McKENZIE *vs.* THE STATE.

The word "*pretence*" as used in statutes in relation to obtaining property by false pretences, has not been regarded by the courts in its lexicographic sense, but they have attached to it a legal and technical meaning.

Where a known statute has been re-enacted in terms, its known interpretation will be presumed to have been also adopted by the legislature.

The false pretence charged in this case was that defendant would assign to B. P. a certain note which he had before that time, for a valuable consideration, passed to B. P. and that by means of this false pretence, he obtained the note with intent to cheat and defraud B. P. and then failed to assign the note to him: HELD, that this indictment charged no *false pretence* within the meaning of Digest page 345, art. 8, because the promise to assign the note was an agreement to do a future act, and not a misrepresentation as to an existing fact.

Appeal from the Conway Circuit Court.

William McKenzie was indicted in the Conway circuit court, at the September term, 1849, as follows:

The grand jurors &c. present that William McKenzie late of &c., on the 28th day of February, A.D. 1849, at &c., unlawfully did falsely pretend to one Benjamin Palmer that he the said William McKenzie would assign to the said Benjamin Palmer a certain promissory note in writing drawn by one Charles Plant to the said William McKenzie, and in his favor, for the sum of sixty dollars, payable on the first day of January, A. D. 1850, and which said promissory note he the said William McKenzie had before then, for a valuable consideration, delivered to the said Benjamin Palmer, by means of which said false pretences, the said William McKenzie did then and there unlawfully obtain from the said Benjamin Palmer the said promissory note in writing drawn by the said Charles Plant to the said William McKenzie, and in his favor for the sum of sixty dollars, payable on the 1st day of January, A. D. 1850, with intent then and there to cheat and defraud him the said Benjamin Palmer of the

same, whereas in truth and in fact the said William McKenzie did not assign the said promissory note in writing, drawn &c., payable &c., at that time, or any other time thereafter, nor did he re-deliver the same to the said Benjamin Palmer at that time or any time thereafter, to the great damage and deception of the said Benjamin Palmer, to the evil example &c., and against &c.

The defendant was convicted at the March term, 1850, before the Hon. WILLIAM H. FEILD, judge, on the plea of not guilty, and sentenced to the penitentiary for one year.

The defendant's counsel moved in arrest of judgment, which was overruled, and he appealed.

PIKE & CUMMINS, for the appellant.

The terms "false token and writing" used in the statute are well defined (2 *Russ. Cr.* 284 *&c.*) and relate only to such pretences as affect the public, and not to private dealings between individuals (2 *Russ* 293 *&c. Queen vs. Jones,* 1 *Salk.* 397. *Rex vs. Wheatly,* 2 *Burr.* 1125.) And the words "any other false pretence" must mean *similar pretences* to those specified. (*Lambert vs. The People,* 9 *Cow.* 597. *Dwar. on Stat.* 737.) This principle is fully recognized in the construction of the South Carolina statute in relation to devices to entice persons to gamble; see *Middleton vs. The State, Dudley's (S. C.) L. & E. Rep.* 275. *State vs. Wilson and Strange, Mills Const. R. (S. C.)* 350. *State vs. Delyon,* 1 *Bay S. C. Rep.* 353.

The false pretence alleged is that McKenzie would assign the note. This is but a contract to assign in future; and no statement as to future conduct, however false or fraudulent in design, can constitute a false pretence within the statute. (*Rex vs. Goodhall, Russ. & Ry.* 461. *Eng. Crown Cases Res.*) A false pretence must relate to past and not future acts &c. *Com. vs. Drew,* 19 *Pick.* 179. *People vs. Williams,* 4 *Hill* 9. *Fenton vs. The People, ib.* 126. *People vs. Thomas,* 169. *Com. vs. Warren,* 6 *Mass.* 72 1 *Greenl.* 376. 9 *Wend.* 187. 14 *J. R.* 371. 1 *Mass.* 137.

CLENDENIN, Attorney General, referred to the statute creating the offence, *sec.* 1, *art.* 8 *ch.* 51 *Digest;* and also to *Arch. Cr. Law,* 246, and *Ros. Cr. Ev.* 363 to show that the pretences were sufficiently stated in the indictment.

