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INTENT TO DEFRAUD

To make a misrepresentation tortious it must be made with an intent to defraud. The question to be discussed in this article is the exact nature of that intent.

Intent or intention is a state of mind. Therefore its actual existence is really always a question of fact, though that fact, like any other fact, may be the subject of legal presumptions. This applies to intent to defraud. But the question whether a given state of mind, proved to exist, amounts to intent to defraud, is one of law.

Intention is of conduct or of consequences. Intention of conduct is a state of mind in which a person, whether or not he is actually doing anything at the time, looks forward to something to be done by him in the future, as where a burglar breaks and enters a dwelling with an intent to steal after he gets in. This kind of intention does not concern us here. Intent to defraud is intention of consequences. The word intent or intention will hereinafter be used only in the latter sense.

Intention of consequences is a state of mind in which a person at the time of doing an act looks forward to some consequence that may flow from his act.

Intention includes expectation of the consequence, i. e., belief that there is some probability that the act will produce the consequence. The degree of probability may seem to the actor very small; it is certainly not necessary that the happening of the consequence shall seem to him more likely than not. A may shoot B intending to hit him, though he knows perfectly well that, because of B's distance or his own want of marksmanship, the chance of hitting him is not one in a hundred. Any degree

of believed probability that is sufficient to lead to the doing the act is enough.

Austin says that expectation alone is sufficient for intention. This would compel us to say that a surgeon who performs a desperate operation intends to kill his patient. Perhaps he did not clearly distinguish between intention and recklessness or negligence, which distinction will presently be pointed out; or he may have been misled by the Latin etymology of the word. The examples he gives are cases where intention in the proper sense would not be necessary to liability. In our law there is no doubt that desire for the consequence is essential to its being intended; though there are at least *dicta* to the contrary. This is shown by the cases hereinafter cited to the effect that intention in the proper sense is necessary to intend to defraud. For instance, in *Peek v. Gurney*,¹ the defendants must have anticipated that some one would act on their representation as the plaintiff did, but they did not desire that, and therefore did not intend it. When any question arises as to the existence of intention in a given case, the doubt is usually about the desire, not about the expectation.

Those two elements, expectation and desire, make up what may be called simple intention. But there is sometimes a third element, namely, knowledge, or at least belief, of the existence of facts that make the conduct wrongful; not knowledge of the rule of law that forbids it. When such knowledge or belief is present, the intention is culpable. Thus if A, cutting timber on his own land, by mistake cuts over on to B's adjoining land, does he intend to cut B's trees? If simple intention is meant, yes. He intends to cut the very trees that he does cut, and they are in fact B's trees. If culpable intention is meant, no. He is ignorant of the fact that makes his act wrongful, the position of the boundary line. In that sense, he intends to cut only his own trees. So if A marries B's wife, supposing that B has died, he has a simple intent to marry another's wife. But if he knows that B is living but supposes that he has a legal right to marry her because B has deserted her, his intent is culpable. Much confusion, at least verbal confusion, has arisen from overlooking the distinction between simple and culpable intention. In the law of crimes, intention usually means culpable intention; in the law of torts it may have either meaning. Intent to defraud

¹ See note 5.

is culpable intention, belief of a fact, namely, that the representation is false, being an essential element in it.

Intention must be distinguished from recklessness. Recklessness is where a person does something which is unreasonably dangerous, i. e., where the probability of some injurious consequence ensuing is unreasonably great, knowing that the probability is such, knowing that he is taking an unreasonable risk of producing such consequence, not desiring the consequence, and therefore not intending it, but either not caring whether it happens or being willing for some reason of his own to take such a risk of producing it.

Recklessness sometimes has the same legal effects as intention. If so, it is often called intention or it is said that intention is conclusively presumed. The maxim that a person is presumed to intend the natural and probable consequences of his conduct is often quoted.² Those expressions are objectionable, because they are a misnaming of things or involve a useless and misleading fiction, and because recklessness is not always legally equivalent to intention. For convenience's sake the word wilfulness may be used to include culpable intention and recklessness, both of which involve a wrong choice known to be wrong. That is not so of simple intention, which may be a quite innocent state of mind.

