

LEXSTAT CAL PEN CODE § 476

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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 § 476 (2008)

§ 476. Bill, note, or check

Every person who makes, passes, utters, or publishes, with intent to defraud any other person, or who, with the like intent, attempts to pass, utter, or publish, or who has in his or her possession, with like intent to utter, pass, or publish, any fictitious or altered bill, note, or check, purporting to be the bill, note, or check, or other instrument in writing for the payment of money or property of any real or fictitious financial institution as defined in Section 186.9 is guilty of forgery.

HISTORY:

Added Stats 1998 ch 468 § 7 (AB 2008).

NOTES:

Former Sections:

Former § 476, similar to the present section, was enacted Stats 1872, amended Stats 1933 ch 646 § 1, Stats 1976 ch 1139 § 215, operative July 1, 1977, and repealed Stats 1998 ch 468 § 6.

Historical Derivation:

- (a) Former Pen C § 476, as enacted Stats 1872, amended Stats 1933 ch 646 § 1, Stats 1976 ch 1139 § 215.
- (b) Crimes and Punishment Act § 77 (Stats 1850 ch 99 § 77).

Cross References:

When intent to defraud is sufficient: *Pen C § 8*.

Unspecified felony punishment: *Pen C § 18*.

How intent manifested: *Pen C § 21*.

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

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

Collateral References:

Witkin & Epstein, Criminal Law (3d ed), Crimes Against Property §§ 140, 148.

Witkin & Epstein, Criminal Law (3d ed), Pretrial Proceedings §§ 103, 104.

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

Cal Jur 3d (Rev) Criminal Law §§ 73, 1322, 1324-1326, 1328, 1331, 1333, 1334, 1372, 1376, 1379, 1384, 1386, 1387, 1398.

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. 1970, Making, Using, etc., Check Knowing Funds Insufficient

Judicial Council of California Criminal Jury Instructions (LexisNexis Matthew Bender), CALCRIM No. 1970, Making, Using, etc., Check Knowing Funds Insufficient

Law Review Articles:

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 issuing bad checks without previous conviction thereon. *26 Ops. Cal. Atty. Gen. 249*.

Hierarchy Notes:

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

NOTES OF DECISIONS 1. In General 2. Elements of, and Acts Constituting, Offense 3. Other and Included Offenses 4. Indictment or Information 5. Prosecution Generally 6. Admissibility of Evidence 7. Weight and Sufficiency of Evidence 8. Appeal and Error

1. In General

A defendant who pleaded guilty to a crime of which he apparently was not guilty, namely uttering a check without sufficient funds, when he intended to plead guilty to the crime of uttering a fictitious check, was not entitled to a writ of error coram nobis when he failed timely to exercise any of the statutory remedies after judgment. *People v. Ingles* (1950, Cal App) 97 Cal App 2d 867, 218 P2d 987, 1950 Cal App LEXIS 1628.

Intent to defraud is intent to commit a fraud; the word "defraud" means to deprive of right, either by procuring something by deception or artifice or by appropriating something wrongfully. *People v. Griffith* (1953, Cal App) 120 Cal App 2d 873, 262 P2d 355, 1953 Cal App LEXIS 2033.

2. Elements of, and Acts Constituting, Offense

To constitute crime of possessing forged notes with intent to pass them, law only requires guilty possession; it is not necessary that intent to fill out unfinished notes should be proved by attempt to do so, and possession, with knowledge of purpose for which they are designed, is sufficient. *People v. Ah Sam* (1871) 41 Cal 645, 1871 Cal LEXIS 151.

Where the representations made by the defendant, and the certificate of acknowledgment of a mortgage purported to be given to secure a note, show that the fictitious name signed to the note was that of a male person, the fact that a married woman bearing the same name came to the county after the date of the note, she never having had any property therein, does not tend to show that the note was not fictitious, so as to make the prosecution under this section void. *People v. Terrill* (1901) 133 Cal 120, 65 P 303, 1901 Cal LEXIS 875.

