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Supreme Court of Appeals

201 VA 663

Records No. 5070, 5071

In the
Supreme Court of Appeals of Virginia
at Richmond

RAYE O. LAWSON
v.
COMMONWEALTH OF VIRGINIA

RAYE O. LAWSON
v.
COMMONWEALTH OF VIRGINIA

FROM THE HUSTINGS COURT OF THE CITY OF ROANOKE

RULE 5:12—BRIEFS

§5. Number of Copies. Twenty-five copies of each brief shall be filed with the clerk of the Court, and at least three copies mailed or delivered to opposing counsel on or before the day on which the brief is filed.

§6. Size and Type. Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

HOWARD G. TURNER, Clerk.

Court opens at 9:30 a. m.; Adjourns at 1:00 p. m.

IN THE

Supreme Court of Appeals of Virginia

AT RICHMOND

RECORD NO. 5070

VIRGINIA:

In the Clerk's Office of the Supreme Court of Appeals at the Supreme Court of Appeals Building in the City of Richmond on Friday the 4th day of September, 1959.

RAYE O. LAWSON, Plaintiff in Error,

against

COMMONWEALTH OF VIRGINIA, Defendant in Error.

From the Hustings Court of the City of Roanoke

Upon the petition of Raye O. Lawson a writ of error and *supersedeas* is awarded him by one of the justices of the Supreme Court of Appeals on August 29, 1959, to a judgment rendered by the Hustings Court of the City of Roanoke on the 15th day of April, 1959, in a prosecution by the Commonwealth against the said petitioner for a felony, Case No. 27,806; but said *supersedeas,* however, is not to operate to discharge the petitioner from custody, if in custody, or to release his bond if out on bail.

IN THE

Supreme Court of Appeals of Virginia

AT RICHMOND.

Record No. 5071

VIRGINIA:

In the Clerk's Office of the Supreme Court of Appeals at the Supreme Court of Appeals Building in the City of Richmond on Friday the 4th day of September, 1959.

RAYE O. LAWSON, Plaintiff in Error,

against

COMMONWEALTH OF VIRGINIA, Defendant in Error.

From the Hustings Court of the City of Roanoke

Upon the petition of Raye O. Lawson a writ of error and *supersedeas* is awarded him by one of the justices of the Supreme Court of Appeals on August 29, 1959, to a judgment rendered by the Hustings Court of the City of Roanoke on the 15th day of April, 1959, in a prosecution by the Commonwealth against the said petitioner for a felony, Case No. 27,807; but said *supersedeas*, however, is not to operate to discharge the petitioner from custody, or to release his bond if out on bail.

Record No. 5070

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(Note: Record No. 5071 commences on page 12)

• • • • •

#27,806.

The grand jurors in and for the body of the said City of Roanoke, Virginia, and now attending said Court at its JANUARY TERM, in the Year 1959, upon their oaths do present:

That RAYE O. LAWSON, heretofore, to-wit: on the .... day of August, 1958, within the jurisdiction of this Court, in the said City of Roanoke, Virginia, feloniously, falsely and fraudulently the name of Rachel L. Taylor, as payee, did forge to a certain instrument in writing, commonly called a check, signed by J. W. King and payable at The Colonial-American National Bank, Williamson Road Branch of Roanoke, Virginia, and chargeable to the account of J. W. King, which said check was dated on the 13th day of August, 1958, and for the sum of $100.00, and was made payable to Rachel L. Taylor, with the felonious intent in so doing to defraud, and to the prejudice of another's right,

Against the peace and dignity of the Commonwealth of Virginia.

S-E-C-O-N-D C-O-U-N-T:

And the grand jurors aforesaid, upon their oaths aforesaid, do further present:

That the said RAYE O. LAWSON, heretofore, to-wit: on the .... day of August, 1958, within the jurisdiction of this Court, in the said City of Roanoke, Virginia, having in his possession a certain instrument in writing, commonly called a check, dated August 13, 1958, payable to Rachel L. Taylor, and of the following purport and tenor:

page 2 }

J. W. KING REAL ESTATE No. 911
ROANOKE-VIRGINIA 68-61
ROANOKE, VA. Aug. 13, 1958 514

PAY TO THE
ORDER OF Rachel L. Taylor $100.00 One Hundred Dollars and No/100 DOLLARS Pd. on Purchase of 2617 Marr St.,
J. W. KING, Broker

J. W. KING

WILLIAMSON ROAD BRANCH
THE COLONIAL-AMERICAN NATIONAL BANK
Of Roanoke
Roanoke, Va.

and on the back of which said check appeared the endorsements of Rachel L. Taylor and Raye O. Lawson, which said endorsements are of the following purport and effect—that is to say:

Bal. due $400.00 as full and complete settlement endorsee's equity in Marr St. House.

Rachel L. Taylor
Raye O. Lawson
201 Peoples Federal Bldg.

he, the said RAYE O. LAWSON, then and there, to-wit: on the .... day of August, 1958, within the jurisdiction of this Court, in the said City of Roanoke, Virginia, feloniously did utter and attempt to employ as true the aforementioned forged name of Rachel L. Taylor to said check; and that he, the said RAYE O. LAWSON, at the time he so uttered and attempted to employ as true the aforementioned forged name of the said Rachel L. Taylor to said check, to-wit: on the .... day of August, 1958, within the jurisdiction of this Court, in the said City of Roanoke, Virginia, well knew the same to be false and forged,

Against the peace and dignity of the Commonwealth of Virginia.

(on back)

INDICTMENT FOR FORGERY AND UTTERING AS TRUE A FORGED INSTRUMENT.

A Felony.

A True Bill.

LEYTON R. KELLER
Foreman Grand Jury.

Received and filed 1/5/59.

R. F. FINNELL, Deputy Clerk.

• • • • •

page 10 }

• • • • •

At a Hustings Court for the City of Roanoke, in the State of Virginia, at the Courthouse thereof, on the 24th day of March, 1959.

• • • • •

#27806.

This day came the Attorney for the Commonwealth of Virginia and the defendant, Raye O. Lawson, came into Court in obedience to his recognizance and was set to the bar. Also came the defendant's Attorney.

Thereupon the said Raye O. Lawson was arraigned and pleaded not guilty to the charge of forgery and uttering as true a forged instrument alleged against him in the indictment and for his trial puts himself upon the country.

Thereupon came twenty (20) persons citizens of the City of Roanoke, Virginia, summoned by the Sergeant of the City of Roanoke, Virginia, pursuant to writs of *venire facias* issued as the law directs, and the Court having examined said persons and finding them free from all legal exceptions and qualified to serve as jurors according to law, the Attorney for the Commonwealth and the prisoner having each struck from said list four (4) of the names thereon, the remaining twelve (12) to-wit: R. B. Deel, Stephen J. Baumes, J. Henry Jarrett, Jr., Ralph K. English, Phillip J. Altizer, Joseph J. O'Conner, Fred T. Heslep, Foy R. Clark, Walter L. O'Donnell, A. J. Christenson, Rufus D. Gish and James H. Repass were sworn to well and truly try the prisoner at the bar, and having heard the evidence, received the instructions of the Court and

heard the argument of counsel, retired to consider their verdict and after some time returned into Court the following verdict, viz:

page 11 } "We the jury find the defendant guilty as charged and fix the punishment at two years in the Penitentiary.

R. B. DEEL, Foreman."

and the jury were discharged.

Thereupon the defendant, by counsel, moved the Court to set aside the verdict of the jury on the grounds that the same was contrary to the law and the evidence, which motion the Court takes time to consider. It is further ordered that the defendant's bond to appear before this Court on the 1st day of April, 1959 at nine o'clock a. m. and from time to time until this case is disposed of be set at $1,500.00.

And the prisoner is remanded to jail.

A Copy—Teste:

Seal W. H. CARR, Clerk
By W. R. CARTER, JR.,
Deputy Clerk.

page 12 } INSTRUCTION NO. 1.

The Court instructs the jury that if you believe from the evidence in this case beyond a reasonable doubt that the defendant, Raye O. Lawson, did sign the name of the payee to the check described in the indictment with the intent to defraud and to the prejudice of another's rights, then you should find the defendant, Raye O. Lawson, guilty as charged, and fix his punishment by confinement in the penitentiary for a period of not less than two years nor more than ten years, or by confinement in jail for not less than six months nor more than twelve months.

O. K.

L. J.

page 13 } INSTRUCTION NO. 2.

The Court instructs the jury that if you believe from the evidence in this case beyond a reasonable doubt that the de-

fendant, Raye O. Lawson, had in his possession the check described in the indictment, and that the defendant, Raye O. Lawson, at the time he had the said check knew the endorsement on the said check to be forged, and knowing it to be forged did employ and pass the said check as true, then you should find the defendant, Raye O. Lawson, guilty as charged, and fix his punishment by confinement in the penitentiary for a period of not less than two nor more than ten years, or by confinement in jail for not less than six months nor more than twelve months.

O. K.

L. J.

page 14 } INSTRUCTION NO. 3.

The Court instructs the Jury that the signature of any party may be made by a duly authorized agent for that purpose, and no particular form of appointment or authority is necessary for this purpose and if you believe from the evidence of this case that the Defendant Raye O. Lawson was acting as agent for Rachel Taylor, and as such agent he was authorized to sign her name to the checks in question in this case, then you should find the Defendant not guilty.

Granted.

L. J.

page 15 } INSTRUCTION NO. 4.

The Court instructs the jury that the Burden of Proof in this case is upon the Commonwealth to prove that the defendant did not have authority to indorse the name of Rachel Taylor on the two checks in question; that his admitted indorsements were done to the prejudice of Rachel Taylor; and that in performing these acts that he intended to defraud her of her share of the money. The Court instructs further that if the Commonwealth fails to prove any one of these material elements of the crime of forgery beyond a reasonable doubt it is the duty of the jury to find the defendant not guilty.

O. K.

L. J.

page 16 } INSTRUCTION NO. 5.

The Court instructs the jury that in this case, as in all other criminal cases, that the defendant's denial of guilt raises a presumption of innocence in his favor which follows him throughout the entire trial and applies to each and every stage thereof, and in order to remove or overcome this presumption of innocence the Commonwealth must prove beyond a reasonable doubt every material fact and each and every element of the crime with which he is charged by clear, distinct and reliable evidence.

If, therefore, upon consideration of the whole case, the testimony of the witnesses and the circumstances proven in evidence, there exists in the minds of the jury a reasonable doubt upon a material fact or element necessary to constitute the crime of forgery, it is the duty of the jury to give the defendant the benefit of such doubt and acquit him.

O. K.

L. J.

page 17 } INSTRUCTION NO. 6.

The Court instructs the jury that no amount of suspicion or probability of guilt of the defendant, however strong, is sufficient to convict, nor is it sufficient if the greater weight of preponderance of the evidence supports the charge in the indictment, but in order to convict, the evidence of his guilt must be so strong that there can be no reasonable theory in your minds from the evidence presented which is consistent with his innocence.