Negligence is not a state of mind at all. It is conduct which in fact involves an unreasonably great risk of causing harm. It is usually due to carelessness or heedlessness, which is a state of mind, and consists in insufficient attention to the conditions or consequence of one's conduct. But it may be due to wilfulness, or on the other hand to mere error of judgment, though error of judgment, or conduct resulting therefrom, is not *per se* negligence. When a person is bound to use care, he must act as a reasonable and prudent man would in his situation, he must judge as such a man would judge whether a given risk is unreasonably great. If he is not in fact such a man, he may err and fall into negligent conduct, though in his mind he is not careless or wilful.

Intent to defraud, assuming for the present that the word intent is used in its proper sense, is made up of the following elements:

²That maxim has various other meanings, which need not be discussed here.

A. Intent to make a representation, to convey an idea to another. When the representation is made in words, there is seldom any question as to this element. But a fraudulent misrepresentation can be made by conduct without words. In such a case the question may arise, whether the actor really intended to make any representation at all, whether he intended that any one should draw from his conduct any inference as to the existence of a fact.

B. Intent to address or direct the representation to some one. If a misrepresentation is directed to one person, but comes to another who is deceived by it and acts upon it to his injury, there is no fraud against the latter. But a representation may be directed to a class of persons and so to each individual of that class, or even to the whole public, as in the case of a lying advertisement.³

C. Intent that the representation bear a certain meaning, amounting to the assertion of a certain fact. A representation may be capable of several meanings, in some of which it may be false and fraudulent and in others not.

D. Knowledge that the representation, in its aforesaid meaning, is false. This, as has been said, is the element that makes the intent amount to culpable rather than to mere simple intention.

E. Intent that the addressee shall believe the representation.

F. Intent that he shall act upon it in a certain way.

G. Intent that his so acting upon it shall produce a certain consequence. Such a consequence will hereinafter be called objective fraud. The simple name fraud is often applied to the intent to defraud. That is subjective fraud, a state of the actor's mind. Objective fraud is the effect upon another of his conduct. The nature of objective fraud will be discussed presently.

The rule that to make a fraudulent misrepresentation tortious it must actually be believed and acted upon is foreign to the present discussion. Such results may be intended, though in fact they never happen.

A to E constitute intent to deceive; when F and G are added, there is an intent to defraud. Intent to deceive is not legally wrongful. If a woman wears false hair or paints her face, she may intend to deceive, but usually not to defraud any one.

Under each of the above heads, except D, the question is whether the word intent is used in its proper sense, to connote desire as well as expectation, or in a looser sense; whether in

³ *Williams v. Wood*, 14 Wend. 126.

some or all of the cases something other than actual intention may not suffice. Of course intention is enough. When that is shown to be present, intent to defraud is proved. But often it is recklessness rather than intention that is present, and the question will be whether that is legally equivalent to intention. A similar question may arise as to carelessness, or even as to negligence, which, as has been said, is not a state of mind at all.

A. Here intention seems to mean intention in the proper sense; mere recklessness as to what conclusions others may draw from one's conduct is probably not enough.⁴ But the authorities are not perfectly explicit. However, when a representation is implied by law from the nature or circumstances of a transaction, there need not be any actual intention to make it, e. g. when a banker by receiving a deposit impliedly represents that he is solvent.

B. Here it seems to be settled in England that intention is necessary, as a general rule, and that recklessness as to whether the representation will reach some one for whom it was not strictly intended is not enough.

The defendants, the directors of a company, issued a false and fraudulent prospectus to induce the public to subscribe for stock. It was widely circulated and came into the hands of the plaintiff, who on the strength of it bought some of the company's stock, not from the company itself but from individual holders of it. Held: the defendants were not guilty of any fraud upon the plaintiff. They did not intend to make any representation to buyers of the stock in the market, but only to persons who might subscribe for stock and take it directly from the company.⁵ Here the defendants must have known that the prospectus would come into the hands of buyers; so that their conduct was at least reckless as to the plaintiff. The decision seems to mean that recklessness is not equivalent to intention here. Perhaps, however, the prospectus should be considered to have been directed to the public generally, and therefore to the plaintiff, but the defendants did not intend to have it acted upon in the manner in which the plaintiff did act upon it. If so, the case falls under F.

