

finally and definitely settled by *Peak v. Derry* that an action for misrepresentation will not lie except where it is made fraudulently; but it may well be doubted whether in view of *Cherry v. The Colonial Bank of Australia*, *Sharkey v. Bank of England*, *Barclay v. Sheffield*, and *Bank of England v. Cutler*, supra, and *Bank of Ottawa v. Harty*, hereafter referred to, that point can now be said to be so conclusively settled as he assumed.

The question of the measure of damages for which an assumed agent in such circumstances is liable on a breach of his implied warranty was discussed in the case of *In re National Coffee Palace Co.*, 24 Ch. D. 367. There a broker had by mistake subscribed for shares on behalf of a customer in one company instead of another, which had been named by the customer. The shares were allotted to the customer, who repudiated them, and they had in fact no marketable value. The broker was, nevertheless, held liable for the par value of the shares subscribed, it being held that the measure of damage was what the company would have gained had the contract been carried out.

This was followed in *Meek v. Wendt*, 21 Q.B.D. 126. In that case the plaintiff had a claim against an insurance company, and the defendants, the agents of the company in England, believing in good faith that they had the power, entered into an agreement with the plaintiff whereby on behalf of the company they agreed to pay £300 in settlement of his claim. The company having repudiated the settlement, it was held by Charles, J., that the measure of damages was the £300, and not merely the expenses to which the plaintiff had been put by entering into the negotiation.

In *Hughes v. Graeme*, 33 L.J.Q.B. 336, the defendant, who was agent of the plaintiffs, also assumed as agent of certain other persons to sell certain goods to the plaintiffs. The defendant's authority to sell was repudiated, and it was held that he was liable to the plaintiffs for all the damages which they had sustained by breach of the contract. This included the costs of an unsuccessful action to enforce the contract, and the difference between the price contracted to be paid and the value of the