O. K.

L. J.

page 18 } INSTRUCTION NO. 7.

The Court instructs the jury that the failure of the accused to testify creates no presumption against him, and in considering his guilt or innocence, his failure to tesitfy is not a circumstance which the jury is entitled to consider.

O. K.

L. J.

page 19 } INSTRUCTION NO. A.

The Court instructs the jury that the presumption of innocence is so strong, that if a case be a doubtful one, the presumption is always sufficient to turn the scales in favor of the accused.

Refused.

L. J.

page 20 } INSTRUCTION NO. B.

The Court instructs the Jury that under Section 6-371 of the Code of Virginia of 1950, as amended, "The signature of any party may be made by a duly authorized agent. No particular form of appointment is necessary for this purpose, and the authority of the agent may be established as in other cases of agency."

Refused.

L. J.

page 21 } INSTRUCTION NO. C.

The Court instructs the jury that every delegation of authority or creation of an agency, unless the extent of the authority or agency be expressly limited, carries with it the power to do all those things which are necessary, proper and usually done in order to effectuate the purpose of the agency, and embraces all the appropriate means necessary to accomplish the desired ends.

Refused.

L. J.

page 22 } INSTRUCTION NO. D.

The Court instructs the jury that no particular form of contract is required in creating agencies. It may be written or unwritten and the relationship may be implied from the conduct of the parties and the nature and circumstances of the particular acts done.

Refused.

L. J.

page 23 } INSTRUCTION NO. E.

The Court instructs the jury that an agent is one who has been intrusted with the business of another.

Refused.

L. J.

• • • • •

page 25 }

• • • • •

At a Hustings Court for the City of Roanoke, in the State of Virginia, at the Courthouse thereof, on the 15th day of April, 1959.

• • • • •

27806.

This day again came the Attorney for the Commonwealth and the defendant, Raye O. Lawson, came into Court in obedience to his recognizance and was set to the bar. Also came the defendant's Attorney.

Thereupon the Court having maturely considered the motion of the defendant, Raye O. Lawson, to set aside the verdict of the jury rendered in this case on the 24th day of March, 1959, overruled said motion, and the defendant, by counsel, excepted.

It is therefore considered by the Court that the said Raye O. Lawson be and he is sentenced to confinement in the State Penitentiary at Richmond, Virginia, for a term of two (2) years, and it is ordered that as soon as practicable the said Raye O. Lawson be removed from the jail of the City of Roanoke, Virginia, and safely conveyed to said State Penitentiary at Richmond, Virginia therein to be kept imprisoned and treated in the manner prescribed by law.

Thereupon the defendant, by counsel, signifying his intention to apply to the Supreme Court of Appeals of the State of Virginia for a writ of error from the judgment of this Court, execution on the above judgment is stayed for a period of sixty (60) days from this date, upon the defendant executing a bond in the penalty of $1,500.00 with approved security this date.

A Copy—Teste:

Seal W. H. CARR, Clerk
By W. R. CARTER, JR.,
Deputy Clerk.

* * * * *

page 117 }

* * * * *

Received and filed June 11, 1959.

W. R. CARTER, JR., Deputy Clerk.

NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR.

Cases Nos. *27086* and 27807.

NOTICE is hereby given that Raye O. Lawson appeals from a final judgment of the Hustings Court of the City of Roanoke, Virginia, entered on the 15th day of April, 1959, and will apply to the Supreme Court of Appeals of Virginia, for a writ of error and *supersedeas* to said judgment.

NOTICE is further given that the undersigned, Raye O. Lawson, will rely upon the following assignments of error:

ONE.

The Court erred in permitting the *Assisant* Commonwealth's Attorney to lead the witness, Rachel L. Taylor during his direct examination of her as a witness for the Commonwealth.

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TWO.

The Court erred in failing and refusing to give at the instance of the defendant, Instructions "A," "B," "C," "D" and "E."

THREE.

The Court erred in failing and refusing to strike the Commonwealth's evidence and in failing and refusing to enter summary judgments for the defendant as to the charges of the felonies embraced in the indictments.

FOUR.

The Court erred in failing and refusing to set aside the verdicts of the jury and dismiss the charges of felonies embraced in the indictments or else award the defendant new trials upon the grounds that there was insufficient evidence to warrant guilty verdicts and said verdicts were contrary to the law and the evidence.

Respectfully submitted,

RAYE O. LAWSON
By GEORGE B. DILLARD
Counsel.

* * * * *

RECORD NO. 5071

* * * * *

#27,807.

The grand jurors in and for the body of the said City of Roanoke, Virginia, and now attending said Court at its JANUARY TERM, in the Year 1959, upon their oaths do present:

That RAYE O. LAWSON, heretofore, to-wit: on the .... day of August, 1958, within the jurisdiction of this Court, in the said City of Roanoke, Virginia, feloniously, falsely and fraudulently the name of Rachel L. Taylor, as payee, did forge to a certain instrument in writing, commonly called a check, signed by J. W. King and payable at The Colonial-American National Bank, Williamson Road Branch of Roanoke, Virginia, and chargeable to the account of J. W. King, which said check was dated on the 21st day of August, 1958, and for the sum of $400.00, and was made payable to Rachel L. Taylor, with the felonious intent in so doing to defraud, and to the prejudice of another's right,

Against the peace and dignity of the Commonwealth of Virginia.

S-E-C-O-N-D C-O-U-N-T:

And the grand jurors aforesaid, upon their oaths aforesaid, do further present:

That the said RAYE O. LAWSON, heretofore, to-wit: on the .... day of August, 1958, within the jurisdiction of this Court, in the said City of Roanoke, Virginia, having in his possession a certain instrument in writing, commonly called a check, dated August 21, 1958, payable to Rachel L. Taylor, and of the following purport and tenor:

page 2 }

No. 916

J. W. KING REAL ESTATE
ROANOKE-VIRGINIA

68-61
514

ROANOKE, VA. Aug. 21, 1958.

PAY TO THE
ORDER OF Rachel L. Taylor $400.00 Four Hundred Dollars and No/100 DOLLARS.

J. W. King, Broker
J. W. King

WILLIAMSON ROAD BRANCH
THE COLONIAL-AMERICAN NATIONAL BANK
Of Roanoke
ROANOKE, VA.

Settlement as agreed on 2617 Marr St. N. W.

Rachel L. Taylor
Raye O. Lawson
201 Peoples Fed. Bldg.

he, the said RAYE O. LAWSON, then and there, to-wit: on the .... day of August, 1958, within the jurisdiction of this Court, in the said City of Roanoke, Virginia, feloniously did utter and attempt to employ as true the aforementioned forged name of Rachel T. Taylor to said check; and that he, the said RAYE O. LAWSON, at the time he so uttered and

attempted to employ as true the aforementioned forged name of the said Rachel L. Taylor to said check, to-wit: on the .... day of August, 1958, within the jurisdiction of this Court, in the said City of Roanoke, Virginia, well knew the same to be false and forged,

Against the peace and dignity of the Commonwealth of Virginia.

(on back)

No. 27807.

INDICTMENT FOR FORGERY AND UTTERING AS TRUE A FORGED INSTRUMENT.

A Felony.

A True Bill.

LEYTON R. KELLER
Foreman Grand Jury.

Received and filed 1/5/59.

R. F. FINNELL, Deputy Clerk.

* * * * *

page 8 } Virginia:

At a Hustings Court for the City of Roanoke, in the State of Virginia, at the Courthouse thereof, on the 24th day of March, 1959.

27807.

This day came the Attorney for the Commonwealth of Virginia and the defendant, Raye O. Lawson, came into Court in obedience to his recognizance and was set to the bar. Also came the defendant's Attorney.

Thereupon the said Raye O. Lawson was arraigned and pleaded not guilty to the charge of forgery and uttering as true a forged instrument alleged against him in the indictment and for his trial puts himself upon the country.

Thereupon came twenty (20) persons citizens of the City of Roanoke, Virginia summoned by the Sergeant of the City of Roanoke, Virginia pursuant to writs of *venire facias* issued

as the law directs and the Court having examined said persons and finding them free from all legal exceptions and qualified to serve as jurors according to law, the Attorney for the Commonwealth and the prisoner having each struck from said list four (4) of the names thereon, the remaining twelve (12) to-wit: R. B. Deel, Stephen J. Baumes, J. Henry Jarrett, Jr., Ralph K. English, Phillip J. Altizer, Joseph J. O'Conner, Fred T. Heslep, Foy T. Clark, Walter L. O'Donnell, A. J. Christenson, Rufus D. Gish and James H. Repass were sworn to well and truly try the prisoner at the bar, and having heard the evidence, received the instructions of the Court and heard the argument of counsel, retired to consider their verdict and after some time returned into Court the following verdict, viz:

page 9 } "We the jury find the defendant guilty as charged and fix the punishment at two years in the state Penitentiary.

R. B. DEEL, Foreman."

and the jury were discharged.

Thereupon the defendant, by counsel, moved the Court to set aside the verdict of the jury on the grounds the same was contrary to the law and the evidence, which motion the Court takes time to consider. It is further ordered that the defendant's bond to appear before this Court on the 1st day of April, 1959 at nine o'clock a. m. and from time to time until this case is *dispose* of be set at $1,500.00.

And the prisoner is remanded to jail.

• • • • •

page 10 } Virginia:

At a Hustings Court for the City of Roanoke, in the State of Virginia, at the Courthouse thereof, on the 15th day of April, 1959.

• • • • •

27807.

This day again came the Attorney for the Commonwealth of Virginia and the defendant, Raye O. Lawson, came into Court in obedience to his recognizance and was set to the bar. Also came the Defendant's Attorney.

Thereupon the Court having maturely considered the motion of the defendant, Raye O. Lawson, to set aside the verdict of the jury rendered in this case on the 24th day of March, 1959, overruled said motion, and the defendant, by counsel, excepted.

It is therefore considered by the Court that the said Raye O. Lawson be and he is sentenced to confinement in the State Penitentiary at Richmond, Virginia for a term of two (2) years, and it is ordered that as soon as practicable the said Raye O. Lawson be removed from the jail of the City of Roanoke, Virginia and safely conveyed to said State Penitentiary at Richmond, Virginia therein to be kept imprisoned and treated in the manner prescribed by law. Upon motion of the defendant, by counsel, for reasons appearing satisfactory to the Court, it is ordered that the above sentence be served concurrently with the former sentence this day pronounced against the defendant.

Thereupon the defendant, by counsel, signifying his intention to apply to the Supreme Court of Appeals of the State of Virginia for a writ of error from the judgment of this Court, execution on the above judgment is stayed for a period of sixty (60) days from this date, upon the defendant executing a bond in the penalty of $1,500.00 with approved security this date.

page 11

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Records Nos. 5070 & 5071

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TRANSCRIPT OF TESTIMONY

* * * * *

Roanoke, Virginia. March 24, 1959.

