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Judgement Book

JAMAICA

IN THE COURT OF APPEAL

RESIDENT MAGISTRATE'S CRIMINAL APPEAL NO. 68/89

BEFORE: THE HON. MR. JUSTICE WRIGHT, J.A.
THE HON. MISS JUSTICE MORGAN, J.A.
THE HON. MR. JUSTICE GORDON, J.A. (Ag.)

REGINA

VS.

HAZEL GRANT
ELDON GRANT

F. M. G. Phipps, Q.C., E. DeLisser and
Dr. Paul Ashley for the appellants

Richard Small, Sandra Phillips and
Lorna Errar-Gayle for the Crown

November 27, 28, 29, 30;
December 1, 4, 5, 6, 1989
and March 19, 1990

WRIGHT, J.A.:

These appeals are against convictions and sentences by His Honour Mr. David J. Pitter, Resident Magistrate (as he then was) for the parish of St. James on several counts of an indictment containing 117 counts viz. 38 counts for Forgery, 37 counts for causing money to be paid by false pretences, 38 counts for causing a person to affix his name by false pretences and two counts for causing a valuable security to be delivered by false pretences.

At the outset the charges against the respective appellants were as follows:-

Hazel Grant - 38 counts for Forgery

37 counts for causing money
to be paid by false pretences

38 counts for causing a person
to affix his name by false
pretences

2 counts (33 & 54) for causing
a valuable security to be
delivered by false pretences;

Eldon Grant - 1 count (31) for Forgery
jointly with Hazel Grant

2 counts (32 & 63) for obtaining
a valuable security by false
pretences

1 count (34) for causing a
person to affix his name by false
pretences (jointly with Hazel
Grant)

1 count (65) for causing money
to be paid by false pretences
(jointly with Hazel Grant).

By amendment to the indictment ordered by the Court after all evidence had been adduced (which occasioned much objection) Hazel Grant was added to two counts (32 & 63) which originally charged Eldon Grant alone with obtaining a valuable security by false pretences and Eldon Grant was added to two counts (62 & 66) which originally charged Hazel Grant alone with Forgery (62) and (66) causing a person to affix his name by false pretences. The verdicts returned were as follows:-

1. No verdicts were returned on the 38 counts charging Forgery

2. Hazel Grant:

Not Guilty on counts 33, 54, 55

Guilty on 36 counts for causing money to be paid by false pretences;

on 38 counts for causing a person to affix his name by false pretences

on two counts (32 & 63) for obtaining a valuable security by false pretences

3. Eldon Grant:

Not Guilty on count 65

Guilty on counts 32, 34, 63 & 66.

Sentences were as follows:-

Hazel Grant:

On each count except counts 32, 34, 63, 66, imprisonment at hard labour for three years to run concurrently with each other. On counts 32, 34, 63, 66 imprisonment at hard labour for two years on each count to run concurrently with each other and consecutively to the sentences of three years.

Eldon Grant:

On counts 32, 34, 63, 66 imprisonment at hard labour for two years on each count to run concurrently with each other.

The appellants are husband and wife and the charges arose out of irregularities in the Scotia Plan Loans (The SPL) at the Bank of Nova Scotia Sam Sharpe Square, Montego Bay, where the wife was the Loans Officer during the period 19th November, 1985, to 13th April, 1987, when the Bank was defrauded of over \$1.4 million dollars. So astutely were the affairs of the Department conducted that during the period under review after checks by both local and foreign inspectors she received commendations and a Special Award for operating the number one department in the Caribbean! They had not uncovered any trace of what came to be represented in this indictment as a massive fraud. This only goes to confirm the opinions of two of her colleagues that she was efficient and meticulous.

The trial occupied fifteen trial days between May 24 and December 28, 1988, and involved the testimony of thirty-four witnesses. In an apparent endeavour to encompass the full range of criminal activities envisaged by the draftsman he included the 38 counts for Forgery which were presented as alternatives to the 38 counts for causing a person to affix his name by false pretences. However, despite strenuous submissions by both sides on the validity of these counts for forgery we do not regard it

necessary to express any opinion on these counts for the simple reason that no verdicts were recorded on them and no submissions were made with a view to the substitution of verdicts on these counts for the verdicts on the counts to which they are the alternative. We will, therefore, say nothing further on the counts for forgery.

There is also another aspect of these appeals upon which we will expend no further effort. Mr. Phipps cited several cases in support of his submissions on the provision for amendment in the Indictments Act, but after Mr. Small had responded Mr. Phipps announced that those provisions were no longer relevant and that those cases may be relevant in identifying the type of amendments which may be made. But, as will be seen, these provisions are not identical to the provisions of the Judicature (Resident Magistrates) Act, with which we are concerned.

The case against Eldon Grant was presented on the basis of common design. It will, therefore, be necessary to determine whether such a common design is disclosed in the evidence. The system obtaining in the SPL Department warrants close attention in order to be able to determine the alleged manipulations by Hazel Grant.

Briefly stated, the contention of the prosecution, as related by Mr. Kent Pantry, Deputy Director of Public Prosecutions, in opening the case for the prosecution was that Hazel Grant, in her capacity as Loans Officer for the period 1985-1987, prepared several loan applications, twenty-five of which were on behalf of fictitious borrowers. In pursuance of these applications Manager's Cheques were caused to be prepared and these were signed by Hazel Grant and other signing officers. Some of these cheques were subsequently cashed at the Bank by Hazel Grant and some were

paid for encashment elsewhere, Certain of these cheques were obtained by Eldon Grant which he paid over for his use and benefit. The amendments to the indictment which were later granted by the Court were said to be necessary because the indictment, as presented, did not fully match the evidence which emerged. The question of the amendments was very stoutly debated before us.

We begin, then, with a consideration of the system in the SPL Department as outlined by Mr. Richard Haughton-James who was then Senior Assistant Manager at the Bank. Applicants for loans would attend upon the Loans Officer who would fill in the application form (Ex. 1) reflecting the following information:

Name and address of applicant, date of birth, marital status, spouse's name and address as well as any previous address of applicant and spouse, occupation and employer of applicant as well as of spouse, any liabilities with any other bank, personal assets and general liabilities.

Each loan application is numbered in a special register kept for the purpose. Security for the loan would be entered on the application form which the applicant would then sign. The Loans Officer would then proceed to verify the information supplied on a Verification Form (Ex. 2) provided for the purpose.

If the amount of the loan is within the Loans Officer's limit then she would determine whether the loan would be granted after ascertaining the applicant's ability to repay the loan. Where the amount exceeds her limit she would present the application form, together with the Verification Form, to the appropriate officer. This officer does not deal with the applicant but with the documents presented by the Loans Officer. After approval, the Loans

Officer would write on the back of the application form the name in which the cheque is to be drawn. Thereafter, the Loans Officer would complete a cheque requisition form and in accordance with the information thereon a Manager's Cheque(s) would be drawn. If the amount is within her limit she would sign the cheque and have it counter-signed by an authorised officer - Assistant Manager, Operating Credit Officer, Senior Assistant Manager, or the Manager - who as well as the Loans Officer, would initial the requisition form. The Loans Officer would also initial the back of the application form indicating that the cheque had been issued and disbursed.

The next stage is that the application form is photocopied and this photocopy is then checked by the Auditor to ensure that it contains everything on the original. The Auditor would then initial the photocopy in red and the original would then be sent to the Computer Centre at Premier Plaza, Half Way Tree, to be processed. Within about two days the original application form would be returned together with a card (the Loan Information Card) bearing the identical information on the Application Form. There are now three representations of the application form - the original, the photocopy and the Loan Information Card. The photocopy is filed away in a special place and kept under the Auditor's control until a certain time when it would be shredded. The original and the Loan Information Card are passed to the Loans Officer who checks the accuracy of the Loan Information Card against the original. The original is then kept in the applicant's file in a Cabinet. The Loan Information Card is kept in a tray during the day and locked away in a vault by night.

If the loan is for the purchase of a motor vehicle, then other forms are prepared -

- (a) Motor Vehicle Appraisal Form
- (b) Insurance Form
- (c) Motor Vehicle Index Card
- (d) Bill of Sale.

Generally, security for loans are by means of -

- (a) Mortgage over real estate
- (b) Conventional Bill of Sale
- (c) Promissory Note
- (d) A lien on savings where the borrower has a savings account at the bank.

When the loan is in excess of the Loans Officer's limit the approval is done by an officer within whose limit the amount falls, after he has scrutinized the forms presented to him by the Loans Officer. This senior person would not normally see the applicant but would determine his ability to repay the loan from the information supplied. The Loans Officer then procures the preparation of the cheque which she then signs and presents to the authorized person who signs the cheque and initials the back of the application form as well as the Requisition Form.