If the name which is forged is that of a fictitious person, it is no defense that the defendant intended to write the name of a particular person well known in the community. *People v. Nishiyama* (1902) 135 Cal 299, 67 P 776, 1902 Cal LEXIS 791.

The crime of uttering and passing a forged check is complete even though the name of the payee was not inserted therein when it was delivered, provided the check was otherwise sufficient in form. *People v. Gorham* (1908, Cal App) 9 Cal App 341, 99 P 391, 1908 Cal App LEXIS 124.

Where a defendant opened an account with a savings bank under an assumed name and was charged with making, passing, uttering and publishing a fictitious check under such assumed name with intent to defraud such bank, the essentials of the offense which must be proved are the uttering and publishing of the fictitious check with knowledge of its fictitious character, with intent to defraud the bank, but it is not essential to prove that the defendant drew or attempted to draw on the account so established, or that the bank was in fact injured or defrauded. *People v. Walker* (1911, Cal App) 15 Cal App 400, 114 P 1009, 1911 Cal App LEXIS 344.

In prosecution for making and delivering check upon bank without sufficient funds in or credit with bank to meet same, it is not necessary to show that check as issued results in financial loss to party to whom it is given. *People v. Oliver* (1931, Cal App) 115 Cal App 677, 2 P2d 450, 1931 Cal App LEXIS 754.

Alien was properly found removable under 8 U.S.C.S. 1227(a)(2)(A)(iii) due to an aggravated felony conviction, as the alien's forgery conviction under *Pen C* § 476 was related to forgery within the meaning of 8 U.S.C.S. § 1101(a)(43)(R); both the generic definition of forgery and the state statute include a requirement of knowledge of the fictitious nature of the instrument. *Morales-Alegria v. Gonzales* (2006, 9th Cir) 449 F3d 1051, 2006 US App LEXIS 13920.

3. Other and Included Offenses

Person charged with forging check signed by firm name cannot be convicted under § 470 if there is no firm of that name, although he may have signed such firm name by mistake, intending to designate firm of different name, believing name signed to be correct name, but he is guilty in such case of making and passing fictitious check and should be prosecuted under this section. *People v. Elliott (1891) 90 Cal 586, 27 P 433, 1891 Cal LEXIS 973.*

Deed executed by fictitious name is not included in fictitious instruments for payment of money or property enumerated in this section, and there being no other statute making signing or uttering of fictitious deed specific offense, it is included in crime of forgery of deed under § 470. *People v. Chretien (1902) 137 Cal 450, 70 P 305, 1902 Cal LEXIS 582.*

A prosecution for forgery for making a fictitious check may be maintained either under § 470 or this section. *People v. Winthrop (1928, Cal App) 88 Cal App 591, 264 P 263, 1928 Cal App LEXIS 306.*

The passing of a fictitious check in violation of this section does not necessarily constitute forgery in violation of § 470, although the passing of spurious instruments is included within the prohibitions of that section, the gist of the offense there defined being the signing or forging of the instrument, and the legislature has considered the passing of instruments a lesser and separate offense. *In re Lamey (1948, Cal App) 85 Cal App 2d 284, 193 P2d 66, 1948 Cal App LEXIS 908.*

Uttering forged check is violation of § 470 and person uttering it may be prosecuted either under that section or under this section. *People v. Pearson (1957, Cal App 1st Dist) 151 Cal App 2d 583, 311 P2d 927, 1957 Cal App LEXIS 1799.*

