

LEXSTAT CAL PEN CODE § 470

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PENAL CODE
Part 1. Of Crimes and Punishments
Title 13. Of Crimes Against Property
Chapter 4. Forgery and Counterfeiting

GO TO CALIFORNIA CODES ARCHIVE DIRECTORY

Cal Pen Code § 470 (2008)

§ 470. Acts constituting forgery

(a) Every person who, with the intent to defraud, knowing that he or she has no authority to do so, signs the name of another person or of a fictitious person to any of the items listed in subdivision (d) is guilty of forgery.

(b) Every person who, with the intent to defraud, counterfeits or forges the seal or handwriting of another is guilty of forgery.

(c) Every person who, with the intent to defraud, alters, corrupts, or falsifies any record of any will, codicil, conveyance, or other instrument, the record of which is by law evidence, or any record of any judgment of a court or the return of any officer to any process of any court, is guilty of forgery.

(d) Every person who, with the intent to defraud, falsely makes, alters, forges, or counterfeits, utters, publishes, passes or attempts or offers to pass, as true and genuine, any of the following items, knowing the same to be false, altered, forged, or counterfeited, is guilty of forgery: any check, bond, bank bill, or note, cashier's check, traveler's check, money order, post note, draft, any controller's warrant for the payment of money at the treasury, county order or warrant, or request for the payment of money, receipt for money or goods, bill of exchange, promissory note, order, or any assignment of any bond, writing obligatory, or other contract for money or other property, contract, due bill for payment of money or property, receipt for money or property, passage ticket, lottery ticket or share purporting to be issued under the California State Lottery Act of 1984, trading stamp, power of attorney, certificate of ownership or other document evidencing ownership of a vehicle or undocumented vessel, or any certificate of any share, right, or interest in the stock of any corporation or association, or the delivery of goods or chattels of any kind, or for the delivery of any instrument of writing, or acquittance, release or discharge of any debt, account, suit, action, demand, or any other thing, real or personal, or any transfer or assurance of money, certificate of shares of stock, goods, chattels, or other property whatever, or any letter of attorney, or other power to receive money, or to receive or transfer certificates of shares of stock or annuities, or to let, lease, dispose of, alien, or convey any goods, chattels, lands, or tenements, or other estate, real or personal, or falsifies the acknowledgment of any notary public, or any notary public who issues an acknowledgment knowing it to be false; or any matter described in subdivision (b).

(e) Upon a trial for forging any bill or note purporting to be the bill or note of an incorporated company or bank, or for passing, or attempting to pass, or having in possession with intent to pass, any forged bill or note, it is not necessary to prove the incorporation of the bank or company by the charter or act of incorporation, but it may be proved by general reputation; and persons of skill are competent witnesses to prove that the bill or note is forged or counterfeited.

HISTORY:

Added Stats 1998 ch 468 § 2 (AB 2008). Amended Stats 2005 ch 295 § 5 (AB 361), effective January 1, 2006.

NOTES:**Former Sections:**

Former § 470, similar to the present section, was enacted Stats 1872, amended Stats 1905 ch 515 § 1, Stats 1968 ch 713 § 1, Stats 1986 ch 55 § 25, effective April 16, 1986, Stats 1988 ch 624 § 1, Stats 1989 ch 897 § 20, and repealed Stats 1998 ch 468 § 1.

Amendments:**2005 Amendment:**

Added ", or falsifies the acknowledgement of any notary public, or any notary public who issues an acknowledgement knowing it to be false;" in subd (d).

Historical Derivation:

(a) Former Pen C § 470, as enacted Stats 1872, amended Stats 1905 ch 515 § 1, Stats 1968 ch 713 § 1, Stats 1986 ch 55 § 25, Stats 1988 ch 624 § 1, Stats 1989 ch 897 § 20.

(b) Former Pen C § 1107, as enacted Stats 1872.

(c) Crimes and Punishment Act §§ 73, 79 (Stats 1850 ch 99 §§ 73, 79).

Cross References:

Sufficiency of intent to defraud: *Pen C § 8*.

Manifestation of intent: *Pen C § 21*.

Offering false or forged instruments to be filed for record: *Pen C § 115*.

Issuing or circulating bill, check, ticket, certificate, promissory note, or paper of any bank: *Pen C § 648*.

Solicitation of forgery: *Pen C § 653f*.

Punishment for scheme to defraud owner: *Pen C § 670*.

Pleading destruction or withholding of instrument in prosecution for forgery: *Pen C § 965*.

Forgery or counterfeiting of public report for subdivisions: *B & P C § 11020*.

Counterfeit parimutuel tickets: *B & P C §§ 19666, 19667*.

Soliciting false or forged signature to initiative, referendum, or recall petition: *Elec C § 18610*.

California State Lottery Act of 1984: *Gov C §§ 8880 et seq.*

Forging, altering, reusing, or counterfeiting cigarette tax stamps or meter impressions: *Rev & Tax C § 30473*.

Collateral References:

Witkin & Epstein, *Criminal Law* (3d ed), Crimes Against Governmental Authority § 153.

Witkin & Epstein, *Criminal Law* (3d ed), Crimes Against Property §§ 140, 147, 148, 150, 151, 152, 153, 154, 155, 156, 157, 158, 160, 163, 166, 167, 168, 169, 171, 173.

Witkin & Epstein, *Criminal Law* (3d ed), Crimes Against Public Peace and Welfare § 293.

Witkin & Epstein, *Criminal Law* (3d ed), Criminal Trial § 422.

Witkin & Epstein, *Criminal Law* (3d ed), Introduction To Crimes § 60.

Witkin & Epstein, *Criminal Law* (3d ed), Punishment § 168.

Cal Criminal Defense Prac., ch 143, "Crimes Against Property".

Judicial Council of California Criminal Jury Instructions (LexisNexis Matthew Bender), CALCRIM No. 1900, Forgery by False Signature

Judicial Council of California Criminal Jury Instructions (LexisNexis Matthew Bender), CALCRIM No. 1901, Forgery by Endorsement

Judicial Council of California Criminal Jury Instructions (LexisNexis Matthew Bender), CALCRIM No. 1902, Forgery by Handwriting or Seal

Judicial Council of California Criminal Jury Instructions (LexisNexis Matthew Bender), CALCRIM No. 1903, Forgery by Altering or Falsifying Will or Other Legal Document

Judicial Council of California Criminal Jury Instructions (LexisNexis Matthew Bender), CALCRIM No. 1904, Forgery by Falsifying, Altering, or Counterfeiting Document

Judicial Council of California Criminal Jury Instructions (LexisNexis Matthew Bender), CALCRIM No. 1905, Forgery by Passing or Attempting to Use Forged Document

Judicial Council of California Criminal Jury Instructions (LexisNexis Matthew Bender), CALCRIM No. 1906, Forging and Passing or Attempting to Pass: Two Theories in One Count

Judicial Council of California Criminal Jury Instructions (LexisNexis Matthew Bender), CALCRIM No. 1930, Possession of Forged Document

Judicial Council of California Criminal Jury Instructions (LexisNexis Matthew Bender), CALCRIM No. 1935, Making, Passing, etc., Fictitious Check or Bill

Judicial Council of California Criminal Jury Instructions (LexisNexis Matthew Bender), CALCRIM No. 1950, Sale or Transfer of Access Card or Account Number

Law Review Articles:

What you should know about altered or forged checks (Part 1). 34 Prac Law No. 4 p 55.

Risk of loss from forged indorsements. 4 *Stan LR* 24.

Legal control of the fabrication and marketing of fake paintings; current criminal statutes. 24 *Stan LR* 940.

California Judges Benchguide S216: Mandatory criminal jury instructions. Cal Center Jud Edu & Research No. 11.

Attorney General's Opinions:

Jurisdiction to try person charged with issuance of bad checks without previous conviction thereon. 26 *Ops. Cal. Atty. Gen.* 249.

Annotations:

Forgery: use of fictitious or assumed name. 49 ALR2d 852.

Alteration of figures indicating amount of check, bill, or note, without change in written words, as forgery. 64 ALR2d 1029.

Admissibility of evidence as to extrajudicial or pretrial identification of accused. 71 ALR2d 449.

Admissibility in evidence of enlarged photographs or photostatic copies. 72 ALR2d 308.

Signing credit charge or credit sales slip, as forgery. 90 ALR2d 822.

What constitutes uttering and passing counterfeit obligation or other security of the United States, with intent to defraud, under 18 *USCS* § 472. 3 ALR3d 1051.

Procuring signature by fraud as forgery. 11 ALR3d 1074.

What are "securities, documents or other written instruments" within terms of bankers' blanket bond insuring losses from counterfeiting or forgery. 38 ALR3d 1437.

Discharge of debtor who makes payment by delivering check payable to creditor to latter's agent, where agent forges creditor's signature and absconds with proceeds. 49 ALR3d 843.

Falsifying of money order as forgery. 65 ALR3d 1307.

Effect of acquittal or dismissal in criminal action as barring disciplinary action against attorney. 76 ALR3d 1028.

Criminal liability for wrongfully obtaining unemployment benefits. 80 ALR3d 1280.

Nominal payee rule of *UCC § 3-405(1)(b)*. 92 ALR3d 268.

What constitutes ratification of unauthorized signature under *UCC § 3-404*. 93 ALR3d 967.

Payee's right of recovery under *UCC § 3-419(1)(c)* for money paid on unauthorized endorsement. 23 ALR4th 855.

What constitutes forgery justifying refusal to honor, or injunction against honoring, letter of credit under *UCC § 5-114(1)(2)*. 25 ALR4th 239.

What constitutes public record or document within statute making forgery thereof an offense. 75 ALR4th 1067.

Construction and effect of "padded payroll" rule of *UCC § 3-405*. 45 ALR5th 389.

What constitutes a "falsely made, forged, altered, or counterfeited" security within the meaning of *18 USCS § 2314*, making transportation of such securities a criminal offense. 4 ALR Fed 793.

Construction and application of *18 USCS § 499* making it criminal offense to falsely make, forge, counterfeit, alter, tamper with, or misuse naval, military, or official passes or permits. 24 ALR Fed 189.

Making, selling, or distributing counterfeit or "bootleg" tape recordings or phonographs records as violation of federal law. 25 ALR Fed 207.

Sufficiency of evidence to satisfy "interstate or foreign commerce" requirement of *18 USCS § 2315*, making sale or receipt of stolen goods, securities, moneys, or fraudulent tax stamps criminal offense. 45 ALR Fed 527.

What constitutes taking and carrying away, with intent to steal or purloin, within the meaning of the Federal Bank Robbery Act (*18 USCS § 2113(b)*). 46 ALR Fed 841.

Recovery from Check Forgery Insurance Fund under *31 USCS §§ 561-564*. 48 ALR Fed 704.

Construction and application of United States Sentencing Guideline § 2B5.1, dealing with offenses involving counterfeit bearer obligations of United States. 124 ALR Fed 637.

Hierarchy Notes:

Pt. 1, Tit. 13, Ch. 4 Note

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Instruments 19. Variance (3) EVIDENCE AND WITNESSES a. GENERALLY 20. In General 21. Examination of Witnesses 22. Inferences and Presumptions b. ADMISSIBILITY 23. In General 24. Intent, Motive, and Knowledge 25. Handwriting or Printing 26. Miscellaneous Evidence c. WEIGHT AND SUFFICIENCY 27. In General 28. Corpus Delicti 29. Accomplice Testimony 30. Proof of Particular Matters 31. Intent and Knowledge 32. Signing With or Without Authority 33. Fictitious Name or Instrument; Signing or Making by Defendant 34. Uttering 35. Credit Cards 36. Checks (4) INSTRUCTIONS 37. In General 38. Proper Refusal (5) VERDICT, JUDGMENT, AND SENTENCE 39. In General 40. Conviction of Several Offenses; Consecutive or Concurrent Sentences (6) APPEAL AND ERROR 41. In General 42. Harmless and Prejudicial Error

A. GENERALLY

1. In General

The charge of forgery necessarily includes all the elements of the crime, and in an action for damages for slander, it is sufficient to allege in the complaint that the defendant accused the plaintiff of having forged the defendant's name as the indorser of a check, without alleging that the slanderous words were used with the intention of charging that the plaintiff had forged the indorsement intending thereby to defraud. *Carl v. McDougal* (1919, Cal App) 43 Cal App 279, 184 P 885, 1919 Cal App LEXIS 766.

Husband or wife may be guilty of forgery through issuance of false documents with intent to cheat or defraud the other. *People v. Crowder* (1954, Cal App) 126 Cal App 2d 578, 272 P2d 775, 1954 Cal App LEXIS 2058.

Fact that bank account, in sole name of husband, is community property does not entitle wife to forge husband's name to his printed checks. *People v. Suciu* (1963, Cal App 2d Dist) 218 Cal App 2d 888, 32 Cal Rptr 645, 1963 Cal App LEXIS 1863.

Though forgery is not expressly made an element of violation of *Unempl. Ins. Code*, § 2101, which classifies as a misdemeanor fraudulent representation to obtain unemployment benefits, unemployment insurance fraud cannot be prosecuted as forgery under *Pen C* § 470. Since applying for aid under a false identity entails signing eligibility questionnaires and pay certification cards with a false name, the Legislature unquestionably contemplated that the special statute might be violated by means of forgery. *People v. Ruster* (1976) 16 Cal 3d 690, 129 Cal Rptr 153, 548 P2d 353, 1976 Cal LEXIS 250, 80 ALR3d 1269, overruled *People v. Jenkins* (1980) 28 Cal 3d 494, 170 Cal Rptr 1, 620 P2d 587, 1980 Cal LEXIS 232.

As applied to disciplinary proceedings involving an attorney convicted of crime, the crime of forgery (*Pen C* § 470) is a serious one involving moral turpitude. *In re Prantil* (1989) 48 Cal 3d 227, 255 Cal Rptr 890, 768 P2d 109, 1989 Cal LEXIS 379.

B. ACTS CONSTITUTING, AND ELEMENTS OF, OFFENSE

(1) GENERALLY

2. In General

Alteration of check already made, with intent to defraud another is forgery. *People v. Brotherton* (1874) 47 Cal 388, 1874 Cal LEXIS 19.

Any material alteration of a writing with intent to defraud anyone, so as to make the writing appear to be different from what it was originally intended to be, is a forgery. *Union Tool Co. v. Farmers & Merchants Nat'l Bank* (1923) 192 Cal 40, 218 P 424, 1923 Cal LEXIS 315, 28 ALR 1417.

Forgery consists in either false making or alteration of document without authority, or uttering of such document with intent to defraud. *Pasadena Inv. Co. v. Peerless Casualty Co.* (1955, *Cal App 2d Dist*) 132 *Cal App 2d* 328, 282 *P2d* 124, 1955 *Cal App LEXIS* 2190.

Forms of forgery set forth in this section are not exclusive. *People v. Searcy* (1962, *Cal App 1st Dist*) 199 *Cal App 2d* 740, 18 *Cal Rptr* 779, 1962 *Cal App LEXIS* 2889, 90 *ALR2d* 814.

Forgery is not limited to forgeries of signatures. *People v. Katz* (1962, *Cal App 2d Dist*) 207 *Cal App 2d* 739, 24 *Cal Rptr* 644, 1962 *Cal App LEXIS* 1962.

Fraud involved in forgery may be against public. *People v. Russel* (1963, *Cal App 4th Dist*) 214 *Cal App 2d* 445, 29 *Cal Rptr* 562, 1963 *Cal App LEXIS* 2628.

The trial court erroneously denied defendant's motion to dismiss a forgery indictment that was based on his fabrication of a signature on a letter endorsing a candidate for public office, since the definition of forgery in *Pen C* § 470, does not extend to such a fabrication. Section 470 is derived from the common law and its reach is thereby limited. Under the controlling case law a letter bearing a false signature urging people to vote for a candidate for public office is not an instrument that could "prejudice, damage, or defraud" any person, as those terms are used in § 470. Unless the consequential harm of the fabrication is a loss, damage, or prejudice of a legal right, generally a pecuniary or property right, there is no harm of the kind to which the statute is directed and hence no forgery, and the attempted persuasion of another to vote does not implicate such a right. *Lewis v. Superior Court* (1990, *Cal App 3d Dist*) 217 *Cal App 3d* 379, 265 *Cal Rptr* 855, 1990 *Cal App LEXIS* 59.

If undue emphasis were given to changes to the forgery statute (now *Pen C* § 470) made in 1872, regarding the order of presentation of the provisions and the use of semicolons as punctuation, one might conclude that the scienter requirement was deleted from the second branch of the statute (prohibiting forgery of the seal or handwriting of another). However, the code commissioners' notes to the 1872 revision reveal no such purpose; their reference to extending the definition of forgery to cover cases not previously included but of equal enormity cannot be read to include cases in which the signing of the signature of another was not done for any wrongful purpose. *Lewis v. Superior Court* (1990, *Cal App 3d Dist*) 217 *Cal App 3d* 379, 265 *Cal Rptr* 855, 1990 *Cal App LEXIS* 59.

The only substantive impact of the 1905 Penal Code amendment on *Pen C* § 470, defining the offense of forgery, is the expansion of the acts covered to include falsifying the signature of a fictitious person. At common law at one time it was not forgery to sign the name of a fictitious person to an instrument, and it was questionable whether such conduct was included within § 470. The 1905 amendment was aimed at remedying this condition; the elimination of the word "another" from the phrase "with intent to defraud another" is entirely explained by a concern for grammatical clarity, and did not affect the statutory continuation of the common law scienter requirement for the offense of forgery. *Lewis v. Superior Court* (1990, *Cal App 3d Dist*) 217 *Cal App 3d* 379, 265 *Cal Rptr* 855, 1990 *Cal App LEXIS* 59.

The separate enactment of former *Elec C* § 11649 (now *Elec C* § 18200) indicated that intent to defraud under *Pen C* § 470 (the forgery statute) was limited to purposes concerning money, property, or identifiable legal rights, and did not apply to forgery of signatures on electoral documents. The categorization of offenses by their allocation to different statutory structures might reveal how certain types of conduct should be regulated, and the existence of an extensive regulatory system focused on political activities and the campaign and election process suggested that political activities should be subjected to restrictions peculiar to that sphere. Specific statutes prescribed criminal or civil sanctions for a variety of acts that interfered with the electoral process, including, in at least two instances, the forging of signatures, former *Elec C* §§ 29102 et seq., (see now *Elec C* § 18002), 29300, (see now *Elec C* § 18200), and 29731, (see now *Elec C* § 18611). Thus, the conduct of one charged with forging the signature of the President of the United States to letters of endorsement of candidates for public office fell within this "political offense" category, which the Legislature had placed outside the ambit of the *Penal Code*. *Lewis v. Superior Court* (1990, *Cal App 3d Dist*) 217 *Cal App 3d* 379, 265 *Cal Rptr* 855, 1990 *Cal App LEXIS* 59.

3. Elements, Generally

The intent to defraud is an essential element of forgery, and is an essential averment in every indictment or information for forgery. *People v. Turner* (1896) 113 Cal 278, 45 P 331, 1896 Cal LEXIS 775.

One who forges, utters, and passes a false instrument may be convicted under this section, whether or not he obtains money. *People v. Cordish* (1930, Cal App) 110 Cal App 486, 294 P 456, 1930 Cal App LEXIS 37.

The intent to defraud is an essential element of forgery. *People v. Meldrum* (1934) 2 Cal 2d 52, 39 P2d 202, 1934 Cal LEXIS 460.

Basic elements of forgery are that defendant issued and passed forged and counterfeit document, knowing it was forged and counterfeit, that person whose name is alleged to be forged is real person, and his name as signed to instrument was not his signature, and that signature was placed on instrument without his authority and document was false instrument. *People v. Battle* (1961, Cal App 4th Dist) 188 Cal App 2d 627, 10 Cal Rptr 525, 1961 Cal App LEXIS 2463.

Three factors are requisite to forgery by uttering or passing forged instrument: instrument must be uttered, published, passed, or attempted to be passed, as true and genuine; person uttering or passing forged instrument must know it to be false, altered, forged, or counterfeited; intent must be to prejudice, damage, or defraud some person. *People v. Poland* (1963, Cal App 5th Dist) 219 Cal App 2d 422, 33 Cal Rptr 211, 1963 Cal App LEXIS 2391.

An element of crime of forgery is intent to defraud. *People v. Braver* (1964, Cal App 2d Dist) 229 Cal App 2d 303, 40 Cal Rptr 142, 1964 Cal App LEXIS 987, 10 ALR3d 565.

