

May 2014

Admissability of Prior Crimes in a Prosecution for Forgery

Henry J. O'Hagan

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Recommended Citation

O'Hagan, Henry J. (2014) "Admissability of Prior Crimes in a Prosecution for Forgery," *St. John's Law Review*: Vol. 10: Iss. 2, Article 5.
Available at: <http://scholarship.law.stjohns.edu/lawreview/vol10/iss2/5>

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him; though the defendant be free from any negligence whatever. Such a death should not be treated as murder.

If the requirement were that the acts causing the homicide must be so connected with the felony as to be within the original felonious design or committed because of, or in furtherance of the felony, in order that the death be murder, the felony murder doctrine would be more properly and justly applied.

G. ROBERT ELLEGAARD.

ADMISSIBILITY OF PRIOR CRIMES IN A PROSECUTION FOR FORGERY.

At common law, the introduction of any evidence proving a crime, other than that charged in the indictment, was severely censured and the exceptions to this narrow view were fostered with reluctance. Such solicitude for the criminal was undoubtedly motivated by the same judicial philosophy which has created the presumption of innocence and the rule of reasonable doubt.¹

In the case of *People v. Molineux*,² the court, in considering the admissibility of independent crimes, restricted their introduction to cases wherein such unrelated crimes bore directly on the issues presented and tended to prove either intent, motive, absence of mistake, identity or furtherance of a preconceived plan. In considering the application of this rule to forgery,³ it must be noted that forgery is a crime which can be committed in either of two ways, *viz.*, the crime of forgery⁴ and the crime of uttering a forged instrument.⁵

*The Rule As Applied to the Crime of Forgery.*⁶

To Prove the Act. To establish the crime of forgery, two things must be proven, (a) a specific intent to defraud,⁷ and (b) the act

¹ *People v. Sharp*, 107 N. Y. 427, 14 N. E. 319 (1887); *Coleman v. People*, 55 N. Y. 81 (1873); RICHARDSON, EVIDENCE (4th ed. 1931) § 148; *People v. Molineux*, 168 N. Y. 264, 291, 61 N. E. 286 (1901); *People v. Durkin*, 330 Ill. 394, 161 N. E. 739 (1928).

² 168 N. Y. 264, 61 N. E. 286 (1901).

³ N. Y. PENAL LAW art. 84.

⁴ N. Y. PENAL LAW §§ 884, 887.

⁵ N. Y. PENAL LAW § 881.

⁶ Forgery as considered under this heading refers to forging as distinguished from uttering a forged instrument.

⁷ N. Y. PENAL LAW § 880; *People v. Molineux*, 160 N. Y. 264, 61 N. E. 286 (1901), "It will be seen that the crimes referred to under this head, constitute distinct classes in which the intent is not to be inferred from the act, * * *." *People v. Katz*, 209 N. Y. 311, 327, 103 N. E. 305 (1913), after stating the general rule against admissibility of prior crimes, continues, "there are various recognized exceptions to this rule, however, and one of them is that

of forging.⁸ Whenever a common plan or scheme⁹ is shown to exist it warrants the admission into evidence of prior crimes,¹⁰ including forgeries,¹¹ to prove the *act* of forging.¹² The prior forgeries are admissible under this theory whether they are similar in nature or not,¹³ as long as they, when considered with the crime in issue, possess a similarity which characterizes each as one of a sequence of criminal acts tending toward the accomplishment of a preconceived objective.¹⁴ The same rule is applicable in civil cases where proof

when guilty knowledge, quite commonly called intent, is an essential ingredient of the crime charged, evidence is admissible of similar crimes * * *. Familiar illustrations of this exception to the general rule, are found in cases of uttering counterfeit money, in forgery * * *."

⁸ N. Y. PENAL LAW § 884.