The legislature did not intend that possession of several instruments in violation of former Pen C § 475a, should constitute multiple offenses in view of judicial recognition that possession of several instruments under *Pen C §§ 475, 476* constitute but a single offense and prescription by the legislature of the same range of punishment for each of the offenses under *Pen C §§ 475, 476*, and former Pen C § 475a. Accordingly, reversal of two of three possession counts under former Pen C § 475a was required. While completed checks possessed by defendants were payable to different individuals and would very likely victimize different persons, possession of the checks constituted but a single offense. *People v. Carter (1977, Cal App 2d Dist) 75 Cal App 3d 865, 142 Cal Rptr 517, 1977 Cal App LEXIS 2064*, superseded by statute as stated in *People v. Todd (1994, Cal App 1st Dist) 22 Cal App 4th 82, 27 Cal Rptr 2d 276, 1994 Cal App LEXIS 80.*

4. Indictment or Information

Where the signature to a check may be either that of a partnership or a corporation it must be alleged in the information that there was no partnership in existence by that name, and that there was no corporation in existence by that name. *People v. Eppinger (1894) 105 Cal 36, 38 P 538, 1894 Cal LEXIS 1105.*

Although either the making or the passing of a fictitious check with intent to defraud the same person would constitute an offense, yet when referring to the same instrument, charging the same intent may constitute but one offense, and may be properly charged in a single count, in which case there is neither necessity nor propriety in repeating the allegations of the making of the check, and of the non-existence of the fictitious person whose name is signed to the check in connection with the allegation of the passing of the check. *People v. Ellenwood (1897) 119 Cal 166, 51 P 553, 1897 Cal LEXIS 873.*

Indictment charging defendant with making and uttering fictitious order for payment of money which alleges that order was uttered to person named with intent to defraud carriage company named, need not allege that such person was connected with carriage company, but such fact can be proved, if necessary, under allegations made, and such

allegations fully satisfy requirements of statute. *People v. Arlington (1899) 123 Cal 356, 55 P 1003, 1899 Cal LEXIS 1075.*

An indictment based upon this section, for knowingly and with intent to defraud a person named passing to him as true and genuine a fictitious note "purporting to be the note of an individual, to wit, Leon McAbee (when in fact there was no such person in existence)," is not fatally defective for not alleging that there was no such "individual" in existence. *People v. Terrill (1901) 133 Cal 120, 65 P 303, 1901 Cal LEXIS 875.*

Where the payee of a check signed by the name of a fictitious maker, purporting to be the name of an individual, was indicted for uttering a fictitious check, an information sufficient in other respects which alleges that there was no such person and individual in existence is sufficient, without negating the remote possibility that there might be a bank, corporation or partnership by such name. *People v. Nishiyama (1902) 135 Cal 299, 67 P 776, 1902 Cal LEXIS 791.*

An information which charges the defendant with passing a fictitious bill of a bank not in existence with intent to defraud the complaining witness, and with knowledge of the fictitious character of the bill and of the nonexistence of the bank named in the bill at the time he passed it, sufficiently sets forth every essential element of the offense described by this section. *People v. Harben (1907, Cal App) 5 Cal App 29, 91 P 398, 1907 Cal App LEXIS 223.*

Information for forgery which charges all essential ingredients of that crime, including false making of instrument, intent to defraud, and, in genuine, that writing might injure another, is sufficient. *People v. McPherson (1907, Cal App) 6 Cal App 266, 91 P 1098, 1907 Cal App LEXIS 150.*

In a prosecution for passing a check without having sufficient funds in the bank upon which it was drawn, where the check offered in evidence corresponded in all respects with the copy set out in the information except that in the date the check showed 3-12-1915 instead of 3-2-1915, the variance was immaterial. *People v. Freeman (1916, Cal App) 29 Cal App 543, 156 P 994, 1916 Cal App LEXIS 183.*

Where a prosecution under an information charging a violation of this section was conducted upon the theory that the defendant had entered upon a common plan of defrauding dealers in bonds by issuing fictitious checks either signed by him with a fictitious name or drawn by him upon banks in which insufficient funds were deposited, the uttering of a check upon a bank with insufficient funds is not so dissimilar to the crime charged in the information as to render evidence of the former inadmissible, even though such acts are specifically defined in different sections of the code as constituting distinct offenses. *People v. Sander (1922, Cal App) 59 Cal App 82, 209 P 1027, 1922 Cal App LEXIS 109.*

