LAW REPORTS.

H. M. SUPREME COURT.

Shanghai, July 10.

Before F.S.A. BOURNE, Esq., C.M.G., Acting Judge.

THE CHINA ADVERTISING CO. *v.* POWELL ROBINSON.

This was a claim for $175 for work done.

Mr. Douglas appeared for the plaintiffs; defendant appeared in person.

Defendant said that he was prepared to admit that the amount was correct.

Some discussion then ensued as to whether judgement should be given against defendant in person, or against the firm. Defendant maintained that plaintiffs were aware that the work was done for the firm; Mr. Douglas said that his client only knew Mr. Robinson in the matter.

Eventually Mr. A. G. Hickmott, managing proprietor of the plaintiff firm was called, and he stated that about the end of February Mr. Robinson came into his office and gave the order for signboards and painting his name on the wall. He gave credit to Mr. Robinson, and did not know Mr. Hall in the matter at all.

Cross-examined by defendant. Witness did not give defendant an estimate to be submitted to his partner. He had no recollection of being served with a notice of the partnership between defendant and Mr. Hall.

Defendant said that he would go into the box to give Mr. Douglas an opportunity of cross-examining him. He said that when the order was given plaintiffs knew that he was in partnership with Mr. Hall. Notices were issued stating that this was the case.

Cross-examined—Witness had carried on business as a tailor in Singapore. The firm in Shanghai was originally started as J. P. Hall and Co, but his partner wished the name to be changed to Powell Robinson to take advantage of his reputation at Singapore. The end of his firm at Singapore was a surplus of $7,000. There were Court proceedings, and he lost $85,000. He was a fully discharged bankrupt within three months, and his reputation at Singapore stood high.

His Lordship said that the matter was really very simple. Mr. Hickmott had sworn that when he gave credit the person to whom he looked was Mr. Robinson, and no evidence had been given which showed that this was not the case. Judgement would therefore be given for the amount claimed, with costs, which would be assessed at $15 and Court fees.

Shanghai, July 12.

Before F. S. A. BOURNE, Esq., C.M.G., Acting Judge.

M. M. TACKEY *v.* R. S. F. MCBAIN.

JUDGEMENT.

His Lordship delivered judgement as follows:

The defendant by paragraph 6 of his statement of defence objects that the statement of claim is bad in law and discloses no ground of action because—

(a) False and fraudulent statements to persons other than plaintiff or his agent calculated to deceive, deceiving, the public, and giving rise to false rumours, give no right of action to the plaintiff:

(b) there was no duty of the defendant to the plaintiff to give him the news withheld, or to abstain from communicating or allowing to be communicated to, or obtained by, others, the said news: and

(c) the damages are not the natural and probable consequence of the acts and omissions alleged.

Our rules make no provision for the trial of points of law before the facts go to a jury: we must therefore adopt the practice of the High Court in England, see Rule 315, that is, we must follow Order 25 of the Rules of the Supreme Court in England, which deals with proceedings in lieu of demurrer. If the plaintiff's statement of claim, admitting all his facts to be true, shows in law no cause of action, it will clearly save time and expense to the parties if the action be at once dismissed: an order was accordingly made under Order 25 r. 2, that the points of law raised by the statement of defence should be tried immediately.

For the purpose of this argument I have to assume that all the allegations of the statement of claim are true. (a) is concerned with paragraphs 4, 7, 9, 10, 11 and 12: the facts alleged in those paragraphs may be put in the abstract as follows: the defendant, the Managing Director, receives very favourable news regarding the property of his company, which he makes known to the shareholders nine days later; in the interval he had stated orally to certain persons, members of the Shanghai Stock Exchange and others (other than the plaintiff or his agent) that no news affecting the value of the company's property had been received by him or by the company; such statements were to the Managing Director's knowledge false and fraudulent, and were calculated to deceive, and did deceive, the public (meaning thereby the dealers in and holders of shares in the company including the plaintiff); the Managing Director further represented orally to the said persons and on the said occasions that the rise in the price of the shares was not due to the receipt of any news, but was due to some other cause, well knowing that such representation was false; during the said period the Managing Director corruptly and improperly communicated the said news to, or allowed the said news to be communicated to, or obtained by, certain persons other than the plaintiff and the general body of shareholders, with the result that such persons did buy shares in the market at higher prices than had before ruled, and that other persons including the plaintiff's agent were induced by repetitions by third parties of the said false statement to sell at prices less than the true value in belief that there was no good cause for the said rise in the market value of the shares, to the damage of the plaintiff.

