

HORATIO G. HUTCHINS, Appellant,
v. REPUBLIC OF LIBERIA, Appellee.

APPEAL FROM THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT,
MONTERRADO COUNTY.

Argued December 11, 12, 16, 17, 1935. Decided January 3, 1936.

1. Absence of a material witness for the defendant is a good ground for the continuance of a criminal cause; but it must be shown that the evidence expected to be given is so material that its exclusion would prejudice defendant's case; especially it is not error to deny the application if defendant had previously urged the trial during the absence of the same witness.
2. The clerk of the court is not a part of the court, but only an official to record and authenticate its doings; for a court is composed of one or more judges, and those only.
3. When there is an assistant clerk appointed and paid by the government, the business of the court is not interrupted by the illness of the clerk.
4. Corroboration is not dependent upon the number of witnesses.
5. A motion in arrest of judgment based on variance between evidence and the charge in the indictment will be denied.

This is an appeal from a judgment of conviction of forgery in the Circuit Court of the First Judicial Circuit, Montserrado County. *Judgment affirmed.*

P. Gbe Wolo, Wm. V. S. Tubman, and D. B. Cooper for appellant. *The Attorney General and R. F. D. Smallwood*, County Attorney for Montserrado County, for appellee.

MR. JUSTICE RUSSELL delivered the opinion of the Court.

At the November term of the Circuit Court for the First Judicial Circuit, Montserrado County, 1933, Horatio G. Hutchins, the appellant in the above entitled case, was indicted by the grand jury of the County of Montserrado for the crime of forgery, and on the 17th day of November, 1934, was arraigned and pled "not guilty." A jury was then impanelled to try the issue

joined between the appellant and the Republic of Liberia, appellee. This trial resulted in the conviction of the appellant, whereupon he excepted to the verdict of the petty jury as well as the final judgment of the court below and brought the case before this Court on appeal for its review.

The records in this case show that during the month of June, 1935, while Horatio George Hutchins, defendant, now appellant, was employed as the typist to the Bureau of Internal Revenue of the Republic of Liberia, two Liberian Government Treasury Department cheques, to wit: No. 19098, value \$179.40 and No. 19099, value \$300.00 were issued in favor of Paramount Chiefs Wesseh Gofah and Sembloh respectively, both being of the District of River Cess within Grand Bassa County.

On the 6th day of June, 1933, Edward B. McClain, the official in charge of the said Bureau of Internal Revenue, signed for and received the aforesaid cheques from the aforesaid Treasury Department paymaster's office, and handed them to Horatio George Hutchins, the Bureau typist, with instructions that he, the typist, should write a covering letter to transmit said cheques to the Collector of Internal Revenue for the River Cess District, who would in turn deliver them to their owners, the payees. The letters having been written, were signed by the aforesaid official in charge with the cheques appended thereto and again returned to the typist, Mr. Hutchins, now defendant and appellant, to be promptly sent to River Cess through Messrs. West and Company, Ltd., Monrovia.

About a month later, the Collector of Internal Revenue at River Cess acknowledged the receipt of the letter of advice from the Bureau stating that the cheques in question had been forwarded through Messrs. West and Company, Ltd., Monrovia, and that this Company would instruct their agent at River Cess to cash the aforesaid cheques, but the Collector also informed the official in

charge of the Bureau that the cheques were not attached as advised, and consequently were not received at River Cess. This information received, the official in charge showed defendant Hutchins the letter of the Collector at River Cess, and requested Hutchins to explain the disappearance of the cheques, whereupon defendant began to assure, and endeavored to convince, the official in charge of the Bureau that he had assuredly dispatched the cheques with the covering letter to River Cess through Messrs. West and Company, Ltd., Monrovia, in accordance with the instructions given him. He went on further to say that the Collector at River Cess was a personal friend of his and had written him, the defendant, a personal letter "stating that he had received these two cheques and delivered them to Gofah Wesseh and Sembloh"; that Messrs. West and Company, Ltd., Monrovia had signed for the letter containing the said two cheques. These statements all proved to be false because when the official in charge asked for the personal letter said to be written him by the Collector at River Cess, he could not produce it. The official in charge testified as follows on this point:

