

of intoxicating liquors in packet-boats and canteens. I say nothing about the sale of spruce or black beer. Our decision only applies to the sale of intoxicating liquors. I am of opinion that our judgment should be for the respondents.

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Judgment for the respondents.

Solicitors for appellant: *Hack & Morris, for Thomas & Malkin, Stockton-on-Tees.*

Solicitors for respondents: *C. J. Archer & Parkin.*

W. A.

[CROWN CASE RESERVED.]

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Nov. 13, 27.

THE QUEEN v. WILLIAM JONES.

Criminal Law—False Pretences—Obtaining Credit by Fraud—Debtors Act, 1869 (32 & 33 Vict. c. 62), s. 13, sub-s. 1.

The defendant ordered a meal in a restaurant; he made no verbal representation at the time as to his ability to pay, nor was any question asked him with regard to it. After the meal he said that he was unable to pay, and that he had (as was the fact) only one halfpenny in his possession:—

Held, that he could not be convicted of the offence of obtaining goods by false pretences, but that he was liable to be convicted of obtaining credit by means of fraud within the meaning of s. 13, sub-s. 1, of the Debtors Act, 1869.

CASE stated by the recorder of Worcester, from which the following facts appeared.

The defendant was tried upon an indictment which contained two counts. The first count charged that the defendant falsely pretended to one Julia Crump that he was then able to pay her for a plate of cold meat and a pint of sherry which he then ordered and requested her to supply to him, and that he then had sufficient money to pay her for the same, by means of which false pretences he unlawfully obtained from her six ounces of mutton, three ounces of bread, and a pint of sherry with intent to defraud, &c. The second count charged that the defendant, being a person without means, incurred a debt and

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liability to William Crump amounting to four shillings in the purchase of the mutton, bread, and sherry, and that with intent to cheat William Crump, the defendant, in incurring the said debt and liability, unlawfully and fraudulently obtained from him credit for the said debt and liability by means of fraud. (1)

From the evidence it appeared that the defendant went to a restaurant kept by the prosecutor, William Crump, and ordered from his wife a plate of cold meat, some bread, and a pint of sherry, which he consumed. After the bill, which amounted to four shillings, had been presented at the end of the meal, he said that he had not got any money except one halfpenny. On being searched at the police station only one halfpenny was found upon him. The prosecutor's wife stated that generally customers paid immediately after they had finished their meal, and that she would not have supplied the defendant with the wine and food if she had known he was not able to pay for it, though customers who were known were sometimes allowed to pay afterwards. She made no inquiries of the defendant as to his ability to pay before supplying him with the food.

At the close of the case the learned recorder left each count of the indictment to the jury separately. As regards the first count, he directed them that before they could convict the defendant they must be satisfied (1.) that he intended by his conduct to represent that he was of present ability to pay for the food and drink, (2.) that he was aware of his want of ability to pay, (3.) that the wine and food were supplied by Mrs. Crump in consequence of the false pretence made by the defendant if it existed, and (4.) that there was an intention on his part to defraud. As regards the second count, he told the jury that before they could convict the defendant they must be satisfied that he was a person without means, and had in incurring a debt or liability for the articles fraudulently obtained credit from William Crump for four shillings with intent to cheat him of the same.

(1) By 32 & 33 Vict. c. 62 (the Debtors Act, 1869), s. 13, sub-s. 1, a person is to be deemed guilty of a misdemeanour "if in incurring any debt or liability he has obtained credit under false pretences, or by means of any other fraud."

The jury found the defendant guilty on both counts ; and as he had been several times previously convicted and was unable to find bail he was sentenced to three months' imprisonment with hard labour on each count, the sentences to be concurrent.

The question for the opinion of the Court was whether the conviction upon both or either of the counts could be sustained.

R. Harington, for the defendant. The conviction was wrong. No untrue statement of any kind was made by the defendant, who merely asked for food ; upon the facts it cannot be said that he was guilty of a false pretence by conduct. To support a false pretence by conduct there must be evidence of something more than a mere demand—e.g., a disguise, as in *Rex v. Barnard* (1), where a man, by wearing an undergraduate's cap and gown, passed himself off as a member of the university. There is nothing here which amounts to a false statement as to an existing fact.