Mr. Justice SCOTT delivered the opinion of the Court.

This prosecution is based upon the first section of our statute of "Fraudulent Pretences" (*Dig. p.* 345, *art.* 8) which provides that "Every person who, with intent to defraud or cheat another, shall designedly, by color of any false token or writing or by any other false pretence, obtain the signature of any person to any written instrument or obtain from any person any money, personal property, right in action or other valuable thing or effects whatsoever" &c.

It is not contended that the fraud complained of was by color of any false token or writing, but by a supposed false pretence included within the general clause "any other false pretence." This language is extremely broad and comprehensive and in a loose and general sense might extend to every misrepresentation, however absurd or irrational. It is not to be supposed, however, that the legislature intended to make every imaginable case of fraud an indictable offence, and accordingly the courts have not adopted the lexicographic definition of the word "pretence" but have endeavored, as far as practicable, to give to it a legal and technical meaning. And so far as this had been done before the enactment of our statute, such will be presumed to have been at that time adopted, upon a common principle of construction that when a known statute has been re-enacted in terms, its known interpretation will be presumed to have been also adopted by the legislature.

The adjudication of the case at bar, as will be presently seen, does not render it necessary or proper for us to go at large into the meaning of these general words, and to fix all the limits of their operation. And it is sufficient for our present duty to say that they are operative, and that we think it far safer to leave their limits to be fixed from time to time in each case as it may

occur, than to attempt the difficult task of drawing a line of discrimination applicable to every possible contingency.

The false pretence, charged in the case before us, is that the defendant below would assign to Benjamin Palmer a certain promissory note described, which he had, before that time, for a valuable consideration, passed to Palmer; and that by means of this false pretence he obtained the note with intent to cheat and defraud Palmer and then failed both to assign and return the note.

This, as the authorities show, was clearly not a false pretence within the statute, because, to be such, it must have been of some existing fact and not a pretence that he would do an act which he did not mean to do; as to pay for goods on delivery, or to ship cotton to refund an advance of money. Any representation or assurance in relation to a future transaction, may be a promise or covenant or warranty, but cannot amount to a statutory false pretence.

This distinction between a false pretence and a false representation is well settled by numerous adjudications upon statutes, both English and American, where the words "false pretence" are used in their broadest signification. *Douglass' case,* reported in 1 *Mood C. C.* 464, aptly illustrates the principle. There the indictment charged the prisoner with falsely pretending to the prosecutor, whose mare and gelding had strayed, that he, the prisoner, would tell him where they were if he would give him a sovereign down, and that the prosecutor gave the sovereign, but the prisoner refused to tell. The indictment was held bad; but all the judges held that if the indictment had charged (as was proven in evidence) that the prisoner had pretended that he knew where the horses were, it would have been good. See also *Roscoe's Cr. Ev.* 461. *Arch. Cr. Pl.* 293. *Rex vs. Moses Goodhall, Russ. & Ry. C. C.* 461. *Com. vs. Drew,* 19 *Pick. R.* 185. *The People vs. Conger,* 1 *Wheeler C. C.* 448. *The People vs. Dalton,* 2 *ib.* 178. *The People vs. Stone,* 9 *Wend.* 187.

The only case, that has been supposed to conflict with this doctrine, is that of *Young vs. The King* (3 *T. R.* 98.) But this

case, when examined, is clearly in harmony with all the other cases; because it will be seen that the false pretence of the prisoner was that a bet *had been made* on a race that was to be run. The contingency that was to decide the bet was future; but the making of the bet was past. The representation, that turned out to be false, was not that the race would be run, but that the bet had been made. The false pretence then in that case related to an event already completed and certain and not to one which was thereafter to happen, and consequently was uncertain. See the case of *The People vs. Johnson,* 12 *John. R.* 292 where Ch. J. THOMPSON cites this case of *Young vs. The King,* doubtless without having examined it closely, to establish the opposite of its true doctrine.

Thus holding the law as applicable to the case before us it is clear that the court below erred in refusing the motion to arrest the judgment; and for this error the judgment must be reversed and the cause remanded.