

JOHN K. PERKINS, Appellant, v. REPUBLIC OF
LIBERIA, Appellee.

APPEAL FROM THE CIRCUIT COURT, THIRD JUDICIAL CIRCUIT,
SINOE COUNTY.

Argued November 6, 1974. Decided December 13, 1974.

1. Any defense or objection based on defects in the institution of proceedings or in an indictment other than that it fails to show jurisdiction in the court over the subject matter or to charge an offense, may be raised only by a motion to dismiss, brought on before the trial.
2. Any defense or objection which is capable of determination without trial of a defendant may be raised before trial by a motion to dismiss the indictment.
3. If a written instrument is only an incident of the offense of obtaining money under false pretense, a particular description thereof in the indictment charging the offense is unnecessary, such portions of the instrument being set forth in the indictment to its nature and purpose being sufficient.
4. An indictment shall not be held insufficient because of form which does not prejudice a substantial right of the defendant upon the merits.
5. The essential facts which an indictment is required to set forth do not include documentary proof.
6. The purpose of a penal provision against the crime of obtaining money under false pretense is to suppress cheating and the said provision should be so construed.
7. The crime of obtaining money under false pretense is indictable where a person is, in fact, deceived, even though the deception is due to such person's own weakness or credulity.
8. To constitute the crime of obtaining money under false pretense it is not necessary that the person defrauded be the legal owner. It is sufficient if the person defrauded is shown to have been in possession of the property or parted with it in reliance on the misrepresentation.

The appellant was charged with obtaining money under false pretense. The prosecution alleged that he had obtained a bank credit advice not intended for his use and had obtained the cash equivalent from the private prosecutor after he had endorsed the credit advice. The bank did not honor the credit advice upon presentation to it by the private prosecutor. The appellant was indicted and tried before a jury, which found him guilty as charged. An appeal was taken from the judgment of the lower court.

The Supreme Court examined the trial record and found there was clearly sufficient evidence to sustain the appellant's conviction. The judgment was *affirmed*.

T. E. Cess Pelham for appellant. *Solicitor General Roland Barnes* and his assistant, *Jesse Banks*, for appellee.

MR. JUSTICE AZANGO delivered the opinion of the Court.

According to the indictment in this case, appellant was charged on June 2, 1973, by the Republic of Liberia with the crime of obtaining money under false pretense and having, between March 1, 1971, and March 31, 1971, unlawfully made a false representation with a fraudulent design and intent to obtain money from Raad Mourad, a trader residing and doing business in the City of Greenville, Sinoe County, based upon a certain bank credit advice, sent by the Christian Nationals' Evangelism Commission, Inc., of San Jose, California, U.S.A., through the Royal Bank of Canada, Lakeside and 8th Street, Toronto, Ontario, in Canada, to the Christian Nationals' Evangelism Commission, Inc., Greenville, Sinoe County, Liberia, for the sum of \$250.00, thereby misleading the said Raad Mourad by the false representation that the amount in the credit slip was intended for him as head of the C.N.E.C., Sinoe County.

On August 14, 1973, prior to arraignment of appellant, his counsel informed the court that on August 13, 1973, he had filed a motion to dismiss the indictment for want of jurisdiction. The motion was heard and denied. Subsequently, on August 21, 1973, he again filed another motion to dismiss the indictment. This motion was also heard and denied by the court. On August 29, 1973, appellant was arraigned and entered a plea of not guilty.

The trial was held before a jury which returned a verdict of guilt. Exceptions were noted, a motion in arrest

of judgment was filed by appellant, and denied by the court. A motion for a new trial was waived, for the record does not show that one was ever filed. Final judgment was rendered on September 17, 1973, against the appellant, fining him in the sum of \$25.00, or to be imprisoned for a time sufficient to liquidate the said fine, at the rate of \$12.50 per month. He was also required to make restitution in the amount of \$241.00. Exceptions were noted to the judgment and an appeal was announced to this Court, and it is now before us, on a bill of exceptions containing 10 counts.

Counts 1, 2, 3, and 4 of the bill of exceptions allege the trial judge's error in arbitrarily denying or overruling appellant's motions, contending the indictment failed to have a copy of the Bank of Monrovia credit advice for \$241.00 appended to it.

The issues raised in four counts posed various questions.

"1. Did the trial judge have jurisdiction over the person and subject matter of the indictment?

"2. And was he in error to have denied the motions for lack of jurisdiction over said person and subject matter?

"3. Did he err by denying the motion to dismiss the indictment?"

To answer these questions it is of importance that we refer to our Criminal Procedure Law. "Any defense or objection which is capable of determination without trial of the general issue may be raised before trial by motion to dismiss the indictment." Rev. Code 2:16.7(1).

And "Defenses and objections based on defects in the institution of the prosecution or in the indictment other than that it fails to show jurisdiction in the court over the subject matter or to charge the offense, may be raised only by motion before trial to dismiss. The motion shall include all such defenses and objections then available to the defendant. . . . Lack of jurisdiction to try the of-

fense or the failure of the indictment or information to charge an offense shall be noticed by the court at any stage of the proceeding." Rev. Code 2:16.7(2). An issue of fact shall be tried by a jury if a jury trial is required by the Constitution or by statute. All other issues of fact shall be determined at a hearing before the court with or without a jury or on affidavits. Rev. Code 2:16.4.

Counts 1, 2, 3, 4, 5, and 6 of the bill of exceptions are in part reiterations of the contentions raised in the motions aforesaid which we shall consider.

Turning now to count one of appellant's motion, which objects to the failure to append a copy of the credit advice receipt to the indictment, it is our holding that if a written instrument is only an incident of the offense of false pretense, a particular description thereof in an indictment or information charging the offense is unnecessary.

