

enforced, but, a supposed liability having turned out to be unfounded in law, we are now creating a new species of liability on a new contract, now for the first time to be implied, as to a warranty of authority, which, if the party now to be charged had been required expressly to give, he would probably have refused. If it is desirable to establish such a rule, it seems to me it should be done by legislative enactment; and that to establish it by judicial decision is to make the law, which it is only our province to expound."

This decision, which has been repeatedly followed, in later cases (see II Smith's L.C., 11th ed., p. 394), dealt, it should be noticed, only with a case of contract, the action being based solely upon contract.

In *Dickson v. Reuter's Telegraph Co.* (1877) 3 C.P.D. 1, the Court of Appeal refused to extend the principle of *Collen v. Wright*, so as to support an action for damages, caused by the negligence of defendants, a telegraph company, who delivered to the plaintiff a telegraph ordering a large shipment of barley, no such message having been, in fact, sent to the plaintiff. It was held that, inasmuch as the erroneous statement was not fraudulent, and there was no duty owing by the defendants to the plaintiffs in the matter, no action would lie. It was pointed out by Bramwell, L.J., that *Collen v. Wright*, properly understood, was not an exception to the general rule at law "that no action is maintainable for a mere statement, although untrue and although acted on to the damage of the person to whom it is made, unless that statement is false to the knowledge of the person making it," "but establishes a separate and independent rule."

*Collen v. Wright* was again considered, and its principle extended in the case of *Firbank's executors v. Humphreys* (1886) 18 Q.B.D. 54, where the question arose, whether the principle of *Collen v. Wright* was restricted to cases of contract, or no. Plaintiff was a contractor who had entered into a contract with a railway company to do certain work, for which he was to be paid in cash. Subsequently to the contract he agreed to waive his right to a cash payment, and to accept part of the payment in debenture stock which was issued to him by the directors. At the time when the new agreement was made, and the certificates were issued, the borrowing powers of the company were exhausted, although the directors were not aware of this, the facts having been mis-