⁹ *People v. Marrin*, 205 N. Y. 275, 98 N. E. 474 (1912); *People v. Dolan*, 186 N. Y. 4, 78 N. E. 569 (1906); *People v. Duffy* (Common Plan under charge of receiving graft), 212 N. Y. 57, 105 N. E. 839 (1914); *People v. Murphy* (Common Plan under charge of arson), 135 N. Y. 450, 32 N. E. 138 (1892); *Altman v. Ozdoba*, 237 N. Y. 218, 142 N. E. 591 (1923); *Booth v. Powers*, 56 N. Y. 22 (1874); *Com. v. Dow*, 217 Mass. 473, 105 N. E. 995 (1914); *People v. Novotny*, 305 Ill. 549, 137 N. E. 394 (1922); *Sapir v. United States*, 174 Fed. 219 (C. C. A. 2d, 1909).

¹⁰ *Supra* note 9. The crimes need not of necessity be prior if a common scheme is shown, see *Mayer v. People*, 80 N. Y. 364 (1880).

¹¹ *People v. Marrin*, 205 N. Y. 275, 98 N. E. 474 (1912); *People v. Dolan*, 186 N. Y. 4, 78 N. E. 569 (1906); *Altman v. Ozdoba*, 237 N. Y. 218, 142 N. E. 591 (1923).

¹² *Supra* note 9; WIGMORE, EVIDENCE (2d ed. 1923) § 315, *infra* note 14.

¹³ WHARTON, CRIMINAL EVIDENCE (11th ed. 1935) § 352, p. 533: "Crimes entirely dissimilar, and apparently unconnected in design and execution, may be connected, for the reason that one was the cause of the other,—such as arson to conceal homicide, homicide to conceal burglary, counterfeiting, or other crimes,—so that evidence of such unlike crimes is relevant, going to identity, intent, or knowledge."—*People v. Marrin*, 205 N. Y. 275, 98 N. E. 474 (1912), where the indictment charged forgery, the prior crimes sought to be introduced were also forgeries, but this identity had no bearing on their admissibility as part of a common plan, the crimes may be entirely alien in their nature, *e.g.*, in the *Murphy* case, the crime charged was arson and the evidence admitted bore on the killing of animals and destruction of other property by other means than fire. Again, in *Pierson v. People*, 79 N. Y. 424 (1880), the indictment was for murder and the crime of bigamy was admitted to show a common plan motivating the murder; see cases *infra* note 14.

¹⁴ WIGMORE, EVIDENCE (2d ed. 1923) § 315, "when the act itself (forging, uttering or the like) is disputed, and the resort of proof is to a plan or system tending to show the doing of the *act*, the prior acts offered must * * * be connected by common features as to suggest a system or plan". This is the general rule, but in forgery cases usually the act is admitted and mistake is set up and hence little authority can be gleaned from the cases save by analogy. *Cooper v. State*, 193 Ind. 144, 139 N. E. 184 (1923) upholds the contention that under a common plan the *act of uttering* may be inferred, saying "and many authorities hold that where a number of like offenses were committed in a like manner, as if by following a novel system, evidence that the accused committed one of such offenses is competent on the question of his identity, as the person who committed another for which he is on trial". See also *McGlasson v. State*, 37 Tex. Cr. R. 620, 40 S. W. 503 (1897); *Thomas v. Com.*, 194 Ky. 491, 239 S. W. 776 (1922). *Contra*: *Mayer v. People*, 80 N. Y. 364 (1880), where the court, after granting that a common plan had been established, said in considering the crime of procuring money under false pretenses, "it was not proper to admit

of commission of the *act* is paramount.¹⁵ The requisites for proof of a common plan are varied and undefined, but it is certain that if all that can be shown is a plan to commit isolated and independent crimes with no formulated goal,¹⁶ their admission will be barred. Where the culprit, however, has directed his efforts to defraud against a single individual,¹⁷ or has had in mind the satisfaction of a pecuniary need such as evading threatening bankruptcy¹⁸ or the settlement of a litigation,¹⁹ the courts without hesitation have held a common plan to exist.