In the United States the rule is perhaps doubtful. It is not always clear from the decisions whether the court thought that recklessness as to the person to whom the representation might come was equivalent to intention, or that there was in fact in the

⁴ *Austin v. Great West Ry. Co.*, L. R. 2 Q. B. 442; *Crawshay v. Thompson*, 4 M. & G. 357, 5 Sc. N. R. 562, 11 L. J. C. P. 301.

⁵ *Peek v. Gurney*, L. R. 6 H. L. 377.

particular case an intention to direct it to the person who received and acted upon it.⁶

When the representation is made to one person to be repeated by him to another, it may be directed to the latter. In this case some authorities at least hold that it is not necessary that the maker of the representation should actually desire the repetition. It has been held sufficient that he makes it for the purpose of enabling the immediate addressee to repeat it if he chooses to, though the maker does not care at all whether he repeats it or not.⁷

If the maker of the representation does not intend that it shall be repeated and does not make it for the purpose of enabling the immediate addressee to repeat it, but believes that the latter intends to and will repeat it, it seems doubtful whether the representation should be deemed to be directed to the person to whom it is repeated. No express authority has been found, except in one class of cases. It has been considered that a person who sells a dangerous thing with a representation to the vendee that it is safe, knowing that it is to be used by a third person to whom the vendee will hand it over for use, thus impliedly repeating to him the vendor's representation, may be liable to such third person, if he is injured by it, for fraud, not merely for negligence. Here the vendor has no desire beyond merely to sell the thing; he does not care what the vendee does with it.⁸

But it has also been considered that in such cases the true ground of action was negligence rather than fraud.⁹

⁶ *Brackett v. Griswold*, 112 N. Y. 454, 20 N. E. 376; *Hindman v. First National Bank*, 112 Fed. 931, 50 C. C. A. 623, 57 L. R. A. 108; *Morgan v. Skiddy*, 62 N. Y. 319; *Prewitt v. Trimble*, 92 Ky. 176, 36 Am. St. Rep. 586, 17 S. W. 356.

⁷ *Stony Creek Woolen Co. v. Smalley*, 111 Mich. 321, 69 N. W. 722; *Peabody Building & L. Assn. v. Houseman*, 69 Pa. St. 261, 33 Am. Rep. 757; *Swift v. Winterbotham*, L. R. 8 Q. B. 244; reversed on other grounds L. R. 9 Q. B. 301.

⁸ *Langridge v. Levy*, 2 M. & W. 519, 6 L. J. Ex. 137, 4 M. & W. 337, 7 L. J. Ex. 387. See also *Huset v. J. J. Case T. M. Co.*, 120 Fed. 865, 57 C. C. A. 237, 61 L. R. A. 303; *Woodward v. Miller*, 119 Ga. 618, 100 Am. St. Rep. 188, 46 S. E. 847; *Roberts v. Anheuser-Busch Brewing Assn.*, 211 Mass. 449, 98 N. E. 95; *Kuelling v. Roderick Lean Mfg. Co.*, 183 N. Y. 78, 111 Am. St. Rep. 691, 75 N. E. 1098, 5 Ann. Cas. 124.

⁹ *Wells v. Cook*, 10 Oh. St. 67, 88 Am. Dec. 436; *Heaven v. Pender*, L. R. 1 Ex. 1.

The mere fact that, as the maker of the representation knows, the immediate addressee will be able to repeat it to a third person and so defraud the latter, will not be sufficient to charge the maker with an intent to have it repeated.¹⁰

In some cases, e. g. of a representation made to an agent about his principal's business or statements made by a person to a mercantile agency about his own financial condition, there seem to be legal presumptions that repetition is intended.

