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WHAT ARE CRIMINAL FALSE PRETENCES?

IN England and in nearly all, if not all, of the American states, there are statutes against what is called obtaining goods by means of false pretences. By some of these statutes this offence is made a misdemeanor, by others a felony. The statute 24 and 25 Vict., ch. 96, sect. 88, provides that: "Whosoever shall, by any false pretence, obtain from any other person any chattel, money or valuable security, with intent to defraud, shall be guilty of a misdemeanor." The statutes upon this subject are generally of a similar character; and are the outgrowth of the common-law doctrine upon the subject of cheats. They have been enacted to meet the wants of "the extended trade and more refined culture of modern times," which "require a certain degree of universal confidence to be placed in the mere verbal representations of men." It may be safely affirmed as a question of morality, that any attempt by one party to influence another by artifice or trick, and to induce him to part with his goods without receiving a true equivalent therefor is vicious. But it must not be understood that every immoral attempt to obtain an advantage in trade is criminal. "These statutes," says a learned author, "are construed in reference to the spirit and reasons of the common law; and they do not, therefore, extend, as the non-professional reader might suppose, to every imaginable kind of false pretence:" Bishop's Cr. Law, vol. 1, § 1019. What, then, are false pretences within the statute? In *Regina v. Lince*, 12 Cox's Cr. Cas. 451,

the pretence charged was that the prisoner lived at a certain beer-house and was the landlord thereof, and this was held to be within the statute; the evidence showed that the prisoner did not say he was the landlord, but only that he lived at the house; and the prosecutor testified that he was influenced by the belief that the prisoner was the nephew of his servant as well as by his assertion that he was the occupier of the beer-house; the prisoner was found guilty and the case was reserved for the opinion of the court of criminal appeal. Upon the appeal it was held that the pretence proven was sufficient to sustain the conviction, and that it was immaterial "that the prosecutor was influenced by other circumstances than the false pretence."

In *Regina v. English*, Ch. J. COCKBURN held that it was criminal to falsely pretend, with intent to defraud, that a certain field was a good and profitable brick-field; and that it was sufficient to show that the prosecutor was partly influenced to do what he did by the pretence: 12 Cox's Cr. Cas. 171.

In *Regina v. Jennison*, 1 Leigh & Cave 157, the prisoner had falsely represented to a woman that he was unmarried, and promised to marry her, by means of which he obtained money from her. It was held that the false promise was not the subject of an indictment, but that the false pretence was. See *Rex v. Young*, 3 Term R. 98; *Rex v. Airy*, 2 East 30; *Regina v. Capeland*, Car. & Marsh. 516.

The secretary of an Odd Fellows' lodge falsely represented to a member that he owed the lodge a sum of money, and so obtained the money; and it was held that he was rightly convicted of obtaining money by false pretences: *Reg. v. Wooley*, 1 Den. C. C. 559.

To falsely pretend that one lives with and is employed by another, is within the statute: *People v. Johnson*, 12 Johns. 292. In *People v. Dalton*, 2 Wheeler's Cr. Cas. 161, the defendant had falsely pretended that he was a grocer and resided at a particular place, and it was held to be criminal.

A false statement by a buyer of goods that he was solvent and never had a note protested, was held a criminal false pretence: *People v. Haynes*, 11 Wend. 557. This case was afterwards reversed, but not upon this question; s. c. 14 Wend. 547. See *Commonwealth v. Davidson*, 1 Cush. 33.

In *Thomas v. The People*, 34 N. Y. 351, the pretence charged

was that the defendant was a chaplain in the army, and it was held sufficient.

It is a pretence within the statute to falsely represent that a bank check is good and of the value stated on its face: *Maley v. The State*, 31 Ind. 192.

Pretences as to a person's pecuniary condition, or his business, situation, residence, or standing in life, have all been held criminal, if made falsely with intent to defraud; and the cases cited furnish illustrations. The general principle to be deduced from these cases is: that whenever a person falsely represents, as an existing fact, that which is not an existing fact, with knowledge of the falsity of the representation, and with intent to defraud, and so obtains anything of value, the offence is complete.

Some of the American cases lay down the doctrine that the pretences, to be criminal, must be of a character calculated to deceive a man of ordinary caution: *State v. Simpson*, 3 Hawks 620; *People v. Haynes*, 11 Wend. 557; *State v. Magee*, 11 Ind. 154.

The construction of the statute given by these cases is certainly open to criticism. It is not warranted by the language of the statute, which speaks of "any false pretences," and it requires the selection of an ideal intelligence, and tests all cases by the inquiry, whether the pretences are such as are likely to mislead the person possessing this intelligence.

