

Now, applying the above rules regarding the necessity of strictly construing and strictly following penal statutes, and also the rule that pleadings are construed most strongly against the pleader, and here there is obviously, and at the most, only an averment of a "*pretense*" of payment, and that "*pretense*" of payment is not alleged to have been, if made, made in compensation for any services ever rendered, but was only a pretense of payment on and for "*pretended*" services.

It is, of course, not possible to make this glaring defect of the complaints more apparent than it is made by simply reading the text thereof; and this defect is, therefore, utterly fatal.

Another specific defect of the petition (but which is really embraced in the above proposition, alleging the complaints to amount to a charge of embezzlement) is this: That the last clause but one in each of the complaints amounts to an explicit averment that no contract ever existed between Crawford and the Indians; that no services were ever rendered by Crawford on behalf of the tribe; that no approval of any compensation was ever made by the Commissioner and Secretary; *that no payment in excess of the amount approved by said officers* ever was made; that each and all of these were shams, mere pretenses; and that the real transaction was but a felonious conspiracy between the defendants "to distribute the said sums of money" named in the respective petitions, and amongst the defendants and their aiders and abettors, and to fraudulently appropriate the same to their own uses and purposes, and which appropriation they did make.

This just stated is not a matter of *inference* or *construction* on our part, but it is simply the literal reading of the complaints; and there is no escape from the proposition that this is an indictment for a conspiracy to embezzle and an actual embezzlement pursuant to the conspiracy,