are the largest and most important in Scotland and have been equipped in a substantial, complete and permanent manner. They can now produce at the rate of 1500 tons of finished bars and plates per week, or about 75,000 tons per annum. The rolling mills with some slight alterations will be capable of turning out 90,000 tons of manufactured iron per annum. The present value of the turnover or output of the entire works is over £1,000,000 per annum."

As early as the 12th of June 1877 the defendants in answer to an interrogatory shewed, in my opinion, what they at that time said was the meaning of this very obscure passage. They swore as follows:—"The then value of the annual turnover or output of the works is a necessary arithmetical result from the amount of the weekly productiveness of which the particulars are given by the last preceding paragraph taken in connection with the then existing average prices, after allowing reasonable deductions for short working, defects and casualties. The current price in Glasgow of bars and rails in May 1873 was £13 10*s.* per ton, of nail rods £15 10*s.* per ton, of hoops £17 per ton, and of sheets £20 per ton. Taking a mean of only £15 per ton on 1500 tons per week and allowing only fifty weeks in the year the value of the year's turnover or output would be £1,125,000."

The defendants interrogated the plaintiff, requiring him "as to each and every of the allegations of misrepresentations contained in the statement of claim" to separately and categorically state, first, what he understood to be the meaning of the particular representation; thirdly, in what respect or respects he now alleges that every or any of the said representations were untrue. And on the 23rd of January 1878, seven months and more after the defendants' answer which I have read, the plaintiff answers thus: "First, I understood the meaning of such misrepresentations respectively to be that which the words composing them obviously

convey, and I am unable to express in any other words what I understood to be the meaning thereof. Thirdly, I allege that such misrepresentations are untrue in manner and respects appearing in the said statement of claim, and I have nothing to add to or detract from the said statement of claim."

It is said that the plaintiff could not say more than that he understood the words in their natural sense. I think that his legal advisers had notice ever since the 12th of June 1877, if not before, that the defendants contended that the meaning of this obscure phrase was that at the then present prices of bars and plates 75,000 tons would be worth more than a million. So understood the representation was true. This meaning is one at least so plausible that Cotton L.J. thought it the right meaning.

If the statement as to prices at the date of the prospectus had been inserted in it so as to make it read thus: "The current price of bars is now £13 10*s.* per ton, of plates £15 to £20 per ton, according to their quality, so that, assuming the proportion of bars to plates not to be unreasonably large, the mean price of bars and plates is more than £13 6*s.* 8*d.* The present value of the turnover," &c., I think a reasonable man would have probably thought that the meaning was that put upon it in the defendants' answer to the interrogatories, or at least would not have acted, without some further inquiry, on the belief that it meant something else. It is quite true that those prices are not stated on the face of the prospectus; and though the plaintiff, being himself engaged in a branch of the iron trade, was not unlikely to know what those prices were, I do not find it anywhere asserted that he knew them; but it is nowhere, that I can find, asserted that he did not know them.

I cannot myself see what difficulty there could have been in saying in answer to the defendants' interrogatory, "I understand the meaning of the representation as to turnover to be that Messrs. Hannay's works had actually during the past year turned out produce that at present prices would be worth more than a million; and that was untrue, for they never produced half as much." When I say this I mean, of course, if the plaintiff could truly swear to that effect. If he did not so understand it there was, of course, a very good reason for not so swearing.

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It is true that the answers to interrogatories are prepared by the legal advisers; and the plaintiff, if, at the trial, he had sworn, "I did so understand it," and had been asked, "Then, if so, why did you not say so in January 1878?" might have had an excuse by saying, "I swore what was true, and if I should have sworn more, that was my lawyer's fault, not mine." But he never at any time, from first to last, swears anything of the sort, and I think it is impossible now to listen to the suggestion that the counsel for the plaintiff at the trial in November 1881 were taken by surprise at finding that the defendants' counsel still put on this passage the interpretation which had been put upon it in the answer to the interrogatories so long ago as June 1877. If they were surprised they had no right to be so. But I think the fair conclusion is, that they feared to ask the question in examining the plaintiff in chief, lest he should answer that he did not understand the prospectus as meaning that there had been an actual output during the last year, or at least that he would not swear that he was influenced by his belief in that statement. The counsel for the defendants did not choose on cross-examination to risk bringing out of a hostile witness evidence which his own counsel had not brought out in chief. If I am right in the opinion which I have already expressed, that the burthen lay on the plaintiff to prove that he was induced, I think they acted wisely. If the plaintiff had made a primâ facie case which required affirmative proof of an answer from the defendants, I think it would be otherwise.

It will be observed that this opinion is quite irrespective of what the true construction of the prospectus is. I should think that a reasonable man would give much more weight to a statement of fact that the actual produce of the works had been so much, than to a statement that their productive power was estimated at so much, and therefore that the statement, if understood as Fry J. and Lindley L.J., and I believe some of your Lordships think, was material. I should think that a reasonable man reading this prospectus would hardly act on the faith of such an obscure statement without further inquiry. But he might so act. My reason for supporting the judgment of the Court of Appeal is, that I do not think it proved that he did so act. In the case

of the misstatement as to Mr. Grieve being a director, I think it positively proved that he did not.

