

Criminal Law - Mere Silence as Constituting Crime of Obtaining Property Under False Pretenses

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RECENT DECISIONS

Criminal Law—Mere Silence as Constituting Crime of Obtaining Property Under False Pretenses.—The defendant incorporated an automobile sales business and to obtain the money to run it, gave as security, mortgages on automobiles, identified by motor and serial numbers, to the General Finance Corporation. By the terms of the mortgage the defendant was not to sell or remove the property without first securing a discharge of the mortgage on it. The automobile in the instant case appeared to be covered by such a chattel mortgage which was duly recorded. The defendant without disclosing the fact of a chattel mortgage of \$570.20 sold a Dodge car to one Hamilton. The defendant failed to secure a release of the chattel mortgage and the finance company replevied the car from Hamilton. The defendant was charged with the crime of obtaining money under false pretenses on the ground that he failed to disclose the presence of the chattel mortgage. Defendant convicted.

On appeal, *held*, judgment reversed because of errors in the introduction of evidence at the trial. But the court stated that false pretense can be the failure to speak when it was necessary to do so, for one may make false pretenses by act as well as by word. If the defendant sold the new car without revealing the fact that it was mortgaged, he was deliberately acting a falsehood and this is as objectionable as a spoken falsehood. *People v. Etzler*, 292 Mich. 489, 290 N.W. 879 (1940).

A review of the decisions reveals that there is a division of authority as to whether the failure to speak or mere silence constitutes the crime of obtaining property under false pretenses.

A number of decisions agree with the principal case. In a Georgia decision the defendant in order to obtain credit, failed to answer certain questions in a written statement as to loans and mortgages, thereby inducing the prosecuting witness to part with his property. The court held that false representations may be implied by way of concealment of part of the truth as to a fact or from total and misleading silence. *Ricks v. State*, 8 Ga. App. 449, 69 S.E. 576 (1910). In *Jones v. State*, 25 S.E. 319, 97 Ga. 430 (1895), where the vendor, though aware of it, failed to disclose the fact that a \$20 gold piece given for a purchase under the impression that it was a dollar and gave change for only a dollar, the court found that this silence came within the statute relating to cheats. However, the charge of false pretense failed in another Georgia decision, where the defendant gave a mortgage on personal property without disclosing the existence of a prior first mortgage on the same property, for no representation was made of the non-existence of the first mortgage. *Griffith v. State*, 3 Ga. App. 476, 60 S.E. 277 (1908). In a California case where the defendant, while borrowing money, failed to disclose fully his financial condition the court stated, "the suppression of a fact by one who is bound to disclose it is a deceit, for a false pretense may be made by act, word, symbol, or token calculated to deceive." *People v. Mace*, 71 Cal. A. Rep. 10, 234 P. 841 (1925). During negotiations for the sale of lands defendants made certain representations, to the subsequent purchasers, as to the boundaries of their lands, but before its sale, found out that they did not own all they had represented but still sold the land without disclosing their acquired knowledge, this concealment was declared a deceitful means, but the decision was reversed for failure to charge the jury on the point of the buyer's knowledge of the misrepresentation. *Crawford v. State*, 117 Ga. 247, 43 S.E. 762 (1903). Also in a federal decision where the legal tariff rate of coarse salt was 10 cents and that of coarse salt in sacks

14 cents, and the defendant filed a shipping order describing merchandise shipped as "coarse salt . . . 10 cents" when the salt actually shipped was in sacks, it was held, "a misrepresentation resulting in injury may consist of the concealment of the truth" and if the defendants intentionally concealed the truth such conduct constituted a false representation. *United States v. Sterling Salt Co.*, 200 Fed. 593 (W.D. N.Y. 1912). In the English case of *Young v. The King*, 3 T.R. 98, 100 Eng. Rep. 475 (K.B. 1789), the defendants were found guilty of obtaining property by false pretenses where they silently acquiesced in false statements made in their presence by another defendant, inducing the complainant to part with his money.

However, other decisions reach a different conclusion. In Colorado, in a fact situation similar to the principal case, where the defendant sold a cow to the prosecuting witness without disclosing the existence of a valid chattel mortgage on it, the court held that the mere non-disclosure of facts known to the defendant, though the disclosure would have operated to deter the other from parting with his money, was not a false pretense. *Stumpf v. People*, 51 Colo. 202, 117 Pac. 134 (1911). The identical result was reached where a defendant sold six bales of cotton as his own, but on which there was outstanding a chattel mortgage, and he withheld this knowledge from the buyer though he made no express misrepresentation. *McCorkle v. State*, 170 Ark. 105, 278 S.W. 965 (1926). In *Moulden v. State*, 5 Lea 577, 73 Tenn. 577 (1880), the defendant gave an order for wages due him and later collected them himself without disclosing the fact of the prior order, but it was held that this did not constitute the crime of obtaining money under false pretenses. Likewise where the defendant continued to receive payments for stock purchased on margin for the prosecuting witness, acknowledging the receipt of the same, after he had sold the stock, the court held this was not the crime of obtaining money under false pretenses. *People v. Baker*, 96 N.Y. 340 (1884). A defendant, in *People v. Johnson*, 87 Misc. 89, 150 N.Y. Supp. 331 (1914), was paid, on the report of a bureau of the state, for work supposedly done according to certain specifications but which was in fact defective though he failed to reveal this when paid, the court held him not guilty for there was no proof that he made any representations to secure the payments. But the New York court, in another case where the defendant was charged with obtaining a signature to a warrant by false pretenses, stated that it was not necessary that words be spoken or written but that a false representation may be made by a mute or silent act. *People ex rel. Phelps v. Court of Oyer and Terminer of City of N. Y.*, 83 N.Y. 436 (1881). Where the seller gave the defendant credit upon the faith of the latter's ownership of a grocery and bakery business and gave additional credit after the defendant conveyed his interest in that business, without knowing of the conveyance, the defendant was held not guilty of false pretenses for withholding the knowledge that would have corrected the seller's mistaken belief. *Blum v. State*, 20 Tex. Ct. App. 578, 54 Am. Rep. 530 (1886).

In Wisconsin the Supreme Court apparently has not declared whether a mere failure to speak or silence will constitute the crime of false pretense, though it has held that acts or conduct as well as spoken words may constitute a false pretense. *Stecher v. State*, 168 Wis. 183, 169 N.W. 287 (1918).

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