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May 11.

[CROWN CASE RESERVED.]

THE QUEEN *v.* GORDON.

*Criminal Law—False Pretences—“Prepared to pay”—Valuable Security—
24 & 25 Vict. c. 96, s. 90.*

The prisoner was convicted on an indictment charging that by the false pretence to the prosecutors that he “was prepared to pay to them or one of them” 100*l.*, he did then unlawfully and fraudulently induce the prosecutors to “make a certain valuable security,” to wit, a promissory note for 100*l.*, with intent thereby to defraud them :—

Held, first, that the indictment was good, as it must be taken by necessary inference to allege a false pretence by the prisoner of an existing fact, viz., that he was prepared to pay the prosecutors 100*l.*, and had the money ready for them on their signing the promissory note; secondly, that the indictment shewed an offence within 24 & 25 Vict. c. 96, s. 90, of fraudulently causing a person to “make a valuable security” although the promissory note in question might not be of value until it had been delivered into the hands of the prisoner.

CASE stated by Lord Coleridge, C.J.

The prisoner was tried before the Lord Chief Justice at Worcester on an indictment of which the following is an abstract :

The charges were,—first, on June 5, 1889, with intent to defraud, obtaining from Richard Summers Brown 10*s.* 6*d.* by false pretences that he was prepared to advance 100*l.* to him “at lower interest than was charged to others,” and that all advances were repayable by easy instalments, to suit applicants; second count, on January 9, 1889, with like intent, obtaining from Richard Summers Brown and Richard Brown a promissory note for 100*l.* by false pretences “that he was prepared to pay them or one of them by way of loan 100*l.*;” third count, same date, with like intent, obtaining from them the said note for 100*l.* by false pretence “that a document then presented for signature was a mere receipt for moneys advanced;” fourth count, same date, with like intent, inducing them to make said promissory note for 100*l.* by false pretence “that he was prepared to pay to them or one of them 100*l.*.”; fifth count, same date, with like intent, fraudulently inducing them to execute said note for 100*l.* by false pretence “that he had agreed with said Richard Summers Brown to lend and was ready to pay over 100*l.*”

The evidence was set out in the case. It was to the following effect, viz.: that the wife of the prosecutor, Richard Summers Brown, a farmer, saw, on December 27 the following advertisement in a newspaper:

"Cash immediately advanced from 5*l.* to 500*l.*, at lower interest than charged by others, to farmers, &c., on their own security, without bondmen, on note of hand alone, repayable by easy instalments to suit applicants. All communications are received in strict confidence. No genuine application refused, and honourable and straightforward transactions guaranteed. Intending borrowers are invited (before applying elsewhere) to apply to

"Mr. J. Gordon, 6, Bridge Street, Worcester.

"Town or country. Distance no object.

"Letters immediately attended to.

"Established 1851."

She read this to her husband; they were in want of money, knew Gordon before, went to his office and asked for 100*l.*, and he, after inquiring and being told what stock they had on the farm, said he should be very pleased to lend it, that there would be 10*s.* 6*d.* for expenses, that it would be necessary to inspect their stock, and that the interest would be 5*l.* per cent. She said that they would pay back the capital 20*l.* a year. He said that he did not stop the 5 per cent. interest, and would pay the whole 100*l.* down on Wednesday morning. The wife paid the 10*s.* 6*d.* The defendant's clerk went over and inspected the stock, which subsequently realized 300*l.*, and on Wednesday morning R. S. Brown and his father, Richard Brown, went to the office and saw Gordon, who caused his clerk, Hughes, to make out two documents, which the defendant produced, and asked the Browns to sign, and they signed them. One was as follows:—

"January 9, 1889.

"We (I and my son) have this day borrowed and received of Mr. Gordon the sum of 60*l.*, for which we have agreed to pay him back 100*l.* (40*l.* interest on 60*l.*) in four quarterly instalments, as set forth on the promissory note, which we read over and signed, and which we clearly understand. We further say that all the furniture, effects, stock, &c., at our farm belong to us and it is solely our own property, and that I, Richard Brown the elder,

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have also an income of 30*l.* per year, which is payable through Mr. Davies, solicitor, of Haverfordwest. We further say that we will pay Mr. Gordon the 100*l.* honourably as promised. We read the above over.

"Witness,

"T. W. Hughes.

"Richard Brown.

"Richard Brown, junr."

This document was all in Hughes' handwriting, except the signature and the words "we read the above over," which were in the father's handwriting.

The other document was as follows:—

"Derby, January 9, 1889.

"100*l.*

"We jointly and severally agree to pay Isaac Gordon or order at Derby the sum of one hundred pounds, for value received, by quarterly instalments as follows, namely:—

Twenty-five pounds on April 9th, next (1889);

Twenty-five pounds on July 9th, next (1889);

Twenty-five pounds on October 9th, next (1889); and

Twenty-five pounds on January 9th (1890);

And if default shall be made in any one payment of the aforesaid instalments all the instalments remaining unpaid shall at once become due and payable immediately thereafter.

