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Criminal Law: Signing One's Own Name as Constituting Forgery

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Criminal Law—Signing One's Own Name as Constituting Forgery.—The defendant, a city comptroller, had the duty to prepare a disbursement sheet when a special assessment bond was presented for payment, if sufficient funds were on hand to pay the bond, in whole or in part. He fraudulently prepared and signed a disbursement sheet which stated that certain bonds were owned by a fictitious person, who presented them for payment. On authority of this sheet, a warrant and an authorization of payment of the bonds to the order of the fictitious person were issued. The defendant was indicted for forgery under a statute which provided that: "Every person who shall falsely make, alter, forge or counterfeit any record or other matter of a public nature . . . shall be guilty of forgery." The indictment was quashed.

On appeal, the order quashing the indictment was reversed and the cause remanded with directions to overrule the motion to quash. One is guilty of forgery although he signed and executed the instrument in his own name, if it is false in any material part, and calculated to induce another to give credit to it as genuine and authentic. The statute involved was not limited to the forgery of the name of one authorized to make the authentic matter of a public nature, or record, but was held to apply to persons authorized to make such a record and did so knowing that its contents were false and untrue, and done with an intent to defraud. *People* v. *Mau,* 36 N.E. (2d) 235 (Ill. 1941).

It seems that no generic definition of forgery can be given to include all possible cases, so statutes in the various states have been made broad enough to include many acts as constituting the crime of forgery that would not have fallen within the common law definitions of the crime. But in the absence of statutes which define forgery to be, inter alia, the genuine making of an instrument for the purpose of defrauding another, there is a conflict of authorities on the question as to whether one may be guilty of forgery where he signs and executes the instrument in his own name.

The principal case expresses the minority view that one may commit forgery by using his own name with an intent to deceive. The earliest expression of this view seems to be found in an English case, *Regina* v. *Ritson,* L.R. 1 Cr. Cas. 200 (1859). In the case of *People* v. *Filkin,* 83 App. Div. 589, 82 N.Y.S. 15 (1903), under a statute similar to that involved in *People* v. *Mau, supra,* the court found that it was broad enough to include a case where the defendant signed his own signature. Here, the defendant, a former town clerk, was convicted of forgery for issuing a certain certificate, with his signature on it, stating that another was entitled to a bounty from the town, when in reality he was not, and the clerk was to share in the amount received. This was affirmed, without comment, by the court of appeals, in 176 N.Y. 548, 68 N.E. 1120 (1903). Also it was held forgery within the meaning of the insurance policy protecting the plaintiff bank from loss because of forged instruments where the depositor had accounts under different names, in different banks, and drew worthless checks, payable to himself for deposit, using such names by signing an instrument under one name and endorsing it under another. The court stated that the test of forgery was whether a person has falsely and with intent to defraud made a writing purporting to be the act of another, regardless of the fact that one's own name was used. *International Union Bank* v. *National Surety Co.,* 245 N.Y. 368, 157 N.E. 269 (1927). Where the defendant signed a check with his own name but represented that he was the son of a certain man who lived at a certain place, when the truth of it was that neither he nor his father lived at such a place, he was convicted of forgery. In signing the check he purported it to be the act of another and this was done with an

intent to defraud. *Parvin* v. *State,* 103 S.W. (2d) 773 (Tex. 1937). A similar result was reached where a postmaster issued a postal money order on the application of a fictitious person. *Ex Parte Hibbs,* 26 Fed. 421 (D. Ore. 1886). And where a county surveyor made and uttered a survey plat and certificate purporting to have been made by him, in his official capacity, which, in fact, was never made, the crime of forgery was committed although his own name was signed to it. *Comm.* v. *Wilson,* 89 Ky. 157, 12 S.W. 264 (1889). A justice of the peace who made up a bill of costs against the county in a fictitious case, and sold it to a third party who presented it for payment, was guilty of forgery. In this case although the justice signed his own name, he made a writing prejudicial of another's rights within the forgery statute, which stated that forgery was the fraudulent making or alteration of any writing to the prejudice of another's rights. *Luttrell* v. *State,* 85 Tenn. 232, 1 S.W. 886 (1886).

However, the majority rule is that the genuine making of a false instrument in writing is not forgery, unless otherwise provided by the forgery statutes. *Gaucher* v. *State,* 113 Neb. 352, 204 N.W. 967 (1925); *Murphy* v. *State,* 93 S.W. 543 (Tex. 1906). In *Gaucher* v. *State, supra,* the statute provided that "whosoever makes, alters, forges, counterfeits, prints or photographs any county warrant for the payment of money with the intent to damage or defraud the county" commits forgery. Yet, where the county was falsely induced to pay out money on a warrant issued by the person authorized, it was held not to constitute forgery. Although the instrument was false, there was no false making, the signature was genuine and made by the one authorized to make it. In *State* v. *Adcox,* 171 Ark. 510, 286 S.W. 880 (1926), the defendant wrote a check for the purpose of obtaining credit on an indebtedness and signed his name to it. He had no money in the bank on which it was drawn. It was held not to be forgery, for the terms "forge or counterfeit any writing" referred to the writing as being forged and not the falsity of the instrument. A false statement of fact in an instument which is itself genuine, by which another person is deceived or defrauded is not forgery. Also, where the accused made a check signed with his own name, payable to another and then indorsed it as the payee, there was no forgery as to the making of the check, but it might be forgery as to the indorsement. *Hancock* v. *State,* 123 Tex. Cr. R. 16, 57 S.W. (2d) 111 (1933).