Nevertheless there is some conflict of authority in reference to the necessity of setting out a written instrument which entered directly into the commission of the offense. A rule which is supported by good authority is that where a written instrument is relied upon as a basis of a charge of the crime of false pretense, it is necessary to set forth in the indictment such portions of the instrument as are required to show its nature and purpose, which has been done herein.

According to our section of the Criminal Procedure Law governing the sufficiency of an indictment, it is stated that:

"An indictment shall be in writing and shall:

(a) specify the name of the court in which the action is triable and the names of the parties;

(b) Contain in each count a statement that the defendant has committed a crime therein specified by the number of the title and section of the statute alleged to have been violated, and described by name or by stating so much of the definition of the crime in

terms of the statutory definition as is sufficient to give the defendant and the court notice of the violation charged;

(c) Contain in each count a plain, concise and definite statement of the facts essential to give the defendant fair notice of the offense charged in that count, including a statement, if possible, of the time and place of the commission of the offense, and of the person, if any, against whom, and the thing, if any, in respect to which the offense was committed.

An indictment shall not be held insufficient because it contains any defect or imperfection of form which does not prejudice a substantial right of the defendant upon the merits." Rev. Code 2:14.3(1).

This provision of our statute is also supported by legal authorities:

"In conformity with rules relative to indictments and informations generally, an indictment for obtaining property by false pretense is sufficient if the language used is such that it designates the person charged and indicates to him the crime of which he is accused. An indictment is not invalidated by the fact that it charges the several acts constituting the offense to have been committed by the defendant in some particular capacity. Such an allegation may be treated as surplusage. An indictment for false pretense must, however, have that degree of certainty and precision which will fully inform the accused of the special character of the charge against which he is called on to defend and will enable the court to determine whether the facts alleged on the face of the indictment are sufficient in the contemplation of law to constitute a crime, so that the record may stand as a protection against further prosecution for the same alleged offense."

Appellant's contention is that there is no averment as to the fruits of the crime as required in the indictment to

establish the crime of obtaining money under false pretense, so that the indictment is not well founded, and consequently the court below did not have jurisdiction over him. This contention is not well founded.

It is our holding that appellant's contention that a copy of the bank credit advice should have been attached to the indictment is without legal merit. The essential facts which an indictment is required to set forth do not include documentary proof. *Swaray v. Republic*, 15 LLR 149 (1963).

As to appellant's motion to dismiss the proceedings against him on the ground of improper procedure, it is our holding that the provisions of the Criminal Procedure Law are intended to provide for the just determination of every criminal proceeding. They shall be construed to secure simplicity in procedure, fairness in administration, and the elimination of unjustifiable expense and delay.

The indictment having been shown to have satisfied all legal requirements provided under our Criminal Procedure Law, we hold that the judge did not err in dismissing the motion. Counts 1, 2, 3, 4, 5, and 6 of the bill of exceptions are, therefore, not sustained, nor as they have been set forth in counts 1, 2, 3, 4, and 5 of appellant's brief.

In closely examining the motion in arrest of judgment, we see that it contains identical issues raised in the motions ruled upon by the court below and upheld by us. We find it, therefore, unnecessary to go into the matter.

Nevertheless, we have noted in count 4 of the motion in arrest of judgment appellant's contention that "the facts and law pleaded in this motion in arrest of judgment are apparent on the face of the indictment in this section." This statement is incorrect when we consider the section of our Criminal Procedure Law governing motions in arrest of judgment.

"The court on motion of a defendant shall arrest judg-

ment if the indictment does not charge an offense or if the court was without jurisdiction of the offense charged. The motion in arrest of judgment shall be made within five days after verdict or finding of guilty, or after plea of not guilty. The motion shall be heard before judgment is rendered. If judgment is arrested, the court shall discharge the defendant from custody, and if he has been released on bail, he and his sureties are exonerated and if money has been deposited as bail, it shall be refunded." Rev. Code 2:22.2.

In view of this unambiguous language one wonders why counsel for appellant does not base his motion on the facts rather than merely generalize on the court's lack of jurisdiction over the subject matter or the person and the failure of the indictment to charge an offense. We must therefore uphold the ruling of the court below denying the said motion. For a scrutiny of the indictment clearly indicates that the offense of obtaining money under false pretense was charged, and the trial court legally exercised jurisdiction both over the appellant and the subject matter of the proceeding.

While it is advanced by many authorities that in indictments for obtaining goods under false pretense, the property should be described with as much accuracy and particularity as in indictments for larceny, and that the property should be described, at least in part, with such certainty as to enable the jury to decide whether the chattel proved to have been obtained is the same as that upon which the indictment was founded; money is a thing so well understood that where a person is accused of obtaining it by criminal means, unnecessary and immaterial particulars further identifying the subject of the crime may be omitted from the indictment.

In the instant case the indictment has not charged the defendant with obtaining goods under false pretense, but

with the crime of obtaining money under false pretense, the amount involved being \$241.00. We take the view, therefore, that count 8 of the bill of exceptions is not sustained.

In counts 7, 9, and 10 of appellant's bill of exceptions, he has contended that no receipt for the money involved was ever introduced, that the defendant upon failure to make restitution was to serve a term of imprisonment, that evidence was wrongly excluded and the judgment did not specify to whom restitution was to be made nor was it properly ordered.

In order to comment fully on these issues, we shall revert to the evidence in this case, to see whether or not the contentions were supported by the trial record.

The first prosecution witness was Raad Mourad.

"Q. Mr. Witness, give your name and place of residence.

"A. My name is Raad Mourad, living in the City of Greenville.

"Q. Are you acquainted with the defendant in the dock?

"A. Yes, I am.

"Q. The Republic of Liberia has charged the defendant in the dock with the commission of the crime of obtaining money under false pretense. If you have knowledge to prove this crime, you will state same for the benefit of this court and jury.