"Witness,

"T. W. Hughes.

"Richard Brown,

"Richard Summers Brown."

They did not read either of them over, nor were they read to them, although the defendant told the father to write down the words "We read the above over;" the defendant gave the prosecutor, R. S. Brown, a ticket [stating the loan, and bonus, and instalments, and rules]; then the defendant gave him 60*l.* "We counted it," said R. S. Brown, in his evidence "and I told him it was 60*l.* only, and not 100*l.*, which my wife had bargained for. He said that was what he charged—the 40*l.* That was all I should have. He said 'I don't do business that way'." The prosecutor did not agree, but went home to his wife, she found there was 60*l.* in a bag, and went to the magistrate's clerk, and then to the defendant's office with it and offered the money back; it was refused, and she communicated with the police.

For the defence the defendant's clerk was called and said, inter alia, that he read both documents out quite loudly to the Browns. In cross-examination, he said he knew they expected 100*l.*; it was not usual to charge 40*l.* for 100*l.*

The Lord Chief Justice, after setting out the evidence in the case, stated. "I told the jury that if they were of opinion that the prisoner obtained the promissory note for 100*l.* from the two Browns, or either of them, by falsely pretending to them that he was ready to pay and would then pay to them, or one of them, 100*l.* on their signing the note, they might find him guilty. I explained to them that a false pretence must be the representation of an existing fact untrue in fact, false to the knowledge of the person making it, and that the money or other subject-matter must be obtained or procured by means of it. I had great doubts as to the validity of counts 1, 2, and 4, and I withdrew count 3 from their consideration, as I thought it bad in law, and that there was no evidence of it, in fact. I was not free from doubt as to count 5, and I directed the jury to find separately on each count. They found the prisoner guilty on counts 1, 2, 4, and 5, and not guilty on count 3.

"I have to request the opinion of the Court of Criminal Appeal whether the conviction upon all or any of the four counts on which a verdict of guilty was entered can be sustained. If it can be sustained on any of those counts the conviction is to be affirmed, if not it is to be quashed."

Lockwood, Q.C. (Harington, with him), for the defendant.

[THE COURT intimated that the argument might be limited to the fourth count.]

First, no false pretence of an existing fact is alleged in the fourth count. The meaning of it is only that the defendant said, "If you will give me a promissory note for 100*l.* I will lend you 100*l.*,"—that is a mere promise to do something in the future, such as would be in the case of a purchaser saying to a tradesman, "If you will send goods to my house I will pay for them."

[WILLS, J. Suppose the defendant said, "I have the intention of advancing 100*l.*," and he, in fact, had no intention of the kind.]

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That would not be a sufficient false pretence. It would be impossible to prove that his intention was not that stated at the time, although it might have been changed afterwards. The defendant was undoubtedly in a position and able to advance 100*l.*, and therefore literally "was prepared to do so."

Secondly, the promissory note was of no value while in the hands of the prosecutor, and was not a "valuable security" until parted with. Therefore the defendant did not induce the prosecutor, to "make a valuable security." In *Reg. v. Danger* (1) the prosecutor was induced by a false statement of the prisoner to accept and deliver to him a bill signed by him as drawer addressed to the prosecutor and made payable to the prisoner's own order. The prisoner negotiated the bill, and was convicted under s. 53 of 7 & 8 Geo. 4, c. 29, for obtaining a valuable security by false pretences. But the Court held that the conviction could not be supported, as the bill whilst in the hands of the prosecutor was of no value to him nor to any one else unless to the prisoner, and as the prosecutor had no property in the bill as a security, or even in the paper on which it was written. Lord Campbell, C.J., said the "chattel, money, or valuable security," must, to be within 7 & 8 Geo. 4, c. 29, s. 53, be the property of some one other than the prisoner. The present indictment is, however, under 24 & 25 Vict. c. 96, s. 90, and the editors of Archbold's Pleading and Evidence in Criminal Cases (20th ed.), p. 556, suggest that the statute of which this section is an amendment (20 & 21 Vict. c. 47) was no doubt introduced in consequence of the decision in *Reg. v. Danger*. (1)

Amphlett, for the prosecution, was not called upon to argue.

LORD COLERIDGE, C.J. The false pretence alleged in the fourth count is that the defendant "Isaac Gordon was prepared to pay to them or one of them the sum of one hundred pounds, by means of which said false pretence the said Isaac Gordon did then unlawfully and fraudulently induce the said Richard Summers Brown and Richard Brown to make a certain valuable security, to wit, a promissory note for one hundred pounds, with

(1) 1 Dears. & Bell, C. C. 307.

intent" to defraud. Two objections have been made. First, that we must interpret the allegation that he was prepared to advance 100*l.*, as if it meant that he was ready to do so at some future time, and that it was a mere statement of his intention that at some time afterwards he would deliver the 100*l.* I do not think that is the true interpretation of the pretence which is stated to be false. I am far from saying that on more consideration much may not be found in the suggestion of my brother Wills in the course of the argument, but that has not been argued out, and I base my judgment on a broader and less refined ground. It appears to me that the ordinary meaning of the allegation is: "I am *now* prepared to give you 100*l.* if you will sign this paper. Here is 100*l.*, and when you sign that paper, which you will do in a moment, the 100*l.* is yours." That, apart from all question of existing state of mind, seems to me to be a false pretence of an existing fact—the existing fact stated being that the money was ready for the prosecutors on their signing the paper. That was untrue, and untrue to the knowledge of the defendant, and it is clear that the promissory note was obtained by means of it. So the first objection to the fourth count fails.

