their effect when Clark bought; and Parker and Woodward seem to have taken Clark's place without further representation made to them.

Now, it is undoubtedly true that representations made to A. that he may act upon them, cannot be taken advantage of by B. in case he acts upon them, not having been intended so to do: Langridge v. Levy, 2 M. & W. 516, 534, 4 M. & W. 337; Peek v. Gurney, L.R. 6 H.L. 377; Metropolitan R.W. Co. v. Wright, 10 M. & W. 109, 114. But, where representations have been made, even to a third person, upon which, at least to the knowledge of the person so representing, another acts, in dealing with the representer, the representation is considered to have been made by the representer to the person so acting. The person so acting is in the same position as the person who has been induced by a false prospectus to apply for shares and has the shares allotted to him, as stated by Lord Chelmsford in Peek v. Gurney, L.R. 6 H.L. 377, 400; Andrews v. Mountford, [1896] 1 Q.B. 372.

But it is necessary that the representations be fraudulent. However much we may dislike the law, it seems plain. At all events we are bound by the Divisional Court's approval (1 O.W.N. 396) of Heatherley v. Knight, 14 O.W.R. 338, so holding. The onus is upon the plaintiffs in the counterclaim to prove this fraud —and, assuming that the finding of the learned trial Judge refers to the purchase in the first instance by Parker and Woodward—and that seems doubtful—this finding, in my view, comes far short of fraud. . . .

The plaintiffs say the most that is found against them is that Neil did not know whereof he spoke. This is perfectly consistent with innocence. Nor do I find anything in the evidence making it necessary for us to go further than the learned Judge has done.

There were representations made again before the last $2,000 was paid. . . . The same considerations apply to these statements.

I think the appeal on the counterclaim should be allowed with costs here and below; and the appeal on the main claim dismissed with costs here and below.

It may be that the plaintiffs have a cause of action against the defendants and the Culver company for not issuing the stock promised. If the plaintiffs are so advised, they may amend by adding the company and any others they may be advised, and have a new trial generally upon the whole case. In that event, however, the defendants are to be allowed to retry their