"A. Yes, Your Honor and jury; on March 15, 1971, Mr. Perkins came to my store and brought a check in the value of \$241.00, and he asked me to help him, to give him this amount. So I took the check from Mr. Perkins, looked at the face value, and said to him, where did you get this check from? He said that his head office in America, the Church people, sent him this

check, and the bank in Sinoe could not take it, and he has no money to go to Monrovia. I told him that I will do that for him, because we are friendly. I then told him to make a receipt for the value of \$241.00. After the receipt had been made, he signed it and I gave him the money. After which I took the receipt plus the check, then he left. The next day I went to O.A.C., the agent of the Bank of Monrovia, and I gave him the check to collect the amount. He said that he could not have paid the money right away, except he sends the check to Monrovia. So I gave him the check and I left. After few days the answer was that there was no money in the bank for this check. I then took the check back, and called Mr. Perkins. I told him that the bank could not have paid this amount. Mr. Perkins said that he is finish with the check, hence I had no business asking him for the amount again, and he left. I called him again, there wasn't anyone to give me any good answer for the money. After, I reported the case to Counsellor Tunning, and he brought it before the court. And this is the receipt and the check. This is all I know."

Thereafter, he identified the receipt and the bank credit advice slip given him by appellant.

The same witness then testified on cross-examination.

"Q. Mr. Witness, I suggest that you are an English speaking witness, and an English speaking business man, who could read and write? On the date mentioned by you, when the defendant presented the document before you, which you offered to be encashed for him, did you recognize what type of document it was, and if so state what?

"A. Yes, I took it to be a valid bank order, or credit

advice for money, but, when I took it to the bank in Monrovia, I was told that it was without value.

"Q. In keeping with the document marked P-1 by court, it shows upon its face, "Crediting your account" as per statement order No. 20. Did you see in said note the name of John K. Perkins to which the credit refers?

"A. I did not see the name of Mr. John K. Perkins on the face of the document that was supposed to have had the credit of CNEC, but Mr. Perkins told me, being that we were friends, that he was the representative of these people, and the said document was endorsed by him, which caused me to have accepted him in good faith and gave him same.

"Q. Are you the private prosecutor in this indictment?

"A. Yes, I am.

"Q. Do you remember that the defendant came to you on one occasion, and the date not too far after he had received the goods from you in the sum of \$241.00, that he showed you a letter coming from Allen B. Finley, the General Director of CNEC, Inc., International Headquarters, T. 321 Bradley Avenue, San Jose, California, and if so, what happened.

"A. I did not see any letter from the defendant. I saw this purported credit note. I did not give him any goods, I gave him cash, and the receipt shows cash and not goods."

The next witness for the prosecution was Clarence O. Tunning.

"Q. Mr. Witness, what is your name and place of residence?

"A. My name is Clarence O. Tunning, living in the City of Greenville, Sinoe.

"Q. Are you acquainted with the defendant in the dock and also Raad Mourad?

"A. Very well.

"Q. The Republic of Liberia has charged the defendant in the dock with the commission of the crime of obtaining money under false pretense. If you have any facts or circumstances please state same for the benefit of this court and jury?

"A. The Christian Nationals' Evangelism Commission, Inc., of Canada sent to their depot, in Greenville, Sinoe County, through the Bank of Monrovia, a bank slip, calling for \$250.00. This bank slip was dated December 29, 1970. The Bank of Monrovia deducted \$9.00 as a commission with \$241.00 payable to the institution in Greenville, Sinoe. How did Rev. Perkins, the defendant, come in possession of this bank slip, nobody knows. This bank slip was issued in duplicate and was carried to Raad Mourad by Rev. Perkins, the defendant. He endorsed both on the back thereof, as representing the Christian Nationals' Evangelism Commission, Inc., the defendant representing that this was a credit in his favor, and would be payable when presented to the bank. Raad Mourad gave the defendant \$241.00, and in turn, the defendant issued a receipt in favor of Raad Mourad for the sum of \$241.00, dated March 13, 1971. When Raad Mourad presented this bank deposit slip or advice, it was declared by both the agency here, and the Bank at Monrovia, not to be any money payable to Rev. Perkins, the defendant, and so it was returned to Raad Mourad. After the elapse of four months, Raad Mourad referred this matter to me as his lawyer. And I wrote Rev. Perkins a letter, dated July 14, 1972, acquainting him of the incident, and requesting that he should re-

turn the \$241.00 to Raad Mourad, or we will refer him to the County Attorney for Sinoe County, for prosecution. A copy of that letter I have in my possession, and the original is with the defendant. On the same day, July 14, 1972, I communicated with Hezekiah D. Monger, County Attorney for Sinoe County, and enclosed in his letter a copy of a letter I had addressed to Rev. Perkins, the defendant, requesting the County Attorney to institute preliminary proceedings against Mr. Perkins unless he would immediately hand over to him the money of \$241.00, and withdraw his two copies of statements of bank slip from us. The copy of that letter is now in my possession, the original is with Hezekiah D. Monger, County Attorney for Sinoe County. As the defendant ignored our letter to him, we again communicated with Hezekiah D. Monger, County Attorney for Sinoe, on July 21, 1972, requesting him to please start an investigation involving the matter of the false instrument the said Rev. Perkins, the defendant, had presented to my client, Raad Mourad, and received the amount of \$241.00 therefor, as it was of no value. In that letter, I enclosed a copy of the bank slip or advice, to Hezekiah D. Monger, County Attorney for Sinoe County, who also has the original of that letter in his possession, and I have the copy with me on the stand. The County Attorney having received my letter, staged an investigation of this matter on August 14, and at that time Counsellor T. E. Cess Pelham, with his client, Rev. John K. Perkins, and I were present with the County Attorney. When going into the matter, Counsellor Pelham presented a letter from the Christian Nationals' Evangelism Commission, Inc., with International Headquarters at three twenty-one