I may say, though it is not necessary for the decision of the case, that I think, as a matter of law, the motive of the person saying that which he knows not to be true to another with the intention to lead him to act on the faith of the statement is immaterial. The defendants might honestly believe that the shares were a capital investment, and that they were doing the plaintiff a kindness by tricking him into buying them. I do not say this is proved, but if it were, if they did trick him into doing so, they are civilly responsible as for a deceit. And if with intent to lead the plaintiff to act upon it, they put forth a statement which they know may bear two meanings, one of which is false to their knowledge, and thereby the plaintiff putting that meaning on it is misled, I do not think they can escape by saying he ought to have put the other. If they palter with him in a double sense, it may be that they lie *like* truth; but I think they lie, and it is a fraud. Indeed, as a question of casuistry, I am inclined to think the fraud is aggravated by a shabby attempt to get the benefit of a fraud, without incurring the responsibility. But I do not think there is any case made out against the defendants of that sort.

There is a third possible case, that a man may make a statement which he intended to mean one thing only, but which negligently and stupidly he sends out in such a shape as to bear another meaning, and the plaintiff acts upon that meaning. On that I need only say that the defendant, in such a case, would have great difficulty in establishing that it was only honest blundering; but if he did, as for instance, by shewing that his manuscript sent to the printer, contained the word "not," which by some printer's error was omitted in the published prospectus, or that 10,000 was by a printer's error printed 100,000, which escaped notice in revising the proofs, I should say it was not a fraud, though perhaps gross negligence. But the question whether in such a case there would be any, and if any, what remedy for the party misled, may, I think, safely be left for decision when it arises. It never has arisen and I think is not likely ever to arise. It certainly does not arise now.

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LORD WATSON:—

My Lords, I am of the same opinion. Shortly after this case was heard at your Lordships' bar I had an opportunity of carefully considering the judgment which has just been delivered by the noble and learned Lord (Lord Blackburn), and finding in that judgment all the reasons which have led me to think that the decision of the Court of Appeal ought to be upheld, I have not thought it necessary to repeat them.

LORD BRAMWELL:—

My Lords, I am content that your Lordships' judgment should be as indicated by the noble and learned Lords who have spoken, but I am not content with the reasons they have given.

It seems to me that the prospectus is capable of but one meaning. I know, as a matter of fact, that a most able and acute mind has found it capable of a different meaning from that which I think it is alone capable of; but according to my understanding (which of course I must act upon, although I may have a sort of general distrust of its value) this part of the prospectus —the main matter—that which alone is of any consequence, is capable of but one meaning, namely, that the actual output was over £1,000,000 sterling per annum or over that rate. I quite agree with the noble and learned Earl on the woolsack that it may mean that the actual output was at that rate, or that it had come to over that figure in a year. But that either it was at the rate of over one million a year, or was in fact over one million a year, seems to me the only meaning that can be attached to that statement in the prospectus.

Now, if that was the meaning of it, that statement was untrue, because there was not an output actually of over a million a year nor one at that rate. Further, I think the plaintiff said that he so understood it. It was unfortunate that he was not more examined or more cross-examined, but I declare the man gave the only answer I could have given if I had been in his situation: "I understood it according to its natural meaning." I do not see what more he could do, and it seems to me impossible to suppose that he was saying "I understood it to mean that

fifteen times £75,000 came to over one million," because that he knew perfectly well, as does everybody else; and if his answer is understood as meaning that, his answer is understood as meaning, "I make no complaint of untruth in it, because it means this, that £75,000 multiplied by 15 is over one million." It seems to me, therefore, that the statement was untrue; that it was understood in the sense in which it was untrue, and consequently that the plaintiff proved all that he could prove, the only other possible question being one of inference to a certain extent, namely, was it fraudulent?

Now I confess that upon that matter I have entertained and do entertain the greatest doubt. Assuming that the statement means that the actual turnout was over one million a year or at the rate of over one million a year, and assuming that the plaintiff so understood it, it nevertheless remains to be considered whether that was a fraudulent statement on the part of the defendants. I am not satisfied that it was, and I will shortly state my reasons. I cannot but think that the defence which has been made for the defendants is one they would not have made for themselves if they had been let alone. I think it is their counsel's defence. The defendants have sworn that they were told by Hannays, who were respectable people, people to be trusted, that the actual rate of production was such that it was over one million a year, and that they believed it, and in addition to that one of them has given the convincing proof of his sincerity that he staked £5000 upon it, which he has lost. I am not satisfied that these men did not believe the statement to be true. Under these circumstances I am not dissatisfied that your Lordships should affirm the judgment that has been given in their favour.

The question here is not whether they should be in any way punished for most improvident and rash statements (more than one) in the prospectus, but whether we are satisfied that this particular statement was a fraudulent as well as what it was to my mind, an untrue statement. I am not satisfied of that. Let me not be misunderstood. An untrue statement as to the truth or falsity of which the man who makes it has no belief is fraudulent; for in making it, he affirms he believes it, which is false.

H. L. (E.) 1884 SMITH v. CHADWICK. Lord Bramwell.

I think it is a pity more time was not taken before Mr. Justice Fry's judgment was reversed, and I confess I should very much have liked if it had been a possible thing to have had this case tried over again. I should like to have been present at the trial and to have had an opportunity of putting some questions to the witnesses, both the plaintiff's and the defendants', which it seems to me might very properly and usefully have been put. But that is an impossibility. We must either affirm the judgment or reverse it, and I am not so satisfied that a fraud has been made out against these defendants that I wish to reverse it.

Orders appealed from affirmed; and appeal dismissed, with costs.

Lords' Journals 18th February 1884.

Solicitors for appellants: *Darley & Cumberland, for Newstead & Wilson, Leeds.*

Solicitor for respondent Adamson: *H. T. Chambers.*

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