

case could probably be found where a second person, not traveling the road, but who might sustain some loss in consequence of an injury to one who did, could because of that have a civil action against the one obstructing the road. The injury is too remote. 1 Smith's Leading cases (131) 266, 8 East 1, 5 B. & Ad. 345. 1 Tunt, 39.

An unlawful act or neglect in violation of some express statute is a tort and a party injured by it has an action. *Ashley v. White*, 2 Ld. Raym. 953, 6 Exch. 752, 7 Exch. 460. 1 Hilliard on Torts 116. *Griswold v. Gallop*, 22 Conn. 208. *Ferguson v. Ken-naut*, 9 Cl. & F. 282.

But a right of action thus created by statute, in the absence of qualifying provisions, must, on principle, be governed by the rules of law applicable to rights of action at common law. *Couch v. Steel*, 3 E. & B. 402.

But the statutory prohibition upon the fraudulent sale of diseased sheep gives no new or additional civil action, because the common law gives it, for similar reasons, independently of the statute. A statutory prohibition upon an act can have no greater effect than a common law prohibition, unless it be more comprehensive, which this statute is not. If the Common Law civil action did not exist then, a sale in violation of the statute would give a civil action to the party primarily injured. With the common law in force the statute merely adds a penal sanction to the unlawful sale. Besides the proviso to the statute expressly limits its operation so that actions for damage exist only as at common law.

But an unlawful sale is not in its wrong aimed at the whole public, but only at the individuals to whom the sale is made. At Common Law, remote persons, who are only injured because the first purchaser is injured, could not maintain an action against the original vendor.

The unlawful sale, and the false representations complained of, are not imminently dangerous to human life; nor did defendant owe to the plaintiff or the public the duty of disclosing the truth. His duty arose from contract, and was to a person whose agent the plaintiff was. Hence, upon the authority of the cases referred to, the plaintiff shows no reason to enable him to recover. Damage to the plaintiff was not a natural, probable or necessary consequence of any act of defendant. 2 Greenl. Ev. 256.

It is not pretended that Osmond Wells' right of action against defendant for fraud, was assignable, or was, in fact, assigned to plaintiff, but the plaintiff claims an independent distinct right of action. If he can recover, there may be two distinct recoveries, for the same wrong, for Osmond Wells can certainly recover. The fact that he sold to plaintiff before the fraud was discovered, does not defeat his action.

On Common Law principles a right of action, arising from the fact of a fraudulent or unlawful sale, is limited to the same persons who could sue for fraudulent representations to induce the sale.

The same difficulty did not arise in *Thomas v. Winchester*, 2 Selden 397, as here. There the vendor was liable to a remote purchaser for injury done to his health. He was not liable at all to his immediate vendee, and, if guilty of fraud, the liability to him only would have been for the difference between the value of the medicine, as it was a fact, and as it was labelled to be. The two actions were for distinct things.

But here, if the vendor is liable in this case, he is liable for two actions for the same wrong and injury to two different persons, and so on ad infinitum as the same sheep may be sold again and again.

It is no answer to this to say that Osmond Wells, the first purchaser, having sold the sheep without loss, sustained no damage. His action is not defeated, nor his damages reduced by his sale. The price for which he sold can not be enquired into to defeat or reduce damages in such action, for if so, as said in *Medbury v. Watson*, 6 Metcalf 246, it might make the question of fraud depend upon the rise and fall of the property in the market, or upon the skill exercised in selling. The sale may have been for more or less than the sheep were worth. 1 Bouv. Institutes, 498. See Chit. Cont. 468, *Street v. Blay*, 2 B. & Ad. 459—7 Bing. 418, 5 M. & P. 284.

The plaintiff says he is without remedy unless he can recover here. That often happens. At common law, if a vendor sells defective goods, as sound, without fraud, the purchaser has no remedy—that is just what happened the plaintiff here.

If, therefore, the plaintiff can recover, it must be because the defendant has done a wrong to him. It is clear that if the plaintiff were about to buy sheep of a party, and another person should make fraudulent representations as to the sheep, inducing the purchase, the plaintiff could recover against him. The fraud is aimed at plaintiff, and perpetrated upon him. *Weatherford v. Fishback*, 3 Scamman, 170, *Paisley v. Freeman*, 3 Term, R. 51, 1 Hilliard on Torts 9, *Evans v. Edwards*, 13 C. B. 786.

He is directly injured in that transaction.

But can the plaintiff maintain an action for fraudulent representations made to him as agent of another person, not designed to influence his conduct personally?

He does not sue for the criminal act of selling, and hence, derives no benefit from the statute. If he did thus sue, he is not within the principle of such cases, where a recovery has been had because of the violation of a duty to the public, or on grounds of public policy in *favorem vitæ*, and so could not recover.

These are the only grounds upon which such actions have been maintained: 2 Selden, R. 400—*Mayor of Albany v. Canfield*; 2 Comst 160—*Broom on Parties to Actions*, 246; *Bush v. Stearns*, 1 Bos. & Pull. 409.

In *Thomas v. Winchester*; 2 Selden, R. 408, it is said:—

"If a horse be defectively shod by a smith, and a person hiring the horse from the owner, is thrown and injured, in consequence of the smith's negligence in shoeing, the smith is not liable for the injury."

And the reason assigned is because:—

"The smith's duty grows exclusively out of his contract with the owner of the horse; it was a duty which the smith owed to him alone, and to no one else. * * * Misfortune to third persons, not parties to the contract, would not be a natural and necessary consequence of the smith's negligence."

The authorities show that damages can only be recovered, generally when they are the natural and necessary consequences of the act complained of. 2 Greenleaf on Evidence, sec. 256. *Sedwick on Damages* passim; 1 Smith's Lead. cases (132) 266; *Vicars v. Wilcox*; 8 East 1, "legal and natural consequences;" *Judler v. Keat*; 19 John's R. 228; 1 Smith's Lead. cases (132) 312.

It makes no difference that the wrong complained of is by statute a penal offence.

A person guilty of larceny may injure the creditors of the party whose property is stolen, but no creditor ever yet sued for such injury.

The plaintiff claims to recover because a false representation was knowingly made by defendant, which induced plaintiff to buy the sheep, and so plaintiff was injured by defendant's wrong; *Broom's Legal Maxims*, 621; *Caveat Emptor*; 1 Hilliard on Torts, 100; *Weatherford v. Fishback*; 3 Scamman, 170; *Paisley v. Freeman*; 3 Term, R. 51.

But the plaintiff can not recover upon this ground. His loss is *damnum absque injuria*—damages without a legal wrong.

In *McCracken v. West*, 17 Ohio, it was held that:

"If a person write a letter to another, desiring him to introduce the bearer to such merchants as he may desire, and describing him as a man of property, and the person having such letter do not deliver it to the person to whom it is directed, but use it to obtain credit elsewhere, the persons so giving the credit can not maintain an action for deceit, though the representations in the letter are untrue."

In that case, Reid, Judge, says:

"If a false statement should be made to one person to induce him to do a particular act, the balance of the world have no legal right to rely upon it; and if they do so, and suffer from it, they can not recover compensation against the person who made the false statement." And see *Edwards v. Gurn*, 15 Ohio R. 502. *Aller v. Addington*, 11 Wend R. 375. *Saell v. Moss*, 1 Johns R. 96. *Perry v. Aaron*, 1 Johns R. 129. *Beach v. Cutlin*, 4 Day R. 284. *Smith v. Blake*, 1 Conn. R. 262. 1 Hilliard on Torts,