The essence of the crime of forgery is not concerned with the end, i.e., what is obtained or taken by the forgery, but has to do with the means, i.e., the act of signing the name of another with intent to defraud and without authority, or of falsely making a document, or of uttering the document with intent to defraud. *People v. Neder* (1971, Cal App 2d Dist) 16 Cal App 3d 846, 94 Cal Rptr 364, 1971 Cal App LEXIS 1643.

To constitute forgery by uttering or passing a forged instrument as defined in *Pen C § 470*, the following factors are requisite: It must be uttered, published, passed or attempted to be passed, as true and genuine; it must be known by the person uttering or passing it to be false, altered, forged, or counterfeited; and it must be uttered with intent to prejudice, damage or defraud some person. *People v. Cooper* (1978, Cal App 2d Dist) 83 Cal App 3d 121, 147 Cal Rptr 705, 1978 Cal App LEXIS 1746.

One of the elements of the crime of forgery is that it be done with an intent to defraud some person. A defendant in a prosecution for the forgery of an employment contract had displayed the requisite intent to defraud his former employer when he attached a forged employment contract to his complaint filed against his former employer for the breach of that contract. It was immaterial that the forged contract could only accomplish its purpose to defraud if it were authenticated in a judicial proceeding. *People v. Cooper* (1978, Cal App 2d Dist) 83 Cal App 3d 121, 147 Cal Rptr 705, 1978 Cal App LEXIS 1746.

To constitute forgery, it is not necessary that a party whose name has been forged has suffered actual damage; it is only essential that it appear that if the manifest intent of defendant had culminated in success, such damage or detriment would follow. *People v. Cooper* (1978, Cal App 2d Dist) 83 Cal App 3d 121, 147 Cal Rptr 705, 1978 Cal App LEXIS 1746.

The words of *Pen C § 470*, defining the offense of forgery, bear a peculiar and appropriate meaning taken from the common law. At common law forgery was the false making or material altering, with intent to defraud, of any writing that, if genuine, might apparently be of legal efficacy or the foundation of a legal liability. The same definition is

evident in § 470 by the detailed attention shown in the listing of instruments that may be the subjects of forgery. Without reference to the common law, the generalized provisions of the second branch of § 470 would be perilously broad; the terse declaration that forgery is the counterfeiting or forging of the handwriting of another could extend to any imitation of another's handwriting for purposes of deception, whatever the harmlessness or triviality of the end in view, that is, regardless of an intention to defraud. However, the common law meaning of a statutory term is a proper basis for defeating a claim of fatal uncertainty. It is settled that despite the absence of an explicit scienter provision, an intent to defraud is to be implied from and must be pled and proved under this branch of § 470. *Lewis v. Superior Court* (1990, Cal App 3d Dist) 217 Cal App 3d 379, 265 Cal Rptr 855, 1990 Cal App LEXIS 59.

Element of trick or fraud was missing, where defendants accurately explained to the mentally infirm victim the nature of the documents they induced him to sign. *People v. Looney* (2004, Cal App 2d Dist) 125 Cal App 4th 242, 22 Cal Rptr 3d 502, 2004 Cal App LEXIS 2214, review denied (2005, Cal) 2005 Cal LEXIS 3569.

Because the 1998 revision of *Pen C* § 470, did not change the law, either by intent or by language, the doing of one or more of the proscribed acts, with respect to the same instrument, constitutes but one offense. Thus, § 470(a) and (d), do not describe separate offenses, but merely separate means of committing the same offense, and this conclusion is supported by the fact that the mens rea is the same for each (intent to defraud), as is the punishment, found in *Pen C* § 473. *People v. Ryan* (2006, Cal App 5th Dist) 138 Cal App 4th 360, 41 Cal Rptr 3d 277, 2006 Cal App LEXIS 478, review denied (2006, Cal) 2006 Cal LEXIS 7138.

4. Completion of Forgery

Forgery is complete when one either makes or passes a false instrument with intent to defraud. *People v. Davidian* (1937, Cal App) 20 Cal App 2d 720, 67 P2d 1085, 1937 Cal App LEXIS 869.

Forgery is committed when one makes or passes false instrument with intent to defraud, element of loss or detriment being immaterial. *People v. McAffery* (1960, Cal App 2d Dist) 182 Cal App 2d 486, 6 Cal Rptr 333, 1960 Cal App LEXIS 2135.

Though fraudulent making of instrument and uttering of spurious instrument may be alleged in conjunctive in same count in language of this section, offense of forgery does not require commission of both, but is complete when one either falsely makes document without authority or passes such document with intent to defraud, and performance of one or both acts with reference to same instrument constitutes but single offense of forgery. *People v. Luizzi* (1960, Cal App 2d Dist) 187 Cal App 2d 639, 9 Cal Rptr 842, 1960 Cal App LEXIS 1439.

In crime of forgery, fraud intended need not be completed; all that statute requires is intent to defraud. *People v. Russel* (1963, Cal App 4th Dist) 214 Cal App 2d 445, 29 Cal Rptr 562, 1963 Cal App LEXIS 2628.

Crime of forgery of endorsement is complete when false instrument is passed with intent to defraud. *People v. Maldonado* (1963, Cal App 2d Dist) 221 Cal App 2d 128, 34 Cal Rptr 168, 1963 Cal App LEXIS 2121.

Whether instrument forged has independent value is unimportant; crime is complete when act is done with requisite intent. *Buck v. Superior Court of Orange County* (1965, Cal App 4th Dist) 232 Cal App 2d 153, 42 Cal Rptr 527, 1965 Cal App LEXIS 1447, 11 ALR3d 1064, cert den *Buck v Superior Court of California* (1965) 382 US 834, 86 S Ct 77, 15 L Ed 2d 77, 1965 US LEXIS 697.

Crime of forgery is complete when one makes or passes incorrectly named instrument with intent to defraud, prejudice, or damage, and proof of loss or detriment is immaterial. *Buck v. Superior Court of Orange County* (1965, Cal App 4th Dist) 232 Cal App 2d 153, 42 Cal Rptr 527, 1965 Cal App LEXIS 1447, 11 ALR3d 1064, cert den *Buck v Superior Court of California* (1965) 382 US 834, 86 S Ct 77, 15 L Ed 2d 77, 1965 US LEXIS 697.

The crime of forgery through knowingly passing a false check on another person's account is completed on the

passing of the check. The intent to defraud is inferred from the very act of passing the check. *People v. Wing* (1973, Cal App 5th Dist) 32 Cal App 3d 197, 107 Cal Rptr 836, 1973 Cal App LEXIS 976.

In a prosecution for forgery of an employment contract, it was immaterial that a photostatic copy of the forged contract, rather than the contract itself, had been attached to a complaint in an action for breach of the contract brought by defendant. The reproduction of a false instrument by photocopy results in the making of another false instrument, and such reproduction, if done with intent to defraud and without authority, likewise constitutes forgery. *People v. Cooper* (1978, Cal App 2d Dist) 83 Cal App 3d 121, 147 Cal Rptr 705, 1978 Cal App LEXIS 1746.

(2) KINDS OF FORGERY

5. Making of False Instrument; Signing

It is not necessary to a conviction of forgery of an order for the delivery of goods that the order be signed in the name of a party having goods in the possession of the drawee. *People v. Way* (1858) 10 Cal 336, 1858 Cal LEXIS 251.

The fact that a defendant charged with forgery of the name of a payee of a negotiable promissory note misspelled the name forged does not affect the crime of forgery, where the doctrine of idem sonans applies and the fraudulent purpose and felonious intent are as plainly manifest and as completely executed as they would have been if the spelling of the forged name had been correct. *People v. Alden* (1896) 113 Cal 264, 45 P 327, 1896 Cal LEXIS 772.

One may be guilty of forgery in signing his own name to an instrument with the fraudulent intent of making it appear to bind another, and of making the writing appear to be the writing of another bearing the same name or the same family name and initial. *People v. Rushing* (1900) 130 Cal 449, 62 P 742, 1900 Cal LEXIS 860.

Where a defendant procured to be signed the name of another person and aided, abetted, encouraged and assisted another to sign the name of said person, knowing he had no authority to do so, he is guilty of forgery. *People v. Gayle* (1927) 202 Cal 159, 259 P 750, 1927 Cal LEXIS 327.

Where person who has no intention of selling or encumbering his property is induced by some trick or device to sign paper having that effect, believing such paper to be substantially different instrument, paper so signed is just as much forgery as it would have been had signature been forged. *Buck v. Superior Court of Orange County* (1965, Cal App 4th Dist) 232 Cal App 2d 153, 42 Cal Rptr 527, 1965 Cal App LEXIS 1447, 11 ALR3d 1064, cert den *Buck v Superior Court of California* (1965) 382 US 834, 86 S Ct 77, 15 L Ed 2d 77, 1965 US LEXIS 697.

In prosecution for forgery, court's interpretation of *Pen C § 470*, making it violation of that section for person to induce homeowner by trick or device to sign paper having effect of selling or encumbering his property where property owner believed paper to be substantially different instrument, did not violate due process by failing to warn of prohibited behavior, where paper so signed was just as much forgery as it would have been had signature been forged. *People v. Carson* (1966, Cal App 4th Dist) 240 Cal App 2d 477, 49 Cal Rptr 653, 1966 Cal App LEXIS 1372.

The crime of forgery is committed when a defendant, by fraud or trickery, causes another to execute a deed of trust or other document, where the signer is unaware, by reason of such trickery, that he is executing a document of that nature. *Buck v. Superior Court of Ventura County* (1966, Cal App 2d Dist) 245 Cal App 2d 431, 54 Cal Rptr 282, 1966 Cal App LEXIS 1482.

By the 1905 amendment to *Pen C § 470*, the Legislature apparently intended to countermand the holding that an unauthorized agency endorsement did not constitute forgery; and defendant did the very thing proscribed by that amendment, by signing a check with the name of another person (California Veterans Post and the V. F. W.), knowing that he had no authority to do so. *People v. Parker* (1970, Cal App 4th Dist) 11 Cal App 3d 500, 89 Cal Rptr 815, 1970 Cal App LEXIS 1750.

The third branch of *Pen C § 470*, prohibiting uttering a forged document, does not have a broader or different scienter requirement than that contained in the other branches of the forgery statute. Forgery consists either in the false making or alteration of a document without authority, or the uttering (making use) of such a document with intent to defraud. The third branch of the statute only applies to matters named in the preceding branches, that is, to the making of specified kinds of instruments with intent to defraud. Deprivation of a right at law is the harm to which the forgery statute is directed, and thus a violation of the statute requires an intent to defraud. Although the third branch mentions intent to prejudice or damage as well as intent to defraud, "prejudice" and "damage" were used synonymously with "defraud" in the common law of forgery, just as the words "utter" and "publish" are synonymous in § 470. The addition of "prejudice" and "damage" to the third branch of § 470 may be explained as an attempt to include schemes resulting in the destruction or impairment of a right protected by the forgery statute, even if the property or right is not obtained by the forger. *Lewis v. Superior Court (1990, Cal App 3d Dist) 217 Cal App 3d 379, 265 Cal Rptr 855, 1990 Cal App LEXIS 59*.

6. Passing of False Instrument

An attempt to utter or pass a forged instrument by delivery to an agent, with the design that the agent shall utter or pass it, is not complete until some overt act is done by the agent or a co-conspirator in uttering or passing it. *People v. Compton (1899) 123 Cal 403, 56 P 44, 1899 Cal LEXIS 1086*.

It must be known by person uttering or passing document that it is false, altered, forged or counterfeited. *People v. Chapman (1957, Cal App 2d Dist) 156 Cal App 2d 151, 319 P2d 8, 1957 Cal App LEXIS 1393*.

Presentation of forged instrument for encashment is representation of its genuineness. *People v. Rosborough (1960, Cal App 2d Dist) 178 Cal App 2d 156, 2 Cal Rptr 669, 1960 Cal App LEXIS 2574*.

To constitute forgery by uttering or passing forged instrument as defined in this section, it must be uttered, published, passed, or attempted to be passed as true and genuine; it must be known by person uttering or passing it to be false, altered, forged, or counterfeited, and it must be with intent to prejudice, damage, or defraud some person. *People v. Sinshiemer (1960, Cal App 2d Dist) 182 Cal App 2d 103, 5 Cal Rptr 740, 1960 Cal App LEXIS 2083*.

If, in forgery case, defendant passes check with intent to defraud, it is immaterial whether he wrote it. *People v. Sanderson (1960, Cal App 2d Dist) 183 Cal App 2d 544, 6 Cal Rptr 330, 1960 Cal App LEXIS 1785*.

Crime of forgery may be committed by merely uttering false or altered document with intent to defraud. *People v. Jones (1962, Cal App 2d Dist) 210 Cal App 2d 805, 27 Cal Rptr 35, 1962 Cal App LEXIS 1636*.

Presenting forged check for payment constitutes uttering. *People v. Jones (1962, Cal App 2d Dist) 210 Cal App 2d 805, 27 Cal Rptr 35, 1962 Cal App LEXIS 1636*.

Test to determine whether false instrument is passed with intent to defraud is whether instrument on its face will have effect of defrauding one who acts on it as genuine. *People v. Maldonado (1963, Cal App 2d Dist) 221 Cal App 2d 128, 34 Cal Rptr 168, 1963 Cal App LEXIS 2121*.

(3) INSTRUMENTS SUBJECT TO FORGERY, GENERALLY

7. Test or Controlling Factor

Forgery consists either in the false making or alteration of a document without authority, or the uttering of such document with intent to defraud; and whether the forged instrument is of a particular name or character, or if genuine would create a legal liability, is immaterial, the test being whether upon its face it will have the effect of defrauding one who acts upon it as genuine. *People v. McKenna (1938) 11 Cal 2d 327, 79 P2d 1065, 1938 Cal LEXIS 307*.

Forgery consists either in false making or alteration of document without authority or uttering of such document with intent to defraud; test is whether on its face document will have effect of defrauding one who acts on it as genuine. *People v. Herrera* (1962, Cal App 2d Dist) 209 Cal App 2d 748, 26 Cal Rptr 409, 1962 Cal App LEXIS 1740.

Instrument is not subject matter of forgery only where it is so defective on its face that, as matter of law, it is not capable of defrauding anyone. *People v. Jones* (1962, Cal App 2d Dist) 210 Cal App 2d 805, 27 Cal Rptr 35, 1962 Cal App LEXIS 1636.

In prosecution for forgery, test is whether on its face forged document will have effect of defrauding one who acts on it as genuine. *People v. Allen* (1963, Cal App 2d Dist) 212 Cal App 2d 857, 28 Cal Rptr 409, 1963 Cal App LEXIS 2920.

The crime of forgery consists either in the false making or alteration of a document without authority or the uttering (making use) of such a document with intent to defraud (*Pen C § 470*); whether the forged instrument is one of a particular name or character or, if genuine, would create legal liability, is immaterial; the test is whether on its face it will have the effect of defrauding one who acts on it as genuine. *People v. Kagan* (1968, Cal App 1st Dist) 264 Cal App 2d 648, 70 Cal Rptr 732, 1968 Cal App LEXIS 2129, cert den (1969) 394 US 911, 89 S Ct 1027, 22 L Ed 2d 224, 1969 US LEXIS 2364.

The crime of forgery consists either in the false making or alteration of a document without authority or the uttering (making use) of such a document with intent to defraud; whether the forged instrument is one of a particular name or character or, if genuine, would create legal liability, is immaterial; the test is whether upon its face it will have the effect of defrauding one who acts upon it as genuine. *People v. Liberto* (1969, Cal App 2d Dist) 274 Cal App 2d 460, 79 Cal Rptr 306, 1969 Cal App LEXIS 2071.

The forms of forgery set forth in the forgery statute (*Pen C § 470*) are not exclusive. Thus, even if a bank signature card were not to be considered a contract or other document specified in the forgery statute, it may still provide the basis of a forgery prosecution, since the test is not the designation of the document but whether the forged instrument on its face will have the effect of defrauding one who acts upon it as genuine. *People v. Vincent* (1993, Cal App 2d Dist) 19 Cal App 4th 696, 23 Cal Rptr 2d 714, 1993 Cal App LEXIS 1049, review denied (1994, Cal) 1994 Cal LEXIS 304.

(4) PARTICULAR INSTRUMENTS AND TRANSACTIONS

8. In General

Every person who, with intent to defraud another, falsely makes, utters or publishes power of attorney, knowing same to be false or forged, is guilty of forgery. *People v. Rushing* (1900) 130 Cal 449, 62 P 742, 1900 Cal LEXIS 860.

Encumbrance may be subject of forgery. *Buck v. Superior Court of Orange County* (1965, Cal App 4th Dist) 232 Cal App 2d 153, 42 Cal Rptr 527, 1965 Cal App LEXIS 1447, 11 ALR3d 1064, cert den *Buck v Superior Court of California* (1965) 382 US 834, 86 S Ct 77, 15 L Ed 2d 77, 1965 US LEXIS 697.

The alteration of a photocopy of an original instrument constitutes forgery when such alteration is done with intent to defraud and without authority, and the reproduction of such a false instrument by photocopying it results in the making of another false instrument, which reproduction, if done with intent to defraud and without authority, likewise constitutes forgery. *People v. Kagan* (1968, Cal App 1st Dist) 264 Cal App 2d 648, 70 Cal Rptr 732, 1968 Cal App LEXIS 2129, cert den (1969) 394 US 911, 89 S Ct 1027, 22 L Ed 2d 224, 1969 US LEXIS 2364.

Forgery (*Pen C § 470*) has three elements: a writing or other subject of forgery, the false making of the writing, and intent to defraud. Section 470 sets forth a long list of various documents that are the subject matter for forgery. This recital is supplemented by other statutes that prohibit special types of forgery. However, a writing not within those listed may fall under the part of § 470 covering a person who "counterfeits or forges the handwriting of another" if, on its

face, the writing could possibly defraud anyone. The false writing must be something that will have the effect of defrauding one who acts upon it as genuine. *People v. Gaul-Alexander* (1995, Cal App 5th Dist) 32 Cal App 4th 735, 38 Cal Rptr 2d 176, 1995 Cal App LEXIS 153.

9. Checks

Check on which line is left blank where amount is to be written out in longhand, though amount appears on line where it is to be written in numerals may be subject of forgery where check, when uttered, might on its face easily defraud someone. *People v. Jones* (1962, Cal App 2d Dist) 210 Cal App 2d 805, 27 Cal Rptr 35, 1962 Cal App LEXIS 1636.

One who attempted to pass a forged check in a market clearly committed forgery, where, though there was no evidence that he signed the name of the purported maker, he presented that person's bank deposit book to the market cashier for the apparent purpose of establishing his identity as that of the purported maker. *People v. Landry* (1971, Cal App 2d Dist) 14 Cal App 3d 445, 92 Cal Rptr 263, 1971 Cal App LEXIS 1008.

Lack of a date and failure to fill in the numerical amount of a forged check did not, either separately or cumulatively, render the check unavailing as evidence in a forgery prosecution; moreover, it could be inferred that the person to whom defendant presented the check for cashing inserted the date and the numerical amount with his authority, where defendant made no objection thereto. *People v. Landry* (1971, Cal App 2d Dist) 14 Cal App 3d 445, 92 Cal Rptr 263, 1971 Cal App LEXIS 1008.

Sufficient evidence supported a finding that defendant cashed a check knowing it was forged and therefore supported the decision to revoke his probation. Against his evidence suggesting innocence weighed his admission that he had not heard of the company on whose account his check was drawn; the court assumed that the trial court disbelieved defendant's testimony that he did not know the check was forged. *People v. Martinez* (2005, Cal App 2d Dist) 127 Cal App 4th 1156, 26 Cal Rptr 3d 234, 2005 Cal App LEXIS 465, review denied (2005, Cal) 2005 Cal LEXIS 7184.

Under *Pen C* § 954, a defendant may be convicted of any number of the offenses charged. Because the commission of any one or more of the acts enumerated in *Pen C* § 470, in reference to the same instrument, constitutes but one offense of forgery, it followed that, under *Pen C* § 954, defendant could be charged with multiple counts of forgery with respect to an incident involving stolen checks at an office supply store and an incident involving stolen checks at an antiques store, but could be convicted of only one such count with respect to each. *People v. Ryan* (2006, Cal App 5th Dist) 138 Cal App 4th 360, 41 Cal Rptr 3d 277, 2006 Cal App LEXIS 478, review denied (2006, Cal) 2006 Cal LEXIS 7138.