The appellant Hazel Grant, as Loans Officer, had a limit of \$40,000 which was later increased to \$70,000. Accordingly, she would grant loans within those limits at the relevant times and no other officer would deal with the applicants. It was only at the point where the cheques were to be counter-signed that a senior officer had anything to do with applications which fell within her competence to approve.

For ease of reference, it may be useful to set out, at this point, the twenty-five loans from which the charges arise giving the names of the applicants, the dates of the applications, the amount and purpose of the loans as these appear in the Open and Closed Register Book (Ex. 32), the Register in which the loan applications are numbered:-

| | | | |
|------------------|------------|------------|------------------------------|
| Aston Wisdom | - 19.11.85 | - \$22,700 | |
| Adrian Blake | - 28. 4.86 | - \$55,000 | |
| George Dunham | - 5. 5. 86 | - \$40,000 | |
| Edward Salmon | - 19. 6.86 | - \$40,000 | |
| Sylvester Graham | - 15. 7.86 | - \$85,000 | |
| Owen Rose | - 17. 7.86 | - \$65,000 | |
| Clive Lawrence | - 24. 7.86 | - \$80,000 | |
| Garth Williams | - 5. 8. 86 | - \$90,000 | |
| Alphonso Murray | - 12. 8.85 | - \$40,000 | - Purchase Car |
| Derrick Jones | - 9. 9. 86 | - \$45,000 | - Purchase Bus |
| Oswald Dawkins | - 22. 9.86 | - \$80,000 | - Purchase M/Bus |
| Anthony Harvey | - 30. 9.86 | -\$128,000 | - Purchase Cars in Rental |
| Errol Murray | - 9. 10.86 | - \$30,000 | - Repair Bus |
| Devon Scott | - 5. 11.86 | - \$38,000 | - Improve Home |
| Sefton Morris | - 26.11.86 | - \$97,500 | - Purchase Bus |
| Edgar Ward | - 11.12.86 | - \$40,000 | - Repair M/Bus |
| David Graham | - 15.12.86 | - \$39,000 | - Purchase Car |
| Dennis Walker | - 17.12.86 | - \$40,000 | - Home Improve- ment |
| John Dixon | - 22.12.86 | - \$40,000 | - Purchase Car |
| Frederick Arnold | - 7. 1. 87 | - \$65,000 | - Improve Home |
| Vincent Harris | - 29. 1.87 | - \$41,000 | - Purchase Car |
| Samuel Brown | - 24. 2.87 | - \$45,500 | - Purchase Car |
| Oscar Brissett | - 3. 3. 87 | - \$56,000 | - Purchase Car |
| Delbert Henry | - 19. 3.87 | - \$70,000 | - Purchase Car |
| Egerton Gordon | - 8. 4. 87 | - \$40,000 | - Purchase Car. |

In keeping with the system outlined earlier the relevant documents in connection with these loans were prepared and distributed i.e. the photocopy loan Application Form, the Original Application Form and the Loan Information Card. For reasons which will appear later the Original Application Forms are not available but from the photocopy and the Loan

Information Card it was ascertained that the purpose of the first eight loans, which does not appear in the Open and Closed Register, was as follows:-

| | | |
|------------------|---|-------------------|
| Aston Wisdom | - | Repair Truck |
| Adrian Baker | - | Repair Truck |
| George Dunham | - | Repair Bus |
| Edward Salmon | - | Purchase Mini Bus |
| Sylvester Graham | - | Purchase Bus |
| Owen Rose | - | Purchase Mini Bus |
| Clive Lawrence | - | Purchase Bus |
| Garth Williams | - | Purchase Car. |

Of the twenty-five loans, therefore, three were for home improvement and twenty-two were either for the purchase or repair of motor vehicles. One may be forgiven for thinking that the possession of a title is a pre-requisite to obtaining a loan for home improvement but none of the three borrowers of the amounts of \$38,000, \$40,000 and \$65,000 respectively, for that purpose, had a title to their respective holdings. Indeed, it does not appear from the documentation that any of the twenty-five borrowers had a title to their declared holdings, a fact which would have been of assistance in tracing the borrowers. Another peculiar feature of these loan transactions is that invariably, in accordance with the notation made on the back of the application forms by the Loans Officer (Hazel Grant), the disbursement cheques were made payable to persons other than the borrower but not even in one instance was the address of any such persons disclosed. There is, therefore, no means of tracing these persons. Also, in keeping with the system, these cheques were prepared pursuant to Cheque Requisitions made by Hazel Grant and, with but a few exceptions, they were encashed by Hazel Grant at the self-same bank. It is a fact that ^{with the exception of one cheque} the forty cheques tendered

in evidence, relevant to these loans, were all signed by the female appellant, Hazel Grant, and co-signed by such other authorized persons to whom she presented them for signature i.e. Paul Powell, Richard Haughton-James, Ferdinand Lindo, Gladys Overton, George Ryan, Eric Martin, Derbert Kiffin and Claston Thorpe. The signatures of each of these officers, who did not testify, were identified by competent witnesses.

Because the affixing of these signatures was procured in accordance with the system then obtaining, the occasion to question the genuineness of the transactions did not arise save for one instance related by Gladys Overton, a Relief Manager at the time and an authorized signatory. The incident had to do with Exhibits 6A and 6B, two cheques for \$7,000 and \$33,000 respectively. The corresponding cheque requisitions (Exs. 6C & 6D) which, like both cheques, bore the date 19.5.86 were prepared by Hazel Grant and disclosed that they were the disbursement cheques for the loan of \$40,000 which Hazel Grant had granted to Edward Salmon. Exhibit 6A was made payable to "Hamlin Wisdom/E. Salmon" and Exhibit 6B to "Hamlin Wisdom". Miss Overton testified that they had been sent to her early one morning by Hazel Grant for her signature but she returned them without signing them for two reasons: viz. the cheques for \$7,000 (Ex. 6A), as related, supra, had as payee "Hamlin Wisdom/E. Salmon" which means "pay Hamlin Wisdom on account E. Salmon". The name Hamlin Wisdom was unfamiliar to Ms. Overton and further she was aware of an E. Salmon who had a bad debt. She accordingly requested the folder which would disclose the necessary information about this loan. She did not get the folder but later in the day Hazel Grant confronted her about the matter telling her she had

received her message but that her customer could not be the E. Salmon with the bad debt. In order to allay Ms. Overton's apprehensions Hazel Grant told her to look out the window where there was a shop "Salmon's Variety Store". That Salmon, she said, was her customer. Thus assured, Ms. Overton signed the cheques and initialled the Cheque Requisitions, one of which had "Hamlin Wisdom sold to SPL E. Salmon" and the other "Hamlin Wisdom sold to SPL Edward Salmon". In response to Ms. Overton's query as to why Mr. Salmon's name was not fully written, Hazel Grant promised to correct it. However, that document (Ex. 6D) still has "E. Salmon". She had also sought to dismiss Ms. Overton's concern about the cheque by telling her there was no need to worry because the cheque would be lodged to Aston Wisdom's savings account.

Evidence from Mrs. Emily Salmon is to the effect that the store opposite the Sam Sharpe Square Branch of the Bank of Nova Scotia is situate at 32 St. James Street and is named "Salmon's Bargain Store and Photo Services Ltd." and is operated by herself and her husband James Alexander Salmon. She was not aware of any loan transaction with that Bank because that is not where they get their loans. Furthermore, they live in St. James and not at Salt Marsh, White Sands Beach P.O., Trelawny, which is the address shown for Edward Salmon. But that is not all.

It will be recalled that Edward Salmon's loan of \$40,000 was granted to purchase a minibus. However, the disbursement did not effectuate that purpose. The cheque for \$7,000 (Ex. 6B) bear Hazel Grant's initial authorizing encashment and the other cheque (Ex. 6B) for \$33,000 with the name Hamlin Wisdom endorsed thereon was lodged in what the Bank treats as a safe-keeping account - that is an account with a balance of over \$200 which has not been used

for over a period of two years. Erica Crews, a teller, testified that Hazel Grant presented the cheque to her together with the lodgment slip (Ex. 6G) to lodge the cheque to such an account numbered 3590 in the name Hamlin Wisdom. The lodgment slip had been written up by Hazel Grant, whose initials appear on it, in addition to the initials of five other bank officials. It needed that much authorization to be so treated and got it. This closes the account of the identity of Edward Salmon and of the disposal of the loan of \$40,000 which Hazel Grant had approved for him.

Mr. Haughton-James testified that no bank official apart from the Loan Officer was required to check the identity of applicants.

It will be recalled that where the loan is with respect to a motor vehicle then there would be appraisal forms, forms notifying the Insurance Company of the Bank's interest and an assignment in writing of the Insurance Policy to the Bank. Despite the number of loans relating to motor vehicles, none of these forms was produced at the trial because none was available and there was evidence in relation to only one such Insurance Policy.