Appearances: C. E. Cuddy, Esq., Commonwealth's Attorney for the City of Roanoke, Virginia; and

A. B. Crush, Jr., Esq., Assistant Commonwealth's Attorney for the City of Roanoke, Virginia.

George B. Dillard, Esq., and Barry N. Lichtenstein, Esq., of counsel for the Defendant.

Stenographic report of all the testimony, together with

the motions, objections and exceptions on the part of the respective parties, the action of the Court in respect thereto, the objections and exceptions to instructions, and other incidents of the trial of the case of Commonwealth of Virginia *v.* Raye O. Lawson, tried at Roanoke, Virginia, on March 24, 1959, before Judge Designate Honorable Langhorne Jones, and jury, in The Hustings Court of the City of Roanoke, Virginia.

Reported by:

Marcus A. Bieler, Court Reporter
1743 Devon Road, S. W.
Roanoke, Virginia.

* * * * *

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* * * * *

The Court: All right, gentlemen, you can make your motion now.

Mr. Lichtenstein: If your Honor please, the defense moves that the charges against Raye O. Lawson be disposed of by a *nolle prosequi* on the part of the Commonwealth for the reason that Rachel L. Taylor, the prosecuting witness in this case, of her own motion and under oath before a Municipal Judge for the City of Roanoke, Virginia, did on the 12th day of November state that Mr. Lawson acted as her agent in obtaining this money.

The Court: I understand that he is indicted for
page 30 } forgery.

* * * * *

The Court: The motion will be overruled and you can consider this as having been made before arraignment, or at the time of the arraignment, either way.

Mr. Lichtenstein: All right, sir; we take exception to your Honor's ruling.

The Court: All right.

* * * * *

page 31 }

* * * * *

The Court: Gentlemen, I can see and I can anticipate that the defendant is going to attempt to introduce in evidence the original warrant on which this matter grew out of. Is that true?

Mr. Crush: I anticipate the same thing.

The Court: I anticipate that from his opening statement. Mr. Commonwealth's Attorney, why would that not be proper?

* * * * *

page 32 }

* * * * *

The Court: It wouldn't hurt you any. Suppose I'd been indicted for assault and battery, and then they came in and had an indictment for rape, don't you think that would be admissible to show the situation that was there then?

Mr. Crush: No, sir. It seems to me—

The Court: I think it is.

page 33 } Mr. Crush: It would be a question of what the evidence of this particular case would show.

The Court: I think it's just as admissible to show it. Of course, the sole thing of this case is—and I also gathered this from your opening statement—that this man knowingly forced this woman's name to this check to her prejudice. Did he have her consent to do it, or with agency? That is the situation in the case; that's the issue we are trying. All this other is to show the friendship between them, which is all right. I don't know but you can't go too far on that, but that has nothing to do with the direct issue. The direct issue in this thing is this, and the sole issue, and that is what I want to stay on; did this man feloniously and knowingly sign this woman's name to these checks—endorse them?

Mr. Crush: Let me ask the Court this then. If that is admissible and I have no serious objections, certainly it will be admissible then—

The Court: I am not going to try that issue. I am just going to let him bring it in—that warrant.

Mr. Crush: The prosecution would be entitled to explain the circumstances under which that was obtained.

The Court: Yes, sir: if you want to testify or have somebody else testify, I will let you.

Mr. Crush: I think I can probably show it by the girl herself; maybe I will have to get someone else.

page 34 } The Court: But I don't want to get too far afield in this thing.

Mr. Crush: Well, that was, of course, my major objection to it to start with but I'd like to say I have no serious objection.

The Court: I have been in a Commonwealth's Attorneys' office and we would try the case and the evidence would develop where it would be a felony and we would indict on it and frequently we would have them for a felony—I mean we would dispose of it as a misdemeanor but frequently that is done, and I have also defended cases and I also put in those warrants where I could get them in and get anything to my benefit, so I am going to let him introduce it but I'm not going to have any trial of that case and I can tell you that now.

* * * * *

Mr. Dillard: I think it's admissible, too, on this ground—that due to the circumstances, it is necessary that all the activities existing between the parties be brought out because our defense is that this man had authority to do what he did.

* * * * *

page 35 }

* * * * *

Mr. Crush: All right, Mrs. Rachel Taylor.

Judge, I might say that if I appear to be talking unusually loud, this witness unfortunately has a little difficulty with her hearing so I am not trying to be excited.

The Court: All right; you may proceed.

MRS. RACHEL L. TAYLOR,

called as a witness in behalf of the Commonwealth, being duly sworn, testified as follows:

* * * * *

By Mr. Crush:

Q. State your name please.

Rachel L. Taylor.

A. Rachel L. Taylor.
Q. Were you—are you or were you at one time the wife of Kermit Taylor?
A. Yes, sir.
Q. State whether or not you and your husband, during the time—are you now divorced from your husband?
page 36 } A. Yes, sir; yes, I am.
Q. During the time of your marriage, were you and your husband in the process of purchasing a home here in the City of Roanoke?
A. Yes, sir.
Q. Where was that home located?
A. 2617 Moore Street.
Q. That's in the City of Roanoke?
A. Yes, sir.
Q. All right.

Mr. Lichtenstein: Excuse us, Mr. Crush. Will you please ask her to speak up a little bit?
Mr. Crush: Speak out loudly.
The Witness: I wish I could.
The Court: I wonder if you would walk around in front of her.
Mr. Crush: All right; I don't want to block these men (indicating jury); I will get here.

Q. (Continued) Now, were you employed by Raye O. Lawson?
A. I beg your pardon.
Q. Were you employed by Raye Lawson?
A. Yes, sir.
Q. In what capacity were you employed?
A. To do part-time work there—secretarial work
page 37 } —in his office—in the office.
Q. I want you to state whether or not it was during that time that you were employed by him that you obtained a divorce?
A. My divorce was under procedure before that.
Q. Before then—all right. Now, did it become necessary, or did you and your husband agree, to sell this property?
A. No, sir. Through Mr. Lawson—he was engaged to take care of the matter.
Q. He was engaged to take care of the matter. Now, what do you mean; just tell the jury what you mean when you say

Rachel L. Taylor.

"he was engaged to take care of the matter." I'm speaking about the sale of the house now.

A. The sale of the house; yes, sir.

Q. All right. What was he to do?

A. He can explain that better than I can, I'm sure.

Q. All right. Was the house sold?

A. Yes, sir.

Q. Well, where were you at the time—was there a contract entered into to sell the house first and then a deed drawn later?

A. Yes, sir.

Q. All right. Where were you when you first found out that a contract was to be signed?

page 38 } A. I was in Maryland—Silver Springs—with my sister.

Q. All right. Now, who contacted you about the contract?

A. Mr. Lawson.

Q. And what did you do as a result of him contacting you?

A. Pardon me.

Q. What did you do after you were contacted—did you leave Maryland?

A. Yes, sir; I did.

Q. Did you come to Roanoke?

A. Yes, sir; I came by bus.

Q. All right. Now tell the jury and the Judge just what you did after you got to Roanoke as far as the contract is concerned?

A. Well, I signed the contract to the house.

Q. I didn't hear you.

A. I signed the contract to the house—I believe so.

Q. All right. Now, did you go with anyone to deliver—who was the real estate man?

A. J. W. King.

Q. And where did he live, do you know; where was his office?

A. Hershberger Road, I think.

page 39 } Q. Hershberger?

A. Yes.

Q. After you signed the contract, did you go to Mr. King's office and take the contract?

A. I went to his home but I did not go in.

Q. All right. Who did you go there with?

A. Mr. Lawson.

Q. Do you remember whether or not what date that was?

A. I think it was in August—maybe the 13th.

Rachel L. Taylor.

Q. It was in August. Now, did you go there on other occasions, and not go in with Mr. Lawson or was that the only time?

A. That was the only time.

Q. The only time. And that was—was that the day that he delivered the contract to Mr. King after you had signed it?

A. Pardon me.

Q. Did the time you went to Mr. King's office or home with Mr. Lawson, was that the time the contract was delivered to Mr. King after you had signed it?

A. Yes, sir.

Q. All right. Now did Mr. Lawson come on back to the car where you were?

A. Pardon me.

Q. Did Mr. Lawson get in the car after he took the contract to Mr. King?

page 40 } A. Yes, sir; I signed them in the office. I signed them in the office downtown.

Q. All right, but you did go with him to King's office?

A. To the house; yes, sir.

Q. All right. Now, after Mr. Lawson had delivered the contract and came back to the car, did he make any mention to you of having received a check from Mr. King?

A. I still didn't understand you. I'm sorry.

Q. Well, do you remember taking the contract to Mr. King with Mr. Lawson—I'm talking about the contract to sell the house that you signed?

A. I signed it but I didn't go back with him to take them; no.

Q. Did you go—when was it you went out there with him to get the contract?

A. The 13th of August, I think it was.

Q. Had you already signed the contract then?

A. That morning.

Q. That morning?

A. Yes, sir.

Q. Well, that's what I'm trying to find out. You signed it; you think it was the morning of August 13th. Then did you that day go with Mr. Lawson to Mr. King's place?

A. I only went once that day.

Q. Well, was that after you signed the contract

page 41 } or before you signed the contract, or do you know?

A. After. I—

Q. After.

Rachel L. Taylor.

By the Court: (interposing)

Q. Well, if you don't know, just say you don't know. I don't want you to—if you know, say so; if you don't know, say so.

A. I went with him to get the contract to the house and I signed them.

By Mr. Crush: (continues examination)

Q. All right.

A. And I went back to the office to sign them and I imagine he returned them to Mr. King that afternoon sometime, but I didn't go then.

Q. All right. Were you employed—were you back working in Mr. Lawson's office then?

A. No, sir; I wasn't working there that day.

Q. All right. Did you work for him subsequent to that day?

A. Yes, sir; I did.

Q. How long did you continue to work there for him?

A. I imagine I worked parttime, on and off, almost two years.

Q. Well, I mean after the contract was signed, how long did you stay in his office and work?

page 42 } A. Let's see. That was in August—about two weeks after that, I worked a couple of months.

Q. You worked a couple of months?

A. Yes, sir.

Q. In other words, the contract was signed on the 13th—

A. Yes.

Q. —and then for two weeks you didn't work for him?

A. Yes.

Q. Then you did start work for him; is that correct?

A. Yes, sir; I did.

Q. And you worked off and on for how long?

A. A couple of months.

Q. A couple of months?

A. Until about the 7th of November.

Q. 7th of November. Now, during that time, did you ask Mr. Lawson about the money you were to receive from the sale of the property?

A. Yes, sir; I did.

Q. What did he tell you when you asked about the money?

A. Well, at that time the deed hadn't gone through or something or another.

Q. That's what he would actually tell you?

Rachel L. Taylor.