When a representation is communicated through one person to another in such circumstances that it can be deemed to be directed to the latter, it makes no difference through how many persons or by how circuitous a route it reaches the latter; nor need there be any intent to deceive any of the intermediate persons through whom it passes.¹¹

C. When words are used to express the intent of the parties to a juristic act, e. g. a contract or a statute, the law recognizes a kind of artificial legal meaning, which is taken as the true meaning, which is a question for the court. That meaning is meant in a general way to coincide with the intended meaning; and it is often said that the interpretation and construction of the words by the court is for the purpose of finding out what the parties intended. But the legal meaning may not in fact agree with the intended meaning; and direct evidence of the intended meaning is usually not admissible. Indeed there may be no intended meaning at all. The parties may have understood their words differently from the outset and never have intended the same thing; or, as often happens, it may be necessary to apply the words to some case which has arisen, which the parties did not foresee and as to which they had no intention whatever. But when words are used to commit a tort, as in slander or deceit and some other cases, there is no such artificial legal meaning. The meaning to be taken must be the intended meaning, the accepted meaning, i. e. the meaning in which the addressee actually understood the words, or a reasonable meaning—there are two or three different kinds of reasonable meanings.

There was for some time a tendency to hold that the maker of a representation might be responsible in an action for deceit for

¹⁰ *Ware v. Brown*, 2 Bond 267; *Magee Furnace Co. v. LeBarron*, 127 Mass. 115; *Singer Mfg. Co. v. Loog*, 8 App. Cas. 15.

¹¹ *Ford v. Foster*, L. R. 7 Ch. 611; *Sykes v. Sykes*, 3 B. & C. 541, 27 Rev. Rep. 420.

a reasonable meaning which the addressee put upon his representation, even though that was not the meaning which he intended it to carry.¹² This was really equivalent to making him liable for negligence. However, it is now settled that the intended meaning must be taken, i. e. the meaning that the maker of the representation intended that the addressee should put upon it, not some esoteric meaning that he may have contemplated in the secret recesses of his own mind.¹³

The intended meaning is of course a question of fact, and may be proved by the direct testimony of the maker of the representation himself, though the jury may not believe him.¹⁴ However, if the representation is not really ambiguous, if it is perfectly plain and capable of only one meaning, the court will reject evidence of any other meaning and hold that to be its meaning; but this rule should be applied only in a very clear case.¹⁵

Apparently recklessness has here been held equivalent to intention; i. e., if a person makes a representation knowing that it will probably be taken in a false sense, it is the same as though he intended it to be so taken.¹⁶ Under D, recklessness is no doubt sufficient for fraud; and there seems no good reason for any stricter rule here. The cases where a person believes his representation false and where he believes that it will be understood in a sense that will make it false, seem to be parallel. But recklessness must be distinguished from mere negligence in making a representation in such a form that it may be misconstrued.

D. Knowledge that the representation is false is not necessary, though it is often said to be. Belief that it is false is undoubtedly enough. Three states of belief are possible: (1) the maker of the representation may believe that it is false; (2) he may have

¹² *Moens v. Heyworth*, 10 M. & W. 147, 10 L. J. Ex. 177.

¹³ *Simon v. Goodyear M. R. Shoe Co.*, 105 Fed. 573, 44 C. C. A. 612, 52 L. R. A. 745; *Nash v. Minnesota T. I. & Trust Co.*, 163 Mass. 574, 47 Am. St. Rep. 489, 40 N. E. 1039, 28 L. R. A. 753; *Derry v. Peek*, 14 App. Cas. 337; *Hays v. Meyers*, 139 Ky. 440, 139 Am. St. Rep. 493, 107 S. W. 287; *Smith v. Chadwick*, 9 App. Cas. 187.

¹⁴ *Angus v. Clifford* (1891), 2 Ch. 449; *Nash v. Minnesota T. I. & Trust Co.*, 163 Mass. 574, 47 Am. St. Rep. 489, 40 N. E. 1039, 28 L. R. A. 753.

¹⁵ *Simon v. Goodyear M. R. Shoe Co.*, 105 Fed. 575, 44 C. C. A. 612, 52 L. R. A. 745; *Edgington v. Fitzmaurice*, 29 Ch. D. 459.