10. Personal Property Transactions

Forging or uttering an order for delivery of goods is a felony. *People v. Platt* (1954, Cal App) 124 Cal App 2d 123, 268 P2d 529, 1954 Cal App LEXIS 1707.

Since stealing of gasoline or tires would be larceny, false signing of implied promise to pay for them is forgery. *People v. Searcy* (1962, Cal App 1st Dist) 199 Cal App 2d 740, 18 Cal Rptr 779, 1962 Cal App LEXIS 2889, 90 ALR2d 814.

In common-law sense of term, charge slip is not "writing obligatory." *People v. Searcy* (1962, Cal App 1st Dist) 199 Cal App 2d 740, 18 Cal Rptr 779, 1962 Cal App LEXIS 2889, 90 ALR2d 814.

There is no practical difference between sales charge slip and credit charge slip signed in connection with purchase made with oil company's credit card. *People v. Searcy* (1962, Cal App 1st Dist) 199 Cal App 2d 740, 18 Cal Rptr 779, 1962 Cal App LEXIS 2889, 90 ALR2d 814.

Signing credit sales slip constitutes implied promise to pay for merchandise described in slip; delivery of merchandise is consideration for implied promise. *People v. Searcy* (1962, Cal App 1st Dist) 199 Cal App 2d 740, 18 Cal Rptr 779, 1962 Cal App LEXIS 2889, 90 ALR2d 814.

Charge slip signed in connection with purchase made with oil company's credit card is not nudum pactum. *People v. Searcy* (1962, Cal App 1st Dist) 199 Cal App 2d 740, 18 Cal Rptr 779, 1962 Cal App LEXIS 2889, 90 ALR2d 814.

Charge slip signed in connection with purchase made with oil company's credit card is not mere invoice. *People v. Searcy* (1962, Cal App 1st Dist) 199 Cal App 2d 740, 18 Cal Rptr 779, 1962 Cal App LEXIS 2889, 90 ALR2d 814.

Fact that gasoline credit cards were not known when this section was last amended does not prevent application of section to cover forgery of credit sales slip. *People v. Searcy* (1962, Cal App 1st Dist) 199 Cal App 2d 740, 18 Cal Rptr 779, 1962 Cal App LEXIS 2889, 90 ALR2d 814.

Credit charge slip signed in connection with purchase made with oil company's credit card may be subject of forgery, since, upon face of slip, its forgery will have effect to defraud those who act on it as genuine. *People v. Searcy* (1962, Cal App 1st Dist) 199 Cal App 2d 740, 18 Cal Rptr 779, 1962 Cal App LEXIS 2889, 90 ALR2d 814.

Person who obtains goods through forged sales slip and the use of stolen credit card commits several crimes, such as theft of goods, in violation of § 484, forgery, in violation of this section, and theft of credit card, in violation of § 484a. *People v. Buckley* (1962, Cal App 2d Dist) 202 Cal App 2d 142, 20 Cal Rptr 659, 1962 Cal App LEXIS 2456.

Enactment of Stat 1967, ch 1395, which repealed former Pen C § 484a, (see now Pen C § 484d et seq.), relating to credit card offenses, added Pen Code § 484f, also related to such offenses, and provided that the act should not be construed to preclude the applicability of any other provision of the criminal law, expressed a legislative intent to overcome the judicial interpretation theretofore placed on credit card prosecutions to the effect that a person charged with an offense involving a credit card could not be prosecuted under the general statutes if the people so chose; thus, defendant was properly charged with violation of the general forgery statute (Pen C § 470) in connection with credit card offenses occurring after the 1967 enactment. *People v. Neder* (1971, Cal App 2d Dist) 16 Cal App 3d 846, 94 Cal Rptr 364, 1971 Cal App LEXIS 1643.

11. Real Estate Transactions

The signing of the name of the owner of land by another person to an instrument purporting to be a mortgage, for the purpose of defrauding such owner and the person from whom the money was to be borrowed on the mortgage, is sufficient to constitute forgery, whether or not, as a matter of law, the mortgage would have been good without execution by both husband and wife. *People v. Baker* (1893) 100 Cal 188, 34 P 649, 1893 Cal LEXIS 767.

The recording of a forged mortgage in the recorder's office at the request of the mortgagee, who desired it to be placed on record before he examined the title, is a sufficient uttering of the forged instrument although it was not in any other way delivered to the mortgagee. *People v. Baker* (1893) 100 Cal 188, 34 P 649, 1893 Cal LEXIS 767.

Forgery may be committed by forging a certificate of recordation upon the back of a deed, with intent to deceive and defraud the grantee named in the deed. *People v. Turner* (1896) 113 Cal 278, 45 P 331, 1896 Cal LEXIS 775.

A deed executed by a fictitious name is not included in the fictitious instruments for the payment of money or property enumerated in § 476, and there being no other statute making the signing or uttering of a fictitious deed a specific offense, it is included in the crime of forgery of a deed under this section. *People v. Chretien* (1902) 137 Cal 450, 70 P 305, 1902 Cal LEXIS 582.

The contention that contracts purporting to be for the sale of land in an unrecorded tract, not being enforceable at law, could not be the subject of forgery with reference to their execution cannot be maintained, as the test is whether or

not it is possible to defraud by reason of the forgery or utterance of the instrument. *People v. Gayle* (1927) 202 Cal 159, 259 P 750, 1927 Cal LEXIS 327.

To constitute forgery by uttering checks, it must appear that they were in fact forged, that defendant presented them as true and genuine instruments, and that he knew them to be forged at time he presented them and passed them with intent to defraud. *People v. Luizzi* (1960, Cal App 2d Dist) 187 Cal App 2d 639, 9 Cal Rptr 842, 1960 Cal App LEXIS 1439.

12. Miscellaneous

The forging of an order of the trustees of a school district upon the county superintendent of schools for a requisition upon the county auditor for a warrant against the county school fund is an offense within the meaning of this section. *People v. Bibby* (1891) 91 Cal 470, 27 P 781, 1891 Cal LEXIS 1112.

A writing purporting to be a sale or assignment of the unearned salary of a public school teacher is the subject of forgery. *People v. Munroe* (1893) 100 Cal 664, 35 P 326, 1893 Cal LEXIS 847.

Forgery cannot be predicated upon a letter to a collector of customs, purporting to have been written and signed by a person other than the actual author, and containing an assault upon the veracity and business standing of a Chinese subject then seeking permission of the collector to land at a port of the United States under the *Chinese Exclusion Act*. *People v. Wong Sam* (1897) 117 Cal 29, 48 P 972, 1897 Cal LEXIS 612.

Escrow instructions are instruments susceptible of being forged, where they are contracts actually acted upon and the deals are consummated in accordance with the altered escrow instructions. *People v. Jones* (1929, Cal App) 100 Cal App 550, 280 P 555, 1929 Cal App LEXIS 446.

Where the defendant inserted particular clauses in escrow instructions without the knowledge of the defrauded parties, after their signatures had been obtained, and the instrument as altered would not have been signed by any of the defrauded parties, the alterations made the escrow instructions, as altered, a forged instrument. *People v. Jones* (1929, Cal App) 100 Cal App 550, 280 P 555, 1929 Cal App LEXIS 446.

The fact that a defendant charged with forgery of a will may not have executed the testatrix's signature thereto renders it no less a forgery, where he prepared the contents of the will above the signature after the signature had been written by the testatrix on blank paper. *People v. Horowitz* (1945, Cal App) 70 Cal App 2d 675, 161 P2d 833, 1945 Cal App LEXIS 1120.

Forgery of a will is complete when it is so prepared that on its face it will have the effect of defrauding one who acts on it as genuine. *People v. Horowitz* (1945, Cal App) 70 Cal App 2d 675, 161 P2d 833, 1945 Cal App LEXIS 1120.

In prosecution for forgery of another's name to request for transcript of college credits and for forgery of receipt for transcript of record, crime of forgery was complete though college personnel had detected fraud and were not deceived. *People v. Russel* (1963, Cal App 4th Dist) 214 Cal App 2d 445, 29 Cal Rptr 562, 1963 Cal App LEXIS 2628.

Forgery of another's name to request for transcript of record of college credits and forgery of other's name to receipt for transcript of record involved intent to defraud college in that it would not otherwise have given transcript to forger and injured public because it has been determined that best interests of society are served by not opening to general public grades achieved by individuals. *People v. Russel* (1963, Cal App 4th Dist) 214 Cal App 2d 445, 29 Cal Rptr 562, 1963 Cal App LEXIS 2628.

Though section does not specify request for transcript of college credits or receipt for transcript as being kind of writing necessary to constitute crime of forgery, section lists among writing forms that may be subject of forgery receipt for money or property and request for payment of money or delivery of goods or chattels of any kind, which language is

sufficiently broad to encompass request and receipt for transcript of credits. *People v. Russel* (1963, Cal App 4th Dist) 214 Cal App 2d 445, 29 Cal Rptr 562, 1963 Cal App LEXIS 2628.

Defendant was properly convicted of forgery (*Pen C § 470*) in a prosecution involving the making of photocopies of federal reserve notes and subsequently placing them in a dollar bill changer, regardless of whether or not such notes were "bank notes or bills" within the meaning of the statute, where the section also referred to forgery or counterfeiting the seal or handwriting of another, where the information charged forgery of a United States Federal Reserve Note, and where the currency in evidence, from which the photocopies in evidence were made, showed on its face a facsimile of the seal of a federal reserve bank and the facsimile signatures of the *Treasurer of the United States and of the Secretary of the Treasury*. *People v. Burkett* (1969, Cal App 2d Dist) 271 Cal App 2d 130, 74 Cal Rptr 692, 1969 Cal App LEXIS 2363.

A bank signature card is within the express terms of the forgery statute (*Pen C § 470*), since it serves as a contract between the depositor and the bank for handling the account and it is a document with apparent legal efficacy which is naturally suited to perpetrate a defrauding. Thus, in a prosecution arising out of the attempted deposit of a counterfeit check into a newly opened account, the bank signature card signed by defendant was the proper subject of a forgery prosecution, since it was a crucial document in the scheme to defraud the bank by causing the bank to act upon it as genuine. Defendant's endorsement of the check with a fictitious signature, in combination with her fictitious signature on the signature card, would have permitted the deposit of the counterfeit check into the new account. *People v. Vincent* (1993, Cal App 2d Dist) 19 Cal App 4th 696, 23 Cal Rptr 2d 714, 1993 Cal App LEXIS 1049, review denied (1994, Cal) 1994 Cal LEXIS 304.

C. PROSECUTION

(1) GENERALLY

13. In General

Where the petitioner was charged with forgery of a check drawn in his favor, and the owner of a bank account on which the check was drawn was not indebted to the petitioner, and in passing the check the petitioner stated that it was a good check given to him in payment for labor performed for said owner, and the signatures of the owner and accommodation signer were necessary to constitute a valid check, and the check in question was neither signed by the latter nor authorized by him to be signed, there was sufficient evidence to warrant the magistrate in holding the petitioner for trial. *In re Application of Khan* (1936, Cal App) 15 Cal App 2d 687, 59 P2d 1048, 1936 Cal App LEXIS 123.

In prosecution for forgery involving signing of third person's name to checks to defendant, intent to defraud and defendant's knowledge of forgeries were questions for jury and are inferable from defendant's testimony. *People v. White* (1941, Cal App) 48 Cal App 2d 90, 119 P2d 383, 1941 Cal App LEXIS 767.

While intent to defraud is of the essence of forgery, question of intent is primarily for jury. *People v. Geibel* (1949, Cal App) 93 Cal App 2d 147, 208 P2d 743, 1949 Cal App LEXIS 1360.

Reasonable and probable cause sufficient to hold defendant to answer a charge of forging purchase orders is shown by evidence that signatures thereon, purportedly those of salesmen and purchasers, were actually executed by defendant without authorization. *People v. Platt* (1954, Cal App) 124 Cal App 2d 123, 268 P2d 529, 1954 Cal App LEXIS 1707.

It was not misconduct for prosecutor to comment on defendant's failure to employ handwriting expert to meet prosecution's experts' testimony, in prosecution for preparing false evidence, forgery, and offering false and forged instruments to be filed of record. *People v. Blaydon* (1957, Cal App 2d Dist) 154 Cal App 2d 817, 317 P2d 24, 1957 Cal App LEXIS 1705.

In a forgery prosecution, a deputy public defender did not provide defendant with effective assistance of counsel, where defendant was charged with two counts under the general forgery statute (*Pen C § 470*) and one count of forging a credit card under former *Pen C § 484a* (see now *Pen C § 484d* et seq.), where the attorney arranged and defendant accepted a plea bargain whereby defendant pleaded guilty to one of the general forgery counts in return for dismissal of the other two counts, where all three counts arose out of defendant's use of a credit card belonging to another, where, at the time of the offense, defendant could not have been prosecuted under the general forgery statute, where the deputy did not research the facts and the law which would have disclosed the availability of such defense and did not mention it to defendant, and where, under all the circumstances, it appeared likely that defendant could have obtained a better plea bargain had the prosecution been forced to properly amend the complaint. *In re Williams (1969) 1 Cal 3d 168, 81 Cal Rptr 784, 460 P2d 984, 1969 Cal LEXIS 199.*

In a prosecution on three counts relating to forgery (*Pen C § 470*, and former *Pen C § 475a*), each offense being punishable either as a felony or as a misdemeanor, the fact that the district attorney initially elected to file the complaint as a misdemeanor under *Pen C § 17*, subd. (b)(4), did not entitle the defendant, upon dismissal of that complaint in the interest of justice after arraignment but before defendant entered a plea, to dismissal of a new information charging the same offenses as felonies. *Necochea v. Superior Court (1972, Cal App 2d Dist) 23 Cal App 3d 1012, 100 Cal Rptr 693, 1972 Cal App LEXIS 1275.*

In a prosecution for forgery (*Pen C § 470*), defendant's motion to represent himself, made on the day trial was to begin, more than four months after arraignment, was not timely for purposes of determining whether defendant's right to self-representation was absolute. *People v. Hall (1978, Cal App 2d Dist) 87 Cal App 3d 125, 150 Cal Rptr 628, 1978 Cal App LEXIS 2164.*

In a prosecution for forgery (*Pen C § 470*), the trial court did not abuse its discretion in denying defendant's last minute motion to represent himself where defendant's reason for the motion was his belief that the heavy workload of the public defender's office would preclude adequate representation, and where the court determined that defendant's public defender was very capable, was prepared for trial, and intended to give defendant's case priority. Defendant's case had been pending for over three months, and he insisted that a further thirty-day continuance was necessary in order for him to prepare to represent himself. *People v. Hall (1978, Cal App 2d Dist) 87 Cal App 3d 125, 150 Cal Rptr 628, 1978 Cal App LEXIS 2164.*

Pen C § 987.2, limits appointment of private counsel at public expense for indigent defendant to cases where the court finds that, because of conflict of interest or other reasons, the public defender has properly refused to represent the defendant. Thus, in a prosecution for forgery (*Pen C § 470*), the trial court properly found that it had no authority to grant defendant's motion to substitute appointed counsel for the public defender, where the court had determined that defendant's fear of inadequate representation, based on the heavy workload of the public defender's office, was groundless in this case. *People v. Hall (1978, Cal App 2d Dist) 87 Cal App 3d 125, 150 Cal Rptr 628, 1978 Cal App LEXIS 2164.*

In a prosecution for forgery (*Pen C § 470*), defendant's motion to represent himself, made on the day trial was to begin, more than four months after arraignment, was not timely for purposes of determining whether defendant's right to self-representation was absolute. *People v. Hall (1978, Cal App 2d Dist) 87 Cal App 3d 125, 150 Cal Rptr 628, 1978 Cal App LEXIS 2164.*

14. Jurisdiction and Venue

In view of § 781, putting jurisdiction of an offense in either county in which a part of the offense is committed, Napa is a proper county in which to prosecute defendant charged with making, forging, and counterfeiting checks in such county, and uttering, publishing and passing such checks, where, notwithstanding that some bore dates subsequent to the time he allegedly ceased to reside in Napa and were deposited in a bank in a different county, they were all drawn on Napa banks, and where evidence justifies an inference that he embarked on a scheme to forge checks and did write

them in *Napa County*. *People v. Gerundo* (1952, *Cal App*) 112 *Cal App 2d* 863, 247 *P2d* 398, 1952 *Cal App LEXIS* 1115, cert den (1953) 344 *US* 936, 73 *S Ct* 507, 97 *L Ed* 720, 1953 *US LEXIS* 2420.

Superior Court of Los Angeles County is without jurisdiction to try indictment counts charging forgeries that occurred in *Orange County*. *Bogart v. Superior Court of Los Angeles* (1964, *Cal App 2d Dist*) 230 *Cal App 2d* 874, 41 *Cal Rptr* 480, 1964 *Cal App LEXIS* 942.

In the prosecution of an employee for forgery of an employment contract, the filing by the accused employee of a verified complaint for breach of the contract, which complaint incorporated by reference a photocopy of the forged contract, constituted an uttering of a forged instrument. Where the complaint was filed in the county in which the information for forgery was brought, venue for the forgery prosecution was proper in that county. *People v. Cooper* (1978, *Cal App 2d Dist*) 83 *Cal App 3d* 121, 147 *Cal Rptr* 705, 1978 *Cal App LEXIS* 1746.

Absent evidence of the location where a forgery took place, venue for prosecution of the forgery is proper in the county in which the forged instrument was uttered. *People v. Cooper* (1978, *Cal App 2d Dist*) 83 *Cal App 3d* 121, 147 *Cal Rptr* 705, 1978 *Cal App LEXIS* 1746.

15. Prosecution of Other Offenses

A person guilty of forging a check, and also of an attempt to pass it, or passing it as true and genuine with intent to damage and defraud another person, may be indicted, tried and convicted for all these connected and consecutive acts as constituting one transaction and one crime; or if guilty of one act only, he may be indicted, tried and convicted for its commission as constituting a distinct crime. *People v. Shotwell* (1865) 27 *Cal* 394, 1865 *Cal LEXIS* 34.

Legislature, by enactment of former *Pen C* § 484a (see now *Pen C* § 484d et seq.), evidenced intent to state penal law with respect to misuse of credit cards and to provide appropriate penalties therefor; though such offenses were formerly governed by sections of this code pertaining to theft, forgery and lost property, where facts of particular case come within acts proscribed by § 484a, People were precluded from prosecuting under general forgery statute. *People v. Swann* (1963, *Cal App 2d Dist*) 213 *Cal App 2d* 447, 28 *Cal Rptr* 830, 1963 *Cal App LEXIS* 2750.

A defendant was properly charged with forgery (*Pen C* § 470) rather than the misdemeanor of counterfeiting (*Pen C* § 648), where the offense involved the placing of photocopies of dollar bills in a changer, and where there would obviously be no "circulation" of the photocopies as contemplated by the counterfeiting statute after the first "passing" to the machine and its owner. *People v. Burkett* (1969, *Cal App 2d Dist*) 271 *Cal App 2d* 130, 74 *Cal Rptr* 692, 1969 *Cal App LEXIS* 2363.

The trial court erred in failing to dismiss an amended information in which defendant was charged with 10 counts of forgery, *Penal C* § 470, and 10 counts of presenting a false or forged document for recording, *Penal C* § 115. The counts contained in the amended information and the counts contained in the original information for which a guilty verdict had been reversed for insufficient evidence were based on the identical conduct. Since defendant's conviction was reversed for insufficiency of evidence, *Penal C* §§ 1262 and 1009 had no application to the case. While it is true that a defendant may be retried when a conviction is reversed for trial error, retrial on the same charge is impermissible if the reversal is based on insufficiency of the evidence. The prosecution here made a deliberate choice of prosecuting defendant originally on grand theft charges, while all along knowing that the identical evidence could support forgery and filing false document charges. Defendant's prosecution on the new information was barred by *Penal C* § 654(a). *Sanders v. Superior Court* (1999, *Cal App 2d Dist*) 76 *Cal App 4th* 609, 90 *Cal Rptr 2d* 481, 1999 *Cal App LEXIS* 1018.

16. Defenses

Indorsement of name of payee of check under authority of general power of attorney does not constitute forgery, although attorney signs principal's name without signing his own. *Kiekhoefer v. United States Nat'l Bank* (1934) 2 *Cal*

2d 98, 39 P2d 807, 1934 Cal LEXIS 471, 96 ALR 1244.

