

Criminal Law, False Tokens, What Are. False Pretense. What Token Required. Token, What Is False Under Statute. Pretenses, False, What Is Token of. Memorandum, Sufficiency of Under Sec. 9289. Statutes, Section 9289, etc., Construed.

The receipt given for money received for a definite purpose under the facts submitted, is sufficient as a token or "note or memorandum," under the provisions of Section 9289, Revised Codes.

November 17, 1915.

Hon. H. W. Bunston,  
County Attorney,  
Hardin, Montana.

Dear Sir:

I am in receipt of your letter of the 13th instant, submitting the question:

as to whether the receipt enclosed with your letter is a token or memorandum within the meaning of Section 9289, Revised Codes?

It appears from the statement of facts that some time in 1913, parties pretending to have for sale stock in the National Life Insurance Company of Montana, offered to sell the same to parties in your county, who agreed to make the purchase, and actually paid therefor, either in notes or cash the full value of such stock as represented by the sellers; that one or more of the notes so given in payment for such stock, was afterwards negotiated by the sellers in payment of property, the title of which they took to themselves, and another one of the notes was negotiated at a bank and the money paid to the sellers of the pretended stock. The stock itself, was not delivered to the purchasers, and never has since been delivered to the purchasers. At the time of the sale the sellers made and delivered to the purchaser their receipt to the effect that the money received was in full settlement on fifty shares of this stock. If it should transpire that the sellers of this pretended stock at the time did not intend to make delivery thereof, or that they did not have the stock, and knew that they could not get it, then it is apparent that they intended fraud, and the receipt in such case is a sufficient memorandum or token within the meaning of said section 9289, for the receipt itself is an earnest, or token, or agreement, or promise to deliver the stock, or to furnish the stock to the parties to whom it was sold, and said receipt is expressed in writing and signed by the defendant. But if the above statement of facts is true as to the intention of the parties then the whole transaction is fraudulent, and the receipt itself becomes "a false token or writing," and is also "some note or memorandum thereof" in writing. We have three statutes in Montana relating to false pretenses, Section 8683, Section 8657, and said Section 9289. The gist of an action of this character, of course, is the fraud practiced and intended to be practiced. The only case that I call to mind in Montana, relating to this subject, is: *State v. Phillips*, 36 Mont. 112; 92 Pac. 299, and the *Underwood* case therein cited. Similar statutes were considered and discussed at considerable length by the entire court in *People v. Rathstein*, 180 N. Y. 148, 72 N. E. 999. Discussion may also be found in the following cases:

State v. Hammelsy, (Oregon) 96 Pac. 865;  
People v. Cadot (Cal.), 71 Pac. 650;  
People v. Carpentier, 91 Pac. (Cal.) 809;  
State v. Phillips (Wash.), 84 Pac. 24.

The analysis of these similar statutes by the courts above referred to in connection with your knowledge of the specific facts, may aid you some in determining your line of action. If the facts as presented to you, after full investigation, show that fraud was actually perpetrated, and that these parties did purposely commit the crime, no hesitancy should be entertained as to whether they should be called to account. Sometimes in these cases, an attempt is made to evade civil liability through the medium of proceedings in criminal cases. However, you understand the facts, and will be able to reach definite conclusions. The general law relating to the subject, may also be found in

19 Cyc.384;

21 Am. St. Rep. 265; 25 Am. St. Rep. 378;

2 Ann. Cas. 1010.

The receipt enclosed is herewith returned.

Yours very truly,

J. B. POINDEXTER,

Attorney General.