Bradley Avenue, San Jose, California, dated February 25, 1971, and purported to convince the County Attorney that this letter gave title to Rev. Perkins because of his connection with the CNEC, Inc. County Attorney Monger not being satisfied to institute criminal proceedings against Mr. Perkins, postponed the matter and so we wrote the CNEC a letter inquiring about the connection of Rev. Perkins with them, but they replied to me on August 25, 1972, in substance, that Rev. Perkins had no connection with CNEC, and that Rev. Perkins was even using the Christian Nationals' Evangelism Commission on the letter heading. The letter further stated that Rev. Perkins is not in any way affiliated with CNEC, and that they were puzzled as to know how Rev. Perkins obtained this bank slip or advice, and that they wrote him a letter, dated April 5, the copy of which I have now, asking him about this bank slip or advice which he, the defendant, obtained on October 14, 1970, but the defendant never answered. This letter dated August 25, 1972, also directed me to Senator Harrison Gigsby, legal advisor of the CNEC, in Liberia, and Rev. Augustus Marwih, whom they say can settle this matter with me. A copy of a letter from CNEC, written to Senator Harrison Grigsby, is here with me on the stand, signed by one Allen B. Finley, General Director. The same person who signed the letters addressed to Mr. Perkins, dated April 5, 1971. Copy of the letter addressed to Senator Harrison Grigsby was sent each to Augustus Marwih, Clarence O. Tunning and Hon. Hezekiah D. Monger. I forgot to mention that the letter addressed by the CNEC, dated August 25, 1972, by the General Director, Allen B. Fin-

ley, intimated that the documents, meaning the duplicate of the bank slip, sent to them, was sent to Senator Harrison Grigsby, their legal advisor. The original is now in court. We also communicated with the Bank of Monrovia, and had discussed with him the issue raised in my letter, and that Rev. Marwieh gave out that he was not aware of any check issued to Rev. Perkins by his organization, the CNEC. This letter, dated August 22, 1972, also requested me to transmit the bank slip to him to see same, which was given to our client, Raad Mourad. We again wrote the Bank of Monrovia, at Monrovia, a letter, dated September 4, 1972, including this credit advice to the CNEC, Greenville, Sinoe County account, in the amount of \$241.00. This letter is signed also by the same Charles T. O. King, III, Assistant Manager of the Bank of Monrovia. He advised me that what the defendant styled as a check issued in his favor, is only a credit advice, as is stated on the upper left hand corner, as the said credit advice, or order no. 20, and the letter is dated September 11, 1972.

“After we came in possession of all these informations, from abroad and Monrovia, we wrote County Attorney Monger, a letter dated September 18, 1972, and after explaining details of the matter, requested him to have the defendant indicted at the August 1972 Term of Court. The original of this letter is in the hands of the County Attorney, and the duplicate is with me here on the stand. This is all I know in the whole matter.”

In answer to a question as to whether or not he had been served with a subpoena *duces tecum* to produce documents in connection with the charge against the appel-

lant of obtaining money under false pretense, he acknowledged the fact.

The bank slip marked P-1 by the court, is the original bank slip for \$250.00, but because of the deductions by the Bank of Monrovia of \$9.00, \$241.00 was payable, and it was endorsed by Rev. John K. Perkins, for the CNEC, Inc., Greenville, Sinoe County, Liberia, the receipt therefor marked P-2; for \$241.00 received by Rev. John K. Perkins, for CNEC, Greenville, Sinoe County, Liberia. Both of these instruments bear the signature of Rev. John K. Perkins, the defendant, and I am acquainted with the signature and handwriting, because I am related to him. The letters from me to Rev. Perkins and County Attorney H. D. Monger, are my genuine signature, because I am the author of them. Letter of February 25, 1971, from John K. Perkins to the CNEC, Canada, and this is the photostat copy sent to me by the CNEC, and it also bears the signature of Rev. John Perkins. Letter dated April 5, 1971, to John K. Perkins, is the photostat copy sent by the CNEC, letter to Clarence O. Tunning from the CNEC, dated August 25, 1972, is the original, and it is signed by the General Director, Finley. Letter dated August 25, 1972, from the CNEC to Hon. Harrison Grigsby, is a photostat copy, and it is also signed by the General Director, Finley. The two letters from the Bank of Monrovia, Monrovia, signed by Charles T. O. King, III, Assistant Manager, dated August 22, 1972, and September 11, 1972, respectively, addressed to me, are original copies and are both signed by Charles T. O. King, III, and I am acquainted with the handwriting and signature, because I have communicated with him; better still, when

he wrote the letter, dated September 11, 1972, I was then sitting at his desk, when he signed it. I am acquainted with the handwriting and signature of Finley, because I know his signature also. I must add that the documents, excluding the bank credit slip or advice and receipt of Rev. Perkins, the defendant, to Raad Mourad, are ten in number and not eleven.

He also testified under cross-examination.

“Q. Mr. Witness, this amount of \$241.00 which was never paid, I presume by the Bank of Monrovia, is this the same amount which was never paid, for which you have instituted this action for the defendant John K. Perkins to pay?

“A. I said the amount transmitted by the CNEC, at Canada with plenty reference to the bank deposit slip dated December 29, 1970, which is still afloat; the General Manager in his letter to Senator Harrison Grigsby, insisted that this amount was made to their representative in Sinoe to be deposited into their account in Monrovia, and in no way was meant to be obtained or used by anyone else. After your client received this advice of deposit slip from either the Post Office or somewhere, he took it to Raad Mourad and made false representation that it was a check in his favor, and valid for payment, whereupon Raad Mourad gave him this money. But the Bank of Monrovia gave out that there was no account given to Perkins, and, therefore, never paid the amount appearing on the bank slip. For this false representation made by the defendant, thus cheating and defrauding Raad Mourad of his money, is why now he is being prosecuted.