"Hutchins further promised to bring me that letter at 2 o'clock of that day; when he returned to office he failed to bring the letter saying that as he lived way out on the beach he sent for the letter but the wrong letter had been brought him. So he would go that evening and bring me the letter that following morning. I, in the meanwhile, dictated a letter which he type-wrote and despatched to the Collector of Internal Revenue, River Cess, making inquiries about the cheques; that was 8:30 in the evening, just at that time Hutchins asked for an excuse to step down the water side. I did not grant him the permission, I told him to wait until 4 o'clock when he would leave office for the day. About ten minutes later I called for Hutchins but was told that he had gone; whereupon I

ordered the Chief Clerk of the Bureau to note a fine of fifty cents against him for leaving the office without permission. On the next morning, I was told that Hutchins had boarded a steamer and sailed for Freetown, Sierra Leone, in company with his wife." See evidence of E. B. McClain, Record, p. 6.

As to the letter having been entered in the despatch book by Mr. Hutchins and forwarded to Mr. Gross, the cashier of West and Company, Ltd., the evidence discloses that Mr. McClain testified as follows:

"When I received the letter from the Internal Revenue Collector, River Cess that West and Company had sent down advice for the encashment of the two cheques in favor of Paramount Chiefs Wesseh Gofah [*sic*] and Sembloh but that he has not seen the cheques themselves, I referred the Collector's letter to the typist, Mr. Hutchins, and inquired from him what had become of the Bureau's letter with those cheques addressed to the Internal Revenue Collector, River Cess. Mr. Hutchins opened the despatch book and pointed out to me the signature of Mr. Gross of West and Company, and stated that that signature was an acknowledgement by Gross of the envelope containing the letter and cheques in question. By comparing the dates of the Internal Revenue Collector at River Cess's letter to me on the subject, I was of the opinion that the two letters had crossed each other and that the cheques in question would soon reach the Internal Revenue Collector at River Cess.

"(Q) Did you have any reason, as official in charge of the Bureau of Internal Revenue, to doubt the genuineness of the signature of Mr. Gross of West and Company, which appeared in your despatch book?

"(A) No, but I subsequently discovered that Mr. Gross' signature pointed out to me by Hutchins that typist was not for the particular letter

containing these two cheques. I found this out after Hutchins had absconded.

"(Q) You found that particular signature to be for what letter?

"(A) In the office's despatch book whenever a letter is entered for despatch, the file's reference number of the letter is quoted in the despatch book. I found out that the file reference number of that particular letter containing the cheques had never been entered in the despatch book, so that Mr. Hutchins must have pointed out at random one of the many signatures of Mr. Gross in the despatch book.

"(Q) You then swear that the reference filing number of the particular letter is found to be in no despatch book of the Bureau of Internal Revenue?

"(A) Yes." *See* evidence of E. B. McClain, Record pp. 8-9.

Decidedly, then, Mr. Hutchins had abstracted the cheques and forwarded only the advice to River Cess through West and Company, Ltd., Monrovia, because, as was afterwards discovered, each cheque bore his signature when presented on different dates to the cashier at West and Company, Ltd., Monrovia, whereas no such endorsements were on said cheques when they were delivered to Mr. Hutchins attached to the letter of advice for the Collector at River Cess.