Assuming all this to be true, has the defendant infringed any legal right of the plaintiff? There being no contract between the parties, I can see no cause of action unless some antecedent legal right which the plaintiff has against all men has been infringed by the defendant; and the only such right here is that plaintiff should not be intentionally deceived by the defendant to his damage. What then must a plaintiff prove to succeed in this action of deceit? (1) that the statement was untrue; (2) that it was known to be untrue by defendant; (3) that it was made with intent that the plaintiff should act upon it; and (4) that the plaintiff did act in reliance upon it, and thereby suffered damage. Conditions (1) (2) and (4) are clearly covered by the above paragraphs of the statement of claim: whether (3) is covered depends on the meaning to be given to the word "calculated." In argument it was taken to mean "intended." If the false statements were made with the intention that the plaintiff should be deceived and should act upon them, condition (3) is satisfied, provided the chain of consequence between the false statement and the sale of the shares was not in law too remote. If the false statements were made to one man with the direct intent that they should, through some other man—both being members of a limited class—reach the plaintiff or the class to which he belongs—holders of Langkat shares—, and that they should act upon them, the consequence would in my opinion on the rule to be deduced from the cases quoted below not be too remote, and the action would lie, cf. Barry *v.* Croskey 2 Jo and H. 1, 23; Peek *v.* Gurney 6 E and I App. pp 412, 413 per Lord Cairns; Scott *v.* Dixon 29 L. J. Ex. 62 n. approved by Lord Chelmsford in Peek *v.* Gurney; Swift *v.* Winterbotham L.R. 8 Q.B. p. 253 and 9 Q.B. p. 301; Richardson *v.* Silvester L.R. 9 Q.B. p. 35; last paragraph of Rigby L.J. judgment in Andrews *v.* Mockford (1896) 1 Q.B. p. 385; and Ker on Fraud and Mistake 3rd Ed. p. 402. The rule to be deduced from these cases seems to me to be clearly stated in the extract from Lord Cairns' judgement quoted below.

Defendant's counsel strongly urged upon me the dictum of Page Wood V.C. quoted by Lord Cairns in giving judgement in Peek v. Gurney: "Your argument would show that every person who in consequence of de Berringer's frauds upon the Stock Exchange was induced to purchase stock at an advanced price in reliance on the false rumour he had circulated that peace was concluded was en

titled to maintain an action against de Berringer for the increase of price. Would not such consequences be too remote to form ground for an action?" Now the question to be decided in the present case is simply this: suppose that with the intention of getting the limited number of holders of Langkat shares in Shanghai to sell below the true value, the defendant had made a false statement to one of the small number of brokers in Shanghai that he might repeat it to another broker or holder who might repeat it to holders including the plaintiff who in reliance thereon sold his shares, would the consequence be too remote to form a ground of action? I think on the authority of the following sentence of Lord Cairns' judgement p. 413 Peek *v.* Gurney that the consequence would not be too remote. "But to bring it within the principle, the injury, I apprehend, must be the immediate and not the remote consequence of the representation thus made. To render a man responsible for the consequences of a false representation made by him to another upon which a third person acts, and so acting is injured or damnified, it must appear that such false representation was made with the direct intent that it should be acted upon by such third person in the manner that occasions the injury or loss." In de Berringer's case the stage, the play, and the actors—the London Stock Exchange and the British Funds being concerned—dwarf Shanghai and its properties. It may well be that the determination to purchase of some men among such masses in de Berringer's case did not immediately and necessarily flow from the false news in regard to peace with France, although the false news may still have been an element affecting their state of mind. In such cases the consequence of injury and damage would be too remote. Here in Shanghai with a few tens of brokers frequently meeting and exchanging news, and a few hundreds of holders of, or dealers in, Langkat shares the false statements might on the other hand be shown to have been directly aimed at the small class to which plaintiff belongs and to have directly induced the sale. It is a question of degree of causation and consequence: and to decide that question is, as Lord Blackburn said, something like having to draw a line between night and day—there is a great deal of twilight. Still it does seem to me possible in the present case that the plaintiff might prove facts under these paragraphs of his statement of claim that would show the damage to have been the natural and reasonable result of the defendant's acts, and that might entitle him to judgement; and I think, therefore, that the case as regards (a) ought not to be withheld from a jury. The defendant accordingly fails in that part of his application.