“Q. Mr. Witness, with reference to written evidence marked P-1 and P-2, do you give the court and

jury to understand that upon these documents and an acknowledgment, the defendant received from the Bank of Monrovia the sum of \$241.00?

"A. Document, marked P-1 is a credit advice of funds sent by the CNEC, of Canada to their institution in Greenville, Sinoe County, through the Bank of Monrovia. Perkins, the defendant, surreptitiously through hook and crook came in possession of this document and after endorsing it on the back, for and on behalf of the CNEC, Greenville, Sinoe County, Liberia, made false representation to the private prosecutor, Raad Mourad; upon which the said Raad Mourad was deceived and misled and parted with \$241.00, which the defendant received; and although P-1 shows \$250.00, but the bank's commission being deducted by the bank, defendant received \$241.00. When it comes to document marked P-2, Raad Mourad was sensible to obtain this receipt, fearing that tomorrow Perkins might deny that he did not give him any money. Perkins never received any money from the bank as far as I know, because had he attempted he would have been apprehended and jailed.

"Q. Since you have said that Raad Mourad was sensible enough to get a receipt for the \$241.00 he gave the defendant, is it not that document P-2 is a guarantee to Raad Mourad for the money he was giving the defendant, Raad Mourad knowing he was not the Bank of Monrovia?

"A. Document marked P-2 is what I was calling a springboard or a trap which Raad Mourad set for your client, because had he denied receiving the money from Raad Mourad, and had the CNEC obtained information that Raad Mourad had no receipt, then Raad Mourad would have been charged for a criminal offense; but

the boot is on the other leg. Perkins falsely represented himself, which led Raad Mourad to part with his money, and Raad Mourad never acted in any manner for the Bank of Monrovia, but he acted in his individual capacity, as Raad Mourad, upon deception by a false, deposed Minister of the Gospel, Rev. John K. Perkins, the defendant."

Upon being called by the prosecution to testify in its behalf, Peter Klorteh, Postmaster in Greenville, confirmed that document P-2, the bank credit advice, was signed by Rev. John K. Perkins. Documents marked by the court P-8, P-9, P-10, P-11, and P-12, were all signed for by Counsellor Clarence O. Tunning.

The Postmaster stated also that he originally knew Rev. Perkins as a Minister of PAW Mission, then of the Assembly of God's Church. He never knew him to be associated with the C.N.E.C. Mission and for mail to be there received by him from the Post Office. The Post Office only delivered mail addressed to him.

Senator Harrison Grigsby was a witness for the prosecution. He corroborated the testimony of Mr. Tunning, identified documents earlier received and marked by court P-1 to P-13, but he could not identify the signature of Rev. John K. Perkins.

Nevertheless, with this testimony against the defendant, one must seriously wonder if Rev. John K. Perkins was indeed a truly honest man, which his counsel labored to impress the Court with during argument. We shall, however, comment on this later.

After the prosecution rested its case, defendant testified in his own behalf.

"I did not receive any money under false pretense. What I do know, that it was the beginning of 1971, I went to the Post Office, and received several mails through my Post Office box. When I went and opened these letters, one of the envelopes was sealed

with a bank credit note, without a letter. Trying to find out the next day, I went to the bank and gave it to the bank agent to find out if there was any money, I was told that the money was not in Sinoe, but rather in Monrovia, and I returned home. After a few days, being a customer with Raad Mourad, I went to his store to attend to some business. While attending same, I made mention of the bank credit note. He then told me that he would like to see it; I said, all right. After few times, which was January 14, 1971, I went downtown with this credit note to Raad. I handed same to him, and told him that it was the bank credit note. After inspecting same, he said that it was good. He further stated that I wanted to go to Monrovia concerning this note, but it would not have been of any use for me to have gone. However, he said since you are doing business with me, you give this credit note to me, so I can cash it for you, because going to Monrovia will cause you to spoil much of this money; simply endorse it and put thereon, by Rev. John K. Perkins, and leave it with me; after a week you can call back. I left the credit note with him, and I went home. After one week, according to his instructions, I went back to him; he said, okay, I will phone back to Monrovia, because, he said, the bank had told him that the money was there, but it will take a long time, hence, I should wait. I waited for another period of time, and went back to him. Upon my arrival, he said, I am sorry I put myself in this business like that; because the way things are moving, I will give you the money, so at anytime the money arrives, I will receive it. He then gave me few dollars and some goods, and I went home. Coming to the conclusion of the business, which was March 13, 1971, I went back to him, and I received some money in addition to the first money he gave me, which made it the total of \$30.00 cash. He gave me some goods in

addition to the first goods to cover same. After the conclusion of the document, on the following day, I wrote the CNEC, thanking them for the credit note that they had sent. On April 14, 1971, I received a letter from the General Director, saying that he was very interested to get such a very interesting letter from me, but asked how I got this note and at what time I got it. He said further that it seems that the bank slip was sent incorrectly; so by returning this bank slip and my letter will help them in transferring their funds to Africa. While on my way from the Post Office that very day, I carried the letter to Raad and said, here is the letter that I received. The people said that it was sent incorrectly, so I should return it; in order to keep my dignity, please give me the slip because I have already given you a receipt for all I have received at the time we came to a conclusion of our business. He, Raad Mourad, then said, no, you will get the money hence, I should not reply to the letter. I said all right. Coming to the middle part of 1971, he, Raad Mourad, called me when I was passing. He stated that I should pay the money to him. I then said, before I pay the money to you, please give me the bank credit slip, or note. He said, no. I further stated that, except I get the credit note I will not be willing to pay you the money. While this argument was on, William Ellious and Thomas Sarvage entered Raad's store and listened to the two of us. He said that he will put me in jail. I then said, okay, when you put me there, I am going to get out. I walked out of his store. This is all I know about it."

