Common Law I

Langridge v Levy, 2 M. & W. 519 (Ex. 1837) (England)

At the trial … it appeared that in June, 1833, the plaintiff's father saw in the shop of the defendant, a gun-maker in Bristol, a double-barrelled gun, to which was attached a ticket [descriptive tag] in these terms: -- "Warranted, this elegant twist gun, by Nock, with case complete, made for his late Majesty George IV.; cost 60 guineas: only 20 guineas."[1] He went into the shop, and saw the defendant, and examined the gun…. Langridge told the defendant he wanted the gun for the use of himself and his sons….. Landgridge … bought the [the gun]. … Langridge the father and his three sons used the gun occasionally; and in the month of December following, the plaintiff, his second son, having taken the gun into a field near his father's house to shoot some birds, putting in an ordinary charge, on firing off the second barrel, it exploded, and mutilated his left hand, so severely as to render it necessary that it should be amputated. There was conflicting evidence as to the fact of the gun's being an insecure [defective] one, or of inferior workmanship. Mr. Nock, however, proved that it was not manufactured by him…. The jury found [that the defendant had warranted that the gun was made by Nock and was "safe and secure" and accordingly awarded] ... the plaintiff, damages 400 pounds….

PARK, B. [the judge]….. It is clear that this cannot be supported upon the warranty as a contract, for there is no privity in that respect between the plaintiff and the defendant. The father was the contracting party with the defendant, and can only sue upon that contract for breach of it.

The question then is, whether enough is stated on this record to entitle the plaintiff to sue, though not on the contract…

We are not prepared to rest the case upon the grounds …. that whenever a duty is imposed on a person by contract or otherwise, and that duty is violated, any one who is injured by the violation of it may have a remedy against the wrongdoer: we think this action may be supported without laying down a principle which would lead to that indefinite extent of liability…. We do not feel it necessary to go to that length, and our judgment proceeds upon another ground. If the instrument in question, which is not of itself dangerous, but which requires an act to be done, that is, to be loaded, in order to make it so, had been simply delivered by the defendant, without any contract or representation on his part, to the plaintiff, no action would have been maintainable for any subsequent damage which the plaintiff might have sustained by the use of it. But if it had been delivered by the defendant to the plaintiff, for the purpose of being so used by him, with an accompanying representation to him that he might safely so use it, and that representation had been false to the defendant's knowledge, and the plaintiff had acted upon the faith [belief] of its being true , and had received damage thereby, then there is no question but than an action would have lain…..

[1] A "guinea" was a British coin worth at little more than a pound. One pound then is worth about $120 today. So 20 guineas would be about $2500 today.

We therefore think that, as there is fraud, and damage, the result of that fraud, not from an act remote and consequential [indirect], but one contemplated by the defendant at the time as one of its results, the party guilty of the fraud is responsible to the party injured.

We do not decide whether this action would have been maintainable if the plaintiff had not known of and acted upon the false representation; nor whether the defendant would have been responsible to a person not within the defendant's contemplation at the time of the sale, to whom the gun might have been sold or handed over. We decide that he is responsible in this case for the consequences of his fraud whilst the instrument [gun] was in the possession of a person to whom his representation was either directly or indirectly communicated, and for whose use he knew it was purchased.

[The decision was affirmed in Levi v Langridge, 16 L. J. R. 387 (Ex. Chamber. 1838) for the reasons stated in the second to last paragraph of the opinion above.]

Winterbottom v Wright, 20 Meeson & Welsby 109 (Exchequer of Pleas [England] 1842)

[Wright had a contract with the Postmaster-General to keep a mail-coach in "fit proper, safe and secure state and condition." Atkinson contracted with the Postmaster-General to supply horses and coachmen. Winterbottom was hired by Atkinson to be a coachman. While driving a mail-coach supplied by Wright, Winterbottom was thrown from his seat and, as a result, became lamed for life. Winterbottom alleges that the accident occurred because the coach supplied by Wright was defective and unsafe.]

Lord Abinger , C. B. I am clearly of opinion that the defendant is entitled to our judgment. We ought not to permit a doubt to rest upon this subject, for our doing so might be the means of letting in upon us an infinity of actions. This is an action of the first impression, and it has been brought in spite of the precautions which were taken, in the judgment of this Court in the case of Levy v. Langridge , to obviate any notion that such an action could be maintained. We ought not to attempt to extend the principle of that decision, which, although it has been cited in support of this action, wholly fails as an authority in its favour; for there the gun was bought for the use of the son, the plaintiff in that action, who could not make the bargain himself, but was really and substantially the party contracting. Here the action is brought simply because the defendant was a contractor with a third person; and it is contended that thereupon he became liable to every body who might use the carriage. If there had been any ground for such an action, there certainly would have been some precedent of it; but with the exception of actions against innkeepers, and some few other persons, no case of a similar nature has occurred in practice. That is a strong circumstance, and is of itself a great authority against its maintenance. It is however contended, that this contract being made on the behalf of the public by the Postmaster-General, no action could be maintained against him, and therefore the plaintiff must have a remedy against the defendant. But that is by no means a necessary consequence—he may be remediless altogether. There is no privity of contract between these parties; and if the plaintiff can sue, every passenger, or even any person passing along the road, who was injured by the upsetting of the coach, might bring a similar action. Unless we confine the operation of such contracts as this to the parties who entered into them, the most absurd and outrageous consequences, to which I can see no limit, would ensue.

