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of the actual holding of that case, and does not necessarily imply that the felony-murder doctrine should be carried to the extreme of imposing responsibility where one of the perpetrators is justifiably killed. It is submitted that a judicious balancing of the factors already mentioned should preclude the Louisiana courts from following the regrettable extension of the felony-murder doctrine in Pennsylvania.

William L. McLeod, Jr.

CRIMINAL LAW — THEFT — MISREPRESENTATIONS AS TO
FUTURE FACTS

Defendant agreed to purchase three automobiles from a car dealer and to pay for them by issuing sight drafts payable two days from date. At the time he knew his funds in the drawee bank were insufficient to cover the drafts. Subsequently he sold the automobiles to third persons without having paid any part of the purchase price. To a charge of theft defendant pleaded that the information did not charge a crime, contending that the drafts were mere promises to pay in the future and hence were representations as to future events. Defendant was nevertheless convicted. *Held*, affirmed. Article 67 of the Criminal Code¹ which provides in part that any "fraudulent conduct, practices or representations" constitutes theft, includes fraudulent representations as to future, as well as to past and existing, facts. *State v. Dabbs*, 228 La. 960, 84 So.2d 601 (1955).

At common law the crime of obtaining property by false pretenses is limited to representations of past or existing facts.² False representations as to future facts, no matter how misleading or dishonest, will not serve as a basis of criminal liability.³ At first the crime was limited under the common law to the fraudulent use of false weights and measures.⁴ Later it was

1. "Theft is the misappropriation or taking of anything of value which belongs to another, either without the consent of the owner or by means of fraudulent conduct, practices or representations. An intent to deprive the other permanently of whatever may be the subject of the misappropriation or taking is essential." LA. R.S. 14:67 (1950).

2. *Jones v. State*, 236 Ala. 30, 182 So. 404 (1938); *United States v. Pearce*, 7 Alaska 246 (1924); *Willis v. State*, 34 Ariz. 363, 271 Pac. 725 (1938); *Territory v. Toak*, 33 Hawaii 560 (1935); *People v. Widmayer*, 265 Mich. 547, 251 N.W. 540 (1938).

3. See note 2 *supra*.

4. *Rex v. Wheatly*, 2 Burr. 1124, 97 Eng. Rep. 746 (K.B. 1761); HALL, THEFT, LAW AND SOCIETY 46 (2d ed. 1952).

extended by statute to include verbal pretenses,⁵ but was still burdened with the artificial limitation that the pretense must relate to a past or present fact.⁶ Prior to the adoption of the Criminal Code⁷ the law in Louisiana was in conformity with this view.⁸ The Code, however, changed matters. It was the acknowledged purpose of the theft article in the Code to combine all the common law stealing offenses into one crime.⁹ One effect was to broaden somewhat the coverage of the crime of obtaining property by false pretenses to include the obtaining of "anything of value."¹⁰ This term was specifically defined as "including any conceivable thing of the slightest value, movable or immovable, corporeal or incorporeal, public or private."¹¹ The Reporter's comment on the article further indicates that the phrase, "by means of fraudulent conduct, practices or representations," was intended to extend the common law crime of obtaining by false pretenses to include false representations as to future, as well as to past or existing, facts.¹²

5. Larceny Act, 1916, 6 & 7 Geo. 5, c. 50, § 32. This rule has received general acceptance in the American jurisdictions. See, e.g., *State v. Tower*, 122 Kan. 165, 251 Pac. 401 (1926); *Commonwealth v. Althaus*, 207 Mass. 32, 92 N.E. 202 (1910); *Watson v. People*, 87 N.Y. 561, 41 Am. Rep. 397 (1882).

6. This qualification has been explained as a restriction of criminal liability to those misrepresentations against which normal prudence cannot defend. 1 HAWKINS, PLEAS OF CROWN 343 (6th ed. 1787); HALL, THEFT, LAW AND SOCIETY 45, 46 (2d ed. 1952).

7. La. Acts 1942, No. 43, p. 137, now LA. R.S. tit. 14 (1950).

8. Pointing up the limitations of the law previous to the Code, the court in one case noted that "however reprehensive [the defendant's] conduct may have been it does not fall within the scope of the legal definition of false pretenses." *State v. Antoine*, 155 La. 120, 122, 98 So. 861, 862 (1924). "The offense denounced by section 831 of the Revised Statutes [1870] as construed in conformity with the common law of England, (section 976, Rev. St.) contemplates a false statement by the accused of a past event, or of an existing fact, and it excludes any representations in regard to a future transaction." *State v. Colly*, 39 La. Ann. 841, 842, 2 So. 496, 497 (1887); *State v. Ritchie*, 172 La. 942, 136 So. 11 (1931) (dictum).

9. "The most significant change effected throughout the entire Code is found in the *Theft Article* which combines all stealing crimes in one . . . Under the new Article 67, all cases where one person takes or misappropriates another's property will be theft regardless . . . of the means employed." Bennett, *The Louisiana Criminal Code*, 5 LOUISIANA LAW REVIEW 6, 37-38 (1942); LSA—R.S. 14:67, Reporter's Comment, at 357 (1950).