In prosecution for forgery, defendant's assertion that no person was actually injured by forgery, even if true, presents no defense. *People v. Weitz* (1954) 42 Cal 2d 338, 267 P2d 295, 1954 Cal LEXIS 175, cert den (1954) 347 US 993, 74 S Ct 859, 98 L Ed 1126, 1954 US LEXIS 2040, cert den (1955) 350 US 889, 76 S Ct 145, 100 L Ed 783, 1955 US LEXIS 224.

Though defendant in forgery case testified his acts were not done of his own free will but were result of threats of persons who had imprisoned him, trial court, in exercise of its function of weighing evidence, was justified in rejecting such defense where it appeared defendant alone appeared at various business establishments at which checks were presented, was calm, and usually indorsed it, after purchasing merchandise, in presence of witness. *People v. Sinshiemer* (1960, Cal App 2d Dist) 182 Cal App 2d 103, 5 Cal Rptr 740, 1960 Cal App LEXIS 2083.

Mere fact that instrument is legally unenforceable is not defense to prosecution for forgery so long as upon its face it may have effect to defraud one who acts upon it as genuine. *People v. Jones* (1962, Cal App 2d Dist) 210 Cal App 2d 805, 27 Cal Rptr 35, 1962 Cal App LEXIS 1636.

In prosecution for cashing checks forged in defendant's husband's name, fact that defendant had used some of funds so secured for furnishing of necessities that her husband was obligated to furnish did not constitute defense. *People v. Suci* (1963, Cal App 2d Dist) 218 Cal App 2d 888, 32 Cal Rptr 645, 1963 Cal App LEXIS 1863.

Generally, subsequent restoration, restitution or repayment is not a defense to the crime of forgery. *People v. Parker* (1970, Cal App 4th Dist) 11 Cal App 3d 500, 89 Cal Rptr 815, 1970 Cal App LEXIS 1750.

A prosecution for forgery was barred by the statute of limitations where charges were filed more than three years after the commission of the offense, and where an amendment to the statute (*Pen C § 800*), changing the time from which the statutory period began from the date of the commission of the offense to the date of its discovery, was not enacted until after the statutory period under the prior statute had expired. *Sobiek v. Superior Court* (1972, Cal App 1st Dist) 28 Cal App 3d 846, 106 Cal Rptr 516, 1972 Cal App LEXIS 802, overruled *People v. Frazer* (1999) 21 Cal 4th 737, 88 Cal Rptr 2d 312, 982 P2d 180, 1999 Cal LEXIS 5535.

Defendant's failure to raise the question of the application of the statute of limitations in a prosecution for forgery did not preclude raising that issue in a petition for a writ of prohibition where it appeared on the face of the record that the charges had been filed after the original statute had run, where an amendment to the statute, enacted after expiration of the original period, provided that the period began when the offense was discovered rather than when it was committed. The application of such amendment to defendant's prosecution would result in unconstitutional ex post facto legislation. *Sobiek v. Superior Court* (1972, Cal App 1st Dist) 28 Cal App 3d 846, 106 Cal Rptr 516, 1972 Cal App LEXIS 802, overruled *People v. Frazer* (1999) 21 Cal 4th 737, 88 Cal Rptr 2d 312, 982 P2d 180, 1999 Cal LEXIS 5535.

In a prosecution under *Pen C § 470*, for forgery, the bare fact of restitution or repayment is irrelevant in the absence of evidence that defendant had authority to affix his or some other person's name to the instrument, or that, at the time he passed the instrument, he did not know it was false. *People v. Wing* (1973, Cal App 5th Dist) 32 Cal App 3d 197, 107 Cal Rptr 836, 1973 Cal App LEXIS 976.

(2) INFORMATION OR INDICTMENT

17. In General

If an indictment for forgery contains two counts, in each of which a copy of the instrument alleged to have been forged is set out, and the copies are alike, it will not be presumed that each is a copy of the same original instrument, without an allegation to that effect in the second count. *People v. Shotwell* (1865) 27 Cal 394, 1865 Cal LEXIS 34.

Indictment for forging instrument in foreign language is good if it set out translation in English language of instrument charged to be forged without containing copy of original in foreign language. *People v. Ah Woo (1865) 28 Cal 205, 1865 Cal LEXIS 110.*

An information is sufficient which alleges that the defendant uttered a forged instrument with intent to defraud, knowing it to be forged, and it is not necessary to aver that there was an intent to defraud in the making of the writing alleged to have been forged. *Ex parte Finley (1884) 66 Cal 262, 5 P 222, 1884 Cal LEXIS 752.*

An allegation in an indictment for forgery, in a single count, of a series of acts named in the statute, either of which would constitute the crime of forgery, is not the allegation of more than one offense, because all constitute but the single crime. *People v. Harrold (1890) 84 Cal 567, 24 P 106, 1890 Cal LEXIS 843.*

It is not necessary to allege in an information, specifically, that the defendant "falsely" made and forged the instrument, as the word "forged" implies false making to the full extent, as if it were expressed. *People v. Mitchell (1891) 92 Cal 590, 28 P 597, 28 P 788, 1891 Cal LEXIS 1258.*

It is not sufficient to charge that the defendant "did unlawfully, feloniously, and fraudulently make and forge" an instrument, as the intent to defraud is the essential element and must be specifically alleged. *People v. Mitchell (1891) 92 Cal 590, 28 P 597, 28 P 788, 1891 Cal LEXIS 1258.*

An averment in an indictment for forgery alleging in the same count that the defendant uttered the instrument does not constitute a statement of two distinct crimes. *People v. McGlade (1903) 139 Cal 66, 72 P 600, 1903 Cal LEXIS 771.*

18. Forgery of Particular Instruments

An indictment for forgery which charges that the defendant forged an indorsement on a draft, and that it was afterwards indorsed by other persons, and that after the true indorsement the defendant uttered it, does not charge two offenses. *People v. Frank (1865) 28 Cal 507, 1865 Cal LEXIS 165.*

In indictment for possessing counterfeit notes with intent to utter them, if legal existence of corporation be not made issue, it is not necessary to charge that banking house whose bills have been imitated was incorporated company; it would be equally offense whether company is actually incorporated or not, so it is acting as a corporation, and issues bank bills which are current anywhere. *People v. Ah Sam (1871) 41 Cal 645, 1871 Cal LEXIS 151.*

A certified copy of a decree of divorce, with court seal attached, is capable of being forged; and in a criminal prosecution for uttering such a forged writing, the information need not state that the parties to the divorce proceedings were ever married. *Ex parte Finley (1884) 66 Cal 262, 5 P 222, 1884 Cal LEXIS 752.*

When a forged will appears to be valid and of legal efficacy upon its face, it is not necessary to allege matters showing in what manner a person alleged to have been injured could be affected by the forgery, nor the fact that the testator had property to bequeath. *People v. Todd (1888) 77 Cal 464, 19 P 883, 1888 Cal LEXIS 727.*

Where alleged forged instruments purported to be an assignment of an interest in certain letters patent, an allegation that the defendant offered said instrument for record at the office of a county recorder and caused the same to be recorded as a record in said office does not charge a separate offense, since to be genuine the letters patent must be filed, registered or recorded under the law of this state. *People v. Harrold (1890) 84 Cal 567, 24 P 106, 1890 Cal LEXIS 843.*

Under the law prior to 1905, a person charged with forging a check signed by a firm name could not be convicted under this section if there was no firm of that name, although he may have signed such firm name by mistake, intending to designate a firm of different name, believing the name signed to be correct name, but he was guilty in such case of making and passing a fictitious check, and should have been prosecuted under § 476. *People v. Elliott (1891) 90 Cal*

586, 27 P 433, 1891 Cal LEXIS 973.

An information containing two counts, the first of which charges the defendant with knowingly and feloniously, and with intent to defraud, forging a check which is set out in the information, and the second of which charges that the defendant did "utter, publish, and pass as true and genuine a certain forged, false and counterfeit check, which said check was the same check referred to in the first count of this information," and sets out a copy of the check, but which fails to allege knowledge on the part of the defendant of its falsity, fails as to the second count to state an offense. *People v. Smith (1894) 103 Cal 563, 37 P 516, 1894 Cal LEXIS 824.*

Under the law prior to 1905, an information charging a defendant with forgery in making and forging a fictitious instrument purporting to be the check of a person who had no existence, with intent to defraud, improperly designated the offense as forgery; but where the information specified acts constituting an offense under § 476, as making or passing a fictitious instrument in writing, and was sufficiently clear to show that the prosecution was under that section, the actual designation of the offense as forgery was immaterial. *People v. Eppinger (1894) 105 Cal 36, 38 P 538, 1894 Cal LEXIS 1105.*

An information charging the defendant with the forgery of a note, and also with passing the forged note, states but one offense. *People v. Leyshon (1895) 108 Cal 440, 41 P 480, 1895 Cal LEXIS 871.*

An information charging the defendant with making and forging a fictitious check, payable to his order, and indorsing the same with intent to defraud a person named "whereas in truth and in fact there was and is no such bank, corporation, co-partnership or individual," as the assumed maker of the check, as the defendant "then and there well knew, and that the instrument was fictitious," sufficiently states a public offense. *People v. Ellenwood (1897) 119 Cal 166, 51 P 553, 1897 Cal LEXIS 873.*

An information charging the defendant with the crime of forgery in raising a certified check, and passing it with knowledge of its fictitious character upon a corporation named, with intent to defraud it, although not showing that the bank upon which the check was drawn had any legal existence, or that the person certifying it had the authority to certify the same, sufficiently charges the forgery of an uncertified check, and the utterance thereof. *People v. Dole (1898) 122 Cal 486, 55 P 581, 1898 Cal LEXIS 618.*

An indictment charging a defendant with making and uttering a fictitious order for the payment of money which alleges that the order was uttered to a person named, with intent to defraud a carriage company, need not allege that such person was connected with the carriage company, but such fact can be proved, if necessary, under the allegations made. *People v. Arlington (1899) 123 Cal 356, 55 P 1003, 1899 Cal LEXIS 1075.*

An indictment charging forgery of a mortgage which does not state facts showing that the mortgage could have injured or defrauded anyone, or that it was given to secure an indebtedness or other obligation, or that it purported to be a valid writing obligatory, is insufficient. *People v. Terrill (1899) 127 Cal 99, 59 P 836, 1899 Cal LEXIS 604.*

A charge of forgery of a deed does not include forgery of the notary's certificate of acknowledgment, or of the signature of the notary. *People v. Chretien (1902) 137 Cal 450, 70 P 305, 1902 Cal LEXIS 582.*

Where an indictment sets out in full the instrument alleged to be forged, which is a claim for street work and causes a "demand upon the city and county of San Francisco," it is immaterial that such demand is not within the enumeration of instruments susceptible of forgery under this section, where the instrument set forth shows upon its face that it is a "request for the payment of money." *People v. McGlade (1903) 139 Cal 66, 72 P 600, 1903 Cal LEXIS 771.*

An indictment charging the defendant with making and forging a certificate of acknowledgment purporting to have been issued by a notary public charges an indictable offense, and it is not error to permit such an indictment to be amended to charge that the defendant forged the notary's handwriting. *People v. Webber (1919, Cal App) 44 Cal App 120, 186 P 406, 1919 Cal App LEXIS 473.*

Where an information charges the uttering, publishing, and passing of a forged check in words and figures which are set forth, and the writing pleaded does not contain any statement as to the amount of the check or the maker's signature, but before the jury is impaneled the court permits the information to be amended by an interlineation of the omitted statements, and the defendant makes no objection but proceeds to trial, he cannot on appeal for the first time complain of the procedure followed. *People v. Van Baron* (1931, Cal App) 111 Cal App 48, 295 P 68, 1931 Cal App LEXIS 1069.

Information that not only alleged forgery of "certain check," but also specifically included therein forgery of "order in writing for payment of money," properly alleged forgery of indorsement in each count, since "order for money," within meaning of this section, includes indorsement of payee's name on reverse side of check. *People v. Luizzi* (1960, Cal App 2d Dist) 187 Cal App 2d 639, 9 Cal Rptr 842, 1960 Cal App LEXIS 1439.

Where accused was apprised that he was charged with forging another person's name on charge slip, he was not misled by fact that information described slip as "writing obligatory." *People v. Searcy* (1962, Cal App 1st Dist) 199 Cal App 2d 740, 18 Cal Rptr 779, 1962 Cal App LEXIS 2889, 90 ALR2d 814.

Conspiracy to violate this section was sufficiently alleged by information charging that defendants did wilfully, unlawfully and feloniously conspire, combine, confederate and agree together to make, alter, forge and counterfeit certain checks and order in writing for payment of money in sum of in excess of \$10,000, and did then and there conspire to utter, publish and pass same, knowing that said checks were false, altered, forged and counterfeited with intent then and there to cheat and defraud certain specified persons. *People v. Bedilion* (1962, Cal App 2d Dist) 206 Cal App 2d 262, 24 Cal Rptr 19, 1962 Cal App LEXIS 2017.

19. Variance

If on a trial for forgery it appears that an interlineation was made in the instrument after the forgery, by the consent of the defendant, and the indictment sets forth the instrument as interlined, there is no such variance as to entitle the defendant to an acquittal. *People v. Frank* (1865) 28 Cal 507, 1865 Cal LEXIS 165.

Where an information alleged a forgery of a promissory note, described as payable "to H. C. Phillips or order" and the note in evidence did not contain the word "to" immediately before the words "H. C. Phillips," the variance was immaterial. *People v. Phillips* (1886) 70 Cal 61, 11 P 493, 1886 Cal LEXIS 725.

The fact that a copy of the alleged forged mortgage set out in an information does not contain any certificate of acknowledgment, while the mortgage introduced in evidence has such a certificate attached, does not constitute a fatal variance. *People v. Baker* (1893) 100 Cal 188, 34 P 649, 1893 Cal LEXIS 767.

There is no fatal variance between an information charging a defendant with forging a check in the name of R. S. Southerland and proof that R. V. Southerland was the true name of the party whose name was sought to be forged. *People v. Smith* (1894) 103 Cal 563, 37 P 516, 1894 Cal LEXIS 824.

Where the pleading unnecessarily set out a deed in full, including the certificate of a notary and the signature of the defendant as a witness, and charged the forgery of the deed by the defendant, proof of the forgery of the signature of the fictitious maker, without proof of the forgery of the attestation, does not show a material variance by which the defendant could be misled or again put in jeopardy for forging the same deed. *People v. Chretien* (1902) 137 Cal 450, 70 P 305, 1902 Cal LEXIS 582.

Where information charged that defendant "did wilfully...and feloniously...pass, utter" certain check, and proof was directed to his efforts to pass and make use of check, fact that defendant's efforts were frustrated and his fraudulent scheme unsuccessful did not constitute variance in proof. *People v. Williams* (1960, Cal App 2d Dist) 186 Cal App 2d 420, 8 Cal Rptr 871, 1960 Cal App LEXIS 1648.

The crime of forgery consists either in the false making or alteration of a document without authority or the uttering of such a document with the intent to defraud, and a defendant may properly be charged in the conjunctive with both the false making and uttering of a check; such conjunctive pleading charges the single offense of forgery, and proof of either the false making or uttering of the check will support a conviction of the offense. *People v. Reisdorff* (1971, Cal App 1st Dist) 17 Cal App 3d 675, 95 Cal Rptr 224, 1971 Cal App LEXIS 1514.

(3) EVIDENCE AND WITNESSES

a. GENERALLY

20. In General

Where check purporting to be signed by another person was completely written when it was presented to bank teller by defendant, whom teller knew by that other person's name, it could be properly treated as exemplar of defendant's handwriting, since defendant himself treated it as genuine. *People v. Chapman* (1957, Cal App 2d Dist) 156 Cal App 2d 151, 319 P2d 8, 1957 Cal App LEXIS 1393.

In order to support a judgment of conviction of forgery by uttering a check on which the indorsement of the payee was allegedly forged, the burden is on the prosecution to establish the following elements constituting the corpus delicti of the offense: that the indorsement of the payee upon the check was a forgery; that the check was uttered as true and genuine; that it was known by defendant at the time he uttered it to be forged; and the intent to defraud. *People v. Swope* (1969, Cal App 2d Dist) 269 Cal App 2d 140, 74 Cal Rptr 586, 1969 Cal App LEXIS 1628.

Defendant's contention on appeal from a conviction of forgery, that handwriting exemplars were obtained in violation of his constitutional privilege against self-incrimination and his right to counsel was not well-founded, where it was clear that the exemplars were taken at a time when defendant had waived his rights, of which he had been advised both orally and in writing, and before he indicated any possible hesitancy about the waiver; moreover, applicable decisions indicate that the taking of handwriting exemplars does not violate an accused's constitutional privilege against self-incrimination or his right to counsel. *People v. Brashier* (1969, Cal App 2d Dist) 271 Cal App 2d 298, 76 Cal Rptr 581, 1969 Cal App LEXIS 2381.

21. Examination of Witnesses

It was not improper to bring out on cross-examination that defendant had been convicted of prior felony and to introduce testimony concerning another similar check which defendant allegedly attempted to pass without success, where defendant took stand and could thus be cross-examined as to prior convictions. *People v. Grey* (1960, Cal App 4th Dist) 180 Cal App 2d 683, 4 Cal Rptr 561, 1960 Cal App LEXIS 2385.

In prosecution for forgery, defendant's objection on grounds of irrelevancy and immateriality, rather than nonresponsiveness, to statement, "It may cause us to lose our home," made by prosecution witness while testifying that she would not have bought aluminum siding from defendant had she known she was signing papers in blank creating trust deed on her home, was properly overruled, where statement was relevant and material to show witness' state of mind when she signed papers. *People v. Carson* (1966, Cal App 4th Dist) 240 Cal App 2d 477, 49 Cal Rptr 653, 1966 Cal App LEXIS 1372.

In a forgery prosecution, defendant was properly cross-examined as to how many bank accounts he had during the year of the offense, and impeaching testimony was properly admitted as to a bank account he denied opening, where defendant, on direct examination, testified in effect that he did not commit the offense charged, where he stated that he had never opened an account under a particular name or "any other similar-type name," where such statement was subject to an interpretation that defendant never opened a bank account under any fictitious name, where no objection of any kind was made to the impeaching testimony, and where the inquiry complained of was relevant and the subject

matter of the impeachment was within the permissible scope of cross-examination. *People v. Eisenberg* (1968, Cal App 2d Dist) 266 Cal App 2d 606, 72 Cal Rptr 390, 1968 Cal App LEXIS 1548.

In a forgery prosecution, it was not error to permit the giving of handwriting exemplars by defendant's wife as a part of her cross-examination or to permit use of the exemplars by a handwriting expert, where the wife had, on direct examination, testified that she had placed a particular name on the forged checks; nor did the trial court abuse its discretion as to regulation of the order of proof by permitting the exemplars to be made in a reopening of the cross-examination. *People v. Villarino* (1970, Cal App 4th Dist) 7 Cal App 3d 56, 86 Cal Rptr 338, 1970 Cal App LEXIS 2134.

22. Inferences and Presumptions

The signing of a person's name without authority, at least where instrument has been uttered, is sufficient to imply an intent to defraud. *People v. Weitz* (1954) 42 Cal 2d 338, 267 P2d 295, 1954 Cal LEXIS 175, cert den (1954) 347 US 993, 74 S Ct 859, 98 L Ed 1126, 1954 US LEXIS 2040, cert den (1955) 350 US 889, 76 S Ct 145, 100 L Ed 783, 1955 US LEXIS 224.

Where forgery consists in false making of instrument, fact of forgery may imply intent to defraud; and same rule should apply where person passes check as genuine knowing at time that it is forged. *People v. Chapman* (1957, Cal App 2d Dist) 156 Cal App 2d 151, 319 P2d 8, 1957 Cal App LEXIS 1393.

Proof of intention to defraud, as element of forgery, may consist of reasonable inferences drawn from affirmatively established facts. *People v. Sinshiemer* (1960, Cal App 2d Dist) 182 Cal App 2d 103, 5 Cal Rptr 740, 1960 Cal App LEXIS 2083.

Tender of check purporting to be signed by certain person is in itself representation that check is genuine; it will not be inferred that person intends to present forged check in absence of evidence to that effect. *People v. Williams* (1960, Cal App 2d Dist) 186 Cal App 2d 420, 8 Cal Rptr 871, 1960 Cal App LEXIS 1648.