Veronica Linton, who was assistant Loans Officer to Hazel Grant, testified that about mid-March 1987, on a day when Hazel Grant was not at office, she was making enquiries concerning the motor car which David Graham was supposed to have purchased and this caused her to check on his file in which she saw a "cover note" from an Insurance Company. Accordingly, she contacted the Insurance Company and obtained certain information which she relayed to Hazel Grant on her return to office. That information was that the Insurance Company reported that it had no record of any insurance for David Graham. Hazel Grant responded

by shrugging her shoulders, which to the Assistant Loans Officer, seemed uncharacteristic of the meticulous and efficient Loans Officer she knew the appellant to be. Next, the Assistant opened the file and drew appellant's attention to the "Cover Note" with particular reference to the date. She was met with silence; so unable to make any headway with the inquiries she handed the file to the appellant saying to her "Here is the file, you deal with it". The Assistant Loans Officer never saw that file again.

The evidence of Miss Linton's contact with the Insurance Company was confirmed by Ena Grayson, General Manager, Security International Agency, 79 Barnett Street, Montego Bay, who testified that there were several conversations with Miss Linton on the matter and that when her searches failed to disclose the required information she requested and received from Miss Linton a copy of the "Cover Note" in question. With this in her possession, she was then able to conclude that David Graham was never a client of her company. The curtain was brought down on her evidence thus:

"Q. Did you find from the company's record any document comparable to the document received from Miss Linton?

A. The document was comparable but not the same. David Graham was never a client of my company."

So far as David Graham is concerned reference is made to Loan Information Card (Ex. 19D) which discloses his address to be Sandy Bay P.O., Hanover, and that his loan of \$39,000 was approved for "the purchase of Honda Civic Motor Car (a very new model) with serial no. 3420S 21441".

Miss Linton's efforts failed to locate either David Graham or this motor car. The loan was disbursed by Manager's Cheque No. A0366000 dated December 15, 1986, signed by

Hazel Grant and D. L. Kiffin and payable to "Glen Parkes a/c David Graham". That cheque was encashed on the following day by Hazel Grant with Roy Glenn, Remittance Teller No. 1 at the Bank.

Miss Janet Young, Sales Co-ordinator at Motor Sales and Company Limited, testified that in August 1986, the male appellant, Eldon Grant, attended at their office in company with Mr. Derrick McKoy, his attorney-at-law, and placed an order for ten Towny Motor Cars at a price of \$42,835 each. Subsequently, he returned, made a deposit of \$50,000 and informed her that he was forming a company to buy the cars but that the documentation was not in place but he would advise her further. Later he returned and advised her he would take one of the cars in his name. He paid a further \$2,835 in cash and took the car leaving a balance of \$10,000 on deposit. He subsequently telephoned and advised her that the name of the company was "Festival Car Rentals" and he requested a debit note for four of the cars in that name. She complied. The note was in the amount of \$171,000. He came and took delivery of the four cars, paying the amount by Bank of Nova Scotia Cheque No. A0347509 dated September 30, 1986 for the sum of \$171,341.24 signed by Richard Haughton-James and Eric Martin, Credit Officer. Mr. Martin testified that the cheque was presented to him for signature by Hazel Grant and at the time it was accompanied by the Cheque Requisition initialled by her. As was required by the System both himself and Mr. Haughton-James signed the cheque and initialled the Cheque Requisition. Hazel Grant did not sign that cheque. The cheque (Ex. 14A) was made payable to "Motor Sales & Service a/c Festival Car Rentals" while the Requisition Form in Hazel Grant's handwriting shows the cheque to be...

in favour of "Motor Sales & Service sold to SPL Anthony Harvey". A departure from the regular pattern is observed here. On the occasions when cheques were issued with reference to the account following the name of the payee that name would be the name of the borrower on whose account the payment was being made. The difference here is that whereas the account reflected on the cheque is "Festival Car Rentals" the account on the Requisition for that cheque is Anthony Harvey. Now there was a loan in the name of Anthony Harvey for \$128,000 but no loan in the name of Festival Car Rentals. The information written on the back of Anthony Harvey's application shows that the difference was accounted for by the payment of a deposit of \$42,873.24. The cost of the loan brought the final figure to \$210,740, the security for which is a Promissory Note in a like sum.

A pertinent question is "What is the connection between Eldon Grant, Anthony Harvey and Festival Car Rentals?" On the Loan Application form the name of the borrower is stated as "Anthony Harvey t/as Festival Car Rentals". His address is given as Reading P.O. and his occupation as Car Rental Agent and Villa Operator. Yet investigations by Detective Corporal Cecil Lewis failed to secure any information of his existence in the area.

The Certificate of Incorporation shows that Festival Car Rentals Limited was incorporated on September 2, 1986. The two signatories to the Memorandum of Association are Derrick McKoy and Maisie Jackson.

Mr. McKoy testified that Eldon Grant engaged his services in the formation of Festival Car Rentals Limited but said he did not wish to be a director. Eldon Grant and his brother Henry Grant, who held 5% of the shares, were members of the company and the first Directors were

Derrick McKoy and Henry Grant.

There is another cheque involving Eldon Grant.

It is cheque no. A0344454 (Ex. 7B) dated July 15, 1986, for the amount of \$70,000 signed by Hazel Grant and George Ryan payable to Arthur Valentine. The Cheque Requisition dated 15/7/86, prepared by Hazel Grant, shows that this cheque represented a portion of the loan of \$85,000 in the name of Sylvester Graham for the purchase of a bus. The balance of the loan \$14,968 (\$32 went towards charges) was paid out by cheque no. A0344452 (Ex. 7A) dated July 15, 1986, in the name of Arthur Valentine and was signed by Hazel Grant and Ferdinand Lindon. This cheque was cashed at the Bank.

Evidence of this is the initial of Hazel Grant authorising encashment, the Stamp of Remittance Teller No. 1 and details of the cash paid out. Sylvester Graham, on whose account it purports to have been drawn, was never found by the Police in the Salt Spring Road address on the application and no information was received that he had ever lived in that area. Nor was the bus for the purchase of which the loan was granted ever located.

The cheque for \$70,000 was differently treated. It found its way into Mr. McKoy's Clients' Account at the hands of Eldon Grant. Mr. McKoy testified that as a part of his practice he operated a Clients' Account at the Bank of Commerce Jamaica Limited, Kingston of which Eldon Grant, a client of long-standing, had knowledge. At Eldon Grant's request, arrangement was made for Grant to make a lodgment to the account the number for which was supplied to Grant. He was subsequently satisfied that the lodgment was made of \$70,000, which was by the cheque (Ex. 7B) which bears an endorsement "Arthur Valentine-Deposit C/A #6203817 B of Comma. Kings St.". Evidence of Melony Tapper, Administrator

of that Bank, confirms that the account bearing that number was the Clients' Account operated by Derrick and Grace McKoy and that the lodgment was in fact made to the account. Indeed, Mr. McKoy testified that he disbursed the amount on Eldon Grant's instructions by making payment to Motor Sales and Service. As a matter of comment, it is worthy of note that the "Archur Valentine" endorsed on these two cheques under consideration, Exhibits 7A and 7B, manifests distinct dissimilarities. It will be necessary to return later to consider the implications arising from the dealings with these cheques.

There are two other cheques relating to Festival Car Rentals. Cheque no. A0455500 (Ex. 28A) dated April 10, 1987, for the amount of \$40,000 payable to "Festival Car Rentals a/c R. Bailey" signed by Hazel Grant and Richard Haughton-James and cheque no. A0455492 (Ex. 29A) dated April 8, 1987, for the amount of \$50,000 payable to "Festival Car Rentals a/c Edgar Smith" signed by the same two authorized persons. Both are stamped on the back "Festival Car Rentals" and each bears what is intended to be the signature "A. Harvey" but the two signatures are dissimilar. The purpose of each cheque is stated on the back thus:

On Exhibit 28A -

"This payment is made on behalf of Raverton Bailey and constitutes balance in full of cash price sale of 1985 Mitsubishi Towny after cash payment or net trade in allowance of \$12,000."

On the back of Exhibit 29A -

"This payment is made on behalf of Edgar Smith and constitutes balance in full of cash price of sale of 1985 Mitsubishi Towny after cash payment."

(Hazel Grant's initials).

It may be of more than passing interest that the cars purchased by Eldon Grant from Motor Sales and Service Company were 1985 Mitsubishi Townys.

Mrs. Janet Young's evidence, supported by the Sales Orders - Exs. 53G-53H - signed by Eldon Grant, shows that the last of the five cars delivered to Eldon Grant was delivered on October 3, 1986. He asked her to hold the other five which he had ordered and gave her telephone number 952-4440 by which she could make contact with him through his wife since he did not have his own telephone. When she did not hear from him for some time she called the number which Eldon Grant had left her (it happens to be the telephone number for the Bank of Nova Scotia, Sam Sharpe Square) and after appropriate identification by both parties she spoke with the female appellant telling her to tell her husband to come and take delivery of the cars. They spoke on three occasions. On one occasion when she called Mrs. Grant was not available and she left a message to which Mrs. Grant responded by calling her. There was still on deposit a balance of \$10,000 for Eldon Grant which she subsequently paid to his attorney-at-law, Mr. Derrick McKoy, on his presenting a written authorization from Eldon Grant. That was in December 1986. Eldon Grant did not take delivery of the other five cars.

