

RECENT ENGLISH DECISIONS.

And after remarking on the difference which formerly existed between the rules of Courts of equity and the rules of Courts of common law as regards the rescission of a contract, he says: "Nothing can be plainer, I take it, on the authorities in equity, than that false representation is not got rid of by the defendant—that is, the person resisting its performance, or asking for rescission on the ground of deceit—being guilty of negligence. One of the most familiar instances in modern times, and one which occurs in case after case, both reported and unreported, is this: Men issue a prospectus containing false statements—false statements of the contracts made before the formation of the company, and on similar matters—and then say the contracts themselves may be inspected at the office of the solicitors. It has always been held that those who accept these false statements as true are not deprived of their remedy merely because they neglected to go and look at the contracts themselves, though they were told the contracts were in writing and might be inspected if they asked to see them. * * * It is not sufficient, therefore, to say that a man has had the opportunity of investigating the real state of the case, but has not availed himself of that opportunity." Moreover, both the M. R. and Baggallay, L. J., make some remarks to the same effect on the onus in such cases. The latter says, as to this: "Where a false representation has been made, it lies on the party who makes it, if he wishes to assail it, to show that although he made the false representation, the other party did not rely upon it. The *onus probandi* is on him to shew that the other party waived it and relied on his knowledge."

COVENANTS—ASSIGNEE WITH NOTICE.

The last case in the February number of the *Law Journal* reports which has not been reported in the *Law Reports*, and which requires notice here, is *Haywood v. The Brunswick Benefit Building Society*. In this

case certain land was granted to one J. in fee subject to a rent charge. The grantee covenanted for himself and his heirs, etc., that he, his heirs or assigns, would pay the rent, erect buildings on the land and thereafter keep them in repair. The plaintiff was assignee of the rent charge, with the benefit of all the covenants. The defendants were mortgagees in possession subject to the covenant, and the plaintiff sued them on the covenant to repair. Two questions, therefore, arose: (i.) whether the covenant to repair ran with the land, so as to impose a liability on the defendants; (ii.) whether the defendants were bound to repair on the ground that an assignee of property taking property with notice of a covenant of a certain class, is bound by reason of the notice in such a way that a Court of equity will oblige him to observe the covenant. As to (i.) all the judges of the Court of Appeal held that the covenant did not run with the land, and that the plaintiff, therefore, had no right of action at common law. Cotton, L. J., said, as to this:—"For a covenant to run with the land it is necessary that it should affect the land, do benefit to the land or affect the rent issuing out of the land. Now this covenant does not affect the rent issuing out of the land—it is only a covenant to do something which shall be an improvement to the land, so that it is not a covenant within the second resolution in *Spencer's Case*, 1 Sm. L. C. (Ed. 8.) 68. It is unnecessary to consider whether it is a covenant the burden of which runs with the land, although I am not inclined to favour that view; but it is clear I think, that at common law this covenant would not run with the rent." (ii.) As to the remedy at equity, the unanimous view of the judges is concisely expressed by Lindley, L. J., thus:—"The doctrine is laid down in *Tulk v. Moxhay*, 2 Ph. 774, and *Cox v. Hislup*, 26 L. J. Ch. 389, and both these cases are different from the present. The former case shews that if a person buys land with notice of a restrictive covenant, he will be bound to