

IN THE FIJI COURT OF APPEAL
Criminal Appeal No. 26 of 1986

Between:

FRED REYNOLDS Appellant

- and -

R E G I N A M Respondent

Noor Dean for the Appellant
Director of Public Prosecutions (M.D. Scott)
for the Respondent

Date of Hearing: 30th June, 1986.

Delivery of Judgment: 4th July, 1986.

JUDGMENT OF THE COURT

Roper, J.A.

This is an appeal against conviction on a charge pursuant to section 310(a) of the Penal Code (Cap.17) of obtaining credit by false pretences. The case was heard in the Magistrate's Court, and on appeal to the Supreme Court the conviction was affirmed.

The particulars of offence in the charge read :-

"FRED REYNOLD, between the 3rd day of November, 1985 and 27th day of November, 1985 at Lami in the Central Division, in incurring debt of \$300.39 with Tradewinds Hotel, obtained credit for himself and his wife by falsely pretending that he will pay the said amount before vacating the hotel."

When the Appellant booked into the Tradewinds he said that he would be staying for a month. He was then told by the receptionist that he would be required to settle his account at the end of each week. The Appellant apparently agreed to that but did not pay despite requests from various members of the staff. From time to time the Appellant was away from the hotel overnight although he still retained the room. On about the 23rd November the hotel manager Mr. Oliver confronted the Appellant. There was a heated exchange at the conclusion of which the Appellant stalked off with the comment that Oliver would have to wait until the Tuesday the 26th for his money. On that day a formal letter of demand for payment was left in the Appellant's hotel room. On the 27th hotel staff found that the Appellant's belongings had been removed from the room although he still had the room key. Some of his property was later returned to the room. An attempt was made to prevent the Appellant leaving by letting down the tyres of his car. He drove off regardless but soon broke down and was returned to the hotel by the Police. He told the Police he was still a guest at the hotel and some of his belongings were still in the room. His plea throughout was that he only paid hotel bills when he checked out and he had intended doing that on this occasion. The Appellant had stayed at the hotel previously and there had been no problems on those occasions.

The learned Magistrate expressed himself satisfied that the Appellant had had no intention of paying his account, and on appeal to the Supreme Court the learned Judge held that there was ample justification for that finding.

On this present appeal only one ground was argued and it concerned an aspect of the case which unfortunately had not been raised at the earlier hearings. The case against the Appellant as disclosed in the Particulars of Offence was that he had obtained credit by a false pretence, namely a false representation that he would pay his hotel bill before he left the hotel. A false pretence is defined in section 308 of the Penal Code (Cap.17) as :

"308. Any representation made by words, writing or conduct, of a matter of fact, either past or present, which representation is false in fact, and which the person making it knows to be false, or does not believe to be true, is a false pretence."

The law is clear that in relation to the offence of false pretences a representation of the existence of a present intention to perform a promise is not a representation of an existing fact, and is not by itself a false pretence in criminal law.

In Greene v. The King (1949) 79 C.L.R. 353
Latham C.J. said at p357 :

"For centuries lawyers have quoted the saying of Brian C.J. - 'The thought of man is not triable, for the devil himself knows not the thought of man': Y.B. 17 Ed. IV.1. Yet through those same centuries lawyers have been continuously concerned with questions of the existence or the non-existence of states of mind. But the doctrine of mens rea in criminal law and the necessity to prove intent in various torts have not destroyed the popularity of the dictum of Brian C.J. In Edgington v. Fitzmaurice (1885) 29 Ch.D. 459, at p.483 Bowen L.J. said:

'The state of a man's mind is as much a fact as the state of his digestion,' and this saying is as popular, but not as ancient as that of Brian C.J. The courts, however, in their consideration of the criminal law relating to false pretences, have been reluctant to admit that a psychological fact can be a fact or that a statement that a psychological fact exists can be a statement that a fact exists. It has been held again and again in relation to the offence of false pretences that a representation of the existence of a present intention to perform a promise is not a representation of an existing fact."

and Dixon J. at p362 :

"The rule that a false representation on the part of the prisoner as to his intention does not amount to a false pretence has perhaps been salutary. For in spite of all that has been said about a state of mind being a state of fact, it is not often a state of fact about which anyone can be sure, even the man himself, and, if the law were otherwise, the risk would be great of men being convicted of false pretences because juries failed to distinguish between false promises and broken promises."

And in R. v. Dent (1955) 2 Q.B. 590 Devlin J., delivering the judgment of the Court of Criminal Appeal, said at p595 :

"Whatever the position may be in civil cases, we are satisfied that a long course of authorities in criminal cases has laid it down that a statement of intention about future conduct, whether or not it be a statement of existing fact, is not such a statement as will amount to a false pretence in criminal law."

The situation may arise where a person's ability to act in a particular way in the future will depend on circumstances existing in the immediate present. In such a case it is likely that his promise to act in that way in the future will be accompanied by a representation, express or implied, as to the present existence of the circumstances which will enable him to carry out his promise. This point is illustrated by the case of R. v. Jennison (1862) Leigh & Cave 157. There the Accused obtained money from a woman by saying falsely that he was an unmarried man and that he intended to marry her. The Court held that while the false promise to marry could not be the subject of a charge, the accompanying false pretence that he was unmarried could be.

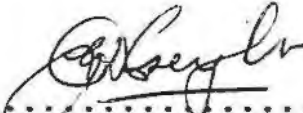
In the present case there was no representation which related to an existing state of fact unless it was an implied representation that he was a man of sufficient means to meet his hotel bill. Such a representation does not help because it appears from the record that he did indeed have the means so the representation was not false.

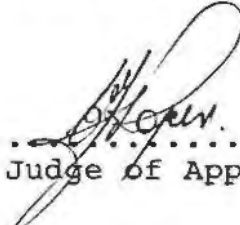
The Appellant could have been charged with obtaining credit by fraud other than by a false pretence pursuant to section 310(a). Such a case was R. v. Jones (1898) 1 Q.B. 119. There the defendant ordered a meal in a restaurant, making no verbal representation at the time as to his ability to pay. At the end of the meal he said he had no money. It was held

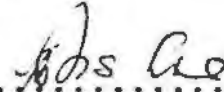
that he could not be convicted on the basis of a false pretence but was liable to conviction on a charge of obtaining credit by fraud.

It is open to this Court to substitute for the conviction in the lower Court on one charge a conviction on another charge if the facts justify a finding of guilt on that other charge. We are not satisfied that the facts do justify a substitution in this case, but in any event it would not be appropriate at this stage. The case was presented in the lower Court as one of false pretences and the defence was limited to meeting that allegation.

The appeal is allowed, the conviction is set aside and the sentence quashed.


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Vice President


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Judge of Appeal


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Judge of Appeal