If it seemed peculiar that several of these loan cheques were cashed by the Loans Officer Hazel Grant, it would seem that the mystery deepens by the evidence of several Tellers at the Bank that the Loans Officer was the one from whom they received payments in respect of these loan accounts. Payments were evidenced by documents called Debit Contras on which would be recorded the details either by the tellers from the information she supplied or by Mrs. Grant herself

and there were occasions when she did not present the payment cards which should accompany the payments. The evidence of four Tellers viz. Carl Stephenson, Donna Williams, Roy Glenn and Peter Murray, supported by twenty-six Debit Contras, is that during the period 29th July, 1986 to 10th April, 1987, Hazel Grant made fifty-four payments in respect of twenty-three of the twenty-five accounts in question totalling \$124,413. There was one payment in each of the following accounts Devon Scott, Delbert Henry, Frederick Arnold, Derrick Jones, Alphanso Murray, Errol Murray and Samuel Brown; two payments on each of the following - George Dunham, John Dixon, Edgar Ward, Vincent Harris and Clive Lawrence; three payments on each of the following - Anthony Harvey, Owen Rose, Sylvester Graham, Dennis Walker, Oswald Dawkins, David Graham and Sefton Morris; four each for Aston Wisdom and Edward Salmon and five payments for Adrian Baker. As a matter of interest so far as dates are concerned it is noted that the last loan in the name of Egerton Gordon for \$40,000 was granted on 8th April, 1987, one payment of \$4,391 was made on 8th April, 1987, eight of the payments totalling \$15,033 were made on 9th April, 1987; twenty payments totalling \$45,271 were made on 10th April, 1987 and Hazel Grant left the Bank on Vacation Leave on 13th April, 1987 to return on 20th May, 1987 but she did not return and as it transpired no further payments were made on these loans. The payments by her brought the accounts up to date and so avoided any queries during her absence. She tendered her resignation on 20th May, 1987. It was this latter event which occasioned the enquiries which resulted in these charges.

All loans were numbered and registered in a book and the loan documents carried that number. Each day a

computer print-out would show the loans on which the payments were delinquent. During Hazel Grant's absence, the Department was managed by Mrs. Veronica Linton, the Assistant Loans Officer. For reasons which have not been disclosed, the bank did not accept Hazel Grant's resignation but Mrs. Linton remained in charge of the Department since Hazel Grant was still absent. When Mrs. Linton checked the computer print-out of delinquent accounts on 26th May, 1987, she observed the name Samuel Brown. The date of that loan was 24th February, 1987, and so because of the payment of the instalment by Hazel Grant on 10th April, 1987 a payment was just now due on Samuel Brown's account. When Mrs. Linton saw this name she took out all the Loan Information Cards in respect of current loans. She discovered from Samuel Brown's Card (Ex. 24D) that neither a Savings or Current Account was listed. She checked the filing Cabinet for Samuel Brown's file. There was none. When she checked his Promissory Note she recognised the handwriting of Hazel Grant at the place where the borrower should sign. She made a further check on the delinquent list and came upon the names Alphanso Murray, Fiederick Arnold, David Graham, Edward Salmon, Dennis Walker, Errol Murray, George Dunham, Edgar Ward, Derrick Jones, Delbert Henry and Sefton Morris. It will be recalled that these were among the loans on which payments had been made by Hazel Grant on April 8, 9 and 10 before she went on leave. There were no files to be found in respect of these loans. There was no response to telegrams which Mrs. Linton then sent to these various persons. On examination of the Loan Information Cards she discovered certain similarities viz:

1. None of the borrowers resided in Montego Bay
2. All operated out of their homes

3. None had a telephone
4. All were self-employed and were either single or married with unemployed wives.

Thanks to a change introduced by Mr. Haughton-James, which had apparently been kept closely guarded, the copies of Loan Applications were no longer being shredded but were kept by the Auditor. By reference to these copies it was determined which were the missing files. When the telegrams failed to bring results Mrs. Linton took to the road in search of the borrowers and the vehicles which they were supposed to have purchased. By this time Mr. Ryan, the Manager, and Mr. Haughton-James had been brought into the picture and the search was now on in earnest bringing to light other similar loans - Aston Wisdom, Adrian Baker, Anthony Harvey/trading as Festival Car Rentals, Oscar Brissett.

So serious was the situation that, although Mrs. Linton did not usually work on Saturdays, she went to work on Saturday May 30, 1987, and while she was in company with Mr. Ryan and Mr. Haughton-James on the third floor, just past mid-day, in came Hazel Grant and greeted them thus "Hi everybody, what's happening?". Said Mr. Ryan "Hazel, we are here looking for some files and we figure you might be able to assist us". "Files missing? No Sir", she replied, "to every ledger card there is a file". She then addressed Mrs. Linton by her nickname "Hi Nikel", she said, to which Mrs. Linton responded that she was looking for some files which could not be found. At that point Mr. Holman, the Chief Inspector, emerged from Mr. Ryan's office and spoke to her. Mrs. Linton did not hear what was said and was not any further involved with the matter that day. She was at the Bank until 5 o'clock during which time she saw Hazel Grant go down stairs and

she saw and heard the male appellant talking with Mr. Ryan. She saw both appellants leave the Bank's parking lot in a car after 5:00 p.m.

In cross-examination she said that she became suspicious when she saw Hazel Grant's handwriting at the place where the borrower ought to sign and stated that for every loan, she expected to find either a Savings or Current Account.

The visit to the bank by Hazel Grant was not as casual as it might have appeared from her greetings. The Manager, Mr. Ryan, had paid three visits to her home - twice on May 29 and once again at 9:00 a.m. on the 30th but he found neither her nor any of the files. So after she had stated that there was a folder for every loan, Mr. Ryan went into his office along with herself, Mr. Calder and Mr. Holman. Mr. Ryan was then in possession of the twenty-five files with the photocopies of the Loan Applications which had been in the custody of Mrs. Yvonne Edmons, the Auditor, the Loan Application Cards and the Original Promissory Notes which were kept by Mr. Gladstone Thorpe, Assistant Manager. Mr. Ryan had made a list of the names in the files but when he read them Mrs. Grant said she had granted hundreds of loans and could not recall any "just off the bat". So Mr. Ryan presented her with the documents from the files one at a time but to no avail. After this had lasted for about an hour Mr. Ryan decided to call in the Police. He took up the telephone and began dialling when Mrs. Grant said "Mr. Ryan, don't call the Police". He did not complete the call. He said to her, "Why, do you have something to say?", to which she replied, "Yes". But when she said nothing more he asked her if she wished to speak to him in private and when she said yes the others present left the

room. As recorded in the Notes of Evidence this is what transpired between herself and Mr. Ryan:

"I said 'Are these loans fictitious'. She said 'Yes'. I said 'All of them?'. She said 'Yes'. I asked if there were any more loans in addition to those - she said 'No'. I asked her if she had a list or some sort of control she might have stating what accounts are involved. I asked her what she had done with the money. She said she was not in a position to tell me. I said 'It is over a million dollars, you must know what you did with the money you stole'. She said 'I did not steal any money, I borrowed it and I had all intention of paying it back'. I asked her how she was going to pay it back. She indicated that her husband had real estate developments and it would be paid from sale proceeds."

Mr. Ryan called the others back into his office and reported to them what had just taken place. He still pursued enquiries with a view to ascertaining whether "there were any other accounts in the book that she might have borrowed to which she said no". He then asked "if she would give a written statement confessing that she had granted these fictitious loans and had not tampered with any other loans" and she said "yes". He then requested her to acknowledge each of the loans involved and she wrote on each Promissory Note "I acknowledge ^{the above debt}, dated and signed it. Thereafter, she wrote a brief statement which was admitted in evidence as Exhibit 33, the admission of which has been challenged. It reads:

"I Hazel Grant, a Loans Officer at the Bank of Nova Scotia Jam. Ltd. Montego Bay branch do make the following Statement of my own free will that during the period Nov./85 to Apr./87, I granted loans in fictitious names and have destroyed the files.

"These loan applications were taken and processed by me.

I have acknowledged the individual loans by making a Statement 'I acknowledge the above debt' on each Promissory Note

To the best of my knowledge these are all the loans & there are no further loans and I have not tampered with any deposits or other loans at this bank.

