

course of business till after those other cheques would be paid, and that there would be no funds for it; and that he deliberately planned that the cheque should be used as it was. If so, it would be unnecessary even to consider whether the actual delivery of the cattle was after he knew that the cheques had been used.

Under sec. 404 and 405 of the Criminal Code, 1906, the false pretence must be a representation of a matter of fact, either present or past: but it is not necessary that it shall be by words. It may be by acts, that is, by "words or otherwise:" sec. 404; and see *Regina v. Bull* (1877), 13 Cox C.C. 608, and *Regina v. Murphy* (1876), ib. 298.

The giving of a cheque in payment for goods under such circumstances is a representation not necessarily that there are actual funds at the drawer's credit in the bank at the moment to meet it, but at least either that there are such funds and that he has done nothing to interfere with the payment of the cheque thereout, or that he has then such credit arrangements with the bank to the amount of the cheque that it will be paid on presentation: *Regina v. Hazelton*, L.R. 2 C.C.R. 134, 135; *Regina v. Jones*, [1898] 1 Q.B. 119, 123; and see *Rex v. Cosnett* (1901), 20 Cox C.C. 6. It may be also a representation that he has then no intention of doing anything thereafter to interfere with the payment; but it is not necessary here so to infer, or to consider the question. Garten had no such credit arrangements, and no reason to suppose that the bank would allow him to overdraw his account; and, while it may be possible that, at the moment of the issue of the cheque or even at the moment of the delivery of the cattle, there was sufficient funds at his credit to meet the cheque, yet he had done four acts any one of which would prevent its payment. The representation was, therefore, false as to an existing fact.

That it was made through Glazer does not absolve Garten, even if Glazer were innocent of any knowledge of the falsity or of the intended fraud. Glazer was merely the medium used—just as a letter might be the medium of making the statements. He was the mouthpiece or hand, but not less the instrument, of Garten. The actual presence of Garten when the false representation was made was not necessary. In *Regina v. Sans Garrett* (1853), 6 Cox C.C. 260, on a charge of attempting to obtain money by false pretences, Lord Campbell, C.J., said: "A person may, by the employment as well of a conscious as of an unconscious agent, render himself amenable to the law of England, when he comes within the jurisdiction of our Courts."