Where a prior forgery or other crime tends to identify the perpetrator of the crime in issue, it is admissible.²⁰ There must be such a connection between the crimes, that proof that the accused com-

these statements previously made to prove the defendant made the statements in question, * * * these statements were to be considered only as bearing on intent, and only then if the jury believed them to be part of a general scheme to obtain goods fraudulently." *Supra* note 13.

¹⁵ In civil cases where the question of forgery is in issue, intent rarely plays a part and the significant question is only whether the act has been committed; hence the rule, admitting prior acts to show intent, is rarely usable and a common scheme must connect the acts to render them admissible as proof of the act in question. *Kingsbury v. Waco State Bank*, 30 Tex. Civ. App. 387, 70 S. W. 551 (1902). For early cases supporting this doctrine, see *Balcetti v. Serani* (1792) Peake, N. P. Cas. 142; *Griffits v. Payne* (1839) 9 L. J. Q. B. N. S. 34, 11 Eng. Rul. Cas. 236. See the later case of *Altman v. Ozdoba*, 237 N. Y. 218, 142 N. E. 591 (1923), where the common plan was to settle a litigation and procure delay in payment of the amount due and prior forged checks were admitted, as part of that common plan, to show the check in question to be a forgery. For application of the criminal rule *re* intent, to civil cases where intent is an issue (usually in fraud), see *Hall v. Naylor*, 18 N. Y. 588 (1859); *Boyd v. Boyd*, 164 N. Y. 234, 58 N. E. 118 (1900); *Compagnie des Metaux Unital v. Victoria Mfg. Co.*, 107 S. W. 651 (Ct. Civ. App. Tex. 1908); *Kelly v. Mutual Life Ins. Co.*, 190 App. Div. 764, 180 N. Y. Supp. 657 (3d Dept. 1920).

¹⁶ *People v. Grutz*, 212 N. Y. 72, 105 N. E. 843 (1914); *People v. Weaver*, 177 N. Y. 434, 69 N. E. 1094 (1904); *People v. Sharp*, 107 N. Y. 427, 14 N. E. 319 (1887); *People v. Thompson*, 212 N. Y. 249, 106 N. E. 78 (1914); *McGee v. State*, 112 Tex. Cr. Rep. 385, 16 S. W. (2d) 1096 (1928); *Kelly v. Mutual Life Ins. Co.*, 190 App. Div. 764, 180 N. Y. Supp. 657 (3d Dept. 1920); *WHARTON, CRIMINAL EVIDENCE* (11th ed. 1935) § 352, "It certainly is not enough to show that the person on trial committed one or more other crimes of the same general nature in the vicinity of the place where he is charged with committing the crime for which he is on trial and that he committed such other crime or crimes at approximately the same time". *Re* the question of time, an analogy may be drawn to the same question arising when a common plan is not involved; for such see *infra* note 42.

¹⁷ *People v. Marrin*, 205 N. Y. 275, 98 N. E. 474 (1912).

¹⁸ *People v. Dolan*, 186 N. Y. 4, 78 N. E. 569 (1906); *Mayer v. People*, 80 N. Y. 364 (1880).

¹⁹ *Altman v. Ozdoba*, 237 N. Y. 218, 142 N. E. 591 (1923).