An information charging the crime of obtaining property under false pretenses may be amended by adding a second count charging a violation of this section for passing a fictitious check with intent to defraud, where according to the original information the defendant in committing the crime of obtaining property by false pretenses did so through the commission of a further crime of uttering and passing a fictitious check, it thus appearing that the two crimes were a part of the same transaction. *People v. Thal (1923, Cal App) 61 Cal App 48, 214 P 296, 1923 Cal App LEXIS 563.*

Where the defendant was charged with wilfully uttering, publishing and having in his possession a false and fictitious note which he attempted to pass as true and genuine, the information as originally drawn having contained all the necessary allegations constituting the offense described by this section with the exception that no "intention to defraud" was charged, the trial court did not err in permitting over the defendant's objection an amendment after the evidence was closed by adding thereto the necessary allegation, where the charge preferred by the information as thus amended constituted an offense shown by the evidence taken at the preliminary examination, and the substantial rights of the defendant were not prejudiced by such amendment. *People v. Milligan (1926, Cal App) 77 Cal App 745, 247 P 580, 1926 Cal App LEXIS 423.*

Where a defendant is charged with forging the name of a real person to a check, and with having passed and published it, it is necessary also to allege that he passed and published it as the genuine check of the person whose name

was signed to it, in order to constitute a complete offense of forgery; but where an information or indictment is founded upon a check bearing the name of an imaginary or fictitious person, the essential elements to be alleged are the uttering and publishing of such check, knowing the same to be fictitious, etc. *People v. Carmona* (1926, Cal App) 80 Cal App 159, 251 P 315, 1926 Cal App LEXIS 79.

In a prosecution for making, drawing and uttering a fictitious check, the information is not rendered insufficient because it alleges the passing of a check on two named individuals, whereas the evidence shows that the check was made payable to a named garage; and if the information is uncertain in this respect, that point should be raised by demurrer. *People v. Rosencrantz* (1928, Cal App) 95 Cal App 92, 272 P 786, 1928 Cal App LEXIS 488.

5. Prosecution Generally

Where a defendant accused of making, uttering, and passing a fictitious check, and with having suffered a prior conviction of petty larceny, pleaded the general issue of not guilty, and the jury failed to find specifically upon the issue of prior conviction, and returned a verdict finding the defendant guilty as charged, the verdict rendered was erroneous in not finding upon that special issue, but should be treated as a finding against the defendant upon the crime charged, and in his favor upon the charge of prior conviction. *People v. Eppinger* (1895) 109 Cal 294, 41 P 1037, 1895 Cal LEXIS 951.

Where the defendant in a prosecution under this section for passing a fictitious check testified in his own behalf for the purpose of showing want of intent, that he was drinking at the time of the alleged act and had no recollection thereof, the court correctly permitted the district attorney on cross examination to ask the defendant if he had ever been convicted of a felony in another state and of a previous violation of this section. *People v. Reed* (1927, Cal App) 84 Cal App 685, 258 P 463, 1927 Cal App LEXIS 389.

When a fictitious check is drawn on a particular branch of a bank, the prosecution, upon proof that the drawee had no account there, is not required to show that the drawee had no account in any other branch of the bank, and there is no error in refusing to allow the defendant to inquire of the manager of said branch, who testified that the drawee had no account there, as to whether the bank had other branches. *People v. Eppstein* (1930, Cal App) 108 Cal App 72, 290 P 1054, 1930 Cal App LEXIS 163.

In a prosecution for uttering fictitious checks, it was proper to give an instruction to the effect that testimony that the drawer of a check did not have any account with the bank upon which the check was drawn was prima facie evidence of the fictitious character of the check. *People v. Menne* (1935, Cal App) 4 Cal App 2d 91, 41 P2d 383, 1935 Cal App LEXIS 375.