In forgery prosecution, intent to defraud may be inferred from fact that fictitious instrument is presented for payment. *People v. Hawkins* (1961, Cal App 2d Dist) 196 Cal App 2d 832, 17 Cal Rptr 66, 1961 Cal App LEXIS 1652.

Signing of another person's name without authority will imply intent to defraud. *People v. Martin* (1962, Cal App 2d Dist) 208 Cal App 2d 867, 25 Cal Rptr 610, 1962 Cal App LEXIS 1874.

In prosecution for forgery, defendant's fraudulent intent may be inferred by court from all circumstances in evidence. *People v. Russell* (1963, Cal App 2d Dist) 212 Cal App 2d 222, 27 Cal Rptr 861, 1963 Cal App LEXIS 2834.

Requisite specific intent to defraud some person by uttering forged check can be inferred from finding that defendant attempted to pass check that he knew to be false. *People v. Fork* (1965, Cal App 1st Dist) 233 Cal App 2d 725, 43 Cal Rptr 804, 1965 Cal App LEXIS 1408.

Inference that defendant knew forged check was not genuine and that he intended to defraud proprietor of cigar store was sufficiently supported by evidence that defendant stated he worked at cafe on whose account check was drawn, that defendant told clerk whom he had asked about cashing check that cafe was closed when clerk attempted to locate its telephone number, that cafe was no longer in business, and that defendant attempted to pull check from hand of store proprietor and was eager to leave when validity of check was questioned. *People v. Fork* (1965, Cal App 1st Dist) 233 Cal App 2d 725, 43 Cal Rptr 804, 1965 Cal App LEXIS 1408.

b. ADMISSIBILITY

23. In General

In a prosecution for forgery of a check, it was proper to refuse to permit the defendant to prove that he had made arrangements with the bank to open an account under a fictitious name, where the name used on the forged check was not the name to be used in opening the account. *People v. Kauffman* (1941, Cal App) 48 Cal App 2d 393, 119 P2d 998, 1941 Cal App LEXIS 812.

In a prosecution for forgery, evidence of another forgery by defendant may be relevant even where the other forgery occurs after the crime charged. *People v. Long* (1970, Cal App 3d Dist) 7 Cal App 3d 586, 86 Cal Rptr 590, 1970 Cal App LEXIS 2193.

24. Intent, Motive, and Knowledge

In a prosecution for forgery, evidence is admissible, on the question of intent, to show that in consequence of protracted intemperance the defendant's mental faculties had been impaired to such an extent as to deprive him of the capacity to distinguish between right and wrong, and that he did not know what he was doing at the time of commission of the act. *People v. Blake* (1884) 65 Cal 275, 4 P 1, 1884 Cal LEXIS 518.

Evidence of transactions between the defendant and the person alleged to have been defrauded, after delivery of the note on which the forgery prosecution was based, is admissible, if it tends to show that the note was used with a fraudulent intent and to secure value from the person to whom it was delivered. *People v. Phillips* (1886) 70 Cal 61, 11 P 493, 1886 Cal LEXIS 725.

Upon trial for forging false instruments, evidence that defendant about same time had forged other false instruments of same description is admissible for purpose of showing guilty knowledge, but where such instruments said to be forged are offered in proof of guilty knowledge there must be strict proof that they are forgeries. *People v. Baird* (1894) 105 Cal 126, 38 P 633, 1894 Cal LEXIS 1124.

Prosecution may prove that person whose name was forged was dead before date of forged instrument and that defendant knew of his death. *People v. Sanders* (1896) 114 Cal 216, 46 P 153, 1896 Cal LEXIS 882.

In a prosecution for forgery, evidence was properly admitted to show the existence of other forgeries of similar instruments about the same time, to show guilty knowledge and intent. *People v. McGlade* (1903) 139 Cal 66, 72 P 600, 1903 Cal LEXIS 771.

In prosecution of doctor's office nurse for forgery of checks and money order paid to doctor, evidence that on other occasions defendant had received cash from patient of doctor and did not give it all to doctor was properly admitted as tending to show defendant signed doctor's name on checks and money order without any intention of giving money received in exchange therefor to him. *People v. McAffery* (1960, Cal App 2d Dist) 182 Cal App 2d 486, 6 Cal Rptr 333, 1960 Cal App LEXIS 2135.

In prosecution of doctor's office nurse for forgery of checks and money order paid to doctor, evidence that defendant, on another occasion in connection with cash payment of \$275, executed receipt for only \$75, used without authorization doctor's printed office receipt, and subsequently "doctored" cash book demonstrated such transactions were part and parcel of scheme to defraud doctor by concealment of collateral criminal acts, committed or contemplated, and conversion to her own use of money realized thereby, and such evidence was admissible. *People v. McAffery* (1960, Cal App 2d Dist) 182 Cal App 2d 486, 6 Cal Rptr 333, 1960 Cal App LEXIS 2135.

In prosecution of doctor's office nurse for forgery of checks and money order paid to doctor, it was not error to admit in evidence two checks not referred to in information where, on both of such checks, doctor's name was written in different color ink from that used to write defendant's signature and same was true of three checks mentioned in information, thus showing intent with which doctor's signature was written on checks forming forgery count, as well as general scheme to embezzle doctor's money. *People v. McAffery* (1960, Cal App 2d Dist) 182 Cal App 2d 486, 6 Cal Rptr 333, 1960 Cal App LEXIS 2135.

In prosecution for issuing fictitious check and forgery of fictitious name, it was not error to admit testimony of defendant's source of income for period of several years prior to his arrest, revealing that defendant had operated bookie establishment, where testimony was relevant to establish that he had motive for committing forgery. *People v. Hawkins* (1961, Cal App 2d Dist) 196 Cal App 2d 832, 17 Cal Rptr 66, 1961 Cal App LEXIS 1652.

Evidence of similar acts or transactions may tend to prove that defendant committed forgery of checks, either by signing them without authority, or by passing them with intent to defraud and knowing them to be forgeries. *People v. Ross* (1961, Cal App 2d Dist) 198 Cal App 2d 723, 18 Cal Rptr 307, 1961 Cal App LEXIS 2597.

In prosecution for forging checks, it was error to admit in evidence, purportedly for purpose of showing "common plan, design, scheme, and thus intent," certain other checks allegedly forged about two years before date of those on which prosecution was based, where there was no showing that earlier checks were forged or dishonored. *People v. Ross* (1961, Cal App 2d Dist) 198 Cal App 2d 723, 18 Cal Rptr 307, 1961 Cal App LEXIS 2597.

Court properly overruled defendant's objection to witness's testimony as to indorsement by defendant of payee's name on back of allegedly forged check in witness' presence; this testimony referred to issue of knowledge and uttering a forged check and was proper. *People v. Poland* (1963, Cal App 5th Dist) 219 Cal App 2d 422, 33 Cal Rptr 211, 1963 Cal App LEXIS 2391.

In a prosecution for forgery, defendant is entitled to rebut or controvert any evidence that tends to establish the intent to defraud. *People v. Braver* (1964, Cal App 2d Dist) 229 Cal App 2d 303, 40 Cal Rptr 142, 1964 Cal App LEXIS 987, 10 ALR3d 565.

In a prosecution for theft by false pretenses, forgery of stock certificates, and uttering the certificates, in which defendant obtained loans from various lending institutions by passing fraudulent stocks off as genuine, defendant was entitled to present evidence of his attempts at repayment of the various loans in an endeavor to convince the jury that he did not know the certificates were false and therefore lacked the requisite specific intent to defraud, where such crimes were specific intent crimes. *People v. Katzman* (1968, Cal App 1st Dist) 258 Cal App 2d 777, 66 Cal Rptr 319, 1968 Cal App LEXIS 2474, overruled *Rhinehart v. Municipal Court* (1984) 35 Cal 3d 772, 200 Cal Rptr 916, 677 P2d 1206, 1984 Cal LEXIS 164, overruled in part as stated *Perryman v. Superior Court* (2006, Cal App 2d Dist) 141 Cal App 4th 767, 46 Cal Rptr 3d 306, 2006 Cal App LEXIS 1135.

Defendant's repayment after his arrest of funds secured by forgery was not relevant to show his lack of intent to defraud at the time he endorsed and cashed a check payable to a stranger, and the court did not err in striking testimony as to defendant's repayment after his arrest. *People v. Parker* (1970, Cal App 4th Dist) 11 Cal App 3d 500, 89 Cal Rptr 815, 1970 Cal App LEXIS 1750.

25. Handwriting or Printing

Upon the trial of a defendant charged with forging an order upon a county superintendent of schools, other orders of the same general character, proved to be in the defendant's handwriting, are admissible in evidence for the purpose of determining by comparison whether the defendant was the forger of the order recited in the information. *People v. Bibby* (1891) 91 Cal 470, 27 P 781, 1891 Cal LEXIS 1112.

In a prosecution for forgery, where it is part of the prosecution's case to prove that writing on the check was removed and other writing substituted in its place, expert testimony is admissible to show that there is a fluid by means of which writing may be removed from paper, without first showing that a solvent fluid was used and that the defendant was conversant with its use. *People v. Dole* (1898) 122 Cal 486, 55 P 581, 1898 Cal LEXIS 618.

Question whether certain type was used to print forged checks is properly subject of expert testimony. *People v. Keene* (1954, Cal App) 128 Cal App 2d 520, 275 P2d 804, 1954 Cal App LEXIS 1501.

In forgery prosecution, it was not error that prosecutor did not call handwriting expert to identify handwriting on forged checks where there was sufficient evidence from other witnesses who testified on which jury could base its guilty verdict. *People v. Grey* (1960, Cal App 4th Dist) 180 Cal App 2d 683, 4 Cal Rptr 561, 1960 Cal App LEXIS 2385.

Court did not err in denying defendant's motion to strike testimony of expert on ground that expert gave no reason for his opinion, where court found witness to be qualified expert as examiner of questioned documents, expert gave his opinion based on his examination and observation of checks and handwriting exemplars that he examined, and expert did in fact state reasons for his opinion. *People v. Allen* (1963, Cal App 2d Dist) 212 Cal App 2d 857, 28 Cal Rptr 409, 1963 Cal App LEXIS 2920.

26. Miscellaneous Evidence

The declaration of a defendant, charged with forging a check, that he had worked for the man whose name was signed to the check, and that the latter had no money to pay him and had given him the check, is admissible. *People v. Smith* (1894) 103 Cal 563, 37 P 516, 1894 Cal LEXIS 824.

In a prosecution for forgery, the teller of the bank at which the check was passed may testify orally that he had examined the books of the bank to ascertain whether the defendant had any account with the bank when the check was passed, and that he had no account at that time. *People v. Dole* (1898) 122 Cal 486, 55 P 581, 1898 Cal LEXIS 618.

It is proper to receive evidence that the names of the superintendent of streets and the deputy clerk of the board of supervisors, signed to an instrument, were not written by them nor authorized by them to be written by the defendant, and that the only person of the same name as the claimant who was engaged in street work did not present the claim or authorize it to be presented or verified by his signature, though the address of another person of the same name was affixed to the verification. *People v. McGlade* (1903) 139 Cal 66, 72 P 600, 1903 Cal LEXIS 771.

An assignment purporting to transfer notes and mortgages, together with a letter which shows that the person making the alterations in the assignment did it to defraud another, are admissible to show forgery. *People v. McKenna* (1938) 11 Cal 2d 327, 79 P2d 1065, 1938 Cal LEXIS 307.

Foundation for admission of checks, bearing similarity to check in suit, is furnished by unchallenged statement of police inspector that those checks were fictitious, coupled with defendant's admission that "they were made on the same press." *People v. Sheeley* (1957, Cal App 1st Dist) 151 Cal App 2d 611, 311 P2d 883, 1957 Cal App LEXIS 1806.

Where female companion of defendant admitted to police officers in defendant's presence that she had cashed number of forged checks which defendant had written and that she had done this because defendant had threatened her 9-month-old baby, defendant's reply "More or less" when asked if this story was true was not admissible hearsay and was correctly received into evidence as admission. *People v. Rose* (1963, Cal App 3d Dist) 221 Cal App 2d 525, 34 Cal Rptr 543, 1963 Cal App LEXIS 2177.

In prosecution for forgery, arising out of aluminum siding transaction, evidence given by homeowners of transactions with defendant in which they signed papers in blank without knowing they were creating trust deeds on their respective properties was properly admitted, not to show criminality of defendant, but similar plan of operation which logically, naturally, and by reasonable inference tended to establish facts material to *People's case*. *People v. Carson* (1966, Cal App 4th Dist) 240 Cal App 2d 477, 49 Cal Rptr 653, 1966 Cal App LEXIS 1372.

In a forgery prosecution arising from an attempt to pass a forged insurance company check at a food market, the trial court acted within its discretion in admitting the testimony of a witness to prove that defendant had had possession of a large supply of such check forms and that he intended their use for purposes of forgery, but it was improper to permit the witness to give further testimony to the effect that defendant had organized and operated a team of bad check passers using not only the insurance company checks but others in which a produce company was the purported maker, where much of such evidence was relevant only to prove that defendant was a very criminal character. *People v.*

Williams (1970, *Cal App 3d Dist*) 11 *Cal App 3d* 970, 90 *Cal Rptr* 292, 1970 *Cal App LEXIS* 1791, overruled *People v. Collie* (1981) 30 *Cal 3d* 43, 177 *Cal Rptr* 458, 634 *P2d* 534, 1981 *Cal LEXIS* 176, 23 *ALR4th* 776.

c. WEIGHT AND SUFFICIENCY

27. In General

In a prosecution for forgery, the evidence warranted a conviction where a person had deposited in escrow with the defendant a deed to certain property to be given in exchange for some land in Missouri providing the title was found sufficient, that some time the next month when he discovered the land in Missouri to be worthless he demanded the deed back from the defendant but the defendant produced a false contract of sale which he had never seen, providing that any objections had to be made within a month, that he brought an action against the defendant to recover the land and that the forged instrument was then produced. *People v. Stork* (1901) 133 *Cal* 371, 65 *P* 822, 1901 *Cal LEXIS* 925.

In a prosecution for forgery, possession of the recently forged instrument, by one claiming under it, is evidence against such possessor. *People v. Cline* (1947, *Cal App*) 79 *Cal App 2d* 11, 179 *P2d* 89, 1947 *Cal App LEXIS* 787.

A conviction of forgery is sustained by evidence that defendant directed execution of conditional sales contracts on which were forged name of purported purchaser although defendant did not personally sign documents. *People v. Weitz* (1954) 42 *Cal 2d* 338, 267 *P2d* 295, 1954 *Cal LEXIS* 175, cert den (1954) 347 *US* 993, 74 *S Ct* 859, 98 *L Ed* 1126, 1954 *US LEXIS* 2040, cert den (1955) 350 *US* 889, 76 *S Ct* 145, 100 *L Ed* 783, 1955 *US LEXIS* 224.

Defendant's innocence was not established by purported confession of third person by testifying for prosecution where there was testimony, aside from that of such witness, that check was forgery, where defendant was identified by bank teller as person who presented check for payment, and where jury did not believe witness' confession was true. *People v. Grey* (1960, *Cal App 4th Dist*) 180 *Cal App 2d* 683, 4 *Cal Rptr* 561, 1960 *Cal App LEXIS* 2385.

Conviction of forgery was supported by evidence that purchasers of new auto from defendant signed conditional sales contract in blank with understanding that sales price of car was \$4,953, and did not authorize anyone to insert any other amount therein as price of auto, and that when purchasers received copy of contract in mail, amount of \$6,221.60 had been inserted as purchase price. *People v. Winning* (1961, *Cal App 1st Dist*) 191 *Cal App 2d* 763, 12 *Cal Rptr* 885, 1961 *Cal App LEXIS* 2121.

Discrepancy of \$70 between money order and carbon copy of original is evidence of alteration. *People v. Lee* (1962, *Cal App 2d Dist*) 202 *Cal App 2d* 36, 20 *Cal Rptr* 360, 1962 *Cal App LEXIS* 2440.

In prosecution for executing false instrument, it need not be shown that defendant himself executed instrument, if there is proof that he procured its execution or aided and abetted another person in doing so. *People v. Buckley* (1962, *Cal App 2d Dist*) 202 *Cal App 2d* 142, 20 *Cal Rptr* 659, 1962 *Cal App LEXIS* 2456.

Crime of forgery does not require proof of who actually created forged instrument, since it also involves making or alteration of document without authority or uttering of such document with intent to defraud. *People v. Martin* (1962, *Cal App 2d Dist*) 208 *Cal App 2d* 867, 25 *Cal Rptr* 610, 1962 *Cal App LEXIS* 1874.

Minimum elements required to be proved in charge of forging instrument are actual making of false writing and intent to defraud. *People v. Allen* (1963, *Cal App 2d Dist*) 212 *Cal App 2d* 857, 28 *Cal Rptr* 409, 1963 *Cal App LEXIS* 2920.

Evidence of either forging or uttering (making use) of instrument with intent to defraud another is enough to sustain conviction of forgery. *People v. Fork* (1965, *Cal App 1st Dist*) 233 *Cal App 2d* 725, 43 *Cal Rptr* 804, 1965 *Cal App LEXIS* 1408.

Where there is no evidence in record linking defendant with actual forgery, his conviction of forgery can only be sustained on basis of attempt to pass forged instrument. *People v. Fork* (1965, Cal App 1st Dist) 233 Cal App 2d 725, 43 Cal Rptr 804, 1965 Cal App LEXIS 1408.

Evidence was sufficient for a judgment of conviction of grand theft and forgery where it was substantial and sustained the jury's finding of guilt to a moral certainty and beyond a reasonable doubt, and where that part of it which was circumstantial was not only consistent with the prosecution's hypothesis of guilt but inconsistent with any other reasonable hypothesis. *People v. Turner* (1967, Cal App 2d Dist) 249 Cal App 2d 909, 57 Cal Rptr 854, 1967 Cal App LEXIS 2300, cert den (1967) 389 US 963, 19 L Ed 2, 88 S Ct 348, 1967 US LEXIS 324.

There was sufficient evidence to sustain convictions of forgery and grand theft where defendants, aluminum siding salesmen, represented to their victims that the amount to be paid for the siding was a certain sum exceeding \$200, when in fact it was a sum greatly in excess of this, and where they induced the victims to sign trust deeds on their property by presenting a sheaf of papers for a signature, representing them to be copies of the purchase order. *People v. Parker* (1967, Cal App 2d Dist) 255 Cal App 2d 664, 63 Cal Rptr 413, 1967 Cal App LEXIS 1326.

In a prosecution for forgery (*Pen C § 470*), the evidence was sufficient to support conviction, where defendant altered a photocopy of a bank's letter of credit to show a \$10,000 amount rather than the correct amount of \$1,000, and showed the altered photocopy to the complaining witness, who had advanced \$11,680 to defendant for the purpose of securing the letter of credit, defendant's purpose in showing the copy to the complaining witness was to lull her suspicions, and the complaining witness acted on the photocopy as genuine, declining to make further inquiry or investigation, at least temporarily. *People v. Kagan* (1968, Cal App 1st Dist) 264 Cal App 2d 648, 70 Cal Rptr 732, 1968 Cal App LEXIS 2129, cert den (1969) 394 US 911, 89 S Ct 1027, 22 L Ed 2d 224, 1969 US LEXIS 2364.

The evidence was sufficient to sustain defendant's conviction of forgery (*Pen C § 470*), where it was clear that a dollar bill changer in a coin-operated laundry was operated by someone while defendant was present and aware of the operation, where photocopies of dollar bills were later found in the machine, where other photocopies of the same bills were found in a residence where defendant was found, where, although there was no express evidence that defendant was an occupant of the residence, he was alone there with a woman using his name early in the morning, where the bedroom in the residence contained both male and female clothing, and where defendant exercised sufficient control over the premises to consent to an officer's entry and search. *People v. Burkett* (1969, Cal App 2d Dist) 271 Cal App 2d 130, 74 Cal Rptr 692, 1969 Cal App LEXIS 2363.

Where the connection between defendant's involvement in other forgeries with the forgery charged could not be clearly perceived, the trial court was required to resolve the doubt in favor of the accused. *People v. Long* (1970, Cal App 3d Dist) 7 Cal App 3d 586, 86 Cal Rptr 590, 1970 Cal App LEXIS 2193.