²⁰ *People v. Thau*, 219 N. Y. 39, 113 N. E. 556 (1916); *People v. Ryan*, 232 N. Y. 234, 133 N. E. 572 (1921); *Cooper v. State*, 193 Ind. 144, 139 N. E. 184 (1923); *Woodard v. Com.*, 228 Ky. 254, 14 S. W. (2d) 773 (1929); *McGee v. State*, 112 Tex. Cr. Rep. 385, 16 S. W. (2d) 1096 (1928); *Thomas v. Com.*, 194 Ky. 491, 239 S. W. 776 (1922).

mitted one will naturally tend to show that he committed the other;²¹ it is not permissible, however, to show that the defendant was likely to commit this crime merely because he committed another one of the same character.²² If, for instance, some uniqueness of method is shown between the crimes, evidence that the defendant committed the unallied crime is admissible as relating to his ability to commit the act in issue.²³ Again, if the instrumentality through which the violation in question was perpetrated, was procured by the commission of a prior crime, it is admissible to show the defendant's connection with the latter as bearing on his identity.²⁴

Although the other forgeries and the one in issue be identical on their face and similar in all circumstances, unless a common scheme is shown or the rule for admission to show identity is satisfied, the prior forgeries are not admissible in evidence to prove that the *act* in question was committed by the defendant.²⁵ They are admissible as bearing on intent, which will presently be discussed.

To Prove Intent. Once the act of forgery has been established, the *intent* with which it was committed can be inferred from the existence of a common plan throughout.²⁶

²¹ *Ibid.*; WHARTON, CRIMINAL EVIDENCE (11th ed. 1935) § 348, p. 510, "Where the two offenses are entirely different, in no way or manner connected with each other, and do not tend to aid in identifying the accused, it is error to admit on the trial for one, evidence of the other, under the claim of identification."

²² Thomas v. Com., 194 Ky. 491, 239 S. W. 776 (1922); McGee v. State, 112 Tex. Cr. Rep. 385, 16 S. W. (2d) 1096 (1928).

²³ Cooper v. State, 193 Ind. 144, 139 N. E. 184 (1923), where the defendant cashed a check in a bank in the same town as the one in which he cashed the check in issue, and forged the same name to it, and did it on the same day, and five days later duplicated the procedure in a different town, following the same method in each instance, the other acts were held admissible to prove the identity of the defendant.

²⁴ People v. Thau, 219 N. Y. 39, 113 N. E. 556 (1916).

²⁵ WIGMORE, EVIDENCE § 302, "It will be seen that the peculiar feature of this process of proof (*referring to proof of intent in the abstract*) is that the act itself is assumed to be done—either because it is conceded, or because the jury are instructed not to consider the evidence from this point of view until they find the act to have been done and are proceeding to determine the *intent*." (italics ours); see People v. Coleman, 55 N. Y. 81 (1873); WHARTON, CRIMINAL EVIDENCE (11th ed. 1935) § 352, p. 527, "Evidence of other crimes may be admitted when it tends to establish a common scheme or plan embracing the commission of a series of crimes so related to each other that proof of one tends to prove the other, and to show the *defendant's guilt* of the crime charged."; see cases cited *supra* note 9.

²⁶ People v. Marrin, 205 N. Y. 275, 281, 98 N. E. 474 (1912). "If one plan ran through all the transactions and was worked out in the same way, at nearly the same time, by the same means, * * *, and a common method, agency and purpose welded all the mortgages together, all were competent to show that the defendant was not mistaken". People v. Murphy, 135 N. Y. 450, 32 N. E. 138 (1892), where under an indictment for arson prior acts were admitted as bearing on a common plan or scheme and the jury was allowed to infer commission of the act in question. See WHARTON, CRIMINAL EVIDENCE (11th ed. 1935) § 352, *supra* note 13. People v. Dolan, 186 N. Y. 4, 78 N. E. 569 (1906);

When independent crimes are admitted to show identity, *intent* may not be inferred therefrom, unless they are so similar in nature to the forgery in issue as to be admissible under the rules governing proof of the intent in forging, or else form part of a common plan or scheme.²⁷

Although it is clear that violations, separate and independent, do not bear on proving that the *act* in issue has been committed, once the act has been established, they are admissible to show the *intent* with which the defendant acted.²⁸ To be admissible, however, the court has established a definite rule that between the offenses, a certain *similarity in nature* must exist;²⁹ and the court must warn the jury that the only purpose for which they can consider these other acts, is in relation to their bearing on *intent*.³⁰ The similarity required in this type of case (where the *act* referred to is forging), is an identity in the signature forged, if the defendant alleges a mistaken belief that he had authority to sign the prosecutor's name, as well as some relation in time, place and circumstance.³¹ However,