While testifying under direct and cross-examination during the trial, he identified a communication that was sent to him by Mr. Allen B. Finley.

If it is expected that we receive the allegation of defendant that he did not receive any money under false pretense, then what reasonable explanation can be given

by him for receiving any amount from the private prosecutor, based on a Bank of Monrovia advice of debit credit slip, dated December 29, 1970, which was not addressed to him, but to the Christian Nationals' Evangelism Commission, Inc., Greenville, Sinoe County. This view is reinforced by his answers under cross-examination when he emphatically stated that he was not affiliated with the C.N.E.C. Since they have been referred to, we have set forth the Bank of Monrovia advice of debit credit slip and the receipt of \$241.00 given to the private prosecutor.

"The Bank of Monrovia

"Advice of Debit Credit, Branch Monrovia, Date: Dec. 29, 1970.

"Details: Crediting your account as per payment order no. 20, Oct. 14, 1970, from the Royal Bank of Canada, Lakeside and 8th Street, Toronto 14, Ontario, order Christian Nationals' Evangelism Commission, Inc.

"A/C No. Fgn. Amt. Can. \$250.00. Rate 0.964 amount \$241.00

"Mail to: Christian Nationals' Evangelism JBK,
FGN
Commission, Inc. Greenville, Sinoe
County Liberia.

[Signature illegible authorized
signature.]"

"Receipt

"Received from Mr. Raad Mourad the amount of \$241.00 (Two hundred and forty-one dollars) on order no. 20 from Christian Nationals' Evangelism Commission, Inc., Toronto 14, Ontario, Canada.

"[Sgd.] REV. JOHN K. PERKINS.

"Christian Nationals' Evangelism
Commission, Inc., Greenville,
Sinoe County, Liberia."

Considering these two documents, one would find it

very difficult to exculpate appellant of the charge against him, especially when at the trial he testified that he was associated with other evangelical organizations which were in no way connected with C.N.E.C. Furthermore, appellant testified that the envelope in which the advice of credit was enclosed was addressed to him, but upon opening it, he discovered that the bank credit slip was addressed to the Christian Nationals' Evangelism Commission, Inc., Greenville, Sinoe, Liberia, with which he was neither affiliated nor associated. We wonder what motivated him to have given the credit slip to Raad Mourad for endorsement upon receiving \$241.00 from Mourad.

The testimony of William W. Ellious called by the defense, is pertinent.

"On one day of last year, 1972, while visiting Mr. Raad's store, I met Rev. Perkins with Raad. And while there, there came an argument between Mr. Raad and Rev. Perkins. The nature of this argument was about a check, which was issued to Raad or given to Raad by Rev. Perkins, in favor of a certain amount which I do not know, that Rev. Perkins was owing Mr. Raad. In that argument, Mr. Raad was demanding Rev. Perkins to give him power of authority for him to receive Mr. Perkins' salary check because the check which Rev. Perkins gave him, Raad, was without value. But Rev. Perkins contended that if the check he gave to Raad was without value, Raad should first give him the said check, before he could give him power of authority. This is all I can remember."

Although Counsellor Clarence O. Tunning was offered by the appellant as a witness, he could not testify because of legal restrictions. Hence, the only testimony introduced in an attempt to rebut or discredit the testimony of the private prosecutor and other prosecution witnesses,

was that of William W. Ellious, which was of little value and did not tend to corroborate the testimony of appellant.

At the commencement of appellants' argument before us, the learned counsel alluded to the character and reputation of appellant as reflected in a letter of Jackson F. Doe, Minister of Education, dated May 23, 1973, extolling appellant for giving unsparingly and unselfishly of his talent, time, and energy to the training of Liberian youth. What relevance this letter has to the commission of the crime of obtaining money under false pretense is yet to be explained. For it does not change the false representation of a fact or circumstance calculated to mislead an individual. Neither does it erase obtaining personal property by an intentional false statement concerning a material matter of fact. Obtaining money under false pretense is a crime which necessarily involves obtaining property through the perpetration of a fraud.

In the motions as well as during argument before us, appellant's counsel laid stress on the honesty of appellant and the civil contractual allegations in the indictment.

We wish to observe that the notion that it is impracticable to make the criminal law co-extensive with moral delinquency is evidently responsible for the fact that many cases of fraud and deceit are left to be dealt with exclusively by civil tribunals. It would certainly seem, however, that a law which punishes a man for obtaining property by means of a willful misrepresentation or deliberate falsehood does not establish a rule of morality which can be deemed too rigid for honest men. Moreover, it has been judicially recognized that since the purpose of the statutes against false pretense is to suppress cheating, they should be construed so as to effectuate that purpose. The purpose of a statute against false pretense is not only to protect owners of property, but also to discourage cheating by punishing cheaters, and is designed to protect not only the shrewd and the wary but also the simple and the

foolish. It is sufficient to make the offense indictable where a person is in fact deceived, even though the deception is due to his own weakness and credulity. It is not necessary that the pretense be such as to deceive persons of ordinary prudence. The modern view requires merely that the representations have actually deceived the victim.

In addition to the evidence at the trial indicating the culpability of appellant, we herewith quote excerpts from exhibits marked and admitted into evidence.

1. The first is a letter from Counsellor Clarence O. Tunning, to Hezekiah D. Monger, County Attorney, Greenville, Sinoe County, dated September 18, 1972.

“Mr. County Attorney:

“When first I wrote you on July 14, 1972, to institute criminal prosecution against John K. Perkins in connection with an amount of \$241.00 he had received from my client, Raad Mourad, upon order no. 20, issued in favor of Christian Nationals' Evangelism Commission, Inc., which the said John K. Perkins had endorsed, you were loath in so doing, until on the 14th day of August, 1972, when you convened a conference at which Counsellor T. E. Cess Pelham, Mr. Perkins and I were present and you did refuse to act in accordance with our request because of a letter, dated April 5, 1971, addressed to the said John K. Perkins by the said CNEC, sent by the Canadian Office of the said CNEC, to the account of the said CNEC at Monrovia.