H. Grant."

Mr. Ryan testified that this statement was given voluntarily and that neither he nor anyone present threatened her or held out any inducement or promise to her. Concerning Mrs. Grant, Mr. Ryan said:

"She was a very matured, meticulous and experienced worker. She was a very senior officer well versed in practices, knowledge and relative procedure of the bank. I had even recommended her for promotion to management - for training."

He said that at about 2:00 p.m., while speaking with Mrs. Grant, he was made aware of the presence of her husband, who had come to fetch her. He went and spoke to the husband who seemed anxious as to what was happening and eventually said if it was money involved "that was no problem even if it was a million dollars". Prior to this encounter Mr. Ryan did not know the husband. He was not allowed to see her then but was asked to return later. He did and Mrs. Grant went and spoke with him. After she had acknowledged the debts Mr. Ryan had asked her whether her husband would guarantee the debts and she said she would discuss it with him. On the occasion when she went to speak to her husband she returned after about fifteen minutes and advised Mr. Mr. Ryan that her husband would give the guarantee but he would prefer to send the mortgage document to his attorney

before signing it. However, the unlimited guarantee in evidence as Exhibit 31, signed by Eldon Grant and witnessed by Richard Haughton-James, to whom was assigned the responsibility of dealing with it, is dated May 30, 1987.

Mr. Haughton-James testified that it was after Eldon Grant had signed the guarantee that he and Mrs. Grant left, Mr. Ryan and others having left before.

Mr. Ryan further testified that on the following Monday, June 1, 1987, Mrs. Grant telephoned him. She said she was speaking from Kingston and wished to know what amount the bank would accept as the initial deposit in paying back the loan. She said she could then find approximately \$10,000. He told her to provide the bank with a proposal indicating how the entire amount would be paid. Next day, June 2, 1987, she called again, this time purportedly from Coral Gardens, informing him that her attorneys, Derrick McKoy and Company, would be giving the bank an undertaking to pay off the amount. Further, she said she had written a letter to the bank requesting a pay-out figure and asked that the response be sent to her at home because she had no transportation at the time. Mr. Ryan promised to do as she had requested. In the meantime, he received her letter, so when she called again the next day, Wednesday June 3, he was able to inform her that he had indeed received it and that he had sent her a list of the various accounts by a porter so she should receive it shortly. She said she intended to go to Kingston to see her attorney to negotiate for the letter of undertaking. He asked her to keep in touch with him daily by collect calls. Her letter (Ex. 34) reads as follows:

" P.O. Box 154,
Reading, St. James.

June 1, 1967.

Mr. George Ryan,
Manager,
The Bank of Nova Scotia Jam. Ltd.
Sam Sharpe Square,
Montego Bay.

Dear Mr. Ryan,

Further to our conversation of even date, I write to ascertain the specific loans that was the subject of our discussion.

Upon determining this, I will be better able to put more specific proposal to you.

Yours truly,

Hazel Grant /s/

/hg."

Mrs. Grant called on the Friday to say the machine listing which had been sent to her was inadequate. She wished to have photocopies of the Promissory Notes which she had endorsed as well as a list of the names and the amounts. Mr. Ryan promised to send these. On the Friday she called to ask what was happening because she had not received the list and that she had heard some news on the radio. He said he had heard it too and told her that the Police were investigating. Asked if the Police had contacted her she said no.

Subsequently, Mr. Ryan received a telephone call from a man identifying himself as Derrick McKoy with whom he discussed the matter concerning Mrs. Grant.

Mr. Ryan said in relation to loans, the applications and cheques were presented to him by Mrs. Grant for his approval and signature. He would question her and would examine the purpose of the loan, the applicants' ability

to repay and the security. He would rely on the officer's credit, judgment and experience before signing cheques.

It was in those circumstances that he had signed Exhibit 7B Cheque No. A0344454 payable to Arthur Valentine for the sum of \$70,000 drawn on account Sylvester Graham which Eldon Grant deposited to Mr. McKoy's Clients' Account and which was eventually paid out to Motor Sales and Service Company.

Cross-examination of this witness centered around (a) operations at the bank and (b) what transpired in his office on May 30 leading up to and including the writing of Exhibit 33 - the statement of Mrs. Grant. As to (a) his evidence was confirmatory of the evidence of other bank officials. He confirmed that officers of the bank from time to time cashed cheques for customers and sometimes made payments for them. As to (b) there was no significant departure from his evidence-in-chief. On his visit to Mrs. Grant's home on the Saturday morning he had been accompanied by Police from the Coral Gardens Station but it would appear that at that stage he had not yet made a formal report. Regarding the writing of Exhibit 33 he said Mrs. Grant wanted to know what she should write. He also disclosed that she had told him of the fate of the files before she wrote the statement which was written on a regular bank scratch pad. In his evidence-in-chief he had stated she did ask what she should write after it was disclosed that the loans were fictitious and that he had told her to write that the loans were fictitious.

Detective Maurice Goodgame testified that it was on June 12, 1987 that he received a report from Mr. Ryan and commenced investigations which resulted in these charges. On July 27, 1987, he went to Montego Bay Police Station and

there he saw both appellants and their attorney-at-law, Mr. Earl DeLisser. He identified himself to them and apprised them of the report which he was investigating but he was to learn nothing from them as they invoked the right to be silent. Mrs. Grant said she had been instructed by her lawyer to say nothing and to answer no questions. Eldon Grant said "I have also been instructed not to say anything". He proceeded to arrest, charge and caution them. They made no statement.

That was the evidence presented by the prosecution. After an unsuccessful submission by Mr. Phipps that there was no case to answer he announced that Eldon Grant would rest his case. Hazel Grant gave sworn evidence and called her sister, Andria Manning, who confirmed the visits to the home by Mr. Ryan, Mr. Holman and two Policemen and that at their request she searched for the missing files but found none.

Hazel Grant gave as her reason for her resignation the fact that she was pregnant at the time and was apparently taking precaution because of a previous mishap. She said that her branch was checked regularly - the last being only a few days before she commenced her leave - and she received a good report from Mr. Nam, the inspector. Indeed, she had never had an adverse report on the operation of her branch. She sought to meet the case for the prosecution. Referring to the twenty-five loans individually she said:

"I have never prepared an application for a loan without personally interviewing the applicant. I have never approved a loan without satisfying myself that all the necessary procedures for a loan have been undertaken. Before any disbursement is made Mr. Haughton-James had to see the application and in his absence Mr. Ryan. When the loan was approved, other than by myself, Mr. Haughton-James

"would write on it 'Approved by Manager prior to disbursement'. He keeps a rubber stamp. There is a Credit Information Service. On the occasions I am making Loans I would have to get a credit report from them on each customer. I have never at any time made a loan without the report from the Credit Information Service. This System operates at the bank from the time I went there up to the time I left.

Whenever a motor vehicle is used as a security for a loan I would have to do a physical check of the motor vehicle. In the cases before the Court I have done physical checks. An appraisal Report would be prepared for the vehicle. There is a bill of sale for every loan that is secured by a motor vehicle. The vehicle would have to be insured. There would be indication on document identifying the vehicles i.e. the type and registration number - on the Insurance, Bill of Sale and Appraisal. All documents were prepared in respect of these matters before Court. These documents were kept in the Customers' files in a filing cabinet."

She said further that everybody had access to the cabinet, the key for which was kept by the typist. She said "I did not personally take away any file or any document from the bank" and she also referred to the fact that Mrs. Edmons, an Auditor, had said in her evidence that she had seen the Original Application in April and May when she, the appellant, was on leave. What Mrs. Edmons had said in cross-examination was "I would have seen the Originals from time to time during the months of April and May". The comment may be made that it has not been disclosed when the files disappeared. They were not missed until May 26, 1987.

Concerning the cheques, she said:

"There is nothing false about the cheques which I signed and which are exhibited in Court here."

Regarding the events at Mr. Ryan's office, she said she was shown the photocopies of the applications and she identified her handwriting on them. The questioning, she said, lasted some five hours and she became upset because her husband should have returned for her in an hour and she was not allowed to go to him but that Mr. Ryan did leave the office and returned with a note from her husband. She was given refreshment during the questioning. This is how she dealt with the writing of the statement (Ex. 33):

"At one stage Mr. Ryan said, 'It was a matter for the Police'. He started dialling the telephone. I felt bad and in order to save the embarrassment with myself and my family, he should not call the (sic) Police. He asked me if I had something to say and I made a suggestion to him. When Mr. Ryan asked me 'Are these loans fictitious?', I did not say 'Yes'. At no stage did I say 'Yes, the loans are fictitious'. I said 'I have not granted any fictitious loans'. I wrote and signed a document in the bank that day. I look at Exhibit 33. I wrote and signed it. Mr. Holman and Mr. Ryan kept on telling me that 25 loans are fraudulent. I kept denying this for about 5 hours. Then Mr. Holman threatened to have me arrested. This after the telephone incident. He told me I should write what he said to me. They gave me this piece of paper and I wrote. Mr. Holman and Mr. Ryan dictated this. I did not grant any fictitious loans. I did not destroy any files. Exhibit 33 was not prepared of my own free will. The words on document 'of my own free will' - not my words; 'fictitious loans' - not my words. I write (sic) Exhibit 33 to save embarrassment to my family and myself and I was threatened that if I did not write it I would be arrested. I had written on the Promissory Note before Exhibit 33. Exhibit 33 written in the presence of Mr. Ryan, Mr. Calder and Mr. Nam. I felt real bad with the questioning and the threat to call the Police. On completion of writing Exhibit 33

"I refused to sign it and Mr. Holman took up the phone and called Fraud Squad. I said to all four men 'if I should sign the note I would be given a chance to call my Attorney'. Mr. Holman rushed on to me, took his glasses from his face and said 'No way'. He went and called the Fraud Squad. I really wanted to contact a lawyer. I signed when Mr. Holman said 'No way'."