Altman v. Ozdoba, 237 N. Y. 218, 142 N. E. 921 (1923); Com. v. White, 145 Mass. 394, 14 N. E. 611 (1888); Finn v. Com., 5 Rand. 701 (Va. 1827); WIGMORE, EVIDENCE § 315, "Evidence amounting to proof of system or design, may of course be employed also where the act is not disputed and the intent alone is in issue".

²⁷ *Supra* note 23. The mere fact that the defendant has been identified by means of prior crimes as the perpetrator of the act, still leaves open the intent with which he committed the act. To prove identity, a uniqueness is demanded in the method of performance; this has no bearing on the intent with which the act in question was committed and is not relevant unless the similarity in nature, required for proof of intent, accompanies this uniqueness in the method of performance.

²⁸ People v. Everhardt, 104 N. Y. 591, 11 N. E. 62 (1887); People v. Gerks, 243 N. Y. 166, 153 N. E. 36 (1926); People v. Katz, 209 N. Y. 311, 103 N. E. 305 (1913), referring to the evidence supplied by the admission of prior acts, states "It was * * * competent and cogent for the purpose of proving the defendant's state of mind, * * *. It should have been withheld, it is true, until some evidence had been given of the commission of the crime charged in the indictment * * *." WIGMORE, EVIDENCE § 302.

²⁹ People v. Marrin, 205 N. Y. 275, 98 N. E. 474 (1912); People v. Everhardt, 104 N. Y. 591, 11 N. E. 62 (1887); People v. Dolan, 186 N. Y. 4, 78 N. E. 569 (1906); People v. Corbin, 56 N. Y. 363 (1874); People v. Altman, 147 N. Y. 473, 42 N. E. 180 (1895); Mayer v. People, 80 N. Y. 364 (1880); WIGMORE, EVIDENCE § 302, "Yet in order to satisfy this demand, it is at least necessary that the prior acts should be *similar*. * * * In short, there must be a similarity in the various instances in order to give them probative value,—as indeed the general logical canon requires".

³⁰ People v. Everhardt, 104 N. Y. 591, 595, 11 N. E. 62 (1887), "Such proof is not received for the purpose of showing other crimes than that charged in the indictment, but for the purpose of showing the guilty knowledge and intent, which are the elements of the crime charged and it can be considered by the jury only for that purpose."; for the same effect see Mayer v. People, 80 N. Y. 364 (1880); Shippy v. People, 86 N. Y. 375 (1881); Com. v. Shepard, 1 Allen 575 (Mass. 1861).

³¹ People v. Corbin, 56 N. Y. 363 (1874), where the defendant was charged with having forged the prosecutor's name to a note and his defense was belief that he had authority to so sign, the prosecution was not entitled to introduce

if a not guilty plea be interposed, and mistake is not set up as a defense, the requisite of identity of signature is dispensed with and all that need be shown is a similarity in time, place and circumstance.³² The theory behind admissibility in these instances to show intent, proceeds in the belief that if one commits an act or acts similar to the one in issue many times before, it is some evidence that he committed the one in issue with a guilty intent and is possessed of the necessary guilty knowledge.³³ A similar rule applies in other crimes where specific intent is an element, *e. g.*, counterfeiting, receiving stolen property and for receiving money or property under false pretenses.³⁴ Before this logic is applicable in any given instance, it is essential that the prosecution show the forging of the prior instruments to be the act of the defendant,³⁵ but it need not be shown that the defendant possessed guilty intent in the prior instances.³⁶

another forged note wherein the name forged was not that of the complainant in the instant action. It would seem from this case that where indictment is for forging, and the defense is mistake, some similarity on the face of the note is required, and another note, forged on a different person, under circumstances similar in time and place, is inadmissible, as being too remote from the issue which revolves around the defendant's knowledge of his authority.