Evidence was sufficient to support defendant's conviction for forgery; although it may not have had a formal appearance and may have appeared incomplete, a document manufactured by defendant purporting to be a purchase agreement for the sale of a boat to defendant was not so defective that as a matter of law it was incapable of supporting a fraud. *People v. Pugh* (2002, Cal App 4th Dist) 104 Cal App 4th 66, 127 Cal Rptr 2d 770, 2002 Cal App LEXIS 5105, review denied (2003, Cal) 2003 Cal LEXIS 1164.

28. Corpus Delicti

Upon charge of forgery prosecution has burden of proving corpus delicti and must show both that person whose name is alleged to have been forged is real person and also that his name was signed to check without authority. *People v. Whiteman* (1896) 114 Cal 338, 46 P 99, 1896 Cal LEXIS 900.

To establish proof of corpus delicti in forgery prosecution, it is not always necessary to show by testimony of maker of instrument that authority was not given; absent such witness, lack of authorization may be proved

circumstantially. *People v. Battle* (1961, Cal App 4th Dist) 188 Cal App 2d 627, 10 Cal Rptr 525, 1961 Cal App LEXIS 2463.

Proof of corpus delicti of forgery need not be shown directly, but can be proved by circumstances surrounding alleged offense or by inferences reasonably to be drawn. *People v. Battle* (1961, Cal App 4th Dist) 188 Cal App 2d 627, 10 Cal Rptr 525, 1961 Cal App LEXIS 2463.

Prosecution need not establish corpus delicti of forgery by proof of clear and convincing character, such as is required to support conviction. *People v. Battle* (1961, Cal App 4th Dist) 188 Cal App 2d 627, 10 Cal Rptr 525, 1961 Cal App LEXIS 2463.

Rule that only prima facie proof is required to establish corpus delicti applies to forgery cases. *People v. Leonard* (1962, Cal App 4th Dist) 207 Cal App 2d 409, 24 Cal Rptr 597, 1962 Cal App LEXIS 1924.

In prosecution for forgery of number of checks, corpus delicti was, prima facie, established by evidence of lack of authority to sign maker's name as shown by bank signature card, very careful preparation of face of checks to make it appear maker had drawn and signed checks personally, attempt by defendant to conceal from person looking at checks that defendant had himself drawn them, actual concealment of that fact by failure to warn person who cashed checks defendant had himself signed maker's name, his endorsement in his own true handwriting which did not look to casual observer like handwriting on face of checks, and his securing cash on every check. *People v. Leonard* (1962, Cal App 4th Dist) 207 Cal App 2d 409, 24 Cal Rptr 597, 1962 Cal App LEXIS 1924.

In a prosecution for forgery of a fictitious name, the corpus delicti was proved with sufficient certainty to make admissible defendant's extrajudicial statements, if those statements were lawfully obtained, where an assistant manager of a bank on which defendant had drawn a counter check in a fictitious name testified that he checked the books and records of the drawee bank in his capacity as assistant manager and determined there was no account in the name signed by defendant to the counter check. *People v. Trombino* (1967, Cal App 2d Dist) 253 Cal App 2d 643, 61 Cal Rptr 634, 1967 Cal App LEXIS 2389.

29. Accomplice Testimony

Testimony of defendant's accomplice was corroborated by testimony of sales manager of one place of business and manager of other at which checks were cashed identifying defendant as being with accomplice when she wrote checks and describing his participation in both transactions, in prosecution for forging and uttering two bad checks. *People v. Owens* (1960, Cal App 1st Dist) 177 Cal App 2d 80, 1 Cal Rptr 861, 1960 Cal App LEXIS 2430.

Testimony of defendant's accomplice was corroborated by testimony of sales manager of one place of business and manager of other at which checks were cashed identifying defendant as being with accomplice when she wrote checks and describing his participation in both transactions, in prosecution for forging and uttering two bad checks. *People v. Owens* (1960, Cal App 1st Dist) 177 Cal App 2d 80, 1 Cal Rptr 861, 1960 Cal App LEXIS 2430.

Testimony of accomplice was sufficiently corroborated by evidence that after arrest and in defendant's presence accomplice admitted that she had cashed number of forged checks which defendant had written and defendant's reaction was shrug of shoulders and admission that accusation was "more or less" correct, that defendant made other statements in presence of police officers indicating that he had written and passed forged checks, and that employees of store where one forged check was cashed and an attempt to pass another was made identified accomplice as person who cashed check and defendant as her companion. *People v. Rose* (1963, Cal App 3d Dist) 221 Cal App 2d 525, 34 Cal Rptr 543, 1963 Cal App LEXIS 2177.

In a forgery prosecution, a conviction could not be had on testimony of an accomplice where the only fact corroborated was defendant's association at a furniture store with the person who forged and attempted to pass a warrant, such association being neither an element of the crime nor incriminating in any respect until colored by the

testimony of the accomplice. *People v. Caldwell* (1967, Cal App 2d Dist) 253 Cal App 2d 195, 61 Cal Rptr 259, 1967 Cal App LEXIS 2334.

In a forgery prosecution, an accomplice's testimony connecting defendant with the commissions of the charged offenses was properly corroborated where it was shown that two of the forged checks in question were cashed personally by defendant and that he helped the accomplice case the third by furnishing identification for him; where a man answering defendant's description was described as participating by witnesses in connection with other counts of forgery; where it was shown repeatedly that defendant possessed and used a certain color and make of car in connection with the crimes; where from the similarity of the method of perpetrating the crimes, defendant also was shown to be connected with the events described in the other counts; and where defendant refused to give a handwriting exemplar at the request of the authorities, thus arguably indicating a consciousness of guilt. *People v. Blackwell* (1967, Cal App 5th Dist) 257 Cal App 2d 313, 64 Cal Rptr 642, 1967 Cal App LEXIS 1787.

30. Proof of Particular Matters

Fact that check involved in forgery prosecution was not good is sufficiently established by evidence that signature was forged and that person whose name was forged had no account in bank in which check was drawn. *People v. Morgan* (1956, Cal App 2d Dist) 140 Cal App 2d 796, 296 P2d 75, 1956 Cal App LEXIS 2321.

There was sufficient evidence showing that defendants had conspired to commit forgery in violation of this section and § 472, and had necessary intent to defraud, where defendants attempted to procure forged driver's license and credit card so that one of defendants could obtain credit under false name, and both defendants took steps toward success of their scheme. *People v. Abrams* (1963, Cal App 2d Dist) 211 Cal App 2d 773, 27 Cal Rptr 639, 1963 Cal App LEXIS 2969.

There was substantial evidence to support the conviction for forgery of a parole officer who had signed a social worker's name on a removal order to have the parolee the officer had married transferred from a state correctional institution to the county jail in an attempt to facilitate the parolee's escape. Although neither *Pen C § 470* (forgery), nor any other statute mentions a prison removal order as a subject of forgery, defendant's act was intended to defraud. It was not dispositive that defendant did not intend to injure any pecuniary right, since § 470 prohibits the intent to alter identifiable legal rights. The identifiable legal right that defendant intended to alter by forging the removal order was the right of the state to incarcerate the prisoner in prison for the term of his lawfully entered sentence resulting from his prosecution. This case involved a novel application of § 470, since defendant attempted to fraudulently obtain a person rather than property, but it was indistinguishable from other cases in which a defendant fabricated a document to gain something to which the defendant was not rightfully entitled. *People v. Gaul-Alexander* (1995, Cal App 5th Dist) 32 Cal App 4th 735, 38 Cal Rptr 2d 176, 1995 Cal App LEXIS 153.

31. Intent and Knowledge

In a prosecution for forgery, the defendant's contention that the verdict cannot be sustained because there was no showing of an intent to defraud was not tenable, where the jury may reasonably have concluded that the defendant and his codefendant were operating together, and the fraudulent intent logically appeared from the circumstances and from the deliberate commission by them of an unlawful act. *People v. Adair* (1934, Cal App) 3 Cal App 2d 323, 39 P2d 274, 1934 Cal App LEXIS 1180.

Evidence in forgery case was insufficient to show that defendant knew he was acting without authority or that he acted with fraudulent intent when he indorsed and cashed check alleged to have been forged. *People v. Valdes* (1957, Cal App 2d Dist) 155 Cal App 2d 613, 318 P2d 118, 1957 Cal App LEXIS 1330.

Mere possession of forged instrument is circumstance affording some evidence of knowledge of its spurious nature. *People v. Rosborough* (1960, Cal App 2d Dist) 178 Cal App 2d 156, 2 Cal Rptr 669, 1960 Cal App LEXIS 2574.

Implied finding of guilty knowledge was supported by showing that defendant presented check to his bank for deposit in savings account, that payee's name indorsed on back of check was forgery, that defendant indorsed check below forged signature and deposited it, but about three hours later returned and drew out most of amount of check, that check had been taken from its owner before he indorsed it, that defendant claimed he received check from couple who purchased from him some records, books and drawings whose authenticity was in doubt, that story of defendant's meeting with couple was such that it could have been rejected as preposterous, and that defendant was in need of and wanted money. *People v. Rosborough* (1960, Cal App 2d Dist) 178 Cal App 2d 156, 2 Cal Rptr 669, 1960 Cal App LEXIS 2574.

In prosecution for forgery of check, defendant's knowledge that checks were not genuine when he cashed them and his intent to defraud were shown by evidence that checks must have been signed by either defendant or payee, no other person having had anything to do with them, that payee's indorsement was written by defendant on reverse side of each check, that all checks were dated same day, drawn in favor of same payee in same amount and all purportedly for salary, that around date checks were passed purported maker's check book had been stolen, that defendant's possession of checks was unexplained, and that defendant knowingly employed spurious checks to procure cash or goods from market to which he presented them. *People v. Luizzi* (1960, Cal App 2d Dist) 187 Cal App 2d 639, 9 Cal Rptr 842, 1960 Cal App LEXIS 1439.

Where in prosecution for forgery defendant received money from altered money order, drove the car of person who wrote money order, carried as a passenger in that car purported payee of money order, denied money order had been cashed and later admitted he had received money from altered money order, there was ample proof that defendant had specific intent to defraud and was principal. *People v. Lee* (1962, Cal App 2d Dist) 202 Cal App 2d 36, 20 Cal Rptr 360, 1962 Cal App LEXIS 2440.

In a prosecution for passing forged check, facts supporting implied findings of jury that defendant knew that check he cashed was forgery include his possession of check and two others from same stolen check book bearing same forged signature and made payable to and cashed by him; his admission that he knew checks were worthless when he cashed them; his contradictory statements respecting his possession of check; and his false statement that he received check for work done for payor who never knew him. *People v. Battle* (1962, Cal App 4th Dist) 202 Cal App 2d 431, 21 Cal Rptr 13, 1962 Cal App LEXIS 2497.

Where defendant had received good check from named person, there was sufficient evidence to establish defendant knew subsequent check purportedly received by him, in alleged poker game, from another person of same name, was forgery where it was shown that defendant knew first named person was illiterate and that someone else had to prepare each check for his signature. *People v. Hulings* (1962, Cal App 5th Dist) 211 Cal App 2d 218, 27 Cal Rptr 446, 1962 Cal App LEXIS 1497.

Mere fact of forgery itself is some evidence of intent to defraud. *People v. Suciu* (1963, Cal App 2d Dist) 218 Cal App 2d 888, 32 Cal Rptr 645, 1963 Cal App LEXIS 1863.

There was ample evidence that defendant knew that checks signed by her in her husband's name were false and that she passed them with intent to defraud where it was shown that checks were forged, that account on which checks were drawn was in sole name of husband and that defendant signed checks without authority and knowing that, in all probability, they would not be covered, that defendant attempted to imitate husband's handwriting in signing name to checks, that defendant gave false and evasive explanations of why she had so signed checks, and that defendant told untruths to persons to whom she submitted such checks for cashing and appropriated money received to her own use. *People v. Suciu* (1963, Cal App 2d Dist) 218 Cal App 2d 888, 32 Cal Rptr 645, 1963 Cal App LEXIS 1863.

In a forgery prosecution there was a total lack of inculpatory circumstances which might have tended to show any knowledge on defendant's part that the payee's indorsement had been forged on a check, other than his possession of the spurious instrument where, although the evidence showed without contradiction that the payee's name as indorser had

been forged, there was no evidence to show that defendant indorsed the payee's name on the check, the handwriting in the indorsement and that of defendant on the back of the check did not appear to an unexpert eye to have any similar characteristics, the check was issued in San Francisco payable to a named payee and the manner in which his name was placed as an indorser made the check negotiable by delivery until specially indorsed, 83 days elapsed from the check's issuance date to the time defendant presented it in Encino in payment of a used car, and how the check left the maker's hands, through how many hands it may have passed, and how it came into defendant's hands were left to conjecture. *People v. Swope* (1969, Cal App 2d Dist) 269 Cal App 2d 140, 74 Cal Rptr 586, 1969 Cal App LEXIS 1628.

32. Signing With or Without Authority

Where there is no evidence to show any authority or belief of authority to sign the name of one of two persons, whose names were signed by the defendants to the note alleged to have been forged, the signing of such name is sufficient to uphold a conviction of forgery. *People v. Leyshon* (1895) 108 Cal 440, 41 P 480, 1895 Cal LEXIS 871.

Upon the trial of a defendant accused of the forgery of a check by signing the name of another, the prosecution must prove that the defendant was not authorized to sign such name, and until this proof is made, it is not shown to be a false instrument, and the defendant is not put to his proof at all, and when a verdict of conviction is returned, in the absence of such proof, it will be set aside. *People v. Lundin* (1897) 117 Cal 124, 48 P 1024, 1897 Cal LEXIS 630.

In a prosecution for the alleged forgery of a check drawn upon a certain account, the case against the defendant was fatally defective, even though an official of the bank testified that the defendant's signature was not included among those which the bank could recognize in honoring checks drawn against said account, where there was no showing that the defendant had no authority to issue the check at the time of its utterance. *People v. Maioli* (1933, Cal App) 135 Cal App 205, 26 P2d 871, 1933 Cal App LEXIS 315.

Evidence that on each of two designated dates customer presented credit card bearing certain name and number to employee of different service station and that invoice was signed by customer, who was not authorized by person named on card to make purchase in his name, supported determination that crime of forgery was committed by customer. *People v. Koomer* (1961, Cal App 2d Dist) 188 Cal App 2d 676, 10 Cal Rptr 607, 1961 Cal App LEXIS 2471.

In proving forgery, proof of lack of authorization does not require testimony by owner or maker of instrument; in absence of such owner or maker as witness, lack of authorization may be proven circumstantially. *People v. Suci* (1963, Cal App 2d Dist) 218 Cal App 2d 888, 32 Cal Rptr 645, 1963 Cal App LEXIS 1863.

In a prosecution for forging and uttering checks signed in defendant's husband's name, evidence was sufficient to establish that defendant lacked authority to sign forged checks where she testified that she "knew [her] husband would press charges sooner or later" and that "the law" would be after her, and where there was evidence that she had admitted that she lacked authority to sign her husband's name to checks and that she disguised her handwriting. *People v. Suci* (1963, Cal App 2d Dist) 218 Cal App 2d 888, 32 Cal Rptr 645, 1963 Cal App LEXIS 1863.

The lack of authority to sign a person's name to an instrument may be established by the testimony of the victim. *People v. Liberto* (1969, Cal App 2d Dist) 274 Cal App 2d 460, 79 Cal Rptr 306, 1969 Cal App LEXIS 2071.

33. Fictitious Name or Instrument; Signing or Making by Defendant

On a trial for the forgery of a check purported to be signed by a firm name, it is necessary to prove that there was such a firm in existence and that the check was not signed by it, or that the firm did not exist and that the check was fictitious. *People v. Elliott* (1891) 90 Cal 586, 27 P 433, 1891 Cal LEXIS 973.

Where a defendant was proved to have passed a false check upon a storekeeper as genuine, with intent to defraud, and it appeared that there were two persons in the county bearing the name which was falsely signed to the check, and that one of them resided in the city where the check was purported to be made and where it was passed, and that neither

of them authorized the defendant to sign his name to the check, the defendant was properly convicted of forgery, and it cannot be claimed that the check was fictitious. *People v. Laird* (1897) 118 Cal 291, 50 P 431, 1897 Cal LEXIS 761.

In a prosecution for forgery, the identity of the person whose name was signed to the check is sufficiently proved to make a prima facie case by a resident witness of that name who testified that the check was not signed by him and that he did not authorize the defendant to sign his name thereto, notwithstanding the testimony of the defendant that he wrote the name with the permission of a person of the same name who resided at another place, without producing such person or making any other substantial corroboration. *People v. Okomoto* (1915, Cal App) 26 Cal App 568, 147 P 598, 1915 Cal App LEXIS 207.

In a prosecution for forgery, evidence that the person by whom the defendant was employed in connection with electrical work, who issued and signed the checks set forth in the information, was the sole owner of a certain property, that the defendant obtained the checks upon representations that they were for purchases of supplies from the electrical company named as payee, that the maker discovered that no such supplies were purchased and the defendant named one of his fellow employees as being the electrical company but stated that said employee received none of the money for said checks, coupled with the testimony of this employee that, at the defendant's request, he indorsed one of the checks by signing the name of said electrical company, followed by what purported to be the name of the person signing said company name, although he had never heard of such a firm or person, and that he received no money therefrom, but that he saw the defendant cash the check at the bank, was sufficient to show the fictitious character of the checks. *People v. Whitaker* (1924, Cal App) 68 Cal App 7, 228 P 376, 1924 Cal App LEXIS 223.

In a prosecution for forging and passing checks, evidence that the persons whose names were appended to the checks had no accounts in the bank upon which the checks were drawn was prima facie proof that the names were those of fictitious persons. *People v. Cohen* (1931, Cal App) 113 Cal App 260, 298 P 114, 1931 Cal App LEXIS 930.

In a prosecution for forgery, the evidence was not sufficient to support the verdicts of conviction, where it did not appear that the payee of either of the checks was a fictitious person, or that, as to the checks indorsed by the defendant, he was not authorized by the payee so to do, which latter fact was one of the essential elements to be proved by the prosecution. *People v. Hidalgo* (1933, Cal App) 128 Cal App 703, 18 P2d 391, 1933 Cal App LEXIS 1211.

A prima facie showing of fictitious character of name used on traveler's check and that defendant forged such name is made by defendant's own admissions that he signed fictitious name to check and had stolen group of such checks. *People v. Martin* (1954, Cal App) 127 Cal App 2d 777, 274 P2d 509, 1954 Cal App LEXIS 1411.

Proof that purported maker of check had no account with bank on which it was drawn constitutes prima facie evidence that check was fictitious. *People v. Gutkowsky* (1963, Cal App 2d Dist) 219 Cal App 2d 223, 33 Cal Rptr 79, 1963 Cal App LEXIS 2366.

In a prosecution for forgery of a fictitious name, the evidence was sufficient to sustain a conviction where it appeared that an assistant manager of a bank on which defendant had drawn a counter check in a fictitious name testified that he checked the books and records of the drawee bank in his capacity as assistant manager and determined there was no account in the name signed by the defendant to the counter check; and that defendant admitted that he had issued a check in a fictitious name, but could not recall on which bank he had written the check. *People v. Trombino* (1967, Cal App 2d Dist) 253 Cal App 2d 643, 61 Cal Rptr 634, 1967 Cal App LEXIS 2389.

The evidence was sufficient to support defendant's conviction of forgery, where he and his codefendant, who was married to defendant's brother, purchased merchandise which defendant stated was for himself, with a credit card belonging to another person with an entirely different name, where the codefendant signed the cardholder's name in defendant's sight and presence, where defendant arranged for and received dental services under a fictitious name corresponding to the name on the credit card, and the codefendant later used the card in paying the dental bill, and where, though defendant knew his codefendant was unemployed, he was unconcerned about her source of funds for

payment of his dental bills or as to her reason for asking him to use a name other than his own in arranging for the services. *People v. Flores* (1969, Cal App 2d Dist) 269 Cal App 2d 666, 75 Cal Rptr 231, 1969 Cal App LEXIS 1687.

34. Uttering

Defendant's conviction as principal in forgery prosecution was supported by evidence that he and his wife went into store, and purchased various articles for which his wife paid with check signed with third person's name and using that person's driver's license and charge plate as identification, and that defendant actually participated in transaction with knowledge of its fraudulent character. *People v. Mauldin* (1960, Cal App 1st Dist) 181 Cal App 2d 184, 5 Cal Rptr 243, 1960 Cal App LEXIS 1980, superseded by statute as stated in *People v. Casillas* (1990, Cal App 3d Dist) 218 Cal App 3d 1365, 267 Cal Rptr 700, 1990 Cal App LEXIS 271.