[LORD RUSSELL of KILLOWEN C.J. Must not one have regard to the character of the business, and to the fact that customers are expected then and there to pay for goods consumed ?]

Not unless such a custom is universal and is brought to the knowledge of the accused. The fair inference from the facts is that there was a promise to pay in futuro ; but a pretence that a person will do at some future time that which he does not mean to do is not a criminal offence : *Rex v. Goodhall* (2) ; *Reg. v. Burrows*. (3) This doctrine is not affected by *Reg. v. Gordon*. (4)

As to the second count, no credit was in fact given, or intended to be given.

[He also cited *Reg. v. Cooper* (5) ; *Reg. v. Slowly* (6) ; *Reg. v. Masterson*. (7)]

J. B. Matthews, for the prosecution. There was ample evidence to warrant a conviction on the first count. Assuming

(1) (1837) 7 C. & P. 784.

(2) (1821) Russ. & Ry. 461.

(3) (1869) 11 Cox, 258.

(4) (1889) 23 Q. B. D. 354.

(5) (1877) 2 Q. B. D. 510.

(6) (1873) 12 Cox, 269.

(7) (1846) 2 Cox, 100.

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that the defendant made a promise to pay in futuro, such a promise may include a representation of an existing fact. There was here an implied contract, which if expressed in words would have been a contract to pay before leaving the restaurant, which involved the false representation that he had the money to pay. It was really a question for the jury whether the conduct of the defendant was such that they could fairly infer from it the representation charged in the indictment. The case is like that of giving a cheque on a bank where the drawer has no account, or an insufficient amount; that is a representation that a sufficient balance will be at the bank to meet the cheque when presented, and is a representation by conduct of the same character as that in the present case. A promise to do a thing in futuro may involve the false pretence that the promisor has the power to do that thing: *Reg. v. Giles*. (1) Upon the second count there is ample evidence that credit was in fact given, regard being had to the fact that the goods obtained were consumable commodities, intended for consumption on the spot.

[He also cited *Rex v. Jackson* (2); *Reg. v. Hazelton* (3); *Reg. v. Murphy* (4); *Rex v. Crossley*. (5)]

R. Harington, in reply.

Cur. adv. vult.

Nov. 27. The judgment of the Court (Lord Russell of Killowen C.J., Wright, Kennedy, Darling, and Channell JJ.) was delivered by

LORD RUSSELL of KILLOWEN C.J. This case was reserved for our consideration by the recorder of Worcester. The defendant was indicted in two counts: in the first he was charged under the Larceny Act, 1861, with obtaining goods by false pretences; in the second, with having incurred a debt and obtained credit by fraud, an offence under the Debtors Act, 1869. The facts, to which I shall presently refer, are fully set out in the case; the questions were left to the jury, and, upon

(1) (1865) L. & C. 502; 34 L. J. (M.C.) 50.

(2) (1813) 3 Camp. 370.

(3) (1874) L. R. 2 C. C. 134.

(4) (1876) 13 Cox, 298.

(5) (1837) 2 Mood. & Rob. 17.

the facts and the directions of the learned recorder, the defendant was convicted on both counts, and was then sentenced to two periods of three months' imprisonment to run concurrently. The question for us is whether, taking the facts as stated coupled with the recorder's direction to the jury, the conviction can be sustained on both counts or on either ; in other words, whether there was any evidence on which the jury could properly convict the defendant.

The facts were shortly these. The prosecutor kept an eating-house, and on June 20 the defendant went in and asked for some soup ; he was told that there was none ready, and thereupon asked for some cold beef ; he was told that there was none, but that he could have some cold lamb and salad ; and this he accordingly ordered. He then ordered half a pint of sherry, and went upstairs to have his meal ; while there he rang the bell, and ordered another half pint of sherry. Subsequently he again rang the bell, and asked what there was to pay ; and upon being told four shillings, said that he had no means of paying, that he had no money, and had (as was the fact) only a halfpenny upon him. Such was the state of the facts. All that the defendant did was to go into an eating-house, order food and refreshment, and eat, but not pay for it ; no question was put to him, and no inquiry was made from him by the prosecutor as to his means, nor was any statement made by him whether he had means to pay. The question is whether this can be regarded as a state of things in which a jury would be justified in finding that the defendant obtained consumable articles by false pretences. We do not desire to say anything which can weaken the authority of the decisions which say that there can be a false pretence by conduct ; for example, the case of *Rex v. Barnard* (1), where a cap and gown were used by a man who had no right to wear them, in order to convey the notion that he was a member of the university. Nor do we in any way dispute the authority of another class of cases ; that is, where a man gives a cheque on a bank where he either has no account or has not sufficient means to meet the cheque, and must have known that he had not