³² *People v. Altman*, 144 N. Y. 473, 42 N. E. 180 (1895) *semble*, the indictment here charged the forgery of the name of X with the intent to defraud Y. The court held that to prove the intent with which the forgery was committed, it was not competent to show that at the time of the arrest, the defendant possessed other checks bearing X's name, unless it is shown that the defendant forged these other checks. (*Contra* in this respect, *Rex v. Hough*, 1 Russell & Ryan 120 [1806] where possession alone was deemed sufficient.) The court infers that had the signing of the other checks been proven the act of the defendant, they would have been admissible under the rules governing admissibility when the indictment is for utterance, saying at p. 477, "There was no attempt to bring the case within the rule laid down by this court, that upon the trial of an indictment for forgery by uttering a forged check, and as bearing on the question of guilty knowledge of the defendant, it is competent to prove the uttering by him of other forged checks on other occasions."

³³ *People v. Gerks*, 243 N. Y. 166, 153 N. E. 36 (1926), "Repetition reduces the likelihood of mistake or mere coincidence"; *People v. Everhardt*, 104 N. Y. 591, 11 N. E. 62 (1887); *People v. Dolan*, 186 N. Y. 4, 78 N. E. 569 (1906); WIGMORE, EVIDENCE § 302, "It is not here necessary to look for a general scheme or to discover a united system in all the acts; the attempt is merely to discover the intent accompanying the act in question; and the prior doing of other similar acts, whether clearly a part of a scheme or not, is useful as reducing the possibility that the act in question was done with innocent intent."

³⁴ *Hall v. Naylor*, 18 N. Y. 588 (1859); *People v. Katz*, 209 N. Y. 311, 103 N. E. 305 (1913); *Coleman v. People*, 58 N. Y. 555 (1874); *Mayer v. People*, 80 N. Y. 364 (1880).

³⁵ *People v. Altman*, 144 N. Y. 473, 42 N. E. 180 (1895).

³⁶ *People v. Gerks*, 243 N. Y. 166, 153 N. E. 36 (1926), "We are unwilling to announce a rule that an earlier forgery may not even be considered in its bearing on a later one unless found at the outset to have been made with fraudulent intent. The first throws light upon the last, but equally is it true that the last throws light upon the first."; WIGMORE, EVIDENCE § 317, "The falsity of the other article uttered or possessed must be shown. But the defendant's knowledge of their falsity need not be shown". *Contra*: 3 GREENLEAF, EVIDENCE § 15, "In the proof of intention * * * the unlawful intent in the particular case may well be inferred from a similar intent proved to have existed in other transactions done before or after that time".

The Rule As Applied to the Crime of Uttering a Forged Instrument.

To Prove the Act. As far as admissibility to prove the *act* of utterance is concerned, the same rules are applicable as when the indictment is for forging the instrument and the *act* of forging is in issue.³⁷

To Prove Intent. On the subject of intent, some confusion exists.^{37a} However, it is safe to say that when a common plan or scheme is evidenced, the separate crimes will be admissible to prove both the act of utterance and the intent accompanying it.³⁸ The difficulty arises when we seek to find the similarity required before admitting other crimes to prove *intent in the abstract*, as distinguished from the *intent accompanying a common plan*.³⁹

The general rule warranting admissibility to show abstract intent demands a similarity in the nature of the offenses, consisting in a relationship of time, place and circumstance.⁴⁰ Hence no similarity on the face of the instrument is demanded in the usual case,⁴¹ but it is essential that not too remote an interval shall separate the acts sought to be introduced, and the act in question.⁴²

³⁷ *Supra* notes 10 to 25, inclusive, the same rules and theories are applicable.

