JAMAICA

IN THE COURT OF APPEAL

RESIDENT MAGISTRATE'S CRIMINAL APPEAL NO: 1/90

BEFORE: **The Hon. Mr. Justice Campbell, J.A.**
The Hon. Mr. Justice Forte, J.A.
The Hon. Mr. Justice Downer, J.A.

R. v. DONOVAN JOHNSON

Crafton Miller for Appellant

Bryan Clarke for Crown

February 13 & March 19, 1990

CAMPBELL, J.A.

The appellant was tried in the Resident Magistrate's Court for the parish of Kingston on an indictment containing 58 counts being 29 counts for forgery and 29 counts for obtaining by virtue of forged instruments. He was found guilty on all counts and on 13th October, 1989 he was sentenced to 6 months imprisonment on each count at hard labour. The sentences were ordered to run concurrently.

The amount obtained by virtue of the forged instruments was $29,000.00. The strategy adopted by the appellant who was the accounting clerk of Yoffie Industries Ltd was to alter the figure and words on cheques which he prepared and signed in favour of C. Bair, the manager, after the latter had countersigned the cheques for the correct sums due.

The appellant then took these cheques to National Commercial Bank Harbour Street where he encashed the same, paid over the correct amount to C. Bair and pocketed the balance.

This fraud, per the indictment was practised over the period of August 1985 and December 1986 and involved 29 cheques. Briefly, what the appellant did was to prepare cheques with words Four Hundred or Seven Hundred dollars as the case may be. After they were signed by him and countersigned by Bair and endorsed over to him for encashment he added the word "teen" to make the sums read fourteen or seventeen hundred and placed the figure "1" before $400.00 or $700.00.

Evidence of C. Bair is that the cheques and cheque stubs are written up by appellant and presented to him. He compared cheques with cheque stubs and on being satisfied that the amounts on the cheques namely "Four Hundred" or "Seven Hundred" coincided with the amounts written on the stubs, he signed the cheques. He then endorsed over those cheques payable to him to the appellant for the latter to cash them and pay over to him the proceeds as they represented travelling or entertainment allowances. At the times he signed the cheques, only the amounts admittedly written by accused on the stubs were written on the cheques themselves and only those amounts he had received from the appellant on encashment of the aforesaid cheques. The appellant had custody of both the cheque stubs and the returned negotiated cheques which were recovered by the police. This witness recognized the handwriting of the appellant on all the cheques as distinct from his signatures. He did not authorise the alterations on the cheques after signing the same.

The appellant admitted writing the cheques. He admitted presenting them. He admitted payments. He also admitted writing the amounts on the stubs. He however asserts that at the time when Bair countersigned the cheques, the amounts actually encashed were already written thereon and to Bair's knowledge the sums paid over to him were intended to correspond

to the amounts on the stubs while the difference was utilized for the additional purpose for which the cheques were drawn, usually for casual labour or sundry expenses. This was the practice at the company which he inherited and followed. The cash book which was destroyed in a fire in 1987 if available would have disclosed the disbursements of the extra sums withdrawn. The appellant was thus asserting that he was authorised to prepare the cheques for "Fourteen Hundred" or "Seventeen Hundred" dollars as appropriate.

The learned Resident Magistrate rejected the defence. He found that the Crown's case was proved beyond all reasonable doubt and that in the main the appellant was an untruthful witness.

Before us, Mr. Miller has submitted that in relation to all the counts, the learned Resident Magistrate erred in law in admitting the cheques exhibited in evidence as they represented computerised "print out" by persons who are not before the court and are therefore inadmissible as hearsay. We did not agree with Mr. Miller because the cheques were not admitted in evidence as proof of the computerised serial numbers but rather as proof of the actual documents signed by C. Bair which he in evidence says were subsequently altered in material particulars without his authority or consent.

A further general ground of appeal canvassed by Mr. Miller was that the documents were not forged documents because they told no lie about themselves. Again we were unable to find any merit in this submission because plainly the documents were speaking to Mr. Bair having co-signed cheques in the sums of Fourteen and Seventeen Hundred dollars when in fact he had co-signed for only 'Four' and 'Seven' hundred dollars.

Other grounds of appeal were argued by Mr. Miller but without any real conviction in their merits and were either expressly or impliedly abandoned in the course of his submissions.

We have ourselves carefully perused the evidence and are in complete agreement with the learned Resident Magistrate that the Crown's case had been proved beyond all reasonable doubt. It was for that reason that we dismissed the appeal on February 13, 1989. We then promised to put our reasons in writing which we have now done.