A. Yes, sir.

Q. Had you already signed the deed in the mean-
page 43 } time?

A. Yes, sir.

Q. And his reply was the deed hadn't gone through?

A. I mean, I'm so fouled up I can't hardly talk.

Q. Well, just take your time now and answer the questions. How many times did you ask him for your money—approximately?

A. I don't really know.

Q. Well, was it one time or several times, or what?

A. Several.

Q. Ma'am?

A. Several.

Q. Several times. And was—is that the only answer he would ever give you?

A. Was what?

Q. You said just a moment ago that when you asked about the money, he would say the deal hadn't gone through. Now, you said you asked him different times about your money. Did he ever tell you any other reason why the money wasn't ready?

A. No, sir.

Q. That was the same all the time. All right. When did you find out, or did you ever find out that the deed, or that the deal had gone through?

A. Yes, sir; I did.

Q. About when was that?

A In November.

page 44 } Q. And how did you find out?

A. Well, my family had mentioned to my sister in law that some of the family should look into the matter and she did so and she found out.

Q. Did you have any conversation with Mr. King; did you go to Mr. King's home?

A. Yes, sir; I did.

Q. What month was that?

A. November.

Q. November?

A. Yes, sir.

Q. I don't want you to tell anything that was told but I want to ask you this, did you find out at that time that the transaction had been completed?

A. Yes, sir.

Rachel L. Taylor.

Q. Did Mr. King show you any checks?
A. Yes, sir; he did.
Q. To whom were those checks written?
A. To me.

Mr. Crush: Do you want to see these checks?
Mr. Lichtenstein: Yes.

(Checks handed to counsel for defendant for examination.)

By Mr. Crush: (continues examination)
Q. Are these the checks that were shown to you?

(Two checks handed to witness.)

page 45 } A. Yes, sir; they are.
Q. Now, state whether or not on the back of each of these checks there appears the name, "Rachel L. Taylor."
A. Yes, sir.
Q. Did you put that name there?
A. No, sir; I did not.
Q. Did you ever authorize or tell anyone that they could sign your name to these checks?
A. Well, Mr. Crush, Mr. Lawson was taking care of this transaction in the house matter and apparently, from what Barry said, he had spent—
Q. Wait a minute. I'm not concerned with what Barry said about that. I want you to answer my question. We are not concerned with what someone else has told you about this thing. Did you ever authorize anyone to sign your name to these checks (indicating)?
A. Well, I imagine he was taking care of the matter. I felt that he probably should have.
Q. Probably should have what?
A. He probably should have signed them if I owed him the money.
Q. He probably should have signed them; is that what you're saying?
A. I don't know.
Q. Well, I want you to tell me now and I want to
page 46 } ask you this—just answer my questions and no more please—no more than my questions. Did you actually, or did you tell Raye Lawson, "Yes; you can sign my name to those checks"?

Rachel L. Taylor.

Mr. Lichtenstein: Objection, your Honor. He is leading the witness.

The Court: I think he is leading the witness.

Mr. Dillard: I have foregone objecting but I believe we will have to object.

The Court: Objection sustained. No use to argue it.

By Mr. Crush: (continues examination)

Q. Well, let me—I want you once more to answer this. I am going to ask you this. State whether or not you ever authorized anyone, or did you give anyone the power or the authority to sign your name to these checks?

A. Well, Mr. Crush, I authorized him to look into this matter by going there and taking care of it and I imagine it would all pertain to the same thing.

Q. Well, you still haven't answered my question.

Mr. Crush: I don't think that, Judge—I'm going to have to be, I think, a little improper. We are not concerned with what your imagination is, and we are not concerned with what someone else told you.

Judge, let me—I want to say this. This witness is testifying contrary to statements she has given us. She is testifying contrary to—

page 47 } The Court: Just a minute. Let's make that somewhere else; not before the jury.

Mr. Crush: All right, sir. I would like to make a motion in chambers then.

In chambers at 11:10 o'clock, A. M.

The Court: I think the matter is that the witness doesn't understand and she is a little bit hostile.

Mr. Crush: She's more than a little bit, Judge. Here's the thing of it, that I started to say out there. This witness has taken me completely by surprise. We have a statement from her—I talked with her personally on about three different occasions.

The Court: If you avow she has taken you by surprise, you can use her as a hostile witness but where are you?

Mr. Crush: Well, I'm not seeking—

The Court: I mean where are you if you do take her as a hostile witness?

Mr. Crush: I think I'm here, Judge; I can take her as a hostile witness without—

Rachel L. Taylor.

The Court: Can you prove your case by that?

Mr. Crush: I think I can do this, Judge. I can show frankly—I will be honest with you. I agree with the Court; I think a good bit of this is as a result of fear and her confusion. Be that whatever the case is, she has gotten hostile.

Now, I understand—

page 48 } The Court: I don't think she has shown so much hostility—mostly, I gather from that witness and from her attitude now—and that's all I can gather it from—is that she just doesn't quite understand. The girl is hard of hearing.

Mr. Crush: That's right.

The Court: I'm wondering—I've got a little gadget there. I don't think it will reach over there where she's at, will it?

Mr. Crush: I was thinking about that when I saw it up there.

The Court: That's the reason I put it up.

Mr. Crush: If we could reverse it.

The Court: Yes; that would be fine. I think it's a question now that she doesn't quite understand and maybe if you rephrased your question in such a way, then try that.

Mr. Crush: But then, if that fails, Judge, here's the thing of it. Of course, it appears she doesn't understand but I have talked with her before and she has—

The Court: Well, I can't tell you what to ask her or what to tell her. It looks like to me, you could frame your question in a different manner.

Mr. Crush: Well, I tried that.

The Court: And get her to completely understand it.

Mr. Crush: Well, I will do that then. That is

page 49 } what I was starting to do.

The Court: If she directly told him that he could sign her name or if she gave him any written authority or did he ever sign any other one for her—there are dozens of ways.

Mr. Crush: Well, as your Honor recalls, I asked that question. I think that was objected to.

The Court: Well, when you had asked it, you were leading. Ask her the direct question—that is, to it.

Mr. Crush: I will ask her has she ever at any time—

The Court: Well, not at "any time"; ask about these checks and then you can ask about the other.

Mr. Crush: I was going to say "has she at any time ever given Raye Lawson, or anyone else, the authority to sign her name on these two checks specifically."

Rachel L. Taylor.

Mr. Lichtenstein: If your Honor please, I'd like to straighten out one thing. She mentioned my name and I would like the Court to ask her if she has ever talked to me since the first Municipal hearing.

The Court: I am not going to ask her anything.

Mr. Lichtenstein: I don't want it to appear to the Court that I ever discussed it.

The Court: If there are any questions or something I may have misunderstood, I may ask the attorneys to ask it.

Mr. Lichtenstein: I would appreciate Mr. Crush
page 50 } to ask that question.

The Court: You have the right to examine her and cross examine her.

Mr. Crush: She's probably referring to what you said in your opening statement.

Mr. Lichtenstein: I'm sure she is referring to that and it is not probably because I haven't had a word with her. I want to make that clear to the Court.

The Court: Maybe if you get in a different position, it will help. Sometimes people can hear from different angles better than others.

(Court, counsel and the defendant returned to the courtroom at 11:20 o'clock, A. M., before the jury.)

Mr. Crush: Members of the jury, excuse me. I don't intentionally mean or wish to stand between you and the witness but apparently I don't have much choice in order to get the questions to this witness.

The Court: All right; proceed, Mr. Crush.

By Mr. Crush: (continues examination)

Q. All right Now, let me ask you here. Do you hear me all right now?

A. Yes, sir.

Q. Maybe I was talking too loud to you and got you confused. Now let's go back just a moment. You say
page 51 } this is your name in each instance on these checks (indicating)?

A. That is my name.

Q. Is that your signature; I mean, did you sign it yourself?

A. I didn't sign it myself.

Q. Did you give anyone permission to sign it for you?

A. Well, Mr. Crush, I feel like he was taking care of the

transaction in the house matter; he was entitled to do—to take what action was necessary—whatever action was necessary.

Mr. Crush: Well, I'd like to see the Court in chambers.
The Court: Ask her another question.

By Mr. Crush:
Q. Had you ever had him sign checks for you before?
A. No, sir; I never had any before.
Q. Had he signed other things for you before?

Mr. Lichtenstein: May I interpose—

By Mr. Crush:
Q. Had you had him sign checks for you before? What was your answer? I said, did he ever sign for you checks—for you before—and what did you say?
A. I said I had never received any before.
Q. Never received any before. Had he signed anything for you?
A. No, sir; not before.
page 52 } Q. Had you ever given any permission to anyone to sign anything for you?
A. No, sir.
Q. And when it became necessary to sign a contract to sell the property, who signed that contract—you or Mr. Lawson?
A. I signed the contract.
Q. You signed the contract. That was sometime after you had asked him to look after this for you; is that correct?
A. Yes, sir. Well, Mr. Crush, when I was in Maryland I had worked for Mr.—I had written to Mr. Lawson telling him to take care of the matter there and do whatever was necessary about the transaction.
Q. All right; that's all right. You just stick to my questions. Now, you were in Maryland and he called—did he call you or write you?
A. He called me.
Q. By 'phone?
A. Yes, sir.
Q. And what did he tell you?
A. That the property—there had been a settlement made to sell the property and could I come home and take care of it—sign the contract.
Q. Called you "could you come home to sign the contract"?

Rachel L. Taylor.

A. Yes, sir.

page 53 } Q. And he thought then, from the conversation, that it was necessary for you to come from Maryland to sign that contract?

A. Yes, sir.

Q. Then was it, or was it not, understood between you and Mr. Lawson then, if he called you from Maryland, that you were to sign a contract?

A. Yes, sir.

Q. And then, if you had to come down to sign the contract, that was simply a question of signing your name, wasn't it?

A. Yes, sir.

Q. The same as it would be signing your name to endorse a check, wouldn't it?

A. Yes, sir.

Mr. Dillard: It's argument, Judge.

Mr. Crush: I'm asking her questions.

The Court: You may proceed.

By Mr. Crush: (continues examination)

Q. Now, in the light of that, were you or had you during these conversations,—you had asked him to look after this; that is true, isn't it?

A. Yes, sir; I had.

Q. And I want to ask you this. Even though you had asked him to look after it, had you discussed with him the

page 54 } question of who would sign these papers or who would put your signature where it would be necessary to sign; had you ever had any discussion with him about who would sign your name to the papers?

A. Well, I don't know exactly whether or not Mr. King would contact me or Mr. Lawson but still—

Q. Well, answer my question. Had you and Mr. Lawson had any conversation with reference to the question as to who would sign your name; had the question of you signing papers or him signing it before ever been discussed between you?

A. I can't even think that clearly.

Q. Well, just take your time now. I don't want you to get excited. I think everyone understands that you are nervous and just take your time. Do you understand the question I'm asking you.