10. At common law liability for obtaining property by false pretenses was limited to certain classes of "property." In connection with this limitation see *State v. Tower*, 122 Kan. 165, 251 Pac. 401 (1926).

11. LA. R.S. 14:2 (1950).

12. "The concept as it exists in Anglo-American law includes only false 'pretenses' or 'representations' about *present* or *past* facts . . . By not including this latter concept in the definition of 'theft', it is intended to produce identity of meaning between civil and criminal fraud." LSA—R.S. 14:67, Reporter's Comment, at 358.

Any doubt as to this extended coverage¹³ was removed by the instant case, in which the court determined for the first time that criminal liability under the theft article may be based upon known false representations concerning future events. Apparently the court believed that since it was the crime of false pretense which had been previously burdened with the jurisprudential limitation of including only past and existing facts, the inclusion of the new criteria, "conduct" and "practices," was meant to include representations as to future facts.¹⁴ Although the Reporter's comment on the theft article was not cited in the decision, it would further support the court's interpretation.¹⁵ The court held in the instant case that the giving of three sight drafts payable in two days when there was no intent to pay, but merely an intent to deceive the seller in order to obtain the property, constituted fraudulent conduct and practices under the theft article.¹⁶ This interpretation of article 67 would seem to extend criminal liability to many types of swindles which had been held, prior to the Code, to have fallen short of the common law crime of obtaining property by false pretenses. Following the reasoning of this case, for example, it would now be a criminal act for one to fraudulently promise to pay another's bail in order to obtain money from third persons.¹⁷ Likewise, obtaining money by falsely promising to procure a magic mineral rod capable of detecting oil beneath the surface of the earth would now seemingly constitute theft.¹⁸

Such an extension of the false pretense crime is desirable. The limitation of the common law appears to have originated in unplanned historical development rather than in logic.¹⁹ It is interesting to note that the recently adopted Wisconsin Criminal

13. That some confusion existed is evinced by the district court judge's instruction to the jury upon the trial of the instant case. "A false pretense to be cognizable by our Criminal Statute must apply to the pretense of a present or past fact. It does not apply to a future promise." Transcript of Record, p. 21, *State v. Dabbs*, 228 La. 960, 84 So.2d 601 (1955).

14. In the instant decision Justice Simon stated that "the theft article was thus designed to enlarge its scope from that of representations only as a basis for theft by fraud and to extend the concept so as to include fraudulent conduct or practice." *State v. Dabbs*, 228 La. 960, 967, 84 So.2d 601, 603 (1955).

15. These comments have been given consideration by the court in the past. See *State v. Marshfield*, 85 So.2d 28, 30 (La. 1956); *State v. Broadnax*, 216 La. 1003, 45 So.2d 604 (1950); *State v. Davis*, 208 La. 954, 23 So.2d 801 (1945).

16. It might be noted that prosecution in the instant case could have been brought under the "bad check" statute, LA. R.S. 14:71 (1950), with the same probable result.

17. See *State v. Colly*, 39 La. Ann. 841, 2 So. 496 (1887).

18. See *State v. Antoine*, 155 La. 120, 98 So. 861 (1924).

19. See HALL, *THEFT, LAW AND SOCIETY* 45-52 (2d ed. 1952).

Code also eliminates the requirement that a criminally false statement must relate to present or past facts only.²⁰ Similarly, the American Law Institute, in the tentative draft of its Model Penal Code, rejects the common law restriction by defining "theft by deception" to include deceptions as to future as well as past and present events.²¹

Chester A. Eggleston

LABOR LAW — FEDERAL AND STATE RELATIONS — JURISDICTION
TO ENJOIN PEACEFUL PICKETING

After expiration of the contract between plaintiff company and defendant union representing its truckdrivers, no new agreement was reached and the union went on strike and began peaceful picketing. Plaintiff employer petitioned the National Labor Relations Board to hold representation proceedings, alleging that the defendant union had demanded recognition as the bargaining agent of the company's employees. The Board dismissed the petition, finding that a question of representation did not exist because the unit named (one employee) was inappropriate for the purposes of collective bargaining.¹ Plaintiff then sued in a Louisiana state court to enjoin the union's peaceful picketing. The trial court granted a preliminary injunction in order to give either party an opportunity to obtain a ruling from the Board that it would or would not regulate the picketing. Plaintiff employer then filed a charge of unfair labor practices with the Board under section 8(b)(4) of the Labor Management Relations Act.² The Board admitted that it had jurisdiction but dismissed the charge as being without merit under that section. The trial court held that the NLRB had exercised jurisdiction over the matter and, therefore, dismissed plaintiff's application for injunction because of lack of jurisdiction. On appeal, *held*, affirmed. Jurisdiction of state courts is preempted if the activity complained of is either protected or prohibited by the

20. "False representations" includes a promise made with intent not to perform it if it is a part of a false and fraudulent scheme." WIS. CRIM. CODE § 943.20 (1955).

21. A.L.I. MODEL PENAL CODE § 206.2, at 63 (*Theft by Deception*) (Tent. Draft No. 2, 1956).

1. At the time of the strike, only one regularly employed truckdriver worked for the plaintiff.

2. 61 STAT. 141 (1947), 29 U.S.C. § 185(b)(4) (1952).