

Lord Vs. Goddard

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Court : US Supreme Court

Decided On : 1851

Appeal No. : 54 U.S. 198

Appellant : Lord

Respondent : Goddard

Judgement :

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Lord v. Goddard

54 U.S. (13 How.) 198

ERROR TO THE CIRCUIT COURT OF THE UNITED

STATES FOR THE DISTRICT OF NEW HAMPSHIRE

SYLLABUS

Where an action was brought against certain persons for giving a commercial letter of recommendation with intention to defraud and deceive whereby the party to whom the letter was addressed gave credit and sustained a loss, the question

for the jury ought to have been whether or not there was fraud and an intention to deceive in giving the letter.

If there was no such intention, if the parties honestly stated their own opinion, believing at the time that they stated the truth, they are not liable in this form of action, although the representation turned out to be entirely untrue.

Goddard was the plaintiff below, and Lord and Jenness the defendants.

The declaration in two counts alleged that the plaintiffs in error, October 28, 1847, intending to deceive and defraud the

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defendant in error, wrongfully and deceitfully made and signed a letter of recommendation in favor of E. K. West and A. W. Daby, addressed to the defendant in error, in which they represented they had full confidence in West & Daby, dealers in coal, lumber &c.;, that they were men well worthy of credit, and good for what they wished to purchase, and that West was visiting Bangor for the purpose of purchasing lumber for the New York market, and did thereby falsely, fraudulently, and deceitfully cause and procure the defendant in error to sell, and that he, confiding in the statements, on 9 November, 1847, did sell to West & Daby certain timber on credit &c.;, whereas, in fact, West & Daby were not worthy of credit, and that the plaintiffs in error well knew the same, and that West & Daby have not paid &c.;

The plaintiffs in error pleaded severally not guilty, on which issue was joined.

The defendant in error offered, in support of his declaration, the letter addressed to him, as follows, *viz.*:

"To John Goddard, Esq., Bangor, Me."

"Sir -- We the undersigned have full confidence in Messrs. E. K. West and A. W. Daby, dealers in coal, lumber, lime &c.; They are men well worthy of credit and good for what they wish to purchase. The bearer of this, Mr. E. K. West, is visiting

your city for the express purpose of purchasing lumber for the New York market."

"Yours respectfully,"

"S. B. LORD"

"GEORGE W. JENNESS"

"Portsmouth, N.H. October, 28, 1847"

In July, 1850, the cause came on for trial, when the jury, under the instructions of the court, found a verdict for the plaintiff for \$2,300.

The bill of exceptions was very comprehensive. It began with reciting the writ, the declaration, and other pleadings, then recapitulated the evidence of two persons with all the interrogatories and cross-interrogatories, and also the evidence of seven persons taken upon the stand. It is not necessary to recite any of this, as the point stated in the instructions of the court was the only matter brought into discussion.

The evidence being closed, the counsel for the defendants then prayed the Honorable Court to instruct the jury that in order to maintain the plaintiff's declaration, it must be proved that the representations made were false and that the defendants made them knowing they were false and intending to defraud the plaintiff, and that if the defendants made the representations on such information as they believed to be true,

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whether that information was true or false, this action cannot be maintained. The defendants further requested the Honorable Court to charge the jury that if the plaintiff had not proved to the satisfaction of the jury either that the defendants gave the recommendation in this case knowing that it was false and intending to defraud the plaintiff or that they gave it without any information of the credit or means of West & Daby, or if the jury believe that the defendants gave such information respecting said West & Daby as said defendants believed to be true

and sufficient, whether that information was true or false and whether it was sufficient or not, the defendants were entitled to a verdict.

But the Honorable Court declined to do this, and did not charge the jury in the terms and manner and to the extent prayed, but the Honorable Court did instruct the jury upon the subject matter so prayed for as follows:

"That as a general rule, one ground upon which to maintain the plaintiff's declaration is it must be proved that the representations made were false and that the defendants made them knowing they were false and intending to defraud the plaintiff, and that if the defendants made the representations on such information as they believed to be true, whether that information was true or false, the action cannot be maintained; but a party, if stating positively that a person is entitled to credit, should do it from his own knowledge or from full and proper inquiries, and then he is not liable if the debtor is insolvent unless the jury see circumstances in the case of real fraud. But if a party state this positively as to the credit of an individual, and does it ignorantly, not knowing the credit of the person recommended and without making full and proper inquiries, and the statements turn out to be false, the jury may infer that those so recommending did wrong and deceived, because they must know that third persons are likely to rely on their stating what they personally know, or had duly inquired about, or what they had good reason to suppose their information as to it was sufficient and true. If the defendants in this case did not make the recommendation upon such authority or information as you may think, under the instructions, they ought to have acted upon, you will charge them."