A. Well, he had discussed with me that he would take care of the matter, Mr. Crush.

Rachel L. Taylor.

Q. All right. But that was that he would talk to Mr. King; is that what you mean?

A. Yes; he did. Mr. King located me through Mr. Lawson. I understand Mr. Lawson called King.

Q. Mr. Lawson?

A. Yes; telling him of my whereabouts.

Q. Well now, I want you to answer this question. Tell me just what the conversation was when you asked page 55 } Lawson, or when it was agreed that Lawson would look after things. Tell the Court just what that conversation was, as best you can.

A. I don't think I can think clearly enough to tell.

Q. Well, just take your time and as best you can relate to the Court and jury what the conversation you had with Lawson was.

A. When the property deal first came up for sale, I understood it was only $100.00 involved in it.

Q. Uh-hum.

A. And Mr. Lawson had managed to work through Mr. King in some way to get a profit out of it over maybe $500.00.

Q. All right.

A. I think Mr. King could explain this better than I can.

Q. Well, we are going to have to take your answers for the time being now, Mrs. Taylor; go on. What further conversation did you have with Mr. Lawson—that's all we're trying to find out now, and not what happened.

A. He said he would let me knew when the matter did go through and he would contact me and he had called me in Maryland and also written me there in Maryland at my sister's.

Q. All right. And what other conversation did you have as far as handling this transaction, or was that all that you had?

A. Pardon me.

page 56 } Q. I say, what other conversation did you have with him pertaining to him looking into the matter for you?

A. That was all and he just said, "Can you come home and sign the contracts."

Q. All right. Now then, had there ever been—let me ask you this. I want you to tell me whether or not and I think you could certainly recall, had there ever been or had you and Lawson ever discussed signing your name—that particular thing; I'm not talking about the general deal.

Rachel L. Taylor.

A. Well, Mr. Crush, he could have said something to me and maybe I didn't hear him. I'd rather you ask him because—

Q. I'm asking you to tell the Court and jury what you remember, what you yourself know, and not something that you may not have heard and may not have understood. I want to know what you yourself recall. Do you personally recall ever having any conversation with Mr. Lawson about signing your name to anything?

A. I just told him to take care of the matter for me and I just assumed that he would.

Q. But that's all the conversation you had there?

A. Yes, sir.

Q. Then I want to ask you whether or not—this is the question I started sometime ago—whether or not you had ever given him anything in writing or whether or not you had ever expressly or specifically told him that he could sign

page 57 } your name—

A. Well,—

Q. Now, I'm not asking that you told him to handle the transaction; I'm asking, did you ever tell him in words to the effect, "You sign my name," or words to that effect?

A. I can't recall but anyway, Mr. Crush, I had written him from Maryland and it seems like I did mention something in the letter, "Would he take care of the matter." I don't know whether I stated to sign my name or not.

Q. Then I'm asking you again, do you have any recollection of ever having told him to sign your name; do you recall doing it? If you don't remember, say so; if you do, say so.

A. I don't.

Q. Ma'am?

A. I do not remember.

Q. Then as far as you can testify to this Court and jury at this time, your answer was that you had no recollection of ever telling him to sign your name?

Mr. Lichtensten: Objection, your Honor, to this statement of Mr. Crush at this time. That is not what she said.

Mr. Crush: Well, I'm putting it in the form of a question, your Honor.

The Court: I think the witness has pretty well answered the question but you can ask it again. Certainly,

page 58 } the Court understood the answer.

Mr. Crush: All right; if the Court understood it,

then I hope the jury did. Of course, the jury understands they are entitled to ask questions, if they wish.

Q. (Continued) Have you ever received from Mr. Lawson an accounting for the $500.00 represented by those checks? Did you understand the question, because I keep turning away from you? Have you ever received from Mr. Lawson an accounting of these checks?

A. An accounting of those checks (indicating) ? Well, speaking of what money he had paid me and everything now, I think it's accumulating more than that.

Q. You think it's accumulated more than that?

A. From what Barry has stated.

Q. The way who stated?

A. Barry, when he was up—

Q. You keep saying, "when Barry was—." You mean when he was here talking to the jury this morning?

A. Yes, sir.

Mr. Crush: Will the Court explain to the witness the purport or the meaning of the opening statement, sir? She keeps relying on that as fact.

The Court: Mrs. Taylor, I want you to answer his questions—

The Witness: Yes, sir.

page 59 } The Court: —as to what you know and not what somebody else said, but what you know.

The Witness: Yes, sir.

By Mr. Crush:

Q. Now, I'm asking you, not what someone else has told you happened to the money and not what someone else has said you owe or don't owe, but has Lawson himself given you an accounting as to what happened to this $500.00? Has he himself done it? Now, it doesn't matter what someone else told you.

A. (There was no response.)

Q. Do you understand the question? Any time you don't understand the question, you just say so.

A. Well, he had advanced me money periodically. When I now had time to think it over, that has accumulated to that amount—maybe more.

* * * * *

page 63 }

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Rachel L. Taylor.

Q. Were you and your husband divorced?

A. Yes, sir; we are.

page 64 } Q. When did you first become acquainted with Mr. Lawson?

A. Let's see—I had gone to see Mr. Messick about obtaining my divorce—that was in '56, and I then went there to ask Mr. Lawson about investgative services and I was sent there by Mr. Messick.

Q. In other words, Mr. Messick, your attorney, referred you to Mr. Lawson?

A. Yes, sir; he did.

Q. For what purpose did you see Mr. Lawson?

A. To do investigative work on my husband and to know of his whereabouts there in Richmond since leaving him.

Q. Did Mr. Lawson go to Richmond?

A. Yes, sir; he did. He made several trips.

Q. What did he charge you for those services?

A. Let's see—when we first went there, I think he obtained a fee of $100.00 or $125.00. We paid him $25.00 once to go to Richmond and I later learned that I did owe him a fee for going there.

Q. Well, was it definitely determined the amount of the fee he was to charge for his services?

A. I can't remember. You'd better ask him.

Q. Well, did you pay him for his services or all of his services; did you pay him in full?

A. I don't think so.

page 65 } Q. Has your husband paid him?

A. Not to my knowledge; no, sir.

Q. Now, when did you begin working for Mr. Lawson?

A. Let's see—it's been about two years back parttime, off and on.

Q. Did you seek employment elsewhere?

A. No, sir; I did not.

Q. Did you and Mr. Lawson have a definite understanding what you were to be paid for your work for him?

A. No, sir.

Q. Were you permanently located in Roanoke at that time?

A. Yes, sir; I lived with my family for sometime and then I stayed in Roanoke.

Q. After you began working for Mr. Lawson, did you take frequent trips from the City?

A. Yes, sir; I did.

Q. In other words, your employment was not continual; it was intermittent?

Rachel L. Taylor.

A. Yes, sir.
Q. You worked from time to time?
A. Yes, sir; I did drive for him.

By Mr. Crush: (interposing)
Q. I didn't hear the answer. What was it; what
page 66 } did you say?
A. Yes, sir; I said I have done some driving for him as well as secretarial work.

Mr. Crush: Thank you.

By Mr. Dillard: (continues examination)
Q. When did you go to Maryland to live with your sister?
A. You mean when was my last trip in Maryland?
Q. Well, we'll say the middle of the Summer of '58.
A. Let's see—I'll think about it directly—wait a minute. If I had my letters. You see he had written me about the house transaction—I would have known.

The Court: I don't know what the object of reading a letter from Maryland is for but let's get down to the issues in this case.
Mr. Dillard: Well, your Honor, it's been developed here—she developed it in the examination in chief—that she owed this man.

* * * * *

Mr. Dillard: Thank you, sir.

Q. (Continued) When did you and your husband buy this property in Roanoke?
A. Let's see—'54, I believe it was.
Q. In the divorce decree, was the property—was
page 67 } there any property settlement made?
A. In the divorce decree?
Q. Yes.
A. No, sir.
Q. Did you know that you owned a half interest in this property in the Summer of '58?

Mr. Crush: Judge, just a minute; I object to this. It's immaterial whether this girl knew or not.
The Court : I think we are going far afield, myself. I think

if you get back to the issues in this case—that is mighty nice to know, but I think it's not relevant to this case and the motion will be sustained.

The Witness: It's just like this. When we did have the property deal, my husband said everything was his and I may as well get used to it but I thought I was entitled to one-half.

Mr. Crush: Just answer his questions.

By Mr. Dillard:

Q. Well, when were you first contacted and by whom with reference to the sale of your interest in the property?

A. Mr. Lawson.

Q. And were you living in Maryland at that time?

A. Yes, sir; I was.

Q. How did he communicate with you?

A. He called me and also he had written to me.

page 68 } Q. What do you mean he called you—by telephone?

A. Yes, sir; by telephone.

Q. Did he tell you what price had been offered for your interest?

A. I learned that I was to receive maybe $100.00 out of the deal.

Q. What understanding did you have with Mr. Lawson for his efforts—did you give him authority to represent you in the sale of this property?

A. Yes, sir; I did.

Q. You talked to him by telephone, did you?

A. Yes, sir; I did.

Q. Did you write to him by letter?

A. Yes, sir; I did write to him several times from there.

Q. In those letters that you wrote to him, did you authorize him to do whatsoever was necessary to effect a sale of the property?

A. If I remember correctly, I believe I did.

Q. Had he called you and told you to come down here to sign the deed, did he not?

A. Yes, sir.

Q. Now, the deed and not a contract?

A. I mean the contract; excuse me.

Q. Did he call you and ask you to come down and

page 69 } sign a deed to the property?

A. Yes, sir.

Q. He did; and you came down?

Rachel L. Taylor.

A. Yes, sir.
Q. And you saw Mr. Lawson?
A. Yes, sir; I did.
Q. What did Mr. Lawson do after you came down?
A. Well, immediately when I arrived from the bus, I had gone on out home and then I called him to tell him I was in town and I would be at the office at such and such a time, and so my father took me in to meet him there at the office and then we went out to Mr. King's.
Q. But did you see Mr. King on that occasion?
A. No, sir; I didn't go in.
Q. Had you known Mr. King before that?
A. No, sir; I had never met him.
Q. Had you heard of him?
A. I had heard of him.
Q. So Mr. Lawson then went in the house to see Mr. King?
A. Yes, sir.
Q. And you remained in the car?
A. Yes, sir. Well, I'll tell you—at that particular time there was a death in the family and I had been a little upset and I didn't care to go in.
page 70 } Q. Well, we appreciate those circumstances. Did Mr. Lawson bring a deed back for you to execute?
A. Yes, sir.
Q. What?
A. He brought the contract for the sale of the house for me to sign.
Q. Did you sign that contract?
A. Yes, sir; I did.
Q. Where did you go from there?
A. Down to the office, 201 Peoples Federal Building.
Q. And now, what understanding did you have of Mr. Lawson—in other words, you were offered $100.00, were you, for your interest?
A. Yes, sir; in the beginning.
Q. And Mr. Lawson advised you that $100.00 was not adequate?
A. That's right.
Q. That you should insist on more?
A. Yes, sir.
Q. And due to his effort, he was able to increase the price of your interest to $500.00?
A. Yes, sir.
Q. And you and Mr. Lawson had an understanding that you were to divide the proceeds—that is the $500.00?