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(1) 7 C. & P. 784.

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sufficient means. In the present case the defendant did nothing beyond what I have already stated: no inquiry was made of him, and no statement was made by him. Under the circumstances, we do not think that the case could properly be left to the jury on the first count; there was no evidence that the defendant had obtained these articles by false pretences.

A further question arises: it is provided by s. 88 of the Larceny Act, 1861, that if, upon the trial of any person indicted for the misdemeanour of obtaining goods by false pretences, it is proved that he obtained them in such manner as to amount in law to larceny, he shall not by reason thereof be entitled to be acquitted of such misdemeanour. But in the present case the defendant did not commit larceny. In the circumstances of the case it is clear that the prosecutor parted not merely with the possession, but also with the property in his goods, and that he intended to do so, for the goods were intended for immediate consumption. The finding of the jury that the defendant was guilty of obtaining the goods by false pretences cannot therefore be supported on that ground, and the conviction on the first count is bad.

The second count is framed upon a different statute, upon s. 13 of the Debtors Act, 1869, which provides that in certain cases a person shall be deemed guilty of a misdemeanour, the first case being if in incurring any debt or liability he has obtained credit under false pretences, or by means of any other fraud. There are three elements which have to be considered in the construction of that section: first, there must be the incurring of a debt or liability; secondly, there must be an obtaining of credit; and thirdly, there must be fraud: the conjunction of these three ingredients makes the offence. No one can doubt that the defendant did incur a debt or liability; he ordered goods under circumstances which implied a promise to pay for them. Then did he obtain credit? We are of opinion that he did. The prosecutor might have said that he would not furnish him with the goods until he paid the price, or he might have insisted on payment in actual exchange for each article as it was supplied, but he did neither; he furnished the goods under circumstances which passed the possession and

property in them, relying on the readiness and ability of the defendant to pay. It does not seem to matter that the period of credit was a short period; he trusted the defendant, and parted with his goods without insisting on prepayment or upon interchangeable payment. We think, therefore, that credit was obtained. Thirdly, was there fraud? There was a debt, and there was credit, and we think there was ample evidence to justify the jury in arriving at the conclusion that the defendant was guilty of fraud. He goes to an eating-house, where the ordinary custom is to pay directly after the goods have been consumed; he knows that such goods are supplied, not on personal knowledge, but on the understanding that the ordinary custom will be observed. The jury found that he had no intention of paying; he intended to cheat, and so the jury found. We think, therefore, that the conviction was right upon the second count, and that it must be affirmed.

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*Conviction quashed on first count, and affirmed
on second count.*

Solicitors for prosecution: *Arrowsmith, Maund & Co.,
Worcester.*

Solicitor for defendant: *John Stallard, Worcester.*

W. J. B.

MOULT v. HALLIDAY.

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 Dec. 7, 8.

*Master and Servant—Contract—Custom—Reasonableness—Notice during first
Fortnight—Determination at end of first Month.*

A custom with regard to the hiring of domestic servants, to the effect that, in the absence of special contract, there is a right, on the part of either the master or the servant, to determine the service, at the end of the first calendar month, by notice given at or before the expiration of the first fortnight, is not a notorious custom of which the Courts will take judicial notice; but, where such a custom is relied on, its existence must be proved by evidence in each particular case.

Such a custom is not unreasonable; and therefore, if, in any particular case, its existence were sufficiently proved by evidence, the Court would give effect to it.

APPEAL from the Westminster County Court.

The action was brought to recover 2*l.* 6*s.* 8*d.*, alleged to be