Whereupon the counsel for the defendants did then and there except to the aforesaid refusal, and the instructions and charge of the Honorable Court.

Upon this exception the case came up to this Court.

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MR. JUSTICE CATRON delivered the opinion of the Court.

Goddard sued Lord & Jenness in the Circuit Court of New Hampshire, alleging that the defendants by letter recommended West & Daby as men well worthy of credit and good for what they wished to purchase; that they were dealers in coal, lumber, lime &c.;, and that West, one of the firm, was visiting Bangor, Maine, for the purpose of purchasing lumber for the New York market.

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The letter, set forth in the declaration, was dated at Portsmouth, New Hampshire, and directed to Goddard at Bangor, Maine. West & Daby resided in New York.

On the faith of this letter, Goddard credited West & Daby for a cargo of lumber worth nearly two thousand dollars, giving them four months time, for which lumber West & Daby never paid, having been insolvent when the letter of recommendation was given and so continued afterwards. It is clear that they were mere insolvent adventurers, without property and entitled to no credit or confidence.

The declaration alleges that the letter was given by Lord & Jenness with an intention to deceive and defraud Goddard, and that they did procure credit for West & Daby falsely and fraudulently. On the plea of the general issue the parties went to trial, when it appeared that Lord had a son residing in New York, who, on 28 October, 1847, gave a letter of introduction to West, dated at New York, and directed to Lord, the father, at Portsmouth, N.H. The letter recommended the firm of West & Daby, as fully worthy of credit, and requested that Lord, the defendant, should recommend West & Daby to others. West delivered this letter, and on the same day got the one on which the suit is founded. It was written by the wife of the younger Lord, who was in Portsmouth, at the instance of West, he being known to her but not known to Lord or Jenness the defendants. They seem to have acted on the information contained in the younger Lord's letter and on the representations of his wife.

On this state of facts, the court charged the jury 1., that as a general rule, it must be proved that the representations made were false and that the defendants made

them knowing they were false, and intended to defraud the plaintiff, and if the defendants made the representations, believing them to be true, they were not liable.

"But a party, if stating positively that a person is entitled to credit, should do it from his own knowledge or from full and proper inquiries, and then he is not liable if the debtor is insolvent unless the jury see circumstances in the case of real fraud. But if a party states this positively as to the credit of an individual, and does it ignorantly, not knowing the credit of the person recommended and without making full and proper inquiries, and the statements turn out to be false, the jury may infer that those so recommending did wrong, and deceived, because they must know that third persons are likely to rely on their stating what they personally know, or had duly inquired about, or what they had good reason to suppose their information as to it was sufficient and true. If the defendants in this case did not make the recommendation upon

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such authority or information as you may think under the instructions they ought to have acted upon, you will charge them."

The jury found for the plaintiff on this charge, and the only question is whether it was proper.

The gist of the action is fraud in the defendants and damage to the plaintiff. Fraud means an intention to deceive. If there was no such intention, if the party honestly stated his own opinion, believing at the time that he stated the truth, he is not liable in this form of action, although the representation turned out to be entirely untrue. Since the decision in *Haycroft v. Creasy*, 2 East, made in 1801, the question has been settled to this effect in England.

The supreme court of New York held likewise in *Young v. Covell*, 8 Johns. 23.

That court declared it to be well settled that this action could not be sustained without proving actual fraud in the defendant or an intention to deceive the plaintiff

by false representations. The simple fact of making representations which turn out not to be true, unconnected with a fraudulent design, is not sufficient.

This decision was made forty years ago, and stands uncontradicted, so far as we know, in the American courts

Taking the foregoing instruction together, we understand it to mean this: that if the jury believed due inquiry as to the credit of West & Daby had not been made by Lord & Jenness, and that they had signed the letter ignorantly and regardless of the fact whether the persons recommended were or were not entitled to credit, then the jury should charge the defendants, the real test of conduct according to the charge obviously being whether Lord & Jenness ought to have accorded confidence to the younger Lord's letter and to its sanction by his wife and whether this information was of such a character as to justify them in writing the letter to Goddard without further inquiry.

That this instruction, taken in its proper sense, was evasive of the true rule and calculated to mislead the jury is manifest, and therefore the judgment must be

Reversed and the cause sent down for another trial.

ORDER

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the District of New Hampshire, and was argued by counsel, on consideration whereof it is now here ordered and adjudged by this Court

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that the judgment of the said circuit court in this cause be and the same is hereby reversed with costs, and that this cause be and the same is hereby remanded to the said circuit court with directions to award a *venire facias de novo*.

