

TAPPAN V. DARLING.

{3 Mason, 101.}¹

Circuit Court, D. Massachusetts. Oct. Term, 1822.

DECEIT—FALSE AFFIRMATION OF CREDIT—GOOD FAITH—GIST OF ACTION.

In an action for a false affirmation of the credit of another, the action is not sustained, if the representation was in substance true, according to the party's knowledge and belief. The gist of such an action is fraud.

Case for a false affirmation of the credit of one Samuel Darling, the brother of the defendant [Joshua Darling], whereby the plaintiff [Charles Tappan] was induced to trust him for \$665 75, with the usual averment, that the plaintiff had wholly lost the same, Samuel Darling being insolvent, &c. At the trial, a letter, addressed by the defendant to the plaintiff on the 6th of October, 1818, with an indorsement on it of Samuel Darling as bearer, was produced, containing this clause: "All I can say, he (Samuel Darling) has always met his payments well in Boston, and owes little or nothing there now. I have none of your fifty per cent, profit, and therefore dont indorse for him, because my brother dont ask it." Upon the faith of this letter the plaintiff, on the 1st of November, 1818, trusted Samuel Darling for merchandise bought, to the amount of \$665 75. There was a good deal of evidence in the cause, to show that, some years before this period, Samuel Darling had been in embarrassed circumstances, and had failed, and was obliged to compromise with his creditors, and that his credit was not afterwards good. On the other hand, it was proved, that the defendant had trusted Samuel Darling, in 1818, to a considerable extent; and that he might have obtained credit for sums not large.

Willard Phillips, for plaintiff.

Mr. Webster, for defendant

STORY, Circuit Justice, in summing up the case to the jury, told them, that the question was, whether the representation was true in substance, according to the defendant's knowledge and belief. If so, the action could not be maintained, for it was founded on a supposed fraud; and that fraud must be proved, as it formed the gist of the action. Verdict for defendant.

¹ [Reported by William P. Mason, Esq.]

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