Rachel L. Taylor.

A. Yes, sir. If I recall back correctly, I think
page 71 } Mr. Martin, some attorney in Richmond, had written to him or Mr. Allen, pertaining to the property. They wanted half or something—was to go to him.

Q. When you came down from Maryland, you expected to sign a deed to the property, didn't you?

A. I'm sorry; I didn't hear you.

Q. I say when you came from Maryland, at his request, didn't you expect to sign or execute a deed?

A. Yes, sir.

Q. But instead it was a contract of sale?

A. Yes, sir.

Q. And that contract of sale provided that you were to receive $500.00—

A. Yes, sir.

Q. —as your interest, or representing your interest, and you and Mr. Lawson had an understanding or you told him to do whatever was necessary to effect the sale and to represent you?

A. Yes, sir; I did.

Q. In the sale of the property, and that you and Mr. Lawson would divide the $500.00?

A. Yes, sir.

The Court: Did she answer that question?

Mr. Dillard: She said, "Yes, sir."

Q. (Continued) After you executed the contract, did Mr. Lawson advance any money to you?

page 72 } A. After what?

Q. After you signed the contract—the contract of sale—

A. He had given me $70.00 later—after then—and he had also given me $30.00.

Q. In your conversation with Mr. Lawson, did he ask you for authority to do whatever was necessary to effect a sale of the property?

A. Yes, sir.

Q. And you gave him that authority?

A. I told him just to take care of the matter and let me know about it and anything I felt that he would do would be all right, that I would appreciate him looking into that for me.

Q. Now, Mrs. Taylor, did you return to Maryland after you signed the contract for sale?

A. No, sir; I did not.

Rachel L. Taylor.

Q. You remained in Roanoke?
A. Yes, sir.
Q. Were you in Mr. Lawson's employment?
A. Yes, sir; I was.
Q. And when was the deed presented to you for your signature?
A. The deed?
Q. Yes; the deed to the property now. Did you sign a deed conveying your interest in the property?
page 73 } A. All I can recall signing is the contract to the property.
Q. You don't recall signing a deed?
A. No, sir; I do not.
Q. Well, in your conversation with Mr. Lawson and with other people, do you at all times understand what they say?
A. No, sir; I do not.
Q. Is it possible that during your discussions with Mr. Lawson about this property—about the sale of this property—that he made utterances that you did not understand?
A. It's possible.
Q. So you don't recall signing the deed?
A. I don't know really.
Q. After—well, as a matter of fact, the deed was signed by you and delivered.
A. (There was no response.)
Q. Did you discuss with Mr. Lawson, after the deed was delivered, how much interest he was to get in the sale?
A. Well, we dicsussed the matter there in the office and he said that the property deal hadn't gone through, but I understood that Allen or someone had written him from Richmond through the first count that he was to have and to get—or to have gotten—one-half of the amount.

Mr. Crush: Just a second please; just a minute. I object to that part of the witness's answer in which she
page 74 } she understands someone in Richmond wrote that Mr. Lawson was to get half of the sale. I think that is improper.
The Court: I think that is inadmissible what somebody else told her.
Mr. Crush: That's right.
The Court: She can testify to any understanding she had with Mr. Lawson though.
Mr. Crush: That's right.

Rachel L. Taylor.

By Mr. Dillard: (continues examination)

Q. Did you at any time and have you at any time stated that Mr. Lawson was your agent?

A. Yes, sir; he was.

Q. Did you regard him as your agent?

A. Yes, sir.

Q. Did you regard him as your agent in the sale of this property?

A. Yes, sir.

Q. And his being your agent, you clothed him with full authority?

A. Yes, sir.

Q. To do whatever was necessary to consummate a sale of the property?

A. Yes, sir; I did.

Q. And that his interest would be $250.00?

A. Yes, sir.

page 75 } Q. Now, you say he has—you definitely remember that he has advanced—he advanced $100.00 of that money after you signed the contract?

A. Yes, sir, but at the time I didn't know it was that money and he may have told me that the deal had gone through or stated it was the money against my property and I probably didn't hear him. There's a lot of things I have missed and he would be talking there in the office and I wouldn't hear him.

Q. And he could have said, when he gave you this money, that "this is your interest"?

A. Yes, sir: he could have.

Q. And had he made advancements to you in other instances?

A. Yes, sir.

Q. And on those instances, could he have said that "this represents—"

Mr. Crush: Your Honor, I object to this line of questioning. I don't think it's proper to ask this person if somebody could have said something. I think we should be bound by what she did hear or it is pure speculation.

The Court: Well, he can ask her if she heard certain things.

Mr. Crush: Yes, sir.

By Mr. Dillard:

page 76 } Q. When other advancements were made to you, did you understand Mr. Lawson's word to you?

Rachel L. Taylor.

A. I didn't understand you.

Q. Well, when you gave—when he gave you money, did Mr. Lawson tell you and did you understand fully at all times the source of the money and for what purpose it was given to you?

A. No, sir.

Q. In other words, could he have told you when he made these advancements to you that this money represented your interest in the sale of the property?

A. Mr. Dillard, he could have but because his desk was directly back of mine and I can't hear well enough to hear someone behind me if they were talking to me.

Mr. Dillard : Your Honor, may we have a few minutes?

The Court: Do you want to have a conference with your client?

Mr. Dillard: Yes, sir

Mr. Lichtenstein: You mean a five-minute recess?

Mr. Dillard: Well, yes.

The Court: We can take a recess.

Gentlemen of the jury, in these recesses, I would like to warn you of this—do not discuss this case with anyone or permit anyone to discuss it with you anytime during the course of this trial. If you want to walk out and page 77 } smoke, you may do so, until we can for you to come back.

(A recess was then taken from 11:50 o'clock, A. M., to 11:55 o'clock, A. M.)

Mr. Dillard: Your Honor, we have no further questions of this witness.

Mr. Crush: Come back to the stand, Mrs. Taylor, please for just a moment.

• • • • •

Q. Now, you stated in reply to Mr. Dillard's questions that after you signed the contract—do you want to see this, gentlemen?

(Paper handed to defense counsel.)

Q. (Continued) Now, is this the contract you signed?

(Paper handed to witness.)

Rachel L. Taylor.

A. Yes, sir; it is.
Q. And is that the day you signed it?
A. Yes, sir.
Q. The 9th of August—the date there.

The Court: What was the date of the contract?
Mr. Crush: The 9th of August, your Honor.

Q. (Continued) The 9th is the date on this. Is this your signature (indicating)?
page 78 } A. Yes, sir; that is.
Q. All right. Now, you stated a moment ago that after you signed—if you don't understand me, please say so—that after you signed the contract, you received from Mr. Lawson the sum of $70.00 and the sum of $30.00?
A. Yes, sir.
Q. Was that during the time you were employed by him?
A. No, sir; I wasn't working—wait a minute; I wasn't working during that week.
Q. Do you recall—well now, when did you receive the $70.00 and the $30.00—do you remember which month it was?
A. I'll tell you; it was in August, I feel sure, because I paid on a note at the Troutville Bank but I don't remember the exact day.
Q. Did you go back and work for him then?
A. Along; yes, sir.
Q. All right. Was there any agreement as to how much he would pay you?
A. No, sir; he gave me $50.00 one week and $40.00 the next, and it would just depend on how many hours I stayed in the office then.
Q. Was that after you signed the contract and went back to work during September and October and November?
A. Yes, sir.
Q. And you had no agreement as to how much
page 79 } you would receive each week?
A. No, sir.
Q. And the amount you received was it different sums from time to time?
A. Yes, sir.
Q, Now, this other money that they were talking about that you received. Had you ever had an accounting with him as to just where you stood?
A. No, sir.
Q. Ma'am?

Rachel L. Taylor.

A. No, sir.

Q. You never did have. Now, about these two checks (indicating), I want to ask you this. What month did you find out that these checks had been drawn?

Mr. Dillard: Your Honor, he has gone over that in chief.

The Court: I don't recall that he did; it wasn't very clear. Go and and ask your question.

By Mr. Crush: (continues examination)

Q. What month did you find out or when did you find out about the checks?

A. In November—the 7th of November.

Mr. Crush: All right. Your Honor, I ask that these three items be entered as exhibits.

page 80 } The Court: All right, sir. You can mark them Exhibits 1, 2 and 3. I think the reporter has a little tab that he can put on them.

(The three documents referred to above, consisting of one check for $100.00; one check for $400.00; and one contract were received in evidence and marked, Commonwealth's Exhibits #1, #2 and #3, respectively.)

Mr. Crush: That's all.

RE-CROSS EXAMINATION.

By Mr. Dillard:

Q. Just a moment. Now, Mr. Crush has gone into this about your accounting. Did you have an agreement with Mr. Lawson that he would pay a dental bill of $200.00 for you?

Mr. Crush: Just a moment. Your Honor, I object to that on this ground, that there was nothing on my re-direct examination and there was nothing on my direct—if there had been, he's already had her on cross examination and there certainly was nothing on my re-direct.

The Court: You asked the question if she ever had an accounting.

Mr. Dillard: That's the exact point.

The Court: He can go on.

The Witness: Do I have to answer that?

J. W. King.

By Mr. Dillard: (continues examination)

Q. Yes, ma'am. Answer the question, will you please?

page 81 } A. Well, let's see. Back in the Summer, I had gotten an *abcess* in my front tooth and I had gone to Mr. Lawson and told him that I wouldn't be working there in the office because of that tooth and that I had been to Dr. Fitzgerald and he said he could fix my teeth and everything for me for about $200.00, and Mr. Lawson said well, whenever I could work, I could work for him for that and he would pay it. He did say that.

Q. Did he pay any other medical bills for you?

A. Yes, sir; I think he did, at the Roanoke Memorial when I went there for an operation.

Q In other words, Mr. Lawson has been kind to you and he has looked after you when others didn't?

A. Yes, sir; he has.

Q. And he was responsible for getting you into the Roanoke Hospital?

A. Yes, sir; he was.

Q. And also paying some of the bills there?

A. Yes, sir; he was.

Mr. Dillard: No further questions.

Mr. Crush: All right; that's all. Stand aside.

The witness stands aside.

MR. J. W. KING,

called as a witness in behalf of the Commonwealth, being duly sworn, testified as follows:

DIRECT EXAMINATION.

page 82 } By Mr. Crush:

Q. State your name and address, sir.

A. J. W. King, 508 Hershberger Road, Northwest.

Q. What is your business, Mr. King?

A. I'm a real estate broker.

Q. Are you the real estate broker that handled the transaction involving the sale of the property belonging to Mrs. Rachel Taylor and her husband—Mr. Kermit Taylor?