“We have communicated with the said Christian Nationals' Evangelism Commission, Inc., at San Jose, California 95128, U.S.A., and they have replied in substance that they do not know how Mr. Perkins obtained order no. 20, and that they wrote him concerning it, but he never answered.

“The said CNEC has also written you, Senator Harrison Grigsby, me, as well as Rev. Augustus Marwieh on this matter, and you and all of the persons

named herein, including myself, have documents to maintain a prosecution.

"In the light of the above, will you be so kind as to have the said John K. Perkins indicted this term of court now in session?"

"Anticipating your cooperation in the premises and with kind regards,

"Faithfully yours,

"/s/ CLARENCE O. TUNNING,

Counsel for Raad Mourad."

The second is also a letter from Counsellor Clarence O. Tunning to Hezekiah D. Monger, County Attorney for Sinoe County, dated July 21, 1972.

"Mr. County Attorney:

"Referring to my letter to you of the 14th instant, I have to say that you will please stage an investigation in re the matter of the false instruments offered by John K. Perkins for the sum of \$241.00, which he presented to my client, Raad Mourad, and received the amount therefor, when they were of no value.

"The instrument is herein enclosed for your observation and other benefit.

"The witnesses are: Raad Mourad; Clarence O. Tunning; copy of instrument.

"Anticipating your cooperation in the premises and with kindest regards,

"Very truly yours,

"/s/ CLARENCE O. TUNNING."

The third exhibit is also a letter involving the same persons.

"Mr. County Attorney:

"We beg to herein enclose a copy of a letter addressed to Mr. John K. Perkins of this City, which is self-explanatory.

"We must request that you will institute criminal proceedings against the said Mr. Perkins, unless he will immediately hand over to you the amount of two

hundred and forty-one dollars (\$241.00), and withdraw his two copies of statement from us, thus abating this long standing matter. Moreover, we stand ready to give you the name of our witnesses, with the fruit of the crime.

"Hoping to receive your cooperation in the premises and with sentiments of our esteemed regards,

"Very truly yours,

"/s/CLARENCE O. TUNNING."

The fourth exhibit is a letter dated July 14, 1972, from Counsellor Tunning to the appellant.

"Dear Sir:

"I have been retained by Raad Mourad, a Lebanese trader of this City, to represent to you as follows:

"1. That during the year 1971, you gave him duplicate copies of a current account statement from the Bank of Monrovia, dated December 29, 1970, crediting the account of Christian Nationals' Evangelism Commission of Toronto 14, Ontario, with the sum of \$241.00.

"2. That you endorsed this statement and represented to the said Raad Mourad as aforesaid that said document was genuine and would be honored by the Bank of Monrovia at Monrovia, and paid in cash, which averment of yours misled the said Raad Mourad and thereupon he gave you the said sum of two hundred and forty-one dollars (\$241.00), in cash by crediting your account with the same; but that when he presented this statement at the said Bank of Monrovia, Monrovia, they informed him that said document was of no value and you had no money there to your credit.

"3. That the said Raad Mourad has repeatedly demanded the return of the said sum of \$241.00 from you, and you have wantonly refused to refund the said sum of \$241.00 to the said Raad Mourad as aforesaid up to the date hereof.

"4. The said statement is in my custody for presenting to you upon payment of the said sum of \$241.00.

"Now, Mr. Perkins, this act of yours is a crime, and you should realize this fact. We must therefore demand of you the said sum of \$241.00 upon receipt hereof by you. If not, we will refer you to the County Attorney for Sinoe County, for prosecution.

"Awaiting your hasty response hereto,

"Yours very truly,

"/s/ CLARENCE O. TUNNING."

The next exhibit is a letter from Rev. John K. Perkins to the Christian Nationals' Evangelism Commission, Inc., Toronto 14, Ontario, Canada.

"Dear Fellow Christians:

"Greetings to you in the precious Name of Jesus. Your order no. 20, dated October 14, 1970, for the amount of \$250.00 (TWO HUNDRED AND FIFTY DOLLARS) sent to the Christian Nationals' Evangelism Commission, Inc., Greenville, Sinoe County, Liberia, has been received.

"Many thanks for this amount sent to us. Please send me a copy of the constitution and bylaws of the Christian Nationals' Evangelism Concession, Inc., as well as any other publications concerning the Christian Nationals' Evangelism Commission, Inc.

May the Lord richly bless you.

"Yours in Christ,

"/s/ REV. JOHN K. PERKINS."

Another exhibit we are quoting is a letter from Allen B. Finley, General Director, to Rev. John K. Perkins, dated April 5, 1971.

"Dear Mr. Perkins:

"Your letter written to our office in Toronto, Ontario, Canada, was referred on to me.

"I was very interested to read in your letter after so many months you had made note of 'our order no. 20,

dated October 14, 1970, for the amount of \$250.00.'

"It would seem that this money was delayed a long time. Can you please send us that order which you described as 'order no. 20.' We would like to find out why it was delayed so long and if it was sent incorrectly. When did you receive it? Did it come to you from the bank in Canada? This information will be helpful to us in future transfers of our funds.

"Also, please explain to us more about your ministry. Our office is in touch with over 600 nationals in 15 countries around the world and we would like to know more about you and your relation to the Christian Nationals' Evangelism Commission, Inc., Sinoe County, Liberia.

"After hearing from you, I will be able to send more of the information you requested in your letter of February 25, 1971.

"May God glorify Himself in your work.