In a prosecution for issuing a check without sufficient funds, an instruction as to restitution as a defense to a prosecution for uttering a fictitious check did not constitute a charge under the statute and, if error, was harmless, since the court was referring to the restitution rather than to the type of crime. *People v. Porter* (1950, Cal App) 99 Cal App 2d 506, 222 P2d 151, 1950 Cal App LEXIS 1737.

Defendant convicted of uttering fictitious check as principal who aided and abetted his codefendant in passing check could not argue that he was unlawfully convicted because codefendant who pleaded guilty to issuance of check without sufficient funds for credit with intent to defraud, received only one-year county jail sentence and that, since her crime was thereby reduced to misdemeanor, he could not be found guilty of higher degree of crime. *People v. Griffith* (1960, Cal App 3d Dist) 181 Cal App 2d 715, 5 Cal Rptr 620, 1960 Cal App LEXIS 2047.

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.

Upon convicting defendant of issuing checks without sufficient funds with intent to defraud (*Pen C § 476*), the sentencing court properly relied on facts underlying counts dismissed pursuant to a plea bargain in its decision to impose a state prison term, where there was an express agreement at the time defendant entered her plea allowing such use of the facts. *People v. Jarvis (1982, Cal App 3d Dist) 135 Cal App 3d 154, 185 Cal Rptr 16, 1982 Cal App LEXIS 1889.*

6. Admissibility of Evidence

The teller of the bank on which a fictitious check was drawn was properly permitted to show by the books of the bank that the defendant had no money or account therein, as prima facie evidence that the check was fictitious. *People v. Walker (1911, Cal App) 15 Cal App 400, 114 P 1009, 1911 Cal App LEXIS 344.*

In a prosecution for making and uttering a fictitious promissory note which the defendant attempted to pass as true and genuine, it having been established by a prosecution witness that she and not the person whose name was subscribed to the note owned the real property upon which the mortgage was given to secure the fictitious note, the court did not err in permitting the witness over the defendant's objection to testify as to the legal description of said property. *People v. Milligan (1926, Cal App) 77 Cal App 745, 247 P 580, 1926 Cal App LEXIS 423.*

In a prosecution for issuing fictitious checks under an information against the defendant and his wife, to which the wife pleaded guilty, the wife's statements made in so doing were a part of the res gestae, and where the opinions of experts that the checks were written by the defendant, when considered with the fact that they were passed by his wife, tended strongly to raise the inference that the enterprise concerned them both, there was no error in admitting testimony as to what the wife said and did in passing the checks. *People v. Eppstein (1930, Cal App) 108 Cal App 72, 290 P 1054, 1930 Cal App LEXIS 163.*

In a prosecution for uttering and passing fictitious checks, the admission of evidence that the wife passed other checks not involved in the information was not error, where the marked similarity of circumstances tended to show that the passing of the checks described in the information was a part of the system of fraud practiced with more than the usual persistence, and in the opinion of the experts the other checks were also written by the defendant. *People v. Eppstein (1930, Cal App) 108 Cal App 72, 290 P 1054, 1930 Cal App LEXIS 163.*

Evidence of passing of similar checks by defendant is admissible under rule that evidence of similar criminal acts occurring at or about same time may be introduced to show common plan or design and criminal intent. *People v. Pearson (1957, Cal App 1st Dist) 151 Cal App 2d 583, 311 P2d 927, 1957 Cal App LEXIS 1799.*

In prosecution for uttering and passing fictitious checks, it is proper to admit evidence concerning other transactions concerning these checks, which defendant received from other persons, are sufficiently similar to the transactions with which he was charged to make the evidence admissible on the question of intent or the use of a common scheme or design. *People v. Choate (1958, Cal App 4th Dist) 157 Cal App 2d 782, 321 P2d 815, 1958 Cal App LEXIS 2306.*