The records further show that the cheque of Gofah Wesseh was cashed in Monrovia fourteen days after the letter supposed to contain it was despatched; and that of Chief Sembloh was cashed on the 10th day of October at Monrovia also. It is also to be seen from the records that on the evening of the 9th of October, 1933, while the official in charge of the aforementioned Bureau was at the residence of Inspector E. G. W. King in Monrovia, the appellant, in company with one Boe Duncan and an-

other man whom he, the appellant, took along with him to personate Paramount Chief Sembloh, approached the official in charge of the Bureau when defendant introduced the said man to the official in charge of the Bureau as being the Paramount Chief Sembloh who had come from River Cess a night before for the purpose of encashing his cheque valued at \$300.00. It is hard to explain how cheques which defendant said had been sent to River Cess and acknowledged to him, Hutchins, by personal letter were still in Monrovia at West and Company, Ltd., for encashment with the signature of the forwarding officer—Mr. Hutchins—endorsed on each of them. Nor was there any advice from River Cess that the cheques had subsequently been received and delivered to the payees and that they were proceeding to Monrovia to have them cashed. In fact there could be no basis for the last supposition, since the firm of West and Company, Ltd., at River Cess had been advised to cash said cheques upon presentation at River Cess. Mr. Hutchins, on the evening aforesaid at the residence of Inspector King, entreated Mr. McClain to write a note to Mr. Hurbert Gross, the cashier at West and Company, Ltd., so as to enable him to get the said cheque of Sembloh encashed; and further impressed Mr. McClain that that was the request of the said cashier, Mr. Hurbert Gross, whereupon the official in charge intimated to defendant Hutchins to defer the matter until the next day.

On the following day, which was October 10th, 1933, defendant Hutchins appeared again before the official in charge with the same man whom he used to personate Paramount Chief Sembloh as on the evening previous, whereupon the official in charge, Mr. McClain, told Mr. Hutchins that he, McClain, was not acquainted with the said Chief Sembloh, and defendant Hutchins laboriously and continuously assured Mr. McClain that the man was Paramount Chief Sembloh because said Chief had been to Monrovia before; whereupon the said

official in charge wrote a personal note to Mr. Hurbert Gross, the cashier, as requested by Mr. Hutchins, the defendant now appellant, based upon the information and several assurances previously given in apparent good faith by an employee of Government to his superior in office, and by whom honesty, truthfulness and straightforwardness are expected to be reflected in the service, especially in such an important Bureau of Government as that in which the services of the defendant, now appellant, were engaged.

About ten minutes after the official in charge had written the note to the aforementioned cashier of Messrs. West and Company, Ltd., upon defendant's suggestion, Inspector King called the official in charge aside and cautioned him against his writing the note to the cashier of Messrs. West and Company, Ltd., for the encashment of the cheque of Paramount Chief Sembloh because, as the Inspector said, the man whom defendant Horatio Hutchins produced was not Paramount Chief Sembloh because he, Inspector King, knew Paramount Chief Sembloh in person. In consequence of said advice the official in charge at once proceeded to Messrs. West and Company, Ltd., to stop the encashment of the cheque in question; but unfortunately, he was too late; the cashier informed the official in charge that he had already cashed the cheque and the money had been hurriedly drawn and taken away by Mr. Hutchins, the appellant, and that the said Mr. Hutchins had left in company with the supposed Paramount Chief Sembloh and the office boy of the Bureau, Boe Duncan.

Subsequently the official in charge returned to his office where he met Mr. Hutchins and queried him about the man whom he had taken to personate Paramount Chief Sembloh, and informed him of the conversation had with Inspector King to the effect that the man whom defendant Hutchins produced and designated as such was not Paramount Chief Sembloh, for he, the Inspector, knew the

said Paramount Chief personally. The appellant again assured the official in charge that this man was Paramount Chief Sembloh.

On the afternoon of the 10th of October, 1933, being the very day cheque number 19099 valued at \$300 was encashed by appellant Hutchins, the official in charge instructed said typist Hutchins to write a letter to the Collector of Internal Revenue at River Cess, making inquiries about the cheques and their owners; the appellant asked permission to go out of the office to the water side, which permission was denied him; whereupon defendant of his own accord unceremoniously left the office on the same afternoon and boarded a ship along with his wife and sailed for Freetown, Sierra Leone. After defendant returned to Liberia from his Sierra Leone trip, then it was that he was arrested and later indicted at the November term of the Circuit Court for the First Judicial Circuit, 1933, for the crime of forgery as aforesaid. This is in substance the brief history of the case now at bar.