In regard to (b)—this deals with paragraphs 6 and 13 of the statement of claim. Now there being no contract between the plaintiff and defendant, and defendant, as a director of the company, not being an employee of, or a trustee for, the plaintiff as an individual, (cf. Percival *v.* Wright L. R. (1902) 2 Ch. p. 421) defendant was under no obligation to be careful towards the plaintiff. Apart from fraud, therefore, negligence or concealment afford him no cause of action, cf. Derry *v.* Peek 14 A. C. p. 337; although of course negligence, or disclosure to others and concealment from the plaintiff, might be evidence of fraud under (a). Paragraphs 6 and 13 of the statement of claim as giving a separate cause of action ought therefore to be struck out.

I have dealt with (c)—remoteness of damage under the heading (a). Costs are reserved.

E. Q. COOPER *v.* F. GRIFFIN.

Plaintiff's claim was for a declaration that the dispute which has arisen between plaintiff and defendant, disclosed the copy of correspondence attached to the writ, arises out of the provisions of the partnership agreement entered into between the plaintiff and the defendant on June 22, 1905, and that the same must be referred to determination by arbitration, in accordance with the provisions of Article 29 of the said partnership agreement.

Mr. Loftus Jones appeared for the plaintiff; defendant was represented by Mr. Oppe, who moved that the correspondence attached to the writ be struck out as being irregular.

His Lordship said that he was not disposed to begin any new cases, in view of his approaching departure, as he thought it better that the case should be tried throughout by the same judge. Judge Lindsey Smith would be here on the 22nd instant.

Mr. Jones said that his point was that this was a formal matter which ought to be taken on the return day.

His Lordship considered that it was a matter that might stand over for Judge Lindsey Smith.

Mr. Oppe said that there would be some very serious questions to be decided.

His Lordship said that if that were the case he would be unable to hear the case. He would set it down for hearing on the 22nd instant, subject to Judge Lindsey Smith being here, and able to hear it. The correspondence attached to the writ must be struck out. In the writ the plaintiff had to state summarily, without any evidence, what was sought. It seemed to him that, on principle, this was not a proper endorsement of the writ, and it was not the shortest way of stating plaintiff's claim.

J. P. HALL *v.* T. P. ROBINSON.

Mr. Douglas, who appeared for plaintiff, reminded his Lordship that on the 7th instant, he had made an order appointing Mr. Robinson Receiver on his giving security for five thousand dollars within five days. On inquiry at the Registry at 9.40 that morning he had been informed that the security had not been given, but the sale of the business of Powell Robinson was advertised to take place at 10 a.m. He asked his Lordship to issue an order to the auctioneers, Messrs Noel, Murray & Co. to pay the money into Court.

His Lordship asked Mr. Douglas to see Mr. King, the Registrar, and if security had not been given, to tell him that he must notify Messrs. Noel Murray & Co. that they must hand any monies received over to the Court.

In reply to Mr. Teesdale, who represented the landlords, his Lordship said that he did not know enough about the circumstances to say whether he would now appoint Mr. Robinson as Receiver if he put up the security. There might have been some mistake, but he might have acted so badly that he would not be entitled to be appointed Receiver at all.