Next it was argued that, on the construction of the Act, this promissory note was not a valuable security because it was not of value until delivery to the defendant, and it required something to be done by him to make it of value. *Reg. v. Danger* (1) was cited in support of that contention, and we should treat that decision, I trust, with proper respect. But it seems to me that the words of 24 & 25 Vict. c. 96, which, as we know historically, was passed because of *Reg. v. Danger* (1), clearly apply to the present case. Sect. 90 enacts that "whosoever, with intent to defraud or injure any other person, shall by any false pretence fraudulently cause or induce any other person to *make* . . . any valuable security," shall be guilty of the offence created by that section, and be liable to a certain punishment. I think that the terms of the Act are exactly fulfilled, and that there is no valid objection to the fourth count, and the indictment can be sustained.

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MATHEW, J. I am of the same opinion. We are asked to declare the fourth count bad. But the phrase that the defendant "was prepared" indicates an existing intention as distinguished from one that is prospective only. Then we are pressed with *Reg. v. Danger* (1), which seems to have decided that under the statute of 7 & 8 Geo. 4, c. 29, s. 53, the negotiable security must be a valuable security prior to delivery. Ought we to place the same construction on this statute passed after that decision, and which declares it to be an offence to induce another by a false pretence "to make" a valuable security? I think not.

CAVE, J., concurred.

WILLS, J. I am glad that it is possible to support the conviction without venturing on the somewhat dangerous ground to which I referred in the course of the argument, and rendering it necessary to distinguish between a pretence to do something, and a statement of intention. I find it difficult to see why an allegation as to the present existence of a state of mind *may* not be under some circumstances as much an allegation of an existing fact as an allegation with respect to anything else. For example, suppose that by an arrangement for the settlement of litigation, a man was to pay a sum of money, and when the time came he said: "I shall not pay until I know that A. has the intention of acceding to this arrangement. I do not insist upon having his promise. I shall be content if I know what his present intention is. Otherwise I shall not pay." Suppose B., who was to get the money, then told him that A. had that intention, and he believed B. and paid the money upon the faith of B.'s assurance, and all the while B. knew that A.'s intention was exactly the contrary to what he had stated. I should have thought that the allegation as to A.'s intention was one of an existing fact, capable of supporting an indictment for obtaining money by false pretences. But I am very sensible that in such an inquiry there must always be a danger of confounding intention with a representation or a promise as to something future; and I am very glad that it is possible, for the reasons given by my Lord, to

affirm this conviction without approaching any such debateable ground.

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GRANTHAM, J. I am of the same opinion.

Conviction affirmed.

Solicitor for prosecution : *Tree & Son.*

Solicitor for defendant : *J. B. Matthews.*

J. R.

THOMPSON v. ADAMS.

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Insurance, Fire—Slip of Policy, Effect of.

June 18, 20.

The plaintiffs, a firm of merchants in New Zealand, in October, 1886, employed a firm of insurance brokers in London to effect for them insurances against fire upon goods in New Zealand. The brokers instructed B., an insurance broker at Lloyd's, to effect a portion of the insurances, and B. prepared a slip containing particulars of the risk, which was initialed by the defendant and other underwriters at Lloyd's. Owing to a misunderstanding between the insurance brokers no policy was put forward for signature by the defendant and the other underwriters, and in February, 1887, the goods in New Zealand were seriously damaged by fire. No premiums had then been paid, but two days after the fire the insurance premiums were paid by the plaintiffs to the insurance brokers. A policy was then tendered to the defendant for signature, but he refused to sign it or to pay the amount for which he had initialed the slip. In an action to recover the amount :—

Held, that the slip formed a complete and binding contract of insurance, that it was not subject to an implied condition that a policy should be put forward for signature within a reasonable time, and that, in the absence of circumstances shewing an intention on the part of the plaintiffs to abandon the insurance, they were entitled to recover.

ACTION tried before Mathew, J., without a jury.

Finlay, Q.C., and *Tindal Atkinson*, for the plaintiffs.

Barnes, Q.C., and *F. W. Hollams*, for the defendants.

The facts of the case and the arguments sufficiently appear in the judgment.

MATHEW, J. This was an action brought to recover the sum of 100*l.*, which it was alleged by the plaintiffs the defendant had agreed to cover by an insurance against fire upon the goods of the plaintiffs in premises of theirs in New Zealand. The action