Q. Is that an agreement for a contract of sale (paper handed to witness)?

A. This is a contract for sale.

Q. Was that delivered to you?

J. W. King.

A. It was delivered to me by Mr. Lawson.

Q. All right. It has—does it have the signatures of the parties involved in the transaction?

A. Yes; all parties have signed and I got her signature first because there had been a prior contract and the husband in Richmond—the husband was in Richmond. So this time I got her signature and then sent it to Richmond and Mr. Lawson identified himself that he witnessed her signature.

Q. All right, sir. Who delivered that contract to you, sir?

A. Mr. Lawson.

Q. What was the conversation that you had
page 83 } with—did you have any conversation with him when he delivered it to you?

A It was just that he wanted to know when she could get a settlement. This was a cash assumed loan and I assume in a few days after getting her signature, of course; we had one prior contract we never did get her to sign because the amount of money was not enough to satisfy them.

Mr. Lawson was the go-between; I was the agent. Actually, as you will see on this one, I received a $1.00 consideration, but he said she needed some money so I advanced him $100.00.

Q. All right, now. How did you advance that; was that in cash or by check?

A. A check made payable to Mrs. Taylor.

Q. In the amount of how much?

A. $100.00.

Q. Is this the check?

(Exhibit #1 handed to the witness.)

A. Yes, sir; that's the check.

Q. And to whom is it made payable, sir?

A. Made payable to Rachel L. Taylor.

Q. And to whom did you deliver it?

A. To Mr. Lawson.

Q. Now, was that delivered at the time he brought this agreeement to you, signed by Mrs. Taylor?

A. The way it was—I'll tell you—he wouldn't
page 84 } agree to have her sign the contract or she wouldn't agree until they were sure of some money.

Q. Let me ask you this. You say he wouldn't agree or she wouldn't agree; who was your conversation with?

A. I was talking to him all the time. I never talked or contacted Mrs. Taylor.

J. W. King.

Q. Mr. Lawson, all right. Now go ahead—the conversation you had that he wouldn't or couldn't agree to sign it unless—

A. That's right.

Q. —go ahead from there.

A. So finally I called him up. I said, "Listen, I'll gamble $100.00 of my own money."

Q. Where did this term of $100.00; where was that said about the money before the contract would be signed?

A. She needed some money at that time.

Q. Who told you that?

A. Mr. Lawson.

Q. All right. That was when you were trying to get the contract signed; is that correct?

A. That's right.

Q. All right. Now what was—go ahead, sir.

A. So I gave him the $100.00 and he had the contract signed and brought it back to me. Each party to it had copies or had a copy. I had had one and this is mine (in-
page 85 } dicating). She kept one and Mr. Taylor, in Richmond, kept one.

Q. Uh-hum. All right now, what was the conversation about the money; you just said you called him about gambling money of your own. What was it?

A. I said, "I'll take a chance. If she needs it, I will advance $100.00 of my own." I only collected $1.00 but I just—I knew it was all right because I had a good buyer.

Q. All right, sir. After you called him and told him that, did he deliver the contract?

A. Yes.

Q. And did you deliver the check to him?

A. I did. I noted the two here (indicating) and I asked him to sign it—I asked him about the woman and I said, "Are you sure she signed the contract?" And he said yes, so he signed it as a witness.

Q. All right, sir. Did you deliver any other checks to Mr. Lawson?

A. There was one subsequent check for $400.00.

Q. All right, sir. I hand you this, sir. (Exhibit #2 handed to the witness.) Is this the other check that you delivered to him?

A. Yes; that's August 21st.

Q. Now, when was the contract actually consummated; when was the deed signed and delivered?

J. W. King.

A. Within two weeks from this original check
page 86 } and then I'd say about two weeks—we could check
over here with the Clerk of the Court and get the exact date.

Q. With reference to this August 21st check, do you recall—

A. I had had the money perhaps twenty-four hours; it had been settled the day before that.

Q. In other words, let me ask you this. When you delivered this check, had the deed already been signed?

A. Oh, yes.

Q. And this is dated the 21st of August?

A. That's right.

Q. To whom did you deliver the $400.00 check?

A. To Mr. Lawson—made payable to Mrs. Taylor.

Q. Made payable to Mrs. Taylor?

A. Yes; the deed was properly executed by a Notary Public in the Peoples Federal *Buiding;* I didn't know him but he is a notary.

Q. I don't want you to say anything that was said. Did you have a conversation with Mrs. Taylor in November of 1958?

A. Yes; I did—two of them, in fact.

Q. I want you to state whether or not that was pertaining to questions on her part as to the settlement, where her money was for the sale of the property?

A. Yes; she called me and asked me when she was going to
get her money and I said, "I've already paid it."
page 87 } Q. That was in November?
A. Yes, sir.

Q. We can't go into what she told you at the time, sir. Those checks were negotiated and the money taken from the account on which they were drawn?

A. She and another lady came to my house.

Q. Well now, you can't tell about that—that would be hearsay I say, these checks were run on through the bank?

A. Oh, yes.

Q. And the money was taken from your account?

A. The dates of payment are shown on them.

Q. All right.

The Court: What dates were they paid?

By Mr. Crush: (continues examination)

Q. Look at it Can you make that out (indicating)?

A. It seems to be the 14th; yes.

J. W. King.

Q. Which month?
A. August 14th.
Q. All right, sir.
A. This other one is dated August 21st—seems to have been paid—I can't read that myself, stamped through there.
Q. Here, hold it here to the light.
A. Paid the same day, 8/21/58—the same day that I wrote the check.

Mr. Crush: All right, sir. I have no further page 88 } questions of this witness, your Honor.

CROSS EXAMINATION.

By Mr. Dillard:
Q. Mr. King, you dealt with Mr. Lawson altogether?
A. Yes.
Q. You regarded him as her agent to consummate the transaction?
A. Yes.
Q. You did not talk to her on any occasion?
A. At no time; I couldn't locate her.
Q. Did you know her personally?
A. No; I didn't. I knew her husband but I did not know her.
Q. Now, talk to the jury in that direction will you please?
A. Yes.
Q. How did you know—why did you contact Mr Lawson?
A. Well, actually prior to this contract, I had a smaller amount offered and couldn't locate her through her family in Cloverdale so I ran an ad in the newspaper in the personal columns and Mr. Lawson answered it. For personal reasons, she didn't want to have anyone know where she was. Now, that had nothing to do—well, that's something besides this. She didn't want to see me but she did want to sell the house.
Q. And I believe you offered her $100.00 for her page 89 } interest?
A. Originally.
Q. Yes.
A. $300.00.
Q. And Mr. Lawson told you that she would not consider that, that that was not adequate but he would consider a higher offer?

J. W. King.

A. Yes; $500.00. It was stipulated then—he said $500.00 for her equity and he said he could then get her to sign the contract, if she would get a net of $500.00.

Q. Because of his efforts then, the price was increased to $500.00 from $300.00?

A. That's right. There was several months elapsed between. It was told to me she would accept $500.00 and no less.

Q. Mr. Lawson told you that?

A. Yes.

Q. And, as stated before, you were dealing solely with Mr. Lawson; you looked upon him as her agent and representing her?

A. I expected him to make the contacts for me since I couldn't find her and had been to her home and couldn't find her, and he subsequently did.

Q. Mr. King, you stated htat you advanced $100.00 of your own money and that you would take the gamble

A. Right.

Q. Had the contract fallen through, to whom would you have looked for that return?

page 90 } A. Nobody. That would have been just water over the dam.

Q. You're quite generous. (Laughter)

A. It's a calculated risk, you know. I have done it before and got stuck, too.

Q. Was the check given to Mr. Lawson at the time she signed the contract?

A. The $100.00 was.

Q. The $100.00?

A. Yes; it was. The $400.00—he allowed me a few days to get the deed executed and delivered and to consummate the deal. It took two or three days—maybe four.

Q. You did not give him the $100.00 until after the contract had been signed and returned to you, did you?

A. No. If he'd bring me the contract, then I'd give him the check.

Q. And you did not give him the check the day that she was in the car?

A. Now, that would be hearsay. He admitted—she admitted that she was in the car but I did not see her.

Q. Well, you had been informed, for personal reasons, she did not want to be seen?

A. Yes.

Captain Kermit Allman.

Mr. Dillard: No further questions.
Mr. Crush: All right. That's all, sir.

The witness stands aside.

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CAPTAIN KERMIT ALLMAN,
called as a witness in behalf of the Commonwealth, being duly sworn, testified as follows:

* * * * *

page 92 } Q. You are Captain Kermit Allman?
A. Yes, sir.
Q. You are Captain of Detectives in the City of Roanoke?
A. Yes, sir.
Q. All these people know you by now. Captain, did you have a conversation with Raye Lawson pertaining to these charges?
A. Yes, sir.
Q When was that, sir?
A. On November 20, 1958, starting about 5:00 P. M.
Q. All right. At that time, did you question him with reference to having signed these checks?
A. Yes, sir.
Q. What statement did he make with reference to having placed his name on the checks?
A. He—his name—he admitted readily that he placed his name on the check—
Q. Is that—
A. —on both checks.
Q. Is that on the back of the checks?
A. Yes, sir.
Q. All right. Did you ask him with reference to the signature of Rachel Taylor, which is on those checks?
A. Yes, sir.
page 93 } Q. What statement, or what was his reply to that?
A. He first said he didn't know whether he signed them or not but then, later during the interrogation, he admitted he had signed them.
Q. Did you show the checks to him?

Captain Kermit Allman.

A. Yes, sir.

Q. And that he admitted signing that name on there before you showed the checks to him?

A. He admitted signing his own.

Q. All right. Had he admitted that he signed Mrs. Taylor's name before you showed him the checks with the signatures?

A. No, sir.

Q. Then did he admit that he had signed her name?

A. Yes, sir; he did.

Mr. Crush: All right, sir; I think that's all the questions I have right now, sir.

CROSS EXAMINATION.

By Mr. Lichtenstein:

Q. Captain, did Mr. Lawson ever deny signing Mrs. Tayor's name?

A. He didn't deny it; no, sir.

Q. In other words, he just didn't get around to it, is that right? When he got to it in the normal course of routine investigation that he then did admit it?

page 94 } A. Well, after I had started comparing the handwriting and called his attention to the fact that it was my opinion that if he signed his own name that he certainly signed her name to these checks, then he admitted it.

Q. But he never did—he never denied it?

A. No, sir.

Q. In the routine investigation which you made that evening, did you question Mr. Lawson as to whether he had the authority to do this?

A. Yes, sir.

Q. What was his answer?

A. His answer was that he acted as her agent in the handling of the contracts for the sale of the property.

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Q. In other words, this was taken out before the Judge of The Municipal Court by Mrs. Taylor; is that correct?