Shanghai, July 15.

Before F. S. A. BOURNE, Esq., C.M.G., ACTING Judge.

LI PING-SU AND OTHER TRUSTEES OF THE POOTUNG MIDDLE SCHOOL *v.* JAMES AMBROSE.

Plaintiffs moved for an order that judgement be entered in their favour in this suit.

Mr. Oppe appeared for the plaintiffs; Mr. R. E. Gregson represented the defendant; and Mr. F. M. Brooks appeared for Yang Shun, the son of the late Yang Chin-chun.

This case was before the Court last on April 23-24, when the Court decided to refer certain matters to the Chinese authorities for decision. The case for the opinion of the Chinese Court was as follows:

CASE FOR THE OPINION OF THE CHINESE COURT.

1. A Chinese subject named Yang Chin-chun died on or about the last day of the fourth moon 34th year, being then possessed in addition to other property of certain lands and properties situate in the Foreign Settlement of Shanghai and registered in the British Consulate as B. C. lots 2017, 1918, 2963, and 2214, in the names of British subjects James Ambrose and W. A. White and of the value of some Tls. 120,000.

2. Shortly before his death the said Yang Chin-chun drew up a will disposing of his family estate, and bequeathed the properties hereinbefore referred to, to the trustees of the Pootung Middle School, a charitable foundation established by him in or about the 32nd year upon trust to maintain the school out of the profits thereof, and also drew up a petition to the City Magistrate of Shanghai setting out the disposition made by him of his family estate and praying the Magistrate to file the will on record. The testator also made provision in the said will for his wives and his sole surviving son.

3.—By writing endorsed on the said will the testator's only son Yang Shun agreed to the provisions of the will and swore to abide by the same.

4.—By an order issued by the City Magistrate of Shanghai the said City Magistrate after reciting the provisions made by Yang Chin-chun for the endowment of the school and the disposition of his family estate recorded his approval

of the same and ordered the same to be filed on record.

5. A day before the testator signed his will he handed the title deeds and declaration of trust issued by the registered owners of the above lots to the trustees to hold the same on behalf of the school in accordance with the provisions of his will to that effect.

6. After the death of the said Yang Chin-chun, the trustees of the school notified the registered owners to transfer the lots to their nominee, but the registered owners refused to do so on the ground that they had been notified that the testator's son Yang Shun claimed the land and they did not know who was entitled to the same.

7. An action was accordingly instituted in the British Court by the trustees to obtain an order compelling the registered owners to transfer at their direction and a similar action was subsequently brought by the son against the registered owners claiming a transfer to the son on the ground that the above recited will was invalid.

8. The following facts were proven at the trial of these actions. (1) That the testator had for a long time prior to the signing of his will intended to endow the Pootung Middle School, which had been founded by him, out of his own resources at his death; (2) That the will was dictated by the testator and a draft thereof had been submitted to the son for his approval at least ten days before the will was chopped and approved by him; (3) That the testator was in full possession of his senses when he signed the will.

9. The plaintiff Yang Shun, the only son and heir of the testator, claims and will offer witnesses to prove the following facts: That the the testator was delirious and not in sound mind when it is alleged he signed the will in question; that many of the names of witnesses who are alleged to have signed the will did not sign the same at the time the testator signed it or in his presence, but after the funeral of the testator; but some of the names affixed to the alleged will as witnesses did not sign at all; that the testator, although intending to endow the said school, never intended to leave all his property to the said school, and thereby practically disinherit his only son and heir; that the order of the said Magistrate was issued on the assumption that the will was genuine and that the witnesses' names were bonâ fide attached to the will at the time the testator was alleged to have signed it; and further that the son's endorsement to the will was voluntary: whereas the son claims that he was forced by alleged trustees to endorse the said alleged will, and was prevented from seeing his father who was then dying, unless he complied with the request of the alleged trustees; and lastly, that no draft of the alleged will was ever submitted to Yang Shun prior to his endorsement thereon and at the time of his said endorsement his father had not signed the alleged will.