Evidence sustained conviction of forgery where check defendant attempted to pass was forged, it could reasonably be inferred that he presented check as genuine document, and officers' testimony as to statements made by him at time of his apprehension and following his arrest, plus fact that he attempted to escape, thus indicating consciousness of guilt, justified implied finding he knew check was not genuine. *People v. Williams* (1960, Cal App 2d Dist) 186 Cal App 2d 420, 8 Cal Rptr 871, 1960 Cal App LEXIS 1648.

In prosecution for forgery of four checks, identity of defendant as person who presented them for payment was shown by positive identification by eyewitnesses as to two of checks and, as to other two checks, by testimony of handwriting experts that indorsements thereon were in defendant's handwriting and by evidence of defendant's prior acquaintance with purported maker of checks, theft of latter's checkbook, defendant's presence in maker's office immediately prior to theft of maker's checkbook, defendant's possession of all four checks, and similarity of circumstances surrounding presenting of each. *People v. Luizzi* (1960, Cal App 2d Dist) 187 Cal App 2d 639, 9 Cal Rptr 842, 1960 Cal App LEXIS 1439.

Conviction of uttering and attempting to pass forged check was sustained by testimony of purported maker that handwriting on check was not his, that he had given no one permission to sign his name, that defendant had been in his shop several days before incident and had discussed possible printing job, and that, prior to time defendant attempted to pass check, his shop had been broken into and several checks were missing, and by testimony of detective that defendant admitted he had attempted to pass check in store. *People v. Hellman* (1961, Cal App 3d Dist) 189 Cal App 2d 777, 11 Cal Rptr 433, 1961 Cal App LEXIS 2248.

Conviction of uttering forged instrument in violation of this section was sustained by testimony of three witnesses who identified defendant as person who cashed and passed check in question, and by testimony of person to whom check was made payable, whose name was endorsed on check and whose operator's license and social security number were used to cash check, that he gave no authorization to defendant to cash check. *People v. Herrera* (1962, Cal App 2d Dist) 209 Cal App 2d 748, 26 Cal Rptr 409, 1962 Cal App LEXIS 1740.

Forgery, as defined by this section, does not require proof that defendant wrote forged check; definition of forgery includes passing of check known to be forged with intent to defraud. *People v. Effman* (1963, Cal App 3d Dist) 212 Cal App 2d 414, 28 Cal Rptr 85, 1963 Cal App LEXIS 2860.

Passing a forged instrument was established by testimony of corporation's representative that name signed on allegedly forged check of corporate payor was not authorized signature, by testimony of store owner in whose presence defendant endorsed check and from whom defendant received cash, merchandise, and an I.O.U. for money to be received later, by testimony of another witness who observed transaction and corroborated store owner's testimony, and by evidence that defendant, when arrested, had in his possession other forged checks payable by corporation and made out for amounts identical to amount of check passed. *People v. Poland* (1963, Cal App 5th Dist) 219 Cal App 2d 422, 33 Cal Rptr 211, 1963 Cal App LEXIS 2391.

Though evidence in case suffices to support finding that defendant attempted to pass forged check, to constitute offense of uttering forgery under this section, two other factors must be present: it must be known to person attempting to pass check that it was not genuine and uttering must be done with intent to prejudice, damage, or defraud some person. *People v. Fork* (1965, Cal App 1st Dist) 233 Cal App 2d 725, 43 Cal Rptr 804, 1965 Cal App LEXIS 1408.

Implied finding that defendant intended and was attempting to pass forged check was supported by evidence that he asked store clerk whether check could be cashed, that he said it was his check and that he worked at cafe against whose account check was drawn, and that he appeared to be in hurry to retrieve it and leave store when check's validity was questioned. *People v. Fork* (1965, Cal App 1st Dist) 233 Cal App 2d 725, 43 Cal Rptr 804, 1965 Cal App LEXIS 1408.

The proof of the offense of forgery of a check (*Pen C § 470*) does not require that defendant wrote the forged check, but the proof may be established where it is shown that defendant passed the check knowing it to be forged with intent to defraud. *People v. McKissack* (1968, Cal App 2d Dist) 259 Cal App 2d 283, 66 Cal Rptr 199, 1968 Cal App LEXIS 1972.

In a prosecution for forgery, there was substantial evidence to support defendant's conviction, where defendant was identified by bank employees as the man that they dealt with in connection with a forged check, where, though identifying witnesses failed to recognize defendant under extraneous circumstances four to six months later, such failure could not, in and of itself, be considered as evidence which discredited or impeached their identification as a matter of law, where, in addition to their positive identification at the time of trial, three of the identifying witnesses had, about one month after the forged check transaction, selected defendant's photograph from a group of photographs, and where a number of the witnesses recognized defendant sitting in the back of the courtroom before the preliminary hearing. *People v. Eisenberg* (1968, Cal App 2d Dist) 266 Cal App 2d 606, 72 Cal Rptr 390, 1968 Cal App LEXIS 1548.

In a forgery prosecution involving the uttering of a check bearing the forged indorsement of the payee's name, an element of the corpus delicti was not established and the evidence was insufficient as a matter of law to support a conviction where, although it was shown in the record that defendant had possession of the check on which the name of the payee had been forged, there was a total lack of evidence of other inculpatory circumstances which might have tended to show knowledge on defendant's part that the payee's indorsement had been forged. *People v. Swope* (1969, Cal App 2d Dist) 269 Cal App 2d 140, 74 Cal Rptr 586, 1969 Cal App LEXIS 1628.

Defendant's contention on appeal from a conviction of forgery (*Pen C § 470*) that there was insufficient evidence to support the verdict was without merit, where there was substantial circumstantial evidence to support a finding that defendant knew that payroll checks which he passed were forged by an acquaintance, and where the jury obviously considered defendant's story as to the origin of the checks as concocted. *People v. Brashier* (1969, Cal App 2d Dist) 271 Cal App 2d 298, 76 Cal Rptr 581, 1969 Cal App LEXIS 2381.

35. Credit Cards

Forgery conviction was supported by expert testimony that signatures used in connection with stolen credit cards were probably written by defendant, and by evidence that cases of liquor and invoice covering some of it in name of owner of credit cards were found in automobile being driven by defendant, that defendant several times offered money to police officer who arrested him if he would let defendant go, and that defendant made number of incriminating statements. *People v. Kramer* (1962, Cal App 2d Dist) 204 Cal App 2d 48, 21 Cal Rptr 920, 1962 Cal App LEXIS 2218.

Testimony by five witnesses that they either sold merchandise to defendant, or saw man in defendant's car making purchases, who was using stolen credit card; testimony of handwriting expert that defendant had signed invoices issued on stolen credit card; and discovery of stolen credit card in purse of defendant's wife at time of his arrest, are sufficient evidence to substantiate jury's finding that defendant was guilty of forgery. *People v. Ball* (1962, Cal App 2d Dist) 211 Cal App 2d 435, 27 Cal Rptr 274, 1962 Cal App LEXIS 1524.

In a prosecution for forgery through the unlawful use of a credit card, the evidence pointed unerringly to defendant's guilt, where the credit card owner denied that he ever gave defendant permission to use his credit card or to sign his name, and defendant's claim of innocence was predicated entirely on his sworn denial of any wrongdoing, and the asserted inherent credibility of his wholly uncorroborated recital of the pertinent events which was unworthy of belief. *People v. Liberto* (1969, Cal App 2d Dist) 274 Cal App 2d 460, 79 Cal Rptr 306, 1969 Cal App LEXIS 2071.

The evidence in a prosecution for forgery based on unauthorized use of a credit card was sufficient to support defendant's conviction on the theory of aiding and abetting, where he accompanied his codefendant as she used the card in making purchases and participated in their selection, where most of the purchases were men's clothing, and all trousers purchased were of the same size, where defendant was with the codefendant as she handed the credit card to store clerks and signed the name of the holder of the card, and where he talked about a sale with a clerk while waiting for the credit department's approval of the card, and, on one occasion, directed a clerk to the codefendant for payment. *People v. Neder* (1971, Cal App 2d Dist) 16 Cal App 3d 846, 94 Cal Rptr 364, 1971 Cal App LEXIS 1643.

36. Checks

Where the only evidence to sustain a charge of forgery of a check is the testimony of an expert, upon comparison of the check with genuine handwriting of the defendant, that in his opinion the face of the check was written by the defendant, nothing being said specifically about the signature, and there being no evidence as to the existence of the purported drawer, or whether he did or did not authorize the signature, the evidence is insufficient to sustain a conviction. *People v. Mitchell* (1891) 92 Cal 590, 28 P 597, 28 P 788, 1891 Cal LEXIS 1258.

Conviction was sustained by evidence that defendant and woman were in store, that defendant filled out one of number of blank checks belonging to another woman with address of that other woman in upper left-hand corner, signed name of other woman and delivered it to salesman, after which defendant carried merchandise away, and by evidence that on same day woman (not owner of lost blank checks) signed another of those checks in same store, using name of owner of checks, and that defendant, who was short distance away when check was signed and delivered to clerk, carried away merchandise. *People v. Dorsey* (1960, Cal App 2d Dist) 177 Cal App 2d 807, 2 Cal Rptr 644, 1960 Cal App LEXIS 2549.

Conviction of forgery and of issuing checks without sufficient funds was supported by evidence that defendant opened checking account by depositing little cash and check therein, that on next day, and before check was returned to bank unpaid, he presented to furniture store check drawn on bank, signed by him and indorsed to third person, that few days later he presented his check to dress shop as payment for some dresses for his wife, but left when saleslady took his check and driver's license upstairs, that first check was presented to defendant's bank and returned unpaid, but second was not because defendant was arrested soon after passing it, and that defendant made no effort to contact person who allegedly wrote check that he originally deposited in his account and gave police fictitious address for such person. *People v. Sanderson* (1960, Cal App 2d Dist) 183 Cal App 2d 544, 6 Cal Rptr 330, 1960 Cal App LEXIS 1785.

In prosecution for forgery of checks, that they were not genuine but in fact forged was established by testimony of purported maker that he neither signed them nor authorized anyone else to sign his name to them. *People v. Luizzi* (1960, Cal App 2d Dist) 187 Cal App 2d 639, 9 Cal Rptr 842, 1960 Cal App LEXIS 1439.

Conviction of forgery of indorsements on checks was sustained by testimony of two handwriting experts that indorsement on reverse side of each check was in defendant's handwriting and from evidence supporting conclusion that defendant presented checks with their forged indorsements and received therefor goods and cash. *People v. Luizzi* (1960, Cal App 2d Dist) 187 Cal App 2d 639, 9 Cal Rptr 842, 1960 Cal App LEXIS 1439.

Conviction of forgery was sustained by evidence that defendant presented and endorsed checks payable to his order which were purportedly signed by person whose account number and name appeared thereon where such person testified that he neither drew checks nor authorized anyone else to draw them and that checks were among blank checks

stolen from his desk, where defendant admitted that he had endorsed and cashed checks, and where he was positively identified by two bank tellers. *People v. McCoy* (1962, Cal App 2d Dist) 199 Cal App 2d 169, 18 Cal Rptr 494, 1962 Cal App LEXIS 2818.

Conviction of forgery was sustained by defendant's testimony that he made out several of blank checks he had stolen from service station, cashed three of checks and attempted to cash fourth; by testimony of witnesses who identified defendant as person who had presented checks and to whom they gave cash or merchandise or both; and by testimony of owner of service station that signature on checks bore his name, but that he did not sign them or give defendant or anyone else permission to sign checks or to use his name. *People v. Chung* (1962, Cal App 2d Dist) 207 Cal App 2d 660, 24 Cal Rptr 637, 1962 Cal App LEXIS 1953.

Judgment of conviction for forgery was sufficiently supported by evidence defendant had stolen company checks as well as check protector from his former employer, that accomplice, as disclosed by her testimony as witness, had signed checks involved by simulating signature of individual who always signed company checks, accomplice had decided to use her own name as payee, accomplice had passed checks involved and given defendant most of money obtained, accomplice's testimony in regard to cashing of checks at various stores was corroborated by various witnesses who were employed at stores, and defendant had asked relative of accomplice and another person to participate in check-passing scheme. *People v. Clay* (1962, Cal App 2d Dist) 208 Cal App 2d 773, 25 Cal Rptr 464, 1962 Cal App LEXIS 1862, overruled *People v. Quinn* (1964) 61 Cal 2d 551, 39 Cal Rptr 393, 393 P2d 705, 1964 Cal LEXIS 232.

Conviction of forgery was sustained by evidence showing defendant cashed certain checks signed with name of prosecuting witness, that defendant had access to such checks, that defendant had defrauded prosecuting witness on another occasion, and that prosecuting witness denied signing such checks or giving anyone permission to sign such checks for her. *People v. Drumm* (1963, Cal App 2d Dist) 211 Cal App 2d 499, 27 Cal Rptr 255, 1963 Cal App LEXIS 2937, cert den (1963) 375 US 865, 84 S Ct 136, 11 L Ed 2d 91, 1963 US LEXIS 922.

Evidence was sufficient to support conviction of forgery where it was shown that defendant presented check in payment for merchandise purchased, that he told store manager that check had been given to him by his store employer as wages, that check was dishonored because signature was irregular, and that alleged employer had not written check, did not know defendant, and defendant had never worked for alleged employer. *People v. Effman* (1963, Cal App 3d Dist) 212 Cal App 2d 414, 28 Cal Rptr 85, 1963 Cal App LEXIS 2860.

Judgment of conviction in forgery prosecution was supported by evidence that checks in question were not genuine, but in fact forged, that defendant wrote endorsements on reverse side of some of checks, and that defendant was positively identified by some witnesses as person who presented checks for cashing. *People v. Allen* (1963, Cal App 2d Dist) 212 Cal App 2d 857, 28 Cal Rptr 409, 1963 Cal App LEXIS 2920.

Defendant's conviction of forging endorsement to check was not supported by evidence where it appeared that defendant could have made check payable to himself on transferring car to his employer, a car dealer, but used dummy as payee in order to obtain commission for finding deal; neither payee nor former car owners were defrauded by defendant's forgery of payee's endorsement. *People v. Maldonado* (1963, Cal App 2d Dist) 221 Cal App 2d 128, 34 Cal Rptr 168, 1963 Cal App LEXIS 2121.

In a prosecution for forgery (*Pen C* § 470), and making or uttering fictitious checks (*Pen C* § 476), the evidence clearly supported a finding of guilt and the elements of *Pen C* § 470, and *Pen C* § 476, were present and proven, where it appeared that defendant passed a check purportedly signed by a maker who did not sign the check nor give anyone permission to sign, that defendant passed two checks purportedly signed by a maker who could not be found, that defendant passed a check signed by him as maker which was returned marked "insufficient-account," and the bank auditor found no checking account for defendant, and that a handwriting expert was of the opinion that the handwriting on all four checks was the same as an indorsement of one by defendant and the same as a signature exemplar card voluntarily filled out by defendant. *People v. Mason* (1968, Cal App 2d Dist) 259 Cal App 2d 30, 66 Cal Rptr 601, 1968

Cal App LEXIS 1942.

(4) INSTRUCTIONS

37. In General

Requested instruction that if defendant when passing check told transferee that assumed maker did not sign check, they must find maker not guilty, was properly refused as misleading in view of evidence that defendant then stated that maker's name had been signed by his son. Check would have been as valid and binding if signed by son with maker's authority as if personally signed by maker. *People v. Walker (1903) 140 Cal 153, 73 P 831, 1903 Cal LEXIS 566.*

Instructions emphasizing fact that one of essential elements of forgery is knowingly signing name of another without authorization would benefit rather than prejudice defendant by stressing an element without which he could not be convicted and concerning which the evidence was conflicting. *People v. Weitz (1954) 42 Cal 2d 338, 267 P2d 295, 1954 Cal LEXIS 175, cert den (1954) 347 US 993, 74 S Ct 859, 98 L Ed 1126, 1954 US LEXIS 2040, cert den (1955) 350 US 889, 76 S Ct 145, 100 L Ed 783, 1955 US LEXIS 224.*

It was not error to refuse to give instructions relative to accomplice testimony, where both defendant and his codefendant were charged with grand theft and forgery of fictitious name, each testified in his own behalf, and neither was called as witness for or against other. *People v. Green (1960, Cal App 2d Dist) 181 Cal App 2d 747, 5 Cal Rptr 525, 1960 Cal App LEXIS 2052.*

Where witness duly qualified as examiner of questioned documents testified that in his opinion certain instruments were all written by same person, it was proper to instruct jury that they could consider opinion of expert with reasons stated therefor, if any, that they were not bound to accept opinion of any expert as conclusive, but should give it weight to which they found it to be entitled and that jury could disregard any such opinion, if it should be found by them to be unreasonable. *People v. Allen (1963, Cal App 2d Dist) 212 Cal App 2d 857, 28 Cal Rptr 409, 1963 Cal App LEXIS 2920.*

Trial court in forgery prosecution acted within its discretion in rejecting defendant's proffered instruction which would have added to instruction as to when expert's opinion may be rejected language "...or, if it [the opinion of the expert] is not based upon substantial reasons, or there are circumstances justifying determination that it has no probative value," where reasons were stated by expert, and defendant was permitted broad latitude in cross-examining expert. *People v. Allen (1963, Cal App 2d Dist) 212 Cal App 2d 857, 28 Cal Rptr 409, 1963 Cal App LEXIS 2920.*

In a prosecution for forgery (*Pen C § 470*), the trial court did not err in omitting an instruction that the jury must unanimously agree on which of the defendant's acts or omissions were the basis for findings of guilt on the charges. Defendant was charged with five forgery counts, and each count involved a single check and was charged in the alternative, i.e., defendant was charged with both forging and uttering the check. As to each count, there was evidence from which the jury could have concluded that defendant participated in the forgery of the checks and, at different times and places, in uttering the same checks. Under the forgery statute, forging and uttering are different legal theories under which a jury may find the defendant guilty of the generic statutory offense of forgery; thus, no jury unanimity is required as to whether the defendant's conduct falls into either or both categories. Further, under such circumstances, the statutory agglutination of these acts under the rubric of a single offense does not require a unanimity instruction to avoid a due process violation. *People v. Sutherland (1993, Cal App 1st Dist) 17 Cal App 4th 602, 21 Cal Rptr 2d 752, 1993 Cal App LEXIS 783.*

Court agreed that a late defense discovery instruction prejudiced defendant in connection with a trial for forgery in violation of *Pen C § 470(d)*; the record failed to show that defendant was personally responsible for any delay, as the instruction falsely stated, and because the jury could have rejected defendant's wife's corroboration of a police officer's testimony as a sanction for the discovery violation the instruction imputed to defendant, defendant might have been

substantially injured by the error, which warranted reversal and a new trial under *Pen C § 1262*. *People v. Cabral* (2004, *Cal App 5th Dist*) 121 *Cal App 4th* 748, 17 *Cal Rptr 3d* 456, 2004 *Cal App LEXIS* 1330.

38. Proper Refusal

In a prosecution for theft by false pretenses, forgery of stock certificates and uttering said certificates, it was not error for the court to fail to instruct sua sponte that attempts at repayment were evidence of defendant's lack of intent to defraud, where the attempts at repayment were specific points developed by the evidence at the trial and instructions thereon should have been requested, and where the court properly defined the crimes of which defendant was charged and fully instructed that specific intent was required to convict defendant of these crimes, and also instructed that an act made under ignorance or mistake of fact which disproves any criminal intent is not a crime. *People v. Katzman* (1968, *Cal App 1st Dist*) 258 *Cal App 2d* 777, 66 *Cal Rptr* 319, 1968 *Cal App LEXIS* 2474, overruled *Rhinehart v. Municipal Court* (1984) 35 *Cal 3d* 772, 200 *Cal Rptr* 916, 677 *P2d* 1206, 1984 *Cal LEXIS* 164, overruled in part as stated *Perryman v. Superior Court* (2006, *Cal App 2d Dist*) 141 *Cal App 4th* 767, 46 *Cal Rptr 3d* 306, 2006 *Cal App LEXIS* 1135.

