

evidently, was to have a contract with the principal, therefore, the court, in treating the agent as a principal, and inflicting on him performance of the contract, or damages for the non-performance of it, were making a new contract for the parties, a contract which neither of them intended to make.

As to the remedy in case for false representation there was this difficulty. It was, in effect, holding a man guilty of a wrong who might not only be perfectly honest in his intentions, but perfectly free from any blame whatever. Take for example, a case where an agent had originally authority to contract, but it turned out that, unknown to both parties, the principal had died, so that in contemplation of law, as it then stood, there existed no principal. To hold the agent guilty of false representation in such a case would be obviously unjust.

Then came *Jenkins v. Hutchinson* (1849) 13 Q.B. 744, in which the remedy in contract was expressly denied. This was an action upon a charter party, signed by the defendant as agent for another person, without authority, but innocently. The court laid down the proposition broadly that he could not be sued upon the contract, whatever other rights the other contracting party might have.

Now, as regards the remedy in case for misrepresentation, the current of authority had been steadily setting in the direction of requiring some degree of fraud or dishonesty to be shewn before a party could be treated as a wrongdoer, and be made liable for damages in tort for false representations or deceit.

To support such an action, it was held to be necessary to shew, at least, that the representation was not only not true, but also that it was false to the knowledge of the party making it or, at all events, that he did not honestly believe it to be true.

Upon this state of the authorities, where a party had contracted as agent of another, without authority to do so, the other party had no remedy unless the alleged agent had either (1) expressly warranted or promised that he had authority or, (2) unless he was aware when he made the contract that he had no authority, or did it recklessly, in ignorance of whether he had any authority or not.

If he made the contract in good faith, honestly believing that he had the authority, he could not be made liable in the absence of an express warranty that he had the authority.