¹⁶ *Angus v. Clifford* (1891), 2 Ch. 449; *Singer Mfg. Co. v. Wilson*, 2 Ch. D. 434.

no belief at all as to its truth or falsehood, in which case he makes it recklessly; or (3) he may believe it true. (1) or (2) is fraudulent; i e., under this head, it is enough if the false representation is made wilfully.¹⁷

When the maker of the representation believes it to be true, the general rule is that it is not fraudulent; and this, even though he had no reasonable grounds for his belief or his belief was due to his own carelessness.¹⁸ A negligent or careless misrepresentation is not as such fraudulent. It is sometimes said that a person may be responsible for a false representation which he believed to be true, if he had no reasonable grounds for his belief. How far this may be so outside of the action for deceit, e. g., when the question is whether a person is to be estopped or charged with an equity because of some false statement of his, does not concern us here.

Even in an action for deceit, the fact that the maker of a false representation had no good ground for believing it, is evidence that he did not in fact believe it. But it is believed that it is no more than evidence; that statements as to its having an effect of its own to make the representation fraudulent, are not correct.

To the above general rule there are two exceptions. If the maker's belief is not *bona fide*, if he wilfully shuts his eyes for fear of finding out something that will prevent him from believing in the truth of a representation that he is going to make, his belief will not protect him from a charge of fraud—if indeed in such a case he can be truly said to believe.¹⁹ However, there is no rule that a person who foresees that he will have to make a representation must use active diligence to find out the truth. His not doing so would usually amount to mere negligence, which, as has been said above, is not equivalent to fraud.

¹⁷ *Sallies v. Johnson*, 85 Conn. 77, 81 Atl. 974, 26 Ann. Cas. 386; *Cooper v. Schlesinger*, 111 U. S. 148, 4 Sup. Ct. 360, 28 L. Ed. 382; *Nash v. Minnesota T. I. & Trust Co.*, 163 Mass. 574, 47 Am. St. Rep. 489, 40 N. E. 1039, 28 L. R. A. 753; *Kountze v. Kennedy*, 147 N. Y. 124, 49 Am. St. Rep. 651, 41 N. E. 414, 29 L. R. A. 360; *Griswold v. Gibbie*, 126 Pa. St. 353, 12 Am. St. Rep. 878, 17 Atl. 673; *Derry v. Peek*, 14 App. Cas. 337.

¹⁸ *Serrano v. Miller & T. Commission Co.*, 117 Mo. App. 185, 93 N. W. 810; *Wakeman v. Dalley*, 51 N. Y. 27, 10 Am. Rep. 551; *Derry v. Peek*, 14 App. Cas. 337; *Pittsburgh Life & T. Co. v. Northern Cent. L. Ins. Co.*, 148 Fed. 674, 78 C. C. A. 408.

¹⁹ *Griswold v. Gebbie*, 126 Pa. St. 353, 12 Am. St. Rep. 878, 17 Atl. 675; *Edgington v. Fitz Maurice*, 29 Ch. D. 459.

Secondly, when a person makes a principal false representation which he believes true, and to support that and induce the addressee to believe it, he makes some false collateral representation, e. g., that he has certain positive knowledge about the matter or has made certain investigations, knowing the collateral representation to be false or at least not believing it true, his want of belief in the truth of the collateral representation will make the principal one fraudulent, even though standing alone it would not be. Such collateral representations are in certain cases implied, and there is a multitude of decisions where makers of false representations believed by them to be true have been held guilty of fraud, because of the falsity of an implied collateral representation.²⁰

E. Whether under this head actual intention is necessary or recklessness will suffice, no authority has been found.

F. There must not only be an intent that the representation be acted upon, but that it be acted upon by the addressee and in a particular way. If it is acted on by some one else or in a different way, there is no fraud as to that.

