

Where goods are obtained on the faith of the buyer's cheque given in payment therefor, a charge of false pretence of an existing or present fact, as distinguished from a future event, is sustainable, although there may have been funds in the bank to the credit of the drawer at the precise time of delivery of the cheque or of the receipt of the goods, if it be shewn that the drawer issued other cheques at about the same time, the payment of which had been planned to so reduce the fund that the cheque in question would be dishonoured and that the drawer had no credit arrangements with the bank for an overdraft. *R. v. Garten*, 22 Can. Cr. Cas. 21, 13 D.L.R. 642.

A charge of obtaining goods by false pretences through the giving in payment by his agent of a worthless cheque against the principal's account will lie against the principal if it be shewn that the latter deliberately planned that the cheque should not be paid for lack of funds at his credit in the bank and had re-sold the goods and applied the proceeds to his own use, and this whether or not the agent was aware of the fraud. *R. v. Garten* (1913), 22 Can. Cr. Cas. 21, 29 O.L.R. 56, 13 D.L.R. 642; *R. v. Garrett*, 6 Cox C.C. 240; *R. v. Hazelton*, L.R. 2 C.C.R. 134, 13 Cox C.C. 1.

The giving of a post-dated cheque implies no more than a promise to have sufficient funds in the bank on the date thereof and is not, in itself, a false representation of a fact past or present. *R. v. Richard*, 11 Can. Cr. Cas. 279.

False pretences may be founded on the false idea conveyed fraudulently by the accused: it is not requisite that the false pretence should be made in express words. *R. v. Holderman*, 23 Can. Cr. Cas. 369, 19 D.L.R. 748.

A person may be convicted of obtaining the return to himself of his own promissory notes from the payee if such return is obtained under false pretences, and it is not a ground of defence that the notes were overdue when so obtained. *Abeles v. The King* (1915), 24 Can. Cr. Cas. 308, 24 Que. K.B. 260.

In Stephen's Digest of the Criminal Law, p. 161, it is said:—

"The words, 'Whosoever shall, by any false pretence, obtain, from any other person, any chattel, and with intent to defraud,' seem simple enough, but they are obviously open to an interpretation which would make any dishonest breach of contract criminal. A man who buys goods, which he does not intend to pay for, may be said to obtain them by a false pretence of his ability and intention to pay. The Courts, however, soon held that this was not the meaning of the statute, and that, in order to come within it, a false pretence must relate to some existing fact. . . . A mere lie, told with intent to defraud, and having reference to the future, is not treated as a crime. A lie, alleging the existence of some fact which does not exist, is regarded as a crime, if property is obtained by it."