Captain Kermit Allman.

A. That's correct.

Q. And at that time, in order for this warrant to be written the way it is, she told him that Mr. Lawson was acting as her agent?

page 96 } A. Yes, sir.

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RE-DIRECT EXAMINATION.

By Mr. Crush:

Q. Captain, you say that warrant bears date of November 11th or 12th, 1958?

A. The 12th, 1958.

Q. On the 12th of November, had you had a conversation with Mrs. Taylor prior to the issuance of this warrant?

A. Yes, sir.

Q. Did you also understand she had had a conversation with the Commonwealth's Attorney?

A. Yes, sir.

Q. Was it a result of the conversation that you had with her that she was taken to the Judge for the purpose of obtaining a warrant?

A. Yes, sir.

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By Mr. Crush:

Q. I will rephrase it. I want to ask you whether or not—let me ask you this, this way—do you know who requested that an embezzlement warrant be issued against Raye O. Lawson, or who suggested that an embezzlement warrant be issued?

A. Mr. Cuddy, the Commonwealth's Attorney—Mr. C. E. Cuddy.

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Mr. Dillard: Judge, the defendant would like to move the Court to strike the Commonwealth's evidence. The chief prosecuting witness for the Commonwealth has stated that the defendant made advancements to her in excess of $250.00, which she was to receive as her part of the proceeds of the transaction, that at the time she received those page 101 } advancements the defendant told her specifically on one or two instances that it was—that it did represent part of the proceeds, and on other occasions when he advanced sums in excess of it, he could have very well have told her that it represented her interest and it was money from the sale of the property.

And, for that reason, the Commonwealth has not shown that the defendant forged the signature of Mrs. Taylor to those checks with the intent to deprive her of her property, or prejudice any of her rights. The defendant has, by the chief prosecuting witness's own testimony, advanced and made advancements to her far in excess of what he actually owed her. She testified that he was—that the proceeds were to be divided and to substantiate these indictments the Commonwealth has got to prove that the defendant forged these signatures with the intent to deprive Mrs. Taylor of her property and thus far the Commonwealth's evidence has fallen short.

The Court: The motion will be overruled. Is there anything else before we go to lunch?

Mr. Crush: No, sir.

(A recess for lunch was then taken from 12:30 o'clock, P. M., to 1:00 o'clock, P. M.)

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Mr. Dillard: First of all, I would like for the record to show that we excepted to the Court's ruling to strike the evidence.

The Court: Yes, sir. The record shows that.

Mr. Lichtenstein: You mean to remake the motion?

The Court: No; he's excepting to it.

Mr. Dillard: I had forgotten that at lunchtime to except and I except now.

The Court: All right.

OBJECTIONS AND EXCEPTIONS TO INSTRUCTIONS.

(Instruction No. 1 for the Commonwealth was tendered and given, without objection.)

page 103 } The Court: Any objection to Number 2, gentlemen? If so, state it.

Mr. Dillard: I don't have any objection to Number 2.

The Court: You are going to have to use the word "forge" in this one because it refers back to the first instruction.

Mr. Lichtenstein: The only thought—and I don't pose this as an objection, your Honor—is the fact that one does not depend on the other and in this case it should.

The Court: Well, it's got to.

Mr. Crush: They've got to believe it was forged.

The Court: They've got to believe he forged it or he couldn't utter it, and this is all one offense. It is not one that I forged or you forged and then somebody else uttered it.

Mr. Dillard: This is all the Commonwealth is offering?

Mr. Crush: Yes.

(Instruction No. 2 for the Commonwealth was given.)

The Court: Let's have the instructions for the defendant.

I am going to give Commonwealth's Instruction Number 1, as amended, at the *requst* of the defendant, changing the word "forged" to the word "signed"—as Number page 104 } 1 for the Commonwealth.

The instruction on uttering, Number 2, which is also given for the Commonwealth.

Number 3 would be an instruction which is now being drafted for the defendant.

Mr. Lichtenstein: Yes, sir.

The Court: Instruction Number 4 is on the burden of the Commonwealth to prove certain things as amended by the Court for the defendant, and it will be granted.

Instruction Number 5, which is the presumption of innocence for the defendant will be granted.

Instruction Number 6, on the suspicion or probibility of guilt, if not sufficient, will be granted for the defendant.

Instruction Number 7, the instruction that the fact that the defendant did not testify raises no presumption against him, will be granted for the defendant, so as I see it there are two instructions granted for the Commonwealth and five for the defendant.

Now, gentlemen, before we go any further, do you have any objections to the instructions offered by the Commonwealth—the two instructions offered by the Commonwealth?

Mr. Lichtenstein: No, sir.

The Court: All right, sir. Mr. Crush, do you have any objections to the instructions offered by the de-
page 105 } fendant, or granted for the defendant?

Mr. Crush: Give me just a second, Judge; let me read this one.

The Court: Yes, sir.

Mr. Crush: No; I don't think so, Judge.

The Court: All right, sir. Gentlemen, the instructions Numbers A, B, C, D and E, offered by the defendant, are refused.

Mr. Lichtenstein: We respectfully take exception to the Court's ruling and reserve that for the appeal.

Mr. Dillard: We just except to the Court's ruling.

Mr. Lichtenstein: I was told to say, "reserve it for appeal."

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page 110 }

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The Court: Gentlemen, you waive the call in
page 111 } this case?

Mr. Dillard: Yes, sir.

The Court: Let the defendant stand up.

The Clerk of the Court: Gentlemen of the jury, have you agreed upon a verdict?

The Jury: We have.

The Clerk of the Court: (Reading):

Commonwealth of Virginia *v.* Raye O. Lawson under the forgery and utterance:

We, the jury, find the defendant guilty as charged and fix his punishment at two years in the penitentiary.

R. V. DELL
Foreman.

On the second charge, Commonwealth of Virginia *v.* Raye O. Lawson, forgery and uttering a forged instrument:

We, the jury, find the defendant guilty as charged and fix his punishment at two years in the state penitentiary.

R. V. DELL
Foreman.

page 112 } Gentlemen of the jury, is this your verdict?
The Jury: Yes, sir.
The Court: Is there any motion before the jury is discharged?
Mr. Dillard: No, sir.
The Court: All right, gentlemen of the jury, you are discharged *for* further consideration of this case.
The Court wishes to thank you for your attendance and for your patience with the Court. You will be discharged until tomorrow morning at 10:00 o'clock and return to The Hustings Court.

(The jury retired from the courtroom at 4:00 o'clock, P. M.)

The Court: Gentlemen, do you have any motions?
Mr. Dillard: Yes, sir; we'd like to make a motion to set the verdict aside as being contrary to the law and the evidence.
The Court: Do you want to argue it?
Mr. Dillard: Yes, sir.
The Court: Do you want to argue it orally?
Mr. Dillard: Yes, sir; later.
The Court: All right, sir. Do you want to set a date for it?

(Here ensued a long discussion, off the record, pertaining to a date for oral argument on the motion to set the verdict aside.)

page 113 } The Court: All right, we will adjourn then to reconvene so far as this particular Court is concerned on the first day of April at 9:00 o'clock.

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A Copy—Teste:

H. G. TURNER, Clerk.

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RULE 5:12—BRIEFS

§1. Form and Contents of Appellant's Brief. The opening brief of appellant shall contain:

(a) A subject index and table of citations with cases alphabetically arranged. The citation of Virginia cases shall be to the official Virginia Reports and, in addition, may refer to other reports containing such cases.

(b) A brief statement of the material proceedings in the lower court, the errors assigned and the questions involved in the appeal.

(c) A clear and concise statement of the facts, with references to the pages of the printed record when there is any possibility that the other side may question the statement. When the facts are in dispute the brief shall so state.

(d) With respect to each assignment of error relied on, the principles of law, the argument and the authorities shall be stated in one place and not scattered through the brief.

(e) The signature of at least one attorney practicing in this Court, and his address.

§2. Form and Contents of Appellee's Brief. The brief for the appellee shall contain:

(a) A subject index and table of citations with cases alphabetically arranged. Citations of Virginia cases must refer to the Virginia Reports and, in addition, may refer to other reports containing such cases.

(b) A statement of the case and of the points involved, if the appellee disagrees with the statement of appellant.

(c) A statement of the facts which are necessary to correct or amplify the statement in appellant's brief in so far as it is deemed erroneous or inadequate, with appropriate references to the pages of the record.

(d) Argument in support of the position of appellee.

The brief shall be signed by at least one attorney practicing in this Court, giving his address.

§3. Reply Brief. The reply brief (if any) of the appellant shall contain all the authorities relied on by him not referred to in his opening brief. In other respects it shall conform to the requirements for appellee's brief.

§4. Time of Filing. As soon as the estimated cost of printing the record is paid by the appellant, the clerk shall forthwith proceed to have printed a sufficient number of copies of record or the designated parts. Upon receipt of the printed copies or of the substituted copies allowed in lieu of printed copies under Rule 5:2, the clerk shall forthwith mark the filing date on each copy and transmit three copies of the printed record to each counsel of record, or notify each counsel of record of the filing date of the substituted copies.

(a) If the petition for appeal is adopted as the opening brief, the brief of the appellee shall be filed in the clerk's office within thirty-five days after the date the printed copies of the record, or the substituted copies allowed under Rule 5:2, are filed in the clerk's office. If the petition for appeal is not so adopted, the opening brief of the appellant shall be filed in the clerk's office within thirty-five days after the date printed copies of the record, or the substituted copies allowed under Rule 5:2, are filed in the clerk's office, and the brief of the appellee shall be filed in the clerk's office within thirty-five days after the opening brief of the appellant is filed in the clerk's office.

(b) Within fourteen days after the brief of the appellee is filed in the clerk's office, the appellant may file a reply brief in the clerk's office. The case will be called at a session of the Court commencing after the expiration of the fourteen days unless counsel agree that it be called at a session of the Court commencing at an earlier time; provided, however, that a criminal case may be called at the next session if the Commonwealth's brief is filed at least fourteen days prior to the calling of the case, in which event the reply brief for the appellant shall be filed not later than the day before the case is called. This paragraph does not extend the time allowed by paragraph (a) above for the filing of the appellant's brief.

(c) With the consent of the Chief Justice or the Court, counsel for opposing parties may file with the clerk a written stipulation changing the time for filing briefs in any case; provided, however, that all briefs must be filed not later than the day before such case is to be heard.

§5. Number of Copies. Twenty-five copies of each brief shall be filed with the clerk of the Court, and at least three copies mailed or delivered to opposing counsel on or before the day on which the brief is filed.

§6. Size and Type. Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

§7. Effect of Noncompliance. If neither party has filed a brief in compliance with the requirements of this rule, the Court will not hear oral argument. If one party has but the other has not filed such a brief, the party in default will not be heard orally.

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