Lord Herschell in Peck v. Derry[1] said: "In order to sustain an action of deceit there must be proof of fraud, and nothing short of that will suffice. Fraud is proved when it is shown that a false representation has been made. First, knowingly, or second, without belief in its truth, or third, recklessly or carelessly, whether it be true or false. Although I have treated the second and third as distinct cases, I think the third is but an instance of the second, for one who makes a statement under such circumstances can have no real belief in the truth of what he states. To prevent a false statement being fraudulent, there must, I think, always be an honest belief in its truth, and this probably covers the whole ground, for one who knowingly alleges that which is false, has obviously no such honest belief. Thirdly, if fraud be proved, the motive of the person guilty of it is immaterial." But in Angus v. Clifford,[2] Lord Justice Lindley pointed out that Lord Herschell qualified this passage further on[3] by stating: "In my opinion, making a false statement through want of care falls far short of, and is a very different thing from, fraud, and the same may be said of a false representation honestly believed though on insufficient grounds;" and further[4]: "I think there is much to be said for the view that this moral duty" (that is, to be vigilant in preparing these prospectuses, and stating no more than you believe to be true) "ought to some extent to be converted into a legal obligation, and that the want of reasonable care to see that statements made under such circumstances, are true, should be made an actionable wrong. But this is not a matter fit for discussion on the present occasion. If it is to be done the Legislature must intervene and expressly give a right of action in respect of such a departure from duty. It ought not, I think, to be done by straining the law and holding that to be fraudulent which the tribunal feels cannot properly be so described. I think

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[1] 14 App. Cas., at p. 374. Thus where a prospectus stated that the profits previously realized had been 17% upon the capital employed in it, which would be true if the words "capital employed" did not include the business premises, or only included their value less the mortgages thereon, but was grossly untrue if the whole value of the business premises was taken as part of the capital. Held by Court of Appeal that under the decision in Derry v. Peck as there was not any evidence of dishonesty in making the representation, therefore, although it were untrue, the action would not lie. Glasier v. Rolls, 42 Ch. D., 436.

[2] (1891) 2 Ch., at p. 465. [3] 14 App. Cases, at p. 375.

[4] 14 App. Cases, at p. 376.