Alderson , B. I am of the same opinion. The contract in this case was made with the Postmaster-General alone; and the case is just the same as if he had come to the defendant and ordered a carriage, and handed it at once over to Atkinson. If we were to hold that the plaintiff could sue in such a case, there is no point at which such actions would stop. The only safe rule is to confine the right to recover to those who enter into the contract: if we go one step beyond that, there is no reason why we should not go fifty. The only real argument in favour of the action is, that this is a case of hardship; but that might have been obviated, if the plaintiff had made himself a party to the contract. Then it is urged that it falls within the principle of the case of Levy v. Langridge . But the principle of that case was simply this, that the father having bought the gun for the very purpose of being used by the plaintiff, the defendant made representations by which he was induced to use it. There a distinct fraud was committed on the plaintiff; the falsehood of the representation was also alleged to have been within the knowledge of the defendant who made

it, and he was properly held liable for the consequences. How are the facts of that case applicable to those of the present? Where is the allegation of misrepresentation or fraud in this declaration [complaint]? It shews nothing of the kind. Our judgment must therefore be for the defendant.

Gurney , B., concurred.

Rolfe , B. The breach of the defendant's duty, stated in this declaration, in his omission to keep the carriage in a safe condition; and when we examine the mode in which that duty is alleged to have arisen, we find a statement that the defendant took upon himself, to wit, under and by virtue of the said contract, the sole and exclusive duty, charge, care, and burden of the repairs, state and condition of the said mail-coach, and, during all the time aforesaid, it had become and was the sole and exclusive duty of the defendant, to wit, under and by virtue of his said contract, to keep and maintain the said mail-coach in a fit, proper, safe, and secure state and condition. The duty, therefore, is shewn to have arisen solely from the contract; and the fallacy consists in the use of that word "duty." If a duty to the Postmaster-General be meant, that is true; but if a duty to the plaintiff be intended (and in that sense the word is evidently used), there was none. This is one of those unfortunate cases in which there certainly has been damnum [harm to the plaintiff], but it is damnum absque injuriâ [harm without legally cognizable injury]; it is, no doubt, a hardship upon the plaintiff to be without a remedy, but by that consideration we ought not to be influenced. Hard cases, it has been frequently observed, are apt to introduce bad law.

Judgment for the defendant.

Note

In England in this period in difficult cases, it was customary for each judge to deliver a "separate opinion" stating the reasons for his decision. Unlike the United States, it was not customary for one judge to write an opinion which other judges joined. Of course, even in the United States, judges are free to write concurrences and dissents. Nevertheless, in the United States it is customary for one judge to join in the opinion of another judge, if their reasoning is very similar. No such custom existed in England. In addition, in England until the late nineteenth century, judges delivered their opinions orally, and they were written down by reporters. That is, judicial opinions were not written by the judges themselves, but were like newspaper reports of court proceedings.

Questions on Winterbottom v. Wright

1. The judges were concerned that if they allowed the plaintiff to prevail in Winterbottom v Wright there would be "the most absurd and outrageous consequences" and "an infinity of actions." What sort of cases were they concerned to prevent? Why?

2. The case most favorable to the plaintiff is Levy v Langridge. If you were the plaintiff's lawyer in Winterbottom v Wright, how would you have used that case to argue that the defendant in this case should be liable to your client? If you were the defendant's lawyer, how would you respond?

3. Why do you think the plaintiff won in Levy v Langridge, but the plaintiff lost in Winterbottom v Wright? Consider both legal and social reasons.

3. What is the holding in Winterbottom v Wright? That is, state in a sentence the legal rule established by this case.

4. Judge Rolfe says that judges should not be influenced by the hardship that the plaintiff suffers on account of the absence of a remedy. Why not? What should influence a judge? What influenced the judges in this case?

6. If Wright had sold a defective coach to Langridge, and Langridge's wife had been injured while riding in the coach, would Wright be liable to Langridge's wife?

7. If the Postmaster had told Wright that the mail-coach would be used by coachmen, and Wright had said that the mail-coach could be safely used by coachmen, would Wright be liable to any coachman injured by a defective coach?

8. If Wright had put explosives under the mail-coach seat, which had gone off while Winterbottom had been sitting on the mail-coach seat, would Wright be liable to Winterbottom?