If A makes a misrepresentation to B to induce B to buy a house, but B does not buy, and afterwards C buys it and then applies to B to lend him money on a mortgage of it, and B lends on the strength of A's representation, there is no fraud by A upon B.²¹

The defendant made fraudulent misrepresentations to the plaintiff to induce him, as agent for his brother, to buy sheep for his brother. The plaintiff bought them for his brother, and afterwards, relying on the false representations, bought them for himself from his brother. Held: he could not have an action against the defendant for the fraud. The representations were made to be acted upon by his brother through him as agent, not by himself personally, and to be acted upon in a different manner.²²

Here we have passed beyond the intent to deceive, and are dealing with the intended consequences of an accomplished deception.

²⁰ *Lehigh Zinc & I. Co. v. Barnford*, 150 U. S. 665, 14 Sup. Ct. 219, 37 L. Ed. 1215; *Chatham Furnace Co. v. Moffatt*, 147 Mass. 403, 9 Am. St. Rep. 727, 18 N. E. 168; *Wakeman v. Dalley*, 51 N. Y. 27, 10 Am. Rep. 551; *Mendenhall v. Stewart*, 18 Ind. App. 262, 47 N. E. 943; *Lynch v. Mercantile Trust Co.*, 18 Fed. 486, 5 McCrary 623.

²¹ *Peek v. Gurney*, L. R. 6 H. L. 377, per Ld. Cairnes.

²² *Wells v. Cook*, 16 Oh. St. 67, 88 Am. Dec. 436.

Even if intent in the strict sense be necessary to the intent to deceive, it does not follow that the same principles should apply here. A person is often held responsible in law for consequences of his conduct on the ground that they were probable, though he had no intent to produce them or was not even reckless as to them. When a person has gone so far as intentionally to deceive another in a transaction, may he not justly be held liable for even merely probable consequences of the deception?

Undoubtedly an actual intention that the representation be acted upon is enough. There is some authority for holding that intention is necessary. As has been said, the decision in *Peek v. Gurney*²³ might be put on that ground, and it seems to have been considered that that was the true ground, and that intention was necessary.²⁴

On the other hand there seems to be some authority for the rule that a sufficient probability that the representation will be acted upon to render the making of it negligent will suffice.²⁵ There are many authorities to that effect under G, and perhaps the same principles should apply here. The present writer remains in doubt.

G. There must be an intent that by the representation being acted upon a consequence of that action shall be produced, which I have called objective fraud. A person who has suffered an objective fraud is said to be defrauded. He is usually the addressee himself, who acts upon the representation to his own injury, but may be a third person to whose injury the addressee acts.

If a person sells goods fraudulently by the use of another's trade mark, the buyer, the addressee, who acts on the false representation, is defrauded. So is the owner of the trade mark.

As to the addressee himself, objective fraud has the following meaning. When a person is deceived by and acts upon a false representation, he does or parts with something, renders something, in the expectation that he or a third person will receive something or will accomplish something. He is defrauded when because of the falsity of the representation, of the non-existence

²³ Note 5.

²⁴ *Cheney v. Dickinson*, 172 Fed. 109, 96 C. C. A. 314, 28 L. R. A. (N. S.) 359.

²⁵ *Zabriskie v. Smith*, 13 N. Y. 322, 64 Am. Dec. 551; *DeGraves v. Smith*, 2 Camp. 533; *State v. Fox*, 79 Md. 514, 47 Am. St. Rep. 424, 29 Atl. 601; *Philpot v. Taylor*, 75 Ill. 309, 20 Am. Rep. 241.

of the fact represented to exist, he is led to render something different from what he supposes himself to be rendering, or he or such third person does not receive or accomplish what he expected. The difference above spoken of is not necessarily, though it usually is, a difference in value. The question is of identity, not of value. A person may be defrauded in a transaction in which he makes a pecuniary gain. Objective fraud of this kind, like a violation of a right, imports damage, and is a ground for the recovery of at least nominal damages.