There was no reason to apply exclusionary rule to certain evidence found in defendant's jacket during search of room in which he was seated, where it appeared that police officers were following defendant because informant had given them information, on which they had right to rely, that defendant was engaged in falsification of driver's licenses and was concerting with another in their preparation and in preparation of checks to be issued and passed. *People v. Piascik (1958, Cal App 4th Dist) 159 Cal App 2d 622, 323 P2d 1032, 1958 Cal App LEXIS 2046, cert den (1959) 359 US 954, 3 L Ed 2d 762, 79 S Ct 743, 1959 US LEXIS 1287.*

Where evidence clearly showed that false licenses were manufactured for purpose of, and were in fact used for, identification in check-passing scheme, evidence of crimes of forgery and sale of driver's licenses was admissible.

People v. Piascik (1958, Cal App 4th Dist) 159 Cal App 2d 622, 323 P2d 1032, 1958 Cal App LEXIS 2046, cert den (1959) 359 US 954, 3 L Ed 2d 762, 79 S Ct 743, 1959 US LEXIS 1287.

Evidence indicating defendant's knowledge of recent activities of codefendant in respect to other fictitious checks was relevant to show that what he did in aiding codefendant to pass fictitious check in question was done with knowledge of other like activities of codefendant, and that he possessed guilty knowledge requisite to convict aider and abettor. *People v. Griffith* (1960, Cal App 3d Dist) 181 Cal App 2d 715, 5 Cal Rptr 620, 1960 Cal App LEXIS 2047.

In prosecution for uttering fictitious check as principal who aided and abetted his codefendant in passing check, it was proper to introduce evidence that codefendant had pleaded guilty to charge of passing check to payee and was presently serving time of confinement for that offense. *People v. Griffith* (1960, Cal App 3d Dist) 181 Cal App 2d 715, 5 Cal Rptr 620, 1960 Cal App LEXIS 2047.

Evidence of codefendant's activities in passing fictitious check in another city, that she was arrested for that crime and pleaded guilty to it some six or seven months before transactions involved in instant case and during time when she and defendant were living together as husband and wife, and that when she was arrested for same crime defendant was arrested at same time on same charge, was relevant and admissible to show guilty knowledge and intent in crime for which defendant was being tried. *People v. Griffith* (1960, Cal App 3d Dist) 181 Cal App 2d 715, 5 Cal Rptr 620, 1960 Cal App LEXIS 2047.

Possession of recently forged instrument by one claiming under it is evidence against possessor. *People v. Hawkins* (1961, Cal App 2d Dist) 196 Cal App 2d 832, 17 Cal Rptr 66, 1961 Cal App LEXIS 1652.

Since, in forgery prosecution, need for or lack of money is always ample motive for passing fictitious check, defendant's financial condition prior to passing check is pertinent, material and relevant, and evidence thereof, where relevant and material, will not be excluded merely because it may be prejudicial to accused. *People v. Hawkins* (1961, Cal App 2d Dist) 196 Cal App 2d 832, 17 Cal Rptr 66, 1961 Cal App LEXIS 1652.

In a prosecution for passing fictitious checks, in violation of *Pen C* § 476, the Fifth Amendment privilege against self-incrimination was not violated by the use of certain of defendant's documents obtained, pursuant to court order, from his attorney, where, prior thereto, defendant had refused to comply with a lawful order to provide exemplars, and where the court ordered that the documents be used only as exemplars, and not for the substance therein either in the instant case or any other. *People v. Paine* (1973, Cal App 4th Dist) 33 Cal App 3d 1048, 109 Cal Rptr 496, 1973 Cal App LEXIS 961.

7. Weight and Sufficiency of Evidence

The testimony of a teller in a bank on which a check was drawn that no firm by the name signed to the check kept or had any account in his books was prima facie evidence of the fictitious character of the check. *People v. Eppinger* (1894) 105 Cal 36, 38 P 538, 1894 Cal LEXIS 1105.