If by means of any false pretences one person obtains the property of another with intent to defraud, it ought to be said, as was said in *Greenough's Case*, 31 Verm. 279, "it is no good reason for the offender to allege that, by the use of due diligence or ordinary care, the imposition might have been prevented."

If the principle, that want of caution on the part of the victim is a sufficient shield for the swindler, is sound, there is no reason why it should not be extended to other offences. In an unguarded moment a rascal obtains another's money by a trick; the owner of a horse leaves his stable door unlocked, and a thief steals the horse; when the first is prosecuted he says: "This man was a fool; if he had exercised ordinary caution, I could not have imposed upon him;" and the law acquits him; when the horse-thief is put upon trial, he says: "If the owner of this horse had used ordinary caution and locked his stable door I could not have stolen his horse;" and must not the law acquit him also? To be consistent it must. The illustration demonstrates the absurdity of the doctrine. It is nothing

more than the introduction into the criminal law of the principle that negligence on the part of the victim constitutes a defence for the criminal. The true principle is: "If the prosecutor believed the pretence, and parted with his property relying on it, there is no need he should have acted in the transaction with ordinary care and caution:" Bish. Cr. Law, vol. 2, § 440.

It is practicably impossible "to estimate the weight of a false pretence only by its effect. It is not an absolute thing, to be handled and weighed, as so much material substance; it is a breath issuing forth from the mouth of man, and no man can know what it will accomplish only as he looks at its effect. * * * And no man of business was ever found so wary as not to commit at some time in his life a mistake therein, which any jury of twelve men would say on their oath could not be done by a man of ordinary judgment and discretion:" Bish. Cr. Law, vol. 2, § 416.

In *Young's Case*, 3 Term R. 98, ASHHURST, J., thought the interpretation of the statute could not be restrained "to such false pretences only, against which ordinary prudence cannot be supposed sufficient to guard." And this it seems is the view taken by the English courts at this day. See Russell on Crimes, vol. 2, p. 288; and Mr. Greaves's note.

In *Jones v. The State*, 50 Ind. 473, the court states the true doctrine upon this subject when it says, the laws "are not made for the protection of the shrewd and vigilant man only, but for the entire community." But with singular inconsistency the learned judge who wrote the opinion continues to say: "In the enactment of criminal laws the legislature adopts, as a standard of intelligence, neither the highest nor the lowest, but the medium." What is the medium? Such a standard is purely ideal. Where is that man to be found who possesses the exact medium between the highest and the lowest intelligence? In the application of such a rule the result will vary according to the views of the individual who occupies the position of judge. One may think the means employed calculated to deceive a person of ordinary caution; another may think none but a fool would be imposed upon by such means. If such a standard is adopted is the law a protection for the "entire community?" Where is to be found the protection for that unfortunate class who are below the medium in intelligence? If the law is designed to protect the entire community, then the lowest in intelligence as well as the highest, the most imprudent, incautious and

credulous are within its pale as well as the shrewd and vigilant; and it is safe to say that the former more frequently than the latter need the protection of the law. If the law is designed to protect only those who are of medium intelligence and of ordinary prudence and caution, then all who are below this standard are at the mercy of every trickster, and may be cheated *ad libitum*.

There is no principle which will support such a construction of the statute against false pretences. The criminal quality of an act resides in the intention, and does not depend upon the means adopted to accomplish it. If the criminal intent is manifest, it will not do to say the act is not criminal because the means employed to accomplish it were not such as are ordinarily calculated to produce the result intended.

If I kill a man with felonious intent, shall I say I am not guilty of murder solely because I employed an agency not ordinarily calculated to produce death?

It may be more difficult to derive the intent from the act in such a case, but the intent once established, the act is criminal in the same degree as if the means employed had been such as are ordinarily adequate to the end sought. So it may be more difficult in a case of false pretences to derive the intent to cheat from pretences not ordinarily calculated to deceive; but when the intent is established, the accused cannot exonerate himself by saying that the person cheated ought not have relied upon the pretences. This exposition of the law may not commend itself to that class of persons who think it neither immoral nor unlawful to resort to artifices, tricks and false pretences in their dealings with their fellow-men; but to honest, candid men, who believe that perfect integrity in business transactions is a jewel that should be preserved untarnished, the construction of the statute contended for in this paper will appear just, not only according to its letter, but upon the broadest principles of morality.

Using the language of one of the most eminent judges that ever sat in any court, "I am yet to learn that a law which punishes a man for obtaining the property of his unsuspecting neighbor, by means of any wilful misrepresentation, or deliberate falsehood, with intent to defraud him of the same, is establishing a rule of morality which will be deemed too rigid" for respectable and fair business men.