^{37a} Referring to intent in the abstract, Wigmore says, "It is just this requirement of similarity which leaves so much room for difference of opinion and accounts for the bewildering variance of rulings in the different jurisdictions and even in the same jurisdictions and in cases of the same offense". WIGMORE, EVIDENCE § 302.

³⁸ *Supra* note 26; WHARTON, CRIMINAL EVIDENCE (11th ed. 1935) § 352.

³⁹ Before admitting crimes as proof of the intent in the abstract, the court seeks a similarity in the nature of the offense. It is the determination of what constitutes this similarity that has caused the confusion referred to in note 37a.

⁴⁰ *Mayer v. People*, 80 N. Y. 364 (1880), holding that acts committed subsequent to the one in question are admissible providing the essential requisite of similarity in time, place and circumstance, exists; in this instance, an act committed two months subsequent to the one in issue was held not too remote; *People v. Shulman*, note, 80 N. Y. 373 (1880); *People v. Altman*, 147 N. Y. 473, 42 N. E. 180 (1895); *People v. Everhardt*, 104 N. Y. 591, 11 N. E. 62 (1887); *People v. Marrin*, 205 N. Y. 275, 98 N. E. 474 (1912); *People v. Gerks*, 243 N. Y. 166, 153 N. E. 36 (1926); *Cooper v. State*, 193 Ind. 144, 139 N. E. 184 (1923); *State v. Murphy*, 17 N. D. 48, 115 N. W. 84 (1908); *Schultz v. United States*, 200 Fed. 234 (C. C. A. 8th, 1912); *People v. Weaver*, 177 N. Y. 434, 449, 69 N. E. 1094 (1904), dissenting opinion of Werner, J., stating that the denial of guilty intent "left the prosecution no alternative but to establish intent by the usual means in such cases, namely, by evidence of other forgeries of the defendant that were so related in time, place and circumstance to the forgery charged, as to throw light on the intent with which it was committed".

⁴¹ *Ibid.*

⁴² *Cooper v. State*, 193 Ind. 144, 139 N. E. 184 (1923); *People v. Canfield*, 173 Cal. 309, 159 Pac. 1046 (1916); *People v. Jarvis*, 306 Ill. 611, 138 N. E. 102 (1923); *Mayer v. People*, 80 N. Y. 364, 376 (1880), (Note, quoting *People v. Shulman*), "It is generally said that they (prior or subsequent acts) must have occurred about the same time as the commission of the alleged crime; but that is quite indefinite, * * *. Each case, as to the application of this rule, must depend largely upon its own circumstance, and not infrequently the limit of

An anomaly has arisen in cases where the indictment charges both uttering and forging, and the defense set up is mistaken belief in authority to sign.⁴³ In such a case it has been held that instruments bearing a signature other than that of the prosecutor, are inadmissible as being too prejudicial;⁴⁴ and mere dissimilarity on the face seems a sufficient bar, even though there is a similarity in time, place and circumstance.⁴⁵ The reasoning seems to be, that since the only thing in issue was the defendant's knowledge of his authority to sign, the fact that he had forged other checks around the same time does not show intent in the instant case unless there is a similarity in the name signed.⁴⁶ Though such has been established as the rule where the indictment was for forging alone,⁴⁷ it is difficult to see why it should apply, when coupled with the indictment for forging, there is one for utterance, since the broad rule in the latter case is to admit all forgeries similar in time, place and circumstance.⁴⁸ The defendant by pleading his mistake, is allowed to restrict the prosecution's evidence, and limits it to instruments almost identical in character.⁴⁹ From the cases following the one wherein this narrow rule was propounded, it is apparent that it will be confined strictly

them must rest entirely in the discretion of the judge presiding at the trial." WHARTON, CRIMINAL EVIDENCE (11th ed. 1935) § 350, "If they are committed within such time, or show such relation to the main charge, as to make connection obvious, such offenses are admissible to show intent".