In a prosecution for forgery, in view of the adequacy of the other instructions regarding the requisite element of intent, including one given pursuant to defendant's request, and irrespective of defendant's failure to request the instruction, the trial court did not err in failing to instruct jury in the language of *CALJIC No. 3.31*, which also concerned the element of intent. *People v. Cobb* (1971, *Cal App 2d Dist*) 15 *Cal App 3d* 1, 93 *Cal Rptr* 152, 1971 *Cal App LEXIS* 868.

In a forgery prosecution, the trial court did not err in its instructions on the requisite intent to defraud. Defendant, a parole officer, was charged with forging a prison removal order to have an incarcerated parolee transferred from a state correctional institution to the county jail in an attempt to facilitate the parolee's escape. The trial court instructed with *CALJIC No. 15.26*, the sanctioned instruction for the fraudulent intent underlying criminal writings. *CALJIC No. 15.26*, in effect, tells the jury that it must find the defendant intended to cause a loss or damage to the legal, monetary, or property rights of another in order to find the requisite intent to defraud. Such an instruction is not inadequate or incomplete. Also, the instruction did not permit the jury to convict defendant of forgery if her fabrication merely caused another to alter his position to his injury or risk. The jury also convicted defendant of conspiracy and aiding an attempted prison escape. Therefore, it must have rejected her testimony that by forging the removal order, she only intended to have the prisoner removed to county jail temporarily so she could visit him more frequently, and instead it concluded that she intended to facilitate his escape from custody. *People v. Gaul-Alexander* (1995, *Cal App 5th Dist*) 32 *Cal App 4th* 735, 38 *Cal Rptr 2d* 176, 1995 *Cal App LEXIS* 153.

(5) VERDICT, JUDGMENT, AND SENTENCE

39. In General

In prosecution for forgery and for grand theft by false pretenses, both charges arising out of same transactions, fact that defendant was acquitted of forgery charge and found guilty of grand theft did not make conviction improper, since verdicts may be sustained even if they are inconsistent in fact. *People v. Caruso* (1959, *Cal App 2d Dist*) 176 *Cal App 2d* 272, 1 *Cal Rptr* 428, 1959 *Cal App LEXIS* 1480, cert den (1960) 363 *US* 819, 4 *L Ed 2d* 1517, 80 *S Ct* 1259, 1960 *US LEXIS* 977.

Crime of forgery is punishable as felony. *Arnold v. Williams* (1963, *Cal App 4th Dist*) 222 *Cal App 2d* 193, 35 *Cal Rptr* 35, 1963 *Cal App LEXIS* 1644.

A defendant convicted of forgery (*Pen C § 470*) whose sentence was enhanced by two years pursuant to *Pen C § 12022.6*, subd. (b) (providing for such enhancement when value of property taken exceeds \$100,000) was not denied equal protection of the law, even though in combination the enhancement and forgery statutes resulted in varying

treatment of persons who had committed forgery, depending on the value of the property taken, since, for equal protection purposes, the statutes in question did not create classifications of persons otherwise similarly situated, but rather defined different offenses. It was well within the Legislature's discretion to determine that persons who commit forgery and thereby take large sums of money are more culpable and deserve greater punishment than those who commit forgery but take lesser amounts. *People v. Hughes* (1980, Cal App 1st Dist) 112 Cal App 3d 452, 169 Cal Rptr 364, 1980 Cal App LEXIS 2468.

A four-year prison sentence for forgery (*Pen C § 470*), which was comprised of a middle term of two years and a two-year enhancement (*Pen C § 12022.6*, subd. b)), did not constitute cruel and unusual punishment, even though the offense was nonviolent, where the record revealed a planned series of acts involving multiple victims who had suffered substantial financial loss, where the statutory scheme under consideration reflected a clear attempt to provide increased punishment in cases of greater culpability based upon injury to the victims and society, where the valid penological purpose was to deter large-scale crime, and where the punishment was not disproportionate to the crime when compared with punishments for different, more serious offenses. *People v. Hughes* (1980, Cal App 1st Dist) 112 Cal App 3d 452, 169 Cal Rptr 364, 1980 Cal App LEXIS 2468.

The trial court in a forgery prosecution (*Pen C § 470*) did not abuse its discretion in failing to strike the two-year enhancement (*Pen C § 12022.6*, subd. (b)) for purposes of sentencing (*Pen C § 1170.1*, subd. (g)), where it was clear from the trial court's statement of reasons for its sentence choice that it was aware of the fact that defendant had made restitution and that this was a factor to be considered in mitigation (under *Cal. Rules of Court, Rule 423*, subd. renumbered Rule 4.423, but where the trial court was of the view that the circumstances in aggravation were of more weight. *People v. Hughes* (1980, Cal App 1st Dist) 112 Cal App 3d 452, 169 Cal Rptr 364, 1980 Cal App LEXIS 2468.

40. Conviction of Several Offenses; Consecutive or Concurrent Sentences

Where an indictment alleged, and the jury found the defendant guilty of, forgery of a will, causing to be filed a forged will, offering in evidence a forged will, and preparing a false and antedated will, and where the evidence supported the jury's determination that the defendant committed these four separate acts on four separate occasions, the consecutive running of the sentences imposed for these offenses did not constitute punishment of one act more than once. *In re Horowitz* (1949) 33 Cal 2d 534, 203 P2d 513, 1949 Cal LEXIS 213.

In a prosecution for grand theft (*Pen C § 487*) and forgery (*Pen C § 470*), on conviction thereof the sentencing procedure of the trial court was proper and did not violate the spirit of *Pen C § 654*, proscribing double punishment, where the judgment stated that execution of sentence on grand theft was stayed pending any appeal and during service of any sentence of the Adult Authority pronounced in connection with the forgery conviction, and that at the completion of the service of the forgery sentence, the stay was to become permanent. *People v. Kagan* (1968, Cal App 1st Dist) 264 Cal App 2d 648, 70 Cal Rptr 732, 1968 Cal App LEXIS 2129, cert den (1969) 394 US 911, 89 S Ct 1027, 22 L Ed 2d 224, 1969 US LEXIS 2364.

Concurrent sentences on each of three counts of forgery of which defendant was convicted were proper under *Pen C § 654*, proscribing double punishment for the same act, where, though it could be said that the offenses were incident to the fundamental objective of taking goods from a store by unauthorized use of a credit card and by forging sales slips, each act of forgery was committed for the taking of certain goods, separate from and unrelated to the goods taken by the other forgeries, and where none was a means for the accomplishment of any of the others, nor the means to the immediate end of any of the others. *People v. Neder* (1971, Cal App 2d Dist) 16 Cal App 3d 846, 94 Cal Rptr 364, 1971 Cal App LEXIS 1643.

Punishment imposed on a conviction of forgery did not constitute double punishment within the meaning of *Pen C § 654*, merely because of defendant's prior federal conviction and sentence for possession of stolen mail, which mail included checks involved in the forgery prosecution; the proscription against double punishment applies only to acts or omissions made punishable in different ways by different provisions of the Penal Code, and the federal offense had no

connection with the state offense. *People v. Williams* (1971, Cal App 2d Dist) 18 Cal App 3d 925, 96 Cal Rptr 291, 1971 Cal App LEXIS 1443.

A prior federal conviction for possession of stolen mail, which mail included two checks defendant later attempted to deposit and draw on, representing himself as the payee thereof, did not constitute a bar or defense under *Pen C § 1043* (former conviction as bar to subsequent prosecution for same offense) or *Pen C § 656* (foreign conviction as sufficient defense to prosecution founded on same act) to a state prosecution for forgery; the two offenses are entirely separate and distinct and founded on different acts. *People v. Williams* (1971, Cal App 2d Dist) 18 Cal App 3d 925, 96 Cal Rptr 291, 1971 Cal App LEXIS 1443.

In a prosecution for forgery (*Pen C § 470*) in which the twenty-three counts originally charged were consolidated into one count, defendant, by his plea of nolo contendere to the amended information, waived his right to assert that the aggregation of counts and subsequent enhancement of his sentence (*Pen C § 12022.6*, subd. (b)) violated the prohibition against multiple punishment (*Pen C § 654*), since the issue of whether or not defendant had engaged in an indivisible course of conduct and had committed but one offense was a question of fact. A guilty plea or a plea of nolo contendere waives the right to an appellate challenge based on insufficiency of the evidence and implies admission that the People can establish every element of the charged offense, thus obviating the need for them to come forward with any evidence. *People v. Hughes* (1980, Cal App 1st Dist) 112 Cal App 3d 452, 169 Cal Rptr 364, 1980 Cal App LEXIS 2468.

Where the defendant was convicted for forgery (*Pen C § 470*) and possession of a completed check with the intent to defraud (former *Pen C § 475a*), and was also found to have served four prior prison terms (*Pen C § 667.5(b)*) and to have previously been convicted of four serious felonies (*Pen C §§ 667(b)-(i), 1170.12(a)-(d)*), the trial court erred in failing to impose a one-year prior prison term enhancement pursuant to *Pen C § 667.5(b)*, with respect to one of the the defendant's prior prison terms. At the time of sentencing the trial court imposed three of the four prior prison term enhancements found to be true by the jury, but never indicated a disposition as to the other prior prison term. To neither strike nor impose a prior prison term enhancement is a legally unauthorized sentence. The power to strike a prior prison term enhancement pursuant to *Pen C § 1385(a)* survived the adoption of *Pen C §§ 667(b)* through (i) and *1170.12*. Effective January 1, 1998, there was no longer the authority to strike a prior prison term pursuant to former *Pen C § 1170.1(h)*; and remand was appropriate for the trial court to exercise discretion pursuant to *Pen C § 1385(a)* as to the unresolved prior prison term. *People v. Bradley* (1998, Cal App 2d Dist) 64 Cal App 4th 386, 75 Cal Rptr 2d 244, 1998 Cal App LEXIS 488, review denied (1998, Cal) 1998 Cal LEXIS 6071.

(6) APPEAL AND ERROR

41. In General

Even if, in forgery prosecution, evidence was insufficient to support defendant's conviction of forgery of certain checks, there was no basis for reversal of judgment, since information also charged defendant with uttering and passing checks, knowing them to be forged, thus alleging two separate and distinct, though related, offenses, and defendant suffered no prejudice, there having been no claim that information was duplicitious, and evidence in fact being sufficient to show defendant's guilt of both making and uttering, but his conviction being only for making forged instruments. *People v. Luizzi* (1960, Cal App 2d Dist) 187 Cal App 2d 639, 9 Cal Rptr 842, 1960 Cal App LEXIS 1439.

In forgery prosecution in which instructions permitted jury to find defendant guilty of forgery by indorsement and by signing name of another without authority, as aider and abettor of his codefendant, when defendant was not charged with that branch of forgery, fact that defendant, representing himself, specifically requested that jury be instructed as to law on forgery did not mean that erroneous instructions were invited by defendant where he did not request any specifically worded instruction. *People v. Mack* (1961, Cal App 5th Dist) 197 Cal App 2d 574, 17 Cal Rptr 425, 1961 Cal App LEXIS 1378.

On appeal from a judgment of conviction of forgery, it could not be held as a matter of law that the prosecution sustained its burden of showing that defendant, while under illegal detention, freely consented to the police officers' procurement of defendant's set of handwriting exemplars, where he had already given one exemplar at the time of his arrest, despite police advice at that time that he had the right to refuse. *People v. Sesslin* (1968) 68 Cal 2d 418, 67 Cal Rptr 409, 439 P2d 321, 1968 Cal LEXIS 174, cert den (1969) 393 US 1080, 21 L Ed 2d 772, 89 S Ct 850, 1969 US LEXIS 2487.

In a prosecution for theft by false pretenses, forgery of stock certificates and uttering said certificates, defendant may not argue on appeal that certain exchanges between the court and counsel tended to mislead the jury into believing that attempts at repayment of the loans were irrelevant, and that failure to instruct on the relevance of repayments became prejudicial error, where the comments complained of occurred during colloquy between court and counsel at various points throughout the trial when defendant's counsel objected to evidence of events subsequent to the loan transaction, and where any error in this regard was invited by counsel in view of counsel's repeated emphasis on the irrelevance of events subsequent to the loan transactions and his agreement with some of the court's comments. *People v. Katzman* (1968, Cal App 1st Dist) 258 Cal App 2d 777, 66 Cal Rptr 319, 1968 Cal App LEXIS 2474, overruled *Rhinehart v. Municipal Court* (1984) 35 Cal 3d 772, 200 Cal Rptr 916, 677 P2d 1206, 1984 Cal LEXIS 164, overruled in part as stated *Perryman v. Superior Court* (2006, Cal App 2d Dist) 141 Cal App 4th 767, 46 Cal Rptr 3d 306, 2006 Cal App LEXIS 1135.

Court rejected the argument that defendant forfeited the right to appellate review by failing to object to the instruction at issue in connection with defendant's trial for forgery in violation of *Pen C* § 470(d); appellate review was allowed, even in the absence of an objection, of any instruction affecting the substantial rights of defendant, as in this case, pursuant to *Pen C* § 1259. *People v. Cabral* (2004, Cal App 5th Dist) 121 Cal App 4th 748, 17 Cal Rptr 3d 456, 2004 Cal App LEXIS 1330.

42. Harmless and Prejudicial Error

In a prosecution for forgery in raising a corporation check which had been signed by the defendant and the other owner of the corporation as president and vice-president, where the evidence was conflicting on the question of the defendant's intent on raising the check, it was prejudicial error to exclude from evidence a copy of the bylaws of the corporation, which authorized the defendant, as president, to withdraw funds from the corporate bank account without supporting signatures. *People v. Meldrum* (1934) 2 Cal 2d 52, 39 P2d 202, 1934 Cal LEXIS 460.

Conviction of forgery should not be reversed merely because prosecuting attorney on one occasion inadvertently referred to check given in transaction as being signed in defendant's own name, where check itself was signed in name of defendant's brother, and where in every other place in transcript the check was correctly described as having been signed in brother's name. *People v. Sergeant* (1960, Cal App 2d Dist) 183 Cal App 2d 342, 6 Cal Rptr 576, 1960 Cal App LEXIS 1756.

In prosecution for forgery of sales drafts by use of stolen bank credit card, though admission into evidence of numerous purchase drafts served no purpose after defendant admitted that his purchases may have amounted to as much as \$3000, no harm was done. *People v. Delaney* (1961, Cal App 2d Dist) 189 Cal App 2d 636, 11 Cal Rptr 524, 1961 Cal App LEXIS 2225.

In forgery prosecution in which defendant competently waived his right to services of public defender and expressed his desire to proceed without counsel, it was reversible error for clerk to read to jury original information charging defendant with both making and passing of forged check when amended information had been filed against defendant charging him only with passing check in question, such error being compounded by judge's statement during reading of instructions that information had already been read to jurors, since it was not defendant's duty to recognize difference between original information and amended information, but it was duty of clerk to read right one and duty of court and prosecutor to see that right information was read, particularly when defendant was not represented by counsel.

People v. Mack (1961, Cal App 5th Dist) 197 Cal App 2d 574, 17 Cal Rptr 425, 1961 Cal App LEXIS 1378.

Conviction of forgery without proof of crime constitutes miscarriage of justice and will be reversed, notwithstanding counsel's failure to present specific point on which case turned, that is, failure to prove corpus delicti. *People v. Ross* (1961, Cal App 2d Dist) 198 Cal App 2d 723, 18 Cal Rptr 307, 1961 Cal App LEXIS 2597.

It was not prejudicial error for prosecutor to refer to defendant as person who attempted to pass forged check where witness testified defendant looked like person who tried to pass check but could not positively say defendant was the one, on redirect witness testified he picked defendant out of police lineup as man who attempted to pass check, and on cross-examination positively identified defendant as man. *People v. Morris* (1964, Cal App 2d Dist) 226 Cal App 2d 12, 37 Cal Rptr 741, 1964 Cal App LEXIS 1245.

In prosecution for forgery effected by inducing homeowner to sign instrument creating trust deed to his property without his knowledge of such effect, giving of instruction on more common instance of forgery involving use of name of another was not prejudicial error in view of other instructions given by court applying *Pen C* § 470, to facts of case, and may have aided defendant, there being no evidence that he signed or altered another person's name or his writing. *People v. Carson* (1966, Cal App 4th Dist) 240 Cal App 2d 477, 49 Cal Rptr 653, 1966 Cal App LEXIS 1372.

The admission into evidence of defendant's handwriting exemplars constituted prejudicial error, where, in support of his conviction of forging a check, the prosecution's only evidence that defendant signed the check consisted of the handwriting expert's testimony that the signature on the check and the handwriting exemplars were executed by the same person, and where the prosecution failed to prove any intervening act of free will on defendant's part, in supplying the exemplars, to dissipate the taint of his prior unlawful arrest. *People v. Sesslin* (1968) 68 Cal 2d 418, 67 Cal Rptr 409, 439 P2d 321, 1968 Cal LEXIS 174, cert den (1969) 393 US 1080, 21 L Ed 2d 772, 89 S Ct 850, 1969 US LEXIS 2487.

In a prosecution for forgery and for making and uttering fictitious checks, the trial court's error, if any, in instructing the jury as to the constitutional right of the defendant in a criminal trial not to testify, and the effect thereof, was not prejudicial where the evidence for the People was complete and persuasive, and beyond any reasonable doubt the giving of the instruction added nothing to the case against defendant and could not have prejudiced him. *People v. Mason* (1968, Cal App 2d Dist) 259 Cal App 2d 30, 66 Cal Rptr 601, 1968 Cal App LEXIS 1942.

On appeal after a conviction of forgery, the giving of an improper cautionary instruction regarding defendant's admission, though error, did not result in a miscarriage of justice, where, in view of the evidence, there was no reasonable probability that a jury could have failed to find defendant guilty. *People v. Wheelwright* (1968, Cal App 3d Dist) 262 Cal App 2d 63, 68 Cal Rptr 356, 1968 Cal App LEXIS 2286.

On appeal from a conviction of forgery (*Pen C* § 470) and receiving stolen property (*Pen C* § 496 subd 1), defendant could not predicate error on the prosecution's eliciting of testimony of a codefendant on cross-examination as to his prior felony conviction, his plea of guilty to forgery, and his having seen defendant at the penitentiary, where defendant raised no objection in the trial court to the particular evidence which he desired excluded, where the forgery to which the codefendant had pleaded guilty had nothing to do with defendant, where no bad faith was exhibited by the prosecution in asking impeaching questions of the codefendant, and where the court, at the request of defendant's counsel, instructed the jury to disregard the codefendant's testimony as to meeting defendant in the penitentiary; in any event, if there was error in the case, the evidence was such that it was not reasonably probable that a result more favorable to defendant would have resulted in the absence of such error. *People v. Campo* (1968, Cal App 2d Dist) 267 Cal App 2d 313, 72 Cal Rptr 869, 1968 Cal App LEXIS 1389.

In a prosecution for forgery, there was a reasonable probability that the jury would not have been convinced of defendant's guilt beyond a reasonable doubt where, though the courtroom identification of defendant by the prosecuting witness was unhesitating, his earlier identification from photographs was characterized by considerable uncertainty and

the handwriting evidence was inconclusive; thus, reversal was required for error in admitting evidence that defendant was present when a third person forged checks payable to the same person as the check purportedly passed by defendant, that these checks bore the purported signature of defendant's brother and that defendant had been charged with forging one of the checks but the charge had been dismissed. *People v. Long* (1970, Cal App 3d Dist) 7 Cal App 3d 586, 86 Cal Rptr 590, 1970 Cal App LEXIS 2193.

On appeal from a forgery conviction, defendant could not successfully raise an issue as to whether the check on which the prosecution was based was received in evidence by the magistrate who bound him over for trial, where defendant never moved for a dismissal pursuant to *Pen C* § 995, where defendant was tried by the court on the basis of the evidence introduced at his preliminary hearing, and where, though no order was made at the preliminary hearing specifically admitting or excluding the check, both prosecution and defense tacitly assumed that it was properly before the trial court as a People's exhibit in evidence. *People v. Landry* (1971, Cal App 2d Dist) 14 Cal App 3d 445, 92 Cal Rptr 263, 1971 Cal App LEXIS 1008.

Decision Under Former Pen C § 1107 Where indictment for possessing counterfeit bills charged that bills were in form of bills of incorporated banking company doing business in Hong Kong, it was competent to prove by reputation the existence and incorporation of the company. *People v. Ah Sam* (1871) 41 Cal 645, 1871 Cal LEXIS 151.