

ing property, who was entitled to the benefit of the covenant. North, J., refused the amendment; but the Court of Appeal thought there had been a *bona fide* mistake in bringing the action in the name of the plaintiff instead of the person proposed to be added, and therefore allowed the amendment, but terms were, however, imposed that the original plaintiff should pay the costs of the application, and also the costs of the action up to the time of the amendment, if it should appear at the trial she was not entitled to maintain the action; and further, that the party added should only be entitled to such relief as he could have got had the action been commenced at the date he was added as a party.

PROSPECTUS—MISREPRESENTATION—ACTION OF DECEIT—CIRCULAR TO CORRECT ERROR IN PROSPECTUS.

*Arnison v. Smith*, 41 Chy.D. 348, is a decision of the Court of Appeal (Lord Halsbury, L.C., and Cotton and Lindley, L.JJ.) affirming a decision of Kekewich, J., which, to some extent, follows on *Peek v. Derry*, 37 Chy.D. 541, which is assumed to be good law, but the recent reversal of that case by the House of Lords (see *English Law Times*, 6th July, 1889) will make it necessary for the practitioner to reconsider this decision by the light of the principles laid down by the Lords in *Peek v. Derry* before relying on it as an authority. In this case the misrepresentation in the prospectus was that £200,000 of share capital had been subscribed, when in fact it had only been allotted in fully paid-up shares to the contractor for the construction of the Company's works. Subsequently another circular was issued to the allottees of stock, which, amid statements about other matters, stated the truth as to the matters misrepresented, but did not admit the misrepresentation nor inform the allottees that they could retire and get back their money. The concern having proved a failure, some of the allottees sued the directors for misrepresentation, and they were held entitled to recover; but in the absence of any fraudulent intent being established we very much doubt whether this case can now be considered to be good law. According to the House of Lords, a misrepresentation, in order to be actionable, must have been made either (1) knowingly, (2) without belief in its truth, or (3) recklessly and without care whether it be true or false. Some of the plaintiffs failed to appear at the trial, and Kekewich, J., ordered them to pay the defendant's costs occasioned by their being joined as plaintiffs; the Court of Appeal, however, varied the judgment as against these plaintiffs by making it without prejudice to their bringing a new action.

MORTGAGE—PROVISO FOR REDUCTION OF INTEREST—ACCOUNTS—RIGHT TO HIGHER RATE OF INTEREST—MORTGAGEE IN POSSESSION.

In *Bright v. Campbell*, 41 Chy.D. 388, a mortgagee went into possession when there was no interest in arrear, and received the rents and profits which he applied in reduction of the amount due on the mortgage. The mortgage contained a covenant in the usual terms, whereby the mortgagee agreed to accept a lesser rate of interest on punctual payment. In taking the accounts of the mortgagee in possession, the question arose whether, under the circumstances, the mortgagee was bound to accept the lesser rate of interest. Kay, J., (following *Union*