On the above facts the British Court desires to obtain the opinion of the Chinese Court on the following questions:—

1—Is the order of the Shanghai Magistrate final as to the validity of the will?

2—If not, is the will valid or not according to Chinese law and custom?

The Shanghai Taotai addressed the following dispatch to H. B. M's Consul General:

Shanghai, June 28, 1909.

Dear Sir,—I beg to acknowledge receipt of your letter of June 7 with its enclosures namely, Will, Petition, Note (of the Shanghai Magistrate on the Petition,) and copy of Evidence—that Yang Ssu-sheng having devoted certain property to the endowment of a school, an action to decide upon the legality of his bequest has been brought before the Judge of H. B. M. Supreme Court, who now inquired whether the will of Yang Ssu-sheng should to considered as a valid proof (of the deceased's intentions).

That Mr. Yang was devoting property to the endowment of (his) school is a matter of universal knowledge, and of common praise.

The time, however, when he settled his family affairs did not long precede the date of his death. In consequence his son pretended, in the hope of himself obtaining the property, that Mr. Yang Ssu-sheng at the time of his death was out of his mind.

This conduct is in direct antagonism to the excellent intentions of the late Mr. Yang's Will.

Moveover Mr. Yang's son, Hsin, wrote with his own hand at the end of the Will that he would never during his life depart from nor in any way obstruct the terms of the Will.

This is a valid proof. To reverse this written declaration would not be allowed by Chinese Law.

This matter has, moreover, been reported by the local officials to the Viceroy and Governor to be placed on record. I am merely waiting until the houses and property have been sold and their price realized and placed in (the Bank?) and to discover the exact amount (of the bequest) to present, as the Regulations provide, a Memorial to the Throne requesting some honourable recompense.

The land registered under the cover of Mr. Ambrose's name should, of course according to the terms of the Will, revert to the control of the Managers of the School, as an incentive to those who would endow schools and to the great advantage of future education in China.

I beg, accordingly, to return herewith the Will, the Petition, the note (of the Shanghai Magistrate on the petition) and copy of Evidence to be handed to the Judge of H. B. M. Supreme Court for his equitable decision; and further request that a copy of that decision, when given, may in due course be forwarded to me for my information.

I am, Sir,
Yours obedient servant.
(Card of Taotai.)

Mr. Oppe said that the case submitted to the Chinese authorities had been submitted to the other counsel engaged, and to the Court, for its approval. In consequence of the dispatch from the Taotai stating that the will was valid and that the land ought to be transferred, he asked for judgement for the plaintiffs.

Mr. Brooks said that the Taotai had found that the will should stand but it was not clear that he had made any investigation, and so far as counsel knew, no witnesses had been called, and nothing had been done to prove the will.

His Lordship said that Mr. Brooks might raise technical objections to the Taotai's dispatch, but in the end it would be absolutely useless. In China administrative and judicial functions were mixed up, and if the matter were referred back they would merely have a sealed order, and Mr. Brooks' client would have to pay for it.

Mr. Brooks said that his client had intimated his intention in any event to carry out his father's will.

His Lordship said that of course he would, on the first principle that a Chinese son was bound to do what his father told him. If he did not he would receive no credit among his own people.

Mr. Oppe asked for a formal order that the land be transferred from Mr. Ambrose to Messrs. Drummond, White Cooper and Phillips.

His Lordship said that Mr. Oppe would have to put in some document showing that his firm was authorized to have this property transferred to it, so that if the Chinese Government made any further inquiries it might be on record. If that were done, he would make the order prayed. A similar order would be made in the White case.

Mr. Gregson submitted that his clients, as trustees who had committed no fault, were entitled to solicitor and client costs.

Mr. Oppe thought that as the whole action was due to the son's action he ought to bear a portion of the costs.

After some further discussion, the plaintiffs agreed not to press for costs from the son.

His Lordship thought that that was the proper way to look at it. He would also make an order that Messrs. Ambrose and White should account for any profits or rents in their possession.