She denied the incident related by Mrs. Overton relating to the loan for E. Salmon being identified with the Salmon's store opposite the bank. She was not aware of any correspondence in connection with these twenty-five loans being returned "unclaimed" or "addressee unknown". No Insurance Representative or Agent had ever spoken to her about David Graham, she said. She admitted telephoning Mr. Ryan after she had heard the news on the radio that there was a fraud at the bank and that she had asked for a list of the missing files.

Cross-examined, she said that she had not attempted to find any of the applicants and that checks with the Credit Information Service would normally be done by telephone and she would write the result on the application. She made the following admissions:

1. That all signatures and initials on cheques identified as hers are indeed hers;
2. That she placed her initials on the cheques to authorize encashment;
3. That she did encash the cheques as related by the several Remittance Tellers though she could not recall telling them that she was encashing them for the customers who were in her office but in fact the customers were usually in her office or at the counter;
4. That she did make payments into the accounts of the twenty-five applicants.

With reference to Festival Car Rentals, this is what she said:

"I remember the name Anthony Harvey I don't remember the person - no recollection. If I see him I might. I do not know anything about Festival Car Rentals. I do not know any of the persons involved in it - not even one. When I was preparing the loan for Mr. Harvey connected to Festival Car Rentals, I made no enquiries at all about Festival Car Rentals. I did not consider at any time who else may have been involved along with Festival Car Rentals. Subsequently (sic) to processing this loan to Harvey I recall no enquiries at all about Festival Car Rentals. Up to today I have made no such enquiries.

I heard evidence in Court Eldon Grant involved in Festival Car Rentals. First time I hearing it in Court. I still have made no enquiries."

Then, dealing with Exhibit 7B, the cheque for \$70,000 payable to Arthur Valentine, which Eldon Grant lodged to Mr. McKoy's Clients' Account, she said:

"I look at Exhibit 7B. I signed this cheque. I gave it to customer. It would have been handed to Graham. Not so I handed this cheque to Mr. Grant. I do not know that Mr. Grant lodged it to Mr. McKoy's account."

Referring to Exhibit 14A (the cheque for \$171,341.24 payable to Motor Sales and Service a/c Festival Car Rentals which Eldon Grant paid to Motor Sales and Service Company) and the Cheque Requisition therefor she said that the Requisition had been prepared by her, but said she did not have any scheme with her husband to request payment to Anthony Harvey re Motor Sales and Company. She denied that Mrs. Janet Young had ever telephoned her. No recollection of her telephoning about cars which Eldon Grant was to collect. Nor does she recall receiving a message which led her to call Mrs. Young at Motor Sales and Company. Concerning the events in

Mr. Ryan's office on May 30, 1987, she said at the beginning she denied that the loans were fictitious but she agreed with Mr. Ryan's version that he did hand her the individual files as he sought information concerning each. Also she agreed with him that she stopped him when he was in the course of telephoning the Police but she denied expressing any wish to speak to him in private. She never admitted the loans were fictitious. It was Mr. Ryan who told her they were. As well she agreed that he said "it is over one million you steal you must know what you did with it", but she denied saying "I did not steal it. I borrowed it and had all intention of paying it back". The idea of treating the sums as a loan came from her in order to save the embarrassment to herself and family. With the exception of June 3 she admitted the telephone calls to Mr. Ryan during June 1 - 5 as well as the letter, Exhibit 24, seeking specific details.

Three grounds of appeal were argued on behalf of Hazel Grant and two on behalf of Eldon Grant. Ground 1, which is common to both, complains:

- "(a) That the amendments to the Indictment, including the addition of the appellants to Counts after their Defences had been closed and final addresses made, were wrongly allowed.
- (b) That each appellant was denied a fair hearing by being refused the opportunity of testing by cross-examination the evidence in support of allegations in the amended charges and also refused the opportunity to give evidence and call witnesses to answer the amended charges."

For Hazel Grant, Ground 2 challenged the admission into evidence of statements allegedly made by her complaining

that the wrong test was applied. Ground 3 of her grounds states that "the verdict is unreasonable and cannot be supported having regard to the evidence". Ground 2, on behalf of Eldon Grant, makes a similar complaint as Ground 3 (supra) but expands it thus:

"in particular there was no proof of primary facts from which inferences could be drawn of an involvement in any criminal activity allegedly undertaken by Hazel Grant."

A fourth ground of appeal against sentence on behalf of Hazel Grant was not argued.

It was previously noted that the amendments to the Indictment were granted after all evidence had been adduced. But as the grounds of appeal complain, final address by Defence Counsel, on behalf of Hazel Grant, had also been closed. That was on December 17, 1988. Arising out of Mr. Phipps' address, Mr. Small indicated his intention to apply for amendments to the Indictment and the adjournment was taken until December 28. After somewhat lengthy submissions on December 28, the amendments applied for were granted. Apart from the addition of both appellants to Counts which up to then charged only one of them, as previously mentioned, the amendments affected the Counts charging -

- (a) Causing money to be paid by false pretences;
- (b) Causing a person to affix his name by false pretences;
- (c) Obtaining a Valuable Security by false pretences.

At that stage the Particulars alleged in these counts read:

as to (a) (Name) with intent to defraud and by means of false pretences caused dollars to be paid vide Bank of Nova Scotia Cheque No. dated

as to (b) (Name) with intent to defraud the Bank of Nova Scotia

fraudulently caused to affix his name to Bank of Nova Scotia Cheque No. ... in order that it may afterwards be used as a valuable security.

as to (c) Eldon Grant with intent to defraud and by means of false pretences obtained cheque no. for \$70,000 a valuable security for the use or benefit of himself.

In the amended form these Counts now read:

(a) (Name) with intent to defraud the Bank of Nova Scotia Jamaica Ltd. by means of falsely pretending that BNS Cheque No. dated was for a genuine loan transaction caused dollars to be paid vide Bank of Nova Scotia Cheque No. dated

(b) (Name) with intent to defraud the Bank of Nova Scotia Jamaica Ltd. fraudulently caused to affix his name to Bank of Nova Scotia Cheque No. in order that it may afterwards be used as a valuable security by falsely pretending that the said cheque was for a genuine loan transaction.

Eldon Grant was added to Count 66 which originally charged Hazel Grant alone with causing a person to affix his name by false pretences.

(c) Hazel Grant and Eldon Grant with intent to defraud the Bank of Nova Scotia Jamaica Ltd. fraudulently caused Richard Haughton-James to affix his name to Bank of Nova Scotia Cheque No. A034569 dated 30th September, 1986 in order that it may afterwards be used as a valuable security by falsely pretending that the said Cheque was for a genuine loan transaction.

A good starting point is to examine the power of amendment conferred upon a Resident Magistrate with a view to determining whether the amendments ordered in this case are sanctioned by that power. Such power is conferred

by Section 278 of the Judicature (Resident Magistrates) Act which reads:

"At any stage of a trial for an indictable offence before sentence, the Court shall amend or alter the indictment so far as appears necessary from the evidence or otherwise and may direct the trial to be adjourned or recommenced from any point if such direction appears proper in the interest either of the prosecution or of the accused person."

It is obvious from the language of the section that it imposes a duty upon the Resident Magistrate to amend the indictment in the circumstances prescribed as well as a discretion as to how to proceed thereafter. The section (previously Section 281 of the Resident Magistrate Law Chapter 432) has been judicially considered in several cases and, in our opinion, these are the authorities from which we must seek guidance and not authorities based on a consideration of the power of amendment contained in the Indictments Act which allows for an amendment where the indictment is defective. There is no such constraint in the language of Section 278. We need not, therefore, consider cases which were cited with reference to the Indictments Act. Some cases in which section 278 was considered are: R. v. Harris et al (1902) S.C.J.B. Vol. 5 p. 76; R. v. McCartney (1939) 3 J.L.R. 207; R. V. Miller et al (1939) 3 J.L.R. 136; R. v. Egbert Wilson (1953) 6 J.L.R. 270; R.M.C.A. No. 80/69 R. v. Desmond Chambers (9/5/69) unreported.

