

which consent the Board subsequently refused to give. Lord Herschell in his elaborate judgment points out that an action for deceit differs essentially from an action for a rescission of a contract on the ground of misrepresentation, in which latter case the proof of the untruth of the representation and that it was material is sufficient to warrant the company in rescinding the contract, although the representation may have been made *bona fide*.

PRACTICE—SECOND ACTION FOR SAME MATTER—COSTS OF FORMER SUIT—STAYING PROCEEDINGS.

*McCabe v. Bank of Ireland*, 14 App. Cas., 413, is a decision of the House of Lords on a question of practice. The plaintiff had brought a former action against the same defendants for the same cause which had been dismissed with costs; without paying the costs, he commenced the present suit, whereupon the defendants applied to stay all proceedings until the costs of the former suit were paid, and the plaintiff made a cross motion to be permitted to prosecute the suit in *forma pauperis*. The Court below stayed the proceedings and refused the plaintiff's motion, and the House of Lords affirmed the decision.

STATUTE OF LIMITATIONS—PAYMENT OF INTEREST—EVIDENCE.

In *Newbould v. Smith*, 14 App. Cas., 423, the House of Lords affirmed the decision of the Court of Appeal, 33 Chy.D. 127, noted vol. 22, pp. 317, 413, but not for the reasons given by that Court, but on the ground that even assuming the entry of the payment of interest to be admissible, there was no evidence to connect the entry with the property in question. The importance of this case to mortgagees has already been dwelt on ante vol. 22, p. 307.

VENDOR AND PURCHASER—RESCISSION THROUGH DEFAULT OF PURCHASER—FORFEITURE OF DEPOSIT—DEFECT IN TITLE SUBSEQUENTLY DISCOVERED.

*Soper v. Arnold*, 14 Appeal Case, 429, was an appeal from the decision of the Court of Appeal 37 Chy.D. 96, noted ante vol. 24, p. 143, in which it was held that when a contract for the sale of land was rescinded after the title had been accepted, in consequence of the default of the purchaser, and his deposit was consequently forfeited, he had no right to recover the deposit on the ground of mutual mistake and failure of consideration, because, on a subsequent sale it turned out that the vendor's title was bad, owing to a defect which appeared on the face of the abstract delivered to the first purchaser. This decision was affirmed by the House of Lords.

STATUTE OF LIMITATIONS—ACTION TO RECOVER LAND—POSSESSION AS AGENT FOR UNKNOWN HEIR AT LAW—RATIFICATION BY TRUE OWNER—EVIDENCE.

*Lyell v. Kennedy*, 14 App. Cas., 437, may be considered to have at last terminated its well litigated course by the judgment of the House of Lords in favor of the plaintiff, whereby many interesting legal questions have been also passed upon. The defendant had acted as the agent of the owner of the lands in question during her lifetime, and on her death in 1867 continued to receive the rents and profits, and to pay them into the bank exactly as before, not informing the