The majority rule was followed where one executed an instrument, purporting on its face to be executed by him as the agent of a principal therein named, when in fact he had not authority from such principal to execute the same. *State* v. *Wilson,* 9 N.W. 28 (Minn. 1881). The fraud in such a case is the inducing of confidence in the validity of the agency, whereas in a true forgery, the fraud is in inducing the belief that the paper was executed or signed by the one who purported to have signed it, when the truth is he didn't sign it at all. *Barron* v. *State,* 77 S.E. 214 (Ga. 1913).

The general rule seems to be that it is immaterial in a prosecution for forgery whether the signature alleged to have been forged is that of an existing or a fictitious person. For one may be guilty of forgery if the name forged is that of a fictitious person. *Walker* v. *State,* 171 Ark. 375, 284 S.W. 36 (1926); *People* v. *Gayle,* 202 Cal. 159, 259 Pac. 750 (1927); *Harmon* v. *Old Det. Nat. Bank,* 153 Mich. 73, 116 N.W. 617 (1908). Where the defendant signed a check with a part of his given name, to wit, Perry Scott, when his full name was Perry Scott Ware, forgery was committed. Although relatives and friends called him by a part of his given name, and he had signed his name such in several letters, the court found that the signature was in fact and in law that of a fictitious person, made with an intent to defraud. *Ware* v. *State,* 65 S.W.

(2d) 310 (Tex. 1934). However, in the case of *State* v. *Wilson,* 123 So. 624 (La. 1929), where the defendant represented himself to the prosecuting witness as a fictitious person and wrote out a check in his name to pay for goods obtained, a different result was reached. The court stated the general proposition, that the essence of forgery is the making of a false writing with the intent that it shall be received as the act of another, than the one signing it. Therefore, the mere use of a fictitious or false name, it reasoned, as long as the writing purported to be the act of the very one issuing it, and of no other, was not forgery, although it might constitute false pretences or some other crime. In another Louisiana case, where the defendant indorsed a check with one of his aliases, he was found not guilty of forgery. *State* v. *Melson,* 161 La. 423, 108 So. 794 (1926). This same result was reached in *Harris* v. *State,* 96 So. 316 (Ala. 1923), where the court stated that the signing of a fictitious name to an instrument, with a fraudulent intent, was forgery, but in signing one of his aliases the defendant did not sign the name of a fictitious person, but his own. "For it is not forgery when the offense is not assumption of the name of a supposed third person, but the adoption of an alias by the party charged."

However, in line with the principal case, it was held forgery for a person to sign his own name to an instrument with a fraudulent intent to have the instrument received as executed by another person having the same name. *People* v. *Rushing,* 62 Pac. 742 (Cal. 1900); *U. S.* v. *National City Bank of N. Y.,* 28 F. Supp. 144 (S.D. N.Y. 1939).

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Criminal Law—The Use of Inconsistent Defenses.—The defendant, Rubin Jersky, was convicted of murder and sentenced to twenty years. He became involved in a quarrel with the deceased. The deceased had provoked the quarrel but when the defendant joined the affray, armed with a pistol, the deceased retreated to his door-step and was killed there by the defendant. On the trial the defendant offered inconsistent defenses: 1) that he killed the deceased in self-defense, and 2) that the gun went off accidentally. In charging the jury the lower court gave instructions both on the point of self-defense and accidental killing. The defendant appealed from his conviction.

Held, judgment affirmed. As to the inconsistent defenses the court stated that the defendant's difficulties and complaints in regard to instructions were of his own creation, since the defendant sought to escape punishment by leaving the law bewildered between two inconsistent defenses thrown into one case. While the defendant had a right "to present as many defenses as he had or thought he had," and could do this "for the express purpose of confusing the jury," he could not complain that the jury was not confused. *People* v. *Jersky,* 36 N.E. (2d) 347 (Ill. 1941).

The general rule would seem to be that in a criminal prosecution the defendant may set up inconsistent defenses. While relatively few courts have been called upon to decide such a question, the weight of authority would certainly seem to favor such a rule.

The basis for the decision in *People* v. *Jersky, supra,* is probably the case of *People* v. *Lee,* 284 Ill. 64, 93 N.E. 321 (1911). This case involved a charge that the defendant had mingled carbolic acid with beer with intent to cause death of one Emma Lee. The defendant tried to offer as evidence 1) that he was not guilty, and 2) that the amount of acid placed in the beer was not sufficient to produce death. He was convicted when the lower court refused