⁴³ *People v. Weaver*, 177 N. Y. 434, 69 N. E. 1094 (1904), where the indictment contained two counts, one forging the other the utterance of the check so forged, the court refused admission to other checks not bearing the signature of the prosecutor and allegedly written by the defendant. However, admission was granted when a check was offered, bearing the prosecutor's signature. The court laid great stress on the not guilty plea of the defendant and the defense of a mistaken belief in the authority to sign, and inferring that sufficient similarity did not exist between the unadmitted notes and the one in question to make them more relevant than prejudicial.

⁴⁴ *Ibid.*

⁴⁵ *Ibid.*

⁴⁶ It is hard to reconcile the ruling in the *Weaver* case with other cases wherein the indictment was for utterance. The court in applying the rule laid down in *People v. Corbin*, 56 N. Y. 363 (1874), seems unmindful that the indictment for utterance should broaden that rule, since the *Corbin* case decided the question of admissibility when the only crime charged was forging itself. Incumbent on the prosecution when the indictment is for uttering, is the task of proving the intent accompanying the utterance (*People v. Dolan*, 186 N. Y. 4, 78 N. E. 569 [1906]; *People v. Everhardt*, 104 N. Y. 591, 11 N. E. 62 [1887]; *People v. Gerks*, 243 N. Y. 166, 153 N. E. 36 [1926]). The evidence possessed, enabling the People to prove such, should not be limited merely because the indictment for utterance is coupled with one for forging.

⁴⁷ *People v. Corbin*, 56 N. Y. 363 (1874).

⁴⁸ *Supra* note 46.

⁴⁹ *People v. Weaver*, *supra* note 43 *et seq.*

to its facts, and under indictments charging utterance the broader rule previously given will prevail.⁵⁰

HENRY J. O'HAGAN.

⁵⁰ In *People v. Dolan*, 186 N. Y. 4, 78 N. E. 569 (1906), under indictment for uttering a forged instrument, the facts were essentially similar to the Weaver case, save that the defendant did not claim a mistaken belief in his authority to sign. Other forgeries, not bearing the signature of the prosecutor, were admitted into evidence. In *People v. Gerks*, 243 N. Y. 166, 153 N. E. 36 (1926), where the indictment was for utterance, no similarity on the face of the instrument was demanded and the rule requiring similarity in place, time and circumstance, alone, was reiterated, and strengthened by the statement that the rule governing admissibility in such instances was similar to that applicable in counterfeiting cases. In counterfeiting cases, no similarity on the face of the coin or bill is required (see cases cited in *People v. Molineux*, 168 N. Y. 264, 297, 61 N. E. 286 [1901]; *Bryan v. United States*, 133 Fed. 495 [C. C. A. 5th, 1904]; *State v. Stark*, 202 Mo. 210, 100 S. W. 642 [1907]). In *People v. Marrin*, 205 N. Y. 275, 98 N. E. 474 (1912), the indictment was essentially similar to a charge of uttering a forged note. The specific facts alleged that the defendant had delivered a mortgage duly acknowledged, before himself as Commissioner of Deeds and executed by one Cahill, as mortgagee, to one Barry, knowing at the time the falsity of the mortgagee's signature. On prior occasions, the defendant had delivered other mortgages to Barry, and in each instance evidence disclosed the purported authors were unknown, and the mortgages never covered full record plots. The court in upholding their admission, is somewhat vague. At times it seems that admission is granted on the ground that the defendant was acting with a common method and purpose in mind, ("The common method, purpose, and victim formed the connecting links which strung together the nine successive and successful efforts to defraud pursuant to a common scheme"); at others, that relevancy was deemed established merely because of the similarity in nature of the crime, ("The false name was not the material fact, but the false man and the furtive intent in certifying that he was a true man and the mortgagor. If the eight mortgagors were myths, it was probable that the ninth was also and equally probable that the defendant knew