The defendant, having been tried and convicted as aforestated, and having excepted to several adverse rulings and the final judgment of His Honor the trial Judge, tendered a bill of exceptions containing forty-one counts, and same was approved on the 6th day of December, 1934.

In count one of the bill of exceptions the appellant says that:

“Because when on the 19th day of November A.D., 1934 at the call of the case for trial, defendant’s counsels moved the court not to take up the case of Forgery, as witness Victoria Hutchins, one of defendant’s witnesses for whom a subpoena had been issued and returned by the Sheriff as being without the bailiwick of the court, is a material witness for the defence, and without whose testimony defendant’s interest would be adversely affected, but in order not to delay trial, he is prepared to go into the other case of embezzlement, for the reason that his witnesses required

in this particular case were all within the bailiwick of the Sheriff of the County; Your Honour denied the request of the defendant and ordered the trial to proceed, to which the defendant excepted."

The law governing continuance in all legal controversies has been frequently expounded by our courts in this jurisdiction, and we assume it to be so well settled as to need no restatement. Among those grounds is the absence of a material witness at the trial. We feel no hesitancy in saying that the grounds set out in count one of the appellant's bill of exceptions would have been supported by law, and would have been granted by the trial judge if there were no other good reasons known to him why said motion should not have been granted. By inspection of the records of the case, however, we find that during the August 1934 term of the aforesaid Circuit Court, the defendant, now appellant, filed a motion or application for hearing in the *absence* of Victoria Hutchins whose absence at the November term was the basic ground of his motion for continuance and the denial of which motion he regards as prejudicial to his interest. Although there is nothing on the records to show that Victoria Hutchins was legally placed under the jurisdiction of the trial court by the returns of the ministerial officer of said court to the writ of subpoena issued for her, or otherwise, nor is there anything to show that any material evidence was expected to be given by the said Victoria Hutchins, the exclusion of which has prejudiced his interest. We are of opinion from the circumstance of this case that the trial judge did not err in refusing to continue the case at the November term, since Victoria Hutchins was still in Sierra Leone when the application for trial was made at the August term of court.

In count thirty-eight of the appellant's bill of exceptions he says:

"And also because on the 25th day of November A.D., 1934, defendant filed a Motion praying Your

Honour to grant him a New Trial on the grounds that the verdict of the jury was contrary to the weight of evidence, and that the court was not organized according to law, the duly sworn Clerk of the court being absent during the whole of the trial of this case, Your Honour denied said motion to which the defendant excepted."

As to this count of the bill of exceptions, the judge in the court below made it quite clear in his ruling that the statutory wording that a court "shall have" a clerk and a seal does not imply that without a clerk or seal there can be no court duly organized, but there can be a court composed of a judge or judges duly convoked without the clerk or seal; only the court will not be able conveniently to record and authenticate its doings without the agency of the clerk, and the instrumentality of a seal. It is a judge or several judges that compose a court; the other two requisites are accessories to the carrying out of the working of the court. In the case at bar, the clerk of court, having had an accident, the assistant clerk who is also appointed and paid by Government carried on the duties of the court as usual, without any interruption or inconvenience to any litigant whatever. The judge in our opinion correctly overruled the motion for new trial on those grounds.

As to the evidence of Mr. McClain being uncorroborated as contended by appellant, this Court says that it goes without saying that evidence in courts of law are not only judged by the number of testifying witnesses but by the quality as well as the evidence adduced in proof. Mr. Hutchins having admitted that he endorsed the cheques in question in his own handwriting, the evidence of Mr. McClain was fully corroborated by this admission of the defendant himself coupled with that of the other witnesses; the question as to the genuineness of defendant's signature on the cheques in question never arose. The

motion for new trial was therefore properly denied by the trial judge.