"Cordially in Christ,
"/s/ ALLEN B. FINLEY,
General Director."

The seventh exhibit is a letter from Allen B. Finley to Clarence O. Tunning, dated August 25, 1972.

"Dear Mr. Tunning:

"Your letter of August 14, 1972, has been received.

"Please find enclosed a copy of a letter I have written to Senator Harrison Grigsby about this matter, as he is our legal advisor there.

"The slip to which you made mention (document from the Bank of Monrovia) is a simple bank deposit notice of funds sent from our Canadian office into our account in Monrovia.

"We do not know how Mr. Perkins obtained it and that is why I wrote him a letter dated April 5, 1971, asking him about a previous slip which he obtained dated October 14, 1970, but he never answered.

"I am sure Senator Grigsby and Rev. Augustus B. Marwiah, Director of the ENI Mission, can settle this matter with you.

"The document you sent and requested our return has been sent to Senator Grigsby.

"Very truly yours,
 "/s/ ALLEN B. FINLEY,
General Director.

"cc: AUGUSTUS MARWIEH
 SENATOR HARRISON GRIGSBY
 HON. HEZEKIAH D. MONGER"

A letter from Allen B. Finley to Senator Harrison Grigsby, Capitol Hill, Monrovia, Liberia, dated August 25, 1972.

"Dear Senator Grigsby:

"We need your help again. This time to clarify a serious matter in the Greenville area. Please find enclosed the following:

- "1. A letter from Counsellor Clarence O. Tunning of August 14, 1972.
- "2. A Bank of Monrovia deposit credit slip of December 29, 1970.
- "3. A copy of a letter from Rev. John K. Perkins of February 25, 1971, to Canada.
- "4. My letter to him of April 5, 1971.

"As you read these you can see that Mr. Perkins has evidently obtained notices sent by the Bank of Monrovia to CNEC. He also has put Christian Nationals' Evangelism Commission on the heading of his letter to our Canadian office.

"Mr. Perkins is not in any way affiliated with CNEC. My letter of April 5, 1971, was written trying to determine how he obtained the notice and what he had done with it, as well as what he considered was his relation to CNEC since he had used it on his letterhead. He never answered.

"The notice which is enclosed (Bank of Monrovia

December 29, 1970), was, of course, mailed to our representatives in Sinoe telling of a deposit into our account in Monrovia and in no way meant to be obtained or used by anyone else. Would you please inform Mr. Tunning and also Hon. Hezekiah D. Monger, County Attorney for Sinoe County, about these things. Also would you please return the copy of the Bank of Monrovia slip to Mr. Tunning, but the original should be kept by yourself as CNEC's legal advisor.

"Thank you.

"Very truly yours,
"/s/ ALLEN B. FINLEY,
General Director.

"cc: AUGUSTUS MARWIEH
CLARENCE O. TUNNING
HON. HEZEKIAH D. MONGER"

Still another exhibit is a letter from Charles T. O. King, III, to Counsellor Clarence O. Tunning, dated August 22, 1972.

"Dear Sir:

"Fortunately, when I received your letter Rev. Marwieh was in Monrovia and I had discussions with him on the issue raised in your letter and he said that he was not aware of any check issued to Rev. Perkins by his organization. He further said that he had received information from his organization's headquarters in San Jose, California, that they are also unaware of any check having been issued to Rev. Perkins. In view of the foregoing, we are unable to render any opinion on this transaction until we are able to scrutinize whatever documents you may have in your possession. Particularly, we would like to see order no. 20, to your client, Raad Mourad.

"Very truly yours,
"/s/ CHARLES T. O. KING, III,
Assistant Manager."

We also quote a letter from Charles T. O. King, III, to Counsellor Tunning's law firm, Greenville, Sinoe County, dated September 11, 1972.

"Gentlemen:

"We herewith acknowledge receipt of your letter dated September 4, 1972, enclosing our credit advice to Christian Nationals' Evangelism Commission account in the amount of \$241.00, which you called order no. 20, October 14, 1970.

"We would like to point out that order no. 20 is not a check, it is only a credit advice, as is stated on the upper left hand corner of order no. 20.

"Very truly yours,

"/s/ CHARLES T. O. KING, III,
Assistant Manager."

From the record certified to us, we are convinced that false pretense led to the receipt of the \$241.00 by appellant. The specific intent to acquire the \$241.00 was proved by the prosecution's witnesses. The contention of appellant's counsel that Raad Mourad should not have been the private prosecutor in this case but it should have been C.N.E.C., which allegedly is the owner of the \$250.00, is absurd. For it has been held that an intent to defraud need not be directed against the legal owner, it is sufficient if it is directed against any one in lawful possession of the money or anyone who parts with property in reliance on the misrepresentation.

On the whole, it is our further feeling that in addition to the statutory definition, the crime of obtaining money under false pretense is complete when there is a device used to perpetrate the fraud or when there is an impersonation. In this case, there was perpetration of fraud committed by appellant for he knew full well that the bank credit advice slip from the C.N.E.C. was not addressed to him, nor innocently obtained from any association with which he was affiliated or associated or for whom he worked. To the contrary, the instrument was

addressed to the C.N.E.C., of Sinoe County from its headquarters in Canada. What is most apparent is the fact that he received and issued a receipt for an amount against order no. 20, which was the property of C.N.E.C., of Sinoe County.

The foregoing is to be construed strictly under the applicable sections defining the crime of obtaining money under false pretense.

In view of the foregoing we are of the firm holding that the trial has been properly conducted, the verdict and final judgment founded thereon in complete accord with the evidence, and that the judgement should not be disturbed. It is, therefore, affirmed to all intents and purposes.

The Clerk of this Court is, therefore, ordered to send a mandate to the court below, informing it of this judgment, with instructions to resume jurisdiction over the case and enforce its judgment. It is so ordered.

Affirmed.