

that misrepresentation may recover damages from A, provided he falls within the category of those persons who are permitted to claim an indemnity for fraud from one with whom they have not directly dealt (c).

The application of the above doctrine to cases of this type seems to have been originally due to the desire of the judges who decided *Langridge v. Levy* to turn the flank of a troublesome problem. But before long its influence was manifested in a more positive form. In two cases (d) where no such evasion of the fundamental issue was possible, these judges committed themselves without reservation to the theory that, where the nature of the facts is such as to exclude the conceptions of a nuisance and of an inherently dangerous thing, fraud is not merely a possible ground, but the only ground upon which a stranger to a contract of sale could recover damages for injuries traceable to its non-performance. Whether there can be a recovery under this doctrine is obviously a mere question of fact,—was the defendant guilty of a fraudulent representation, and was the plaintiff one of those persons who have a right to be indemnified for injuries caused by reliance on that representation? Here again, as in (C.) ante, the doctrine operates so as to make the defendant's negligence, though in a different

(c) *Langridge v. Levy* (1837) 2 M. & W. 519; 4 M. & W. (Exch. Ch.) 337. The rationale of this case is clearly shewn by the following passage of the opinion of Baron Parke: "As there is fraud, and damage, the result of that fraud, not from an act remote and consequential, but one contemplated by the defendant at the time as one of its results, the party guilty of the fraud is responsible to the person injured." In a later case the principle of the decision was said to be, "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." Alderson, B. in *Winterbottom v. Wright* (1842) 10 M. & W. 109 (p. 115). Compare the remarks of Parke, B. in *Longmeid v. Holliday* (1851) 6 Exch. 761; and of Page-Wood, V.C. in *Burry v. Croskey* (1861) 1 John. & H. 1. It was also expressly stated in *Blake-more v. Bristol, &c. R. Co.* (1858) 8 El. & Bl. 1035 that wilful deceit was the ground of the decision (p. 1050).

(d) *Winterbottom v. Wright* (1842) 10 M. & W. 109; *Longmeid v. Holliday* (1851) 6 Exch. 761. The opinion of Cave, J. in *Heaven v. Pender* (1883) 9 Q.B.D. 302, shews that he regarded the law as being settled in this sense, and although the actual judgment of the Queen's Bench Division was reversed by the Court of Appeal (11 Q.B.D. 503), the reversal had no reference to this theory. The comment of Brett, M.R. on *Langridge v. Levy*, supra, that, "taking the case to be decided on the ground of a fraudulent misrepresentation made hypothetically to the son, and acted upon by him, such a decision upon such a ground in no way negatives the proposition that the action might have been supported on the ground of negligence without fraud," (*Heaven v. Pender*, L.R. 11 Q.B.D. 503, 512) seems to be shaped by a wish to minimize the effect of the case as one adverse to his own theory, to be noticed hereafter. (XII.) The later decisions by the same Court, as just cited, leave no doubt as to the intention of the judges to negative the plaintiff's right to recover, if his action had sounded in negligence alone. In *Collis v. Selden* (1868) L.R. 3 C.P. 405 (see III. ante), all the judges conceded that the plaintiff might have recovered, if he had established fraud.