In Harris (supra) the Supreme Court upheld the alteration of the indictment by the addition of two counts after some evidence had been adduced. The judgment recognised the difference between the Resident Magistrates' Court and the Circuit Court when it said at page 46:

"It may be considered that such an amendment could not be made in the Circuit Court, but we think it is within s 255 of the R.M. Law, by which a Resident Magistrate is empowered to alter as well as to amend an indictment 'so far as appears necessary from the evidence or otherwise'. We think that the power to alter includes a power to prefer a new charge. The word 'necessary' in the expression 'so far as appears necessary' means, in our opinion, necessary for the purpose of trying the defendant upon any charge or charges which, upon the facts, can properly be preferred against him.

In some cases it might be highly improper to alter the indictment without commencing the proceedings de novo. But the evidence here given prior to the alteration or amendment was the same as it would have been if the original indictment had included the charges subsequently added. No possible injustice to the accused was therefore caused by the course pursued ..."

McCartney (supra) followed Harris (supra) and confirmed that the power to amend conferred by the section (281) includes a power to prefer a new charge. Miller (supra) also followed Harris (supra). Egbert Wilson (supra) updated the position when Carberry, J. at page 270, dealing with section 281, stated:

"It has been held by this Court that this section imposes a duty on a Resident Magistrate to amend by adding counts where the evidence makes it necessary to do so - R. v. Miller and others 3 J.L.R. 136; R. v. Harris and others 1 Stephens 45. It was held in R. v. McCartney 3 J.L.R. 207 that the power to amend includes the addition of an alternative Count."

Desmond Chambers (supra), without referring to any of these authorities, nonetheless applied the principles supported by them. The judgment delivered by Waddington, P. (Ag.) considered and distinguished the case of R. v. Robert Hughes

20 C.A.R. 4, which had been cited. Lord Hewart, the Lord Chief Justice giving the judgment in R. v. Robert Hughes (supra), pointed out that the amendment:

"was not correcting a defect in the indictment, it was altering its substance in circumstances in which as it appears to us, the defendant was prejudiced by the alteration."

Of that case Waddington, P. (Ag.) had this to say:

"It appears from that case that had the evidence been different, that is to say, had the evidence in the case supported the allegation in respect of which the amendment was made, that might have altered the position and the Court in that case might have been satisfied that the amendment was properly made.

In the instant case the Court is satisfied on the evidence that there was a false pretence by the appellant to both Hargreaves and Myers of an existing fact."

In the two counts charging obtaining money by false pretences the false pretences as framed in the indictment referred to a future event i.e. that the accused "would" obtain tyres for both complainants whereas the evidence established that he had represented that he was then able - a present existing fact - to obtain the tyres.

Disposing of the point raised the Court held:

"It is our view that had this point been raised in the Court below, the learned Resident Magistrate would have been justified in exercising his powers of amendment, in amending the indictment to make it conform with the false pretences which the evidence supported.

The Court is satisfied that no injustice has been caused to the appellant in this case.
[Emphasis supplied]

Quite understandably, the Crown relies on these cases in support of the amendments.

On the other hand, Mr. Phipps submitted that despite the power to amend at any stage before sentence the amendment should not have been made in that it changes the false pretences initially relied on, although there was some evidence of the false pretences introduced by the amendment. That sort of amendment, he submitted, ought not to be made at all. He would rather rely on English decisions to support his contention but, in our view, those decisions are singularly unhelpful because they are based on the Indictments Act, whereas amendments in the Resident Magistrates' Court are governed by the Special Provisions in the Judicature (Resident Magistrates) Act. Indeed, there is a special system in the Act for dealing with indictments in the Resident Magistrates' Court which is peculiar to the Act. See Sections 272, 273, 274, 275, 276, 278. In Harris (supra) it was recognised that the amendment, which was being approved, could not be made in a Circuit Court. It is clear, therefore, that the amendments are good if they do no more than "make the indictment conform to the false pretences which the evidence supports".

In considering the amendments as they affect Hazel Grant, we remind ourselves that Mr. Phipps conceded that, as regards this appellant, "he does not complain about the adequacy of the evidence against her". The question, therefore, is this: Does that evidence support the false pretences alleged in the amendments? Mr. Phipps complained that having regard to the false pretences originally alleged in the indictment the appellants could not have contemplated, and so set out to meet, the false pretences introduced by the amendments and, accordingly, such amendments without a recommencement of the prosecution case to allow the appellants to meet the new allegations was to the prejudice of the

of the appellants and worked an injustice against them.

From the very outset in opening the prosecution case Mr. Pantry is recorded as having stated that the prosecution proposed to prove that Hazel Grant, as Loans Officer, prepared twenty-five loan applications on behalf of fictitious borrowers and that in consequence of these applications certain Manager's Cheques were caused to be prepared and signed by certain authorized persons and the said Hazel Grant and that some of these cheques were thereafter cashed by Hazel Grant at the Bank and others paid for encashment elsewhere. Further, stated Mr. Pantry, Eldon Grant obtained certain of those cheques which he used to have money paid over for the use and benefit of himself. In response to Mr. Phipps' request for specifics Mr. Pantry said that "the false pretence was by the presenting of fictitious documents to other persons i.e. officers of the bank purporting that they were for genuine banking transactions". We think that had he considered well the draft indictment, which was in Court, he would, in the light of his opening, recognize the need to amend the draft then and there. What is more, Mr. Small is recorded in the Notes of Evidence as disclosing that copies of the documents, on which the prosecution would be relying, had been sent to defence Counsel long in advance of the trial date.

Among the dictionary meanings of "fictitious" are the following - "counterfeit, false, not genuine". In our opinion, a document is equally fictitious whether it is made in the name of a real person who did not in fact make or authorize its making or if it is made in a name just plucked from the air.

The evidence indicating that the banking transactions involved in the twenty-five loan applications from which

sprang the other elements of the charges are not genuine is overwhelming. In brief summary, certain important indicators are:

1. Not even one of the twenty-five "borrowers" could be located in the areas given in the applications. Neither by the Police nor by the bank officer accustomed to tracking down delinquent clients could any trace of their existence in those areas be obtained and that is so although the application forms are replete with references.
2. Of the twenty-two motor vehicles on which the bank's money was supposed to have been expended each of which Hazel Grant testified on oath that she had personally inspected as well as interviewed the twenty-five loan applicants not even one could be located.
3. There was the falsity of the Insurance document regarding David Graham (see evidence of Veronica Linton and Ena Grayson).
4. The evidence concerning the procuring of the issue of the cheques and their disposal.
5. The involvement of Hazel Grant with Festival Car Rentals in procuring the issue of four cheques with respect thereto, two of which (\$50,000 and \$40,000) she cashed on 8/4/87 and 10/4/87 just days before her leave began on 13/4/87 and the other two being used by Eldon Grant.
6. The evidence of the loan re-payments by Hazel Grant, which she admitted, the fact that no re-payments were made subsequent to the last payments made by her and the curious fact that although of the twenty-five loans only nine had re-payment dates earlier than the 13th of the month yet with the exception of Egerton Gordon, whose loan date was 8.4.87 just five days before she went on her leave all the loan payments were made between April 8 - 10.
7. The question arising out of the identity of Edward Salmon whose loan application had been approved by Hazel Grant.

8. Even omitting Exhibit 33 and the admissions alleged to have been made in Mr. Ryan's office on 30/5/37 the evidence of her subsequent conduct in deciding to treat these loans as her personal responsibility and seeking specific information about each in order that arrangements could be made to re-pay them; the inquiry of what would be acceptable as a deposit; undertaking to be given by her attorney to pay off the accounts; the unlimited guarantee given by her husband to cover the total amount outstanding.
9. The undisputed evidence that Eldon Grant had indeed obtained possession of, and had used to his own benefit, two of the largest of the cheques in question (\$171,341.24 and \$70,000) for which he had offered no explanation - cheques which Hazel Grant was instrumental in creating pursuant to what were challenged as fictitious loans.

And these are but some of the very telling aspects of the evidence. Indeed, we are of the opinion that, faced with such evidence, the learned Resident Magistrate had abundant justification in having the indictment amended. Accordingly, we see no reason to interfere with the exercise of his discretion in granting the amendment.

On the question as to whether, having ordered the amendment, the learned Resident Magistrate should also have directed that the prosecution case be re-opened we answer in the negative. The case had occupied fifteen trial days during which the prosecution witnesses were thoroughly cross-examined to meet the thrust of the case as had been outlined and along which lines the evidence had been presented. There is no indication that the prosecution case would be otherwise than it stood at that point. Accordingly, had the case been re-opened the prosecution could only lead the same evidence. We are firmly of the view that no injustice was done to

either of the appellants. Hazel Grant, with full appreciation of the prosecution case, had set out valiantly to meet that case. Eldon Grant, despite the evidence of his involvement with the two cheques, had chosen to remain silent.