In count forty of the bill of exceptions defendant says:

"And also because on the 27th day of November A.D., 1934, defendant filed a Motion praying Your Honour to arrest judgment in his behalf on the grounds that there is a material variance between the evidence adduced at the trial and the charge laid in the indictment. Your Honour denied the motion to which the defendant excepted."

According to Wharton's *Criminal Procedure*, volume 3, section 1692, on "Motion in Arrest of Judgment," it is held, "Any objection which would have been fatal in demurrer was . . . equally fatal on motion in arrest of judgment." Judge Bouvier has said, "A motion for arrest of judgment must be grounded on some objection arising on the face of the record itself; . . . and no defect in the evidence or irregularity at the trial can be urged in this stage of the proceedings." B.L.D., "Arrest of Judgment." The exception in the count under review having urged variance between evidence and proof, the trial judge correctly denied said motion.

Besides, the very clear and cogent testimony of witness McClain and the two Paramount Chiefs who were produced at the trial proved that during the periods said cheques were presented to West and Company, Ltd., respectively, with their crosses affixed and said crosses witnessed by defendant Hutchins who in turn affixed his signature, identifying the payees, they were never in Monrovia but were at their respective homes in River Cess District; that they had never authorized any one to draw their money so paid out upon the authority of defendant's supposed identification of the payees; and that in the case of Paramount Chief Sembloh in whose supposed presence the money was paid to defendant Hutchins, he had not received the three hundred dollars.

Mr. Gross, the cashier at West and Company, Ltd., clearly proved that defendant Hutchins witnessed the crosses on both of the cheques by affixing his genuine signature to each of them, and the signature of defendant Hutchins was known to him; defendant admitted that the signature appearing to said crosses was his own. More positively the cashier stated that defendant Hutchins drew the money with cheque No. 19099 called for, and that defendant on that occasion was accompanied by the office boy Boe Duncan when defendant was accompanied by a man with a big gown whom the defendant used in personating Paramount Chief Sembloh. It was also brought out in the testimony of witness McClain that at the police station on the 13th of October the man Korah who was said to have been the man used by defendant to personate Chief Sembloh, confessed that defendant had paid him two pounds to carry through the personation. In answer to the question of defense counsel, the official in charge explained this personation as follows:

"I mean by that according to what Korah said, that Hutchins put a gown on him and told him to answer to the name of Paramount Chief Sembloh.

"(Q) And gave him two pounds to put on the gown?

"(A) He Kora said he received the two pounds not only for putting on the gown and answering to the name of Paramount Chief Sembloh, but also being present when the cheque was cashed at Messrs. West and Company after which latter transaction he received his pay.

"(Q) So you give the court and jury to understand that the supposed Korah succeeded in cashing the cheque for \$300.00?

"(A) Mr. Gross of West and Company told Hutchins that he wanted to see Sembloh before he would encash the cheque and naturally when Hutchins

presented Korah as Sembloh, Mr. Gross then encashed the cheque.

“(Q) And delivered the cash to Korah?

“(A) Mr. Gross told me that Hutchins took up the cash and handed it to Messenger Boe Duncan, at which time both Hutchins, Messenger Boe Duncan, and the supposed Sembloh left the store of Messrs. West and Company.” *See* evidence of E. B. McClain, p. 10.

Having briefly traversed the points of law arising in the bill of exceptions which appear to us to be of any merit, and having examined closely the evidence of material witnesses at the trial of the case, we have reached the conclusion that defendant, Horatio George Hutchins, formerly typist at the Bureau of Internal Revenue, was correctly convicted of the crime of forgery as alleged against him based upon the evidence, oral and written, adduced at the trial. We are therefore of the opinion that the judgment of the court below should be affirmed; and it is so ordered.

Affirmed.