In prosecution for issuing fictitious check, intent to defraud person who cashed check and bank on which it was drawn is proven by testimony that all handwriting on face and back of check including signature and indorsement was that of defendant, taken in connection with fact that bank was named as drawee and further fact that third person cashed check. *People v. Hamby* (1921, Cal App) 55 Cal App 37, 202 P 907, 1921 Cal App LEXIS 83.

In a prosecution under this section, testimony that the purported drawer of the check had no account with the bank upon which the check was drawn was prima facie evidence of the non-existence of the drawer, and where supplemented by the defendant's statement to the arresting officer that he never knew such a drawer and had never seen the check or the person to whom he was charged with having delivered it, is sufficient to prove the non-existence of the drawer. *People v. Thal* (1923, Cal App) 61 Cal App 48, 214 P 296, 1923 Cal App LEXIS 563.

In a prosecution under this section, where the essence of the offense charged in the information was the passing with the intent to defraud of a fictitious check purporting to be for the payment of money to an individual, when in fact there was no such an individual in existence, knowing the check to be fictitious, the testimony of the assistant manager of the bank on which the check was drawn to the effect that the bank had no account with the drawer named in the check was prima facie evidence of the fictitious character of the check. *People v. Roche* (1925, Cal App) 74 Cal App 556, 241 P 279, 1925 Cal App LEXIS 141.

In a prosecution for forgery, testimony of a chief clerk of the bank upon which a fictitious check was drawn that he was familiar with the accounts of the bank, that he looked particularly for the account of the person designated as drawer of the check and did not find any such account, and that he could state positively that there were no accounts with the designated name, constituted prima facie evidence of the nonexistence of the drawer of said check. *People v. Carmona* (1926, Cal App) 80 Cal App 159, 251 P 315, 1926 Cal App LEXIS 79.

In a prosecution for passing a fictitious check, testimony that the name of the person signed to the check was not found in directories of the cities where the bank was located and where the check was cashed and not disclosed by the records of the bank was sufficient proof of the corpus delicti to render admissible the defendant's admissions that he had drawn the check and passed it by indorsement. *People v. Reed* (1927, Cal App) 84 Cal App 685, 258 P 463, 1927 Cal App LEXIS 389.

In a prosecution under this section, testimony showing that the alleged makers of the checks had no accounts in the banks upon which they were drawn was prima facie evidence of the fictitious character of the checks. *People v. Sheridan* (1934, Cal App) 136 Cal App 675, 29 P2d 464, 1934 Cal App LEXIS 977.

In a prosecution for the passage of fictitious checks, the corpus delicti was proven and the fictitious character of the checks established where the assistant cashier of the bank upon which the checks were drawn testified that there was no record of any kind in the bank under the names of the drawers of the checks. *People v. Menne* (1935, Cal App) 4 Cal App 2d 91, 41 P2d 383, 1935 Cal App LEXIS 375.

In a prosecution under this section, the conviction was supported by evidence showing the cooperation of the defendant and another in issuing numerous fictitious checks to merchants, the possession after arrest of the unused portion of a pad of blank checks, partially filled out, and the identification of the confederate by photographs. *People v. Descant* (1942, Cal App) 51 Cal App 2d 343, 124 P2d 864, 1942 Cal App LEXIS 622.

Conviction of making and uttering forged and fictitious check is sustained by evidence that niece of person to whom check was given saw defendant write name of payee on back of check, and by circumstantial evidence that defendant forged entire check. *People v. Pearson* (1957, Cal App 1st Dist) 151 Cal App 2d 583, 311 P2d 927, 1957 Cal App LEXIS 1799.