In case of a misrepresentation about a person's solvency, the person defrauded gets the obligation of a person less able to perform it than he thought.²⁶

If a person by a false representation that the title is clear is induced to buy a piece of land that is subject to a mortgage, he is defrauded even before the mortgage lien is enforced.²⁷

If a man by misrepresentation is induced to marry an unchaste woman supposing her chaste, he is defrauded. He gets a different kind of a wife from what he expected.²⁸

The defendant induced the plaintiff to exchange a yoke of oxen for a horse of the defendant, by a false representation that the horse was sound. Even though unsound, the horse was worth more than the oxen. Held: the defendant was nevertheless guilty of fraud.²⁹

When the person defrauded is not the addressee but a third person, apparently any kind of loss or damage amounts to objective fraud, e. g., bodily injury.³⁰ Usually, however, the loss is pecuniary.

The defendant was employed by a high school committee to examine candidates for admission to the school and report the result to the committee. The plaintiff was a candidate. The defendant fraudulently made a false report about the plaintiff, wherefor he was refused admission. This the court thought a fraud upon the plaintiff.³¹

²⁶ *Briggs v. Brushaber*, 43 Mich. 330, 38 Am. Rep. 187, 5 N. W. 383.

²⁷ *Linn v. Green*, 17 Fed. 407, 5 McCrary 380.

²⁸ *Kujek v. Goldman*, 150 N. Y. 176, 55 Am. St. Rep. 670, 44 N. E. 775, 34 L. R. A. 156.

²⁹ *Murray v. Jennings*, 42 Conn. 9, 19 Am. Rep. 527.

³⁰ *Langridge v. Levy*, note 8; *State v. Fox*, 79 Md. 514, 47 Am. St. Rep. 424, 29 Atl. 601.

³¹ *Hammond v. Hussey*, 51 N. H. 40, 12 Am. Rep. 41.

False representations to a person's customers to induce them not to continue to trade with him, may be fraud upon him.³²

When an objective fraud is intended, the ulterior motive of the maker of the representation is immaterial; a bad motive is not necessary, nor will a good one excuse him. He need not intend to cause any actual harm or loss.³³

A false representation made merely by way of a practical joke, if intended to deceive and to be acted upon so as to produce an objective fraud, is fraudulent.³⁴

It is wrong to obtain payment of a just debt by fraud.³⁵

As to the meaning of intention here, some authorities seem to take the view that intention in the proper sense is necessary,³⁶ while others seem to hold that the mere probability that objective fraud will result, i. e., negligence, is enough.³⁷

No doubt intention is usually present, and may usually be *prima facie* presumed under the rule that a person is presumed to intend the natural and probable consequences of his acts; and that may have led to the use of the word intention in a loose way.³⁸

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³² *Hollenbeck v. Ristine*, 105 Iowa 488, 67 Am. St. Rep. 306, 75 N. W. 355.

³³ *Peek v. Gurney*, L. R. 13 Eq. 79; *Oakes v. Turquand*, L. R. 2 H. L. 325; *Nash v. Minnesota T. I. & Trust Co.*, 163 Mass. 574, 47 Am. St. Rep. 489, 40 N. E. 1039; *Brackett v. Griswold*, 112 N. Y. 454, 20 N. E. 376; *Einstein v. Marshall*, 58 Ala. 153, 29 Am. Rep. 729.

³⁴ *Wilkinson v. Downnton* (1897), 2 Q. B. 57.

³⁵ *Blake v. Blackley*, 109 N. C. 257, 26 Am. St. Rep. 556, 13 S. E. 786.

³⁶ *Cheney v. Dickenson*, 172 Fed. 109, 96 C. C. A. 314, 28 L. R. A. (N. S.) 259; *Morris v. Talcott*, 96 N. Y. 100; *Peek v. Gurney*, L. R. 13 Eq. 79.

³⁷ *State v. Fox*, 79 Md. 514, 47 Am. St. Rep. 424, 29 Atl. 601; *Philpot v. Taylor*, 75 Ill. 309, 20 Am. Rep. 241; *Wiser v. Lawler*, 189 U. S. 260, 23 Sup. Ct. 624, 47 L. Ed. 802; *Hexter v. Bast*, 125 Pa. St. 52, 11 Am. St. Rep. 874, 17 Atl. 252. See cases in note 8.

³⁸ *Barnes v. Union Pacific Ry. Co.*, 54 Fed. 87, 4 C. C. A. 199.