The amendment did not create a new situation by which the appellants could say they were taken by surprise. Quite apart from the fact that Mrs. Grant's defence shows that she understood the charges she had to meet, Mr. Phipps' no-case submission amply demonstrates that understanding.

Said he:

"No case to answer in respect of both accused. Factual basis of prosecution's case was that Mrs. Grant had prepared applications for non-existent borrowers. Most important ingredient of prosecution is the existence or non-existence of the borrowers. If there is a failure to prove that element means that the necessary ingredient of each and every count not established. No dispute at this stage that Mrs. Grant dealt with Scotia Plan Applications and that she in some instances had tellers paying over cash in exchange for some of these cheques"

That submission on behalf of both appellants put paid to Mr. Phipps' submission before us to the effect that the appellants had been led to believe that the allegations related to false cheques but that the amendment purported to deal with the application forms for loans. As well, he submitted, that although the application forms did arise on the evidence it was only for the purpose of the falsity of the cheques. Accordingly, so he submitted, the defence ought to have been allowed to deal with false pretences relating to the application forms and as to Eldon Grant that he should have been allowed to deal with the Counts to which he was added by the amendment. How can such contention be

maintained in the face of the evidence given on oath by Hazel Grant rejecting the falsity of the loan applications? According to her she personally saw and interviewed every one of those twenty-five applicants and attended to all the requirements for a genuine loan.

Clearly, therefore, no prejudice resulted to either appellant in the course adopted by the learned Resident Magistrate. No new charge was presented in the sense that evidence would be required to establish such charges. The amendments only fitted the indictment to the evidence before the Court. Eldon Grant, before as well as after the amendments, apart from the charges of forgery with which we are not here concerned, was charged with offences relating to the two cheques which he had undoubtedly obtained and used to his own benefit.

Among the findings of fact by the learned Resident Magistrate are the following:

- "26. Accused Eldon Grant received Exhibit 7B and 14A from accused Hazel Grant.
27. Both accused were acting together to create and use cheques Exhibit 7B and 14A each knowing that the pretence then was that a loan application for each was false."

The answer of Hazel Grant is that she never knew of Eldon Grant's involvement with Festival Car Rentals Limited until she heard the evidence in Court. Eldon is silent. Mr. Phipps submitted that there are no primary facts from which the incriminating inference can be drawn. Consider, therefore, this amazing concatenation of events. The first mention of the name Festival Car Rentals Limited was by Mrs. Janet Young, who said that in August 1986, when Eldon Grant came and booked the ten cars, he told her he was forming a company in whose

name the cars would be purchased. Later he advised her that the name of the company was Festival Car Rentals Limited and requested a Debit Note for four of the cars in that name. The Debit Note was duly issued for the sum of \$171,000 and Eldon Grant collected it and thereafter on 1st October, 1986 he presented cheque no. 0347569 for \$171,341.24 (Exhibit 14A) in full payment for the cars. That cheque is by now familiar from frequent references but for emphasis we repeat its particulars. Bearing date 30.9.86, just the day before it was presented to Mrs. Janet Young at Motor Sales and Service, it is payable to Motor Sales and Service a/c Festival Car Rentals and the evidence shows that Hazel Grant procured its issuance. But, as we have indicated previously, Festival Car Rentals had no loan account with the bank. How then did Hazel Grant manage to procure the creation of this cheque? It purports to emanate from the application of Anthony Harvey t/as Festival Car Rentals. But on 30th September, 1986 when such a representation was made on the application Festival Car Rentals Limited had been a legal entity for twenty-seven days having been incorporated on 3rd September, 1986. And concerning Anthony Harvey, Mr. McKoy, one of the two directors of Festival Car Rentals Limited, said "that name never came up". Obviously meaning that Anthony Harvey was a stranger to the company. It has been abundantly demonstrated on the evidence that this application prepared by Hazel Grant in the name of Anthony Harvey was not genuine. No such person could be located. But the very day after the application came into being, resulting in the cheque being created, Eldon Grant was making use of the cheque. It could not have reached his hands through Anthony Harvey. Apart from the two persons who signed the cheque the only other persons who have been shown to have

dealt with that cheque are the two appellants. As a legal entity conducting its affairs above-board, the company would have no need to adopt such a devious method of securing a loan. Eldon Grant is not a director of the company yet he is the one conducting the business of the company and on the strength of this irregularity obtained the cheque. Inasmuch, therefore, as Eldon Grant presented that cheque in satisfaction of the Debit Note which he had requested the only reasonable inference, indeed, the irresistible inference must be that the obtaining of the Debit Note and the procuring of the cheque are part of a single enterprise involving both appellants.

The cheque, Exhibit 7B, for \$70,000, which Eldon Grant lodged to Mr. McKoy's 'Clients' Account, was issued long in advance of the incorporation of Festival Car Rentals Limited. It is dated 15.7.86 and was signed by both Mr. Ryan and Hazel Grant in favour of Arthur Valentine in pursuance of the loan application of Sylvester Graham which application has been shown to be not genuine. Again, the only persons who are shown to have dealt with this cheque after it was signed are Hazel Grant and Eldon Grant. We are confidently of the view that the inference drawn by the learned Resident Magistrate, that the appellants acted together in relation to these two cheques, is both reasonable and inescapable. It is true that Eldon did not personally make any representation to any officer of the bank but he need not because that was done on his behalf by Hazel in their joint enterprise to defraud the bank.

Further evidence of deviousness on the part of Hazel Grant, with reference to Festival Car Rentals Limited, is supplied by Exhibits 28A and 29A. Exhibit 28A, cheque no. 0455500, for \$48,000 bears date 10.4.87 the payee being

Festival Car Rentals a/c R. Bailey and Exhibit 29A dated 6.4.87 is cheque no. 0455492 for the amount of \$50,000 payable to Festival Car Rental a/c Edgar Smith. Both cheques were encashed by Hazel Grant and neither of the alleged borrowers has been shown to exist. Why should she be cashing cheques payable to a company in which her husband has majority shareholdings even when she knew nothing of her husband's involvement with the company and in a situation in which no relationship between herself and any of the alleged borrowers has even been hinted at?

But there is also another very pertinent question that clamours for an answer and it is this: Hazel Grant makes herself to be a stranger to her husband's involvement in Festival Car Rentals Limited, why then should she assume personal responsibility for the two cheques which are shown to have been used by her husband for the benefit of the company? Then, too, what was her connection with Festival Car Rentals which would enable her to encash the two cheques which she had prepared in the company's name, and what noble impulse motivated her to accept liability for those two cheques? How, then, could her evidence of lack of knowledge of Eldon's involvement with the company be true? And since her evidence must be a lie, why did she lie? The answer is obviously a desperate endeavour to conceal their joint enterprise.

We have deliberately deferred dealing with the complaint relating to the admissions, both oral and written, which were made in Mr. Ryan's office. The complaint is that, in the circumstances in which Exhibit 33 and the endorsement on the Promissory Notes were written and the oral statements made, the prosecution has failed to show that they were voluntary. Disqualifying factors referred to are that

Hazel Grant was sequestered in Mr. Ryan's office for some five hours with persons in authority, was not allowed to see her husband and was subjected to oppression. Although we do not agree that Mr. Ryan's attempt to call the Police was any evidence of oppression we nonetheless have some reservation about the circumstances in which those admissions were made. Mr. Holman is alleged to have shown much hostility to the appellant, who was the junior officer among those present, and inasmuch as he was not available to allow his conduct to be examined by the Court the taint of oppression remains and we conclude that the impugned evidence ought not to have been admitted. Nevertheless, we entertain no doubt whatsoever that there is overwhelming evidence, unaffected by the evidence now omitted, that the charges have been satisfactorily proved and that each appellant had a fair hearing. We are also of the view that the impugned evidence did not turn the scales against the appellant. See R. v. Parker 45 C.A.R. 1. Accordingly, pursuant to section 305(3) of the Judicature (Resident Magistrates) Act although the point raised as to the admissibility of these admissions has been decided in favour of the appellant we are nonetheless of the opinion that no substantial miscarriage of justice has actually occurred and so we dismiss the appeal on that point. With the exception, therefore, of the complaint against the admission of these admissions, we find that the grounds of appeal are without merit.

The appeals are accordingly dismissed and the convictions and sentences affirmed.

No submissions were addressed to us on the sentences although Hazel Grant included, among her grounds, a ground that the sentence is manifestly excessive. The villainy disclosed in the evidence by a person in such a position

of trust betrays great ingenuity for which she has been mistakenly applauded and rewarded. The sentence is not in any way excessive let alone being manifestly so.

The sentences will commence from the 10th day of February, 1989.