Evidence was sufficient to support conviction under this section where it showed, among other things, that defendant met person who operated portrait studio and asked him if he could photograph driver's license application, that such person informed police and then, on their instructions, told defendant he could do so, that month later defendant asked this person to meet him at certain cafe and there gave him negative of California driver's license bearing certain signature and number, that such person copied it and delivered it to defendant and that shortly thereafter fictitious checks were cashed by one other than defendant bearing name appearing on driver's license and one bearing number appearing on license. *People v. Piascik* (1958, Cal App 4th Dist) 159 Cal App 2d 622, 323 P2d 1032, 1958 Cal App LEXIS 2046, cert den (1959) 359 US 954, 3 L Ed 2d 762, 79 S Ct 743, 1959 US LEXIS 1287.

Conviction of issuing fictitious check was supported by evidence that defendant presented check to tailor in payment for suit of clothes, that check was made out by third person on branch bank, that bank did not have branch at address written on check, that tailor investigated and found that address listed for maker of check was nonexistent, and that maker did not have account with bank on which check was drawn. *People v. Hawkins* (1961, Cal App 2d Dist) 196

Cal App 2d 832, 17 Cal Rptr 66, 1961 Cal App LEXIS 1652.

In a prosecution for forgery, defendant was not convicted on the uncorroborated testimony of an accomplice where there was independent corroborative evidence adequate to sustain his conviction by intimately connecting him with the crime, in that he indorsed checks and negotiated them in the presence of a savings and loan officer who identified defendant, the checks, and their amounts, and the savings account transaction of defendant; the checks at that time bore unauthorized forged signatures of two officers of a corporation each of whom testified that he had not authorized the preparation or signature on the checks; defendant conceded that he received checks payable to him and drawn on an unknown company by makers identified only as friends of the accomplice who had just been released from prison; neither the corporation on whom the checks were drawn nor the officers thereof owed defendant money; and the accomplice owed him money less than the amount of the checks which was returned to her in cash after negotiation of the checks by defendant. *People v. Scott (1967, Cal App 2d Dist) 255 Cal App 2d 721, 63 Cal Rptr 489, 1967 Cal App LEXIS 1333.*

In a prosecution for forgery, the evidence was sufficient to establish defendant's guilt where it demonstrated that defendant set in motion all forces contributing to the crime by persuading an accomplice to obtain a position where she had access to checks and thereafter to make unauthorized use of such checks; where defendant knew when he received and negotiated the checks that he was not entitled to the money, and it might be presumed that he knew that the maker's signatures were forgeries; and where nonetheless, he exercised dominion and control over the funds thereby represented for his own benefit. *People v. Scott (1967, Cal App 2d Dist) 255 Cal App 2d 721, 63 Cal Rptr 489, 1967 Cal App LEXIS 1333.*

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.*

8. Appeal and Error

In a prosecution under this section, where the instrument set out in the information and the check admitted in evidence are similar in some respects but differences relating to the parties and provisions forming material parts of the contract appear, which affect the sense and change the identity of the instrument alleged to an extent constituting a material variance, the judgment must be reversed. *People v. Allan (1927, Cal App) 80 Cal App 709, 252 P 779, 1927 Cal App LEXIS 934.*

A conviction of issuing fictitious checks will not be disturbed on appeal, where the jury's verdict is supported by substantial evidence, including positive identification by seven clerks who sold the articles for which the checks were tendered in payment and the store managers who OK'd the checks, and where no legal error appears in the record. *People v. Graff (1951, Cal App) 104 Cal App 2d 32, 230 P2d 654, 1951 Cal App LEXIS 1565.*

Though information erroneously designated this section as offense of forgery of name of fictitious person, when it should have designated § 470, defendant was not prejudiced by such error where court instructed jury in language of § 470 instead of section, where he was sufficiently apprised of nature of charge against him, and where jury found him guilty of committing forgery of fictitious name. *People v. Martin (1954, Cal App) 127 Cal App 2d 777, 274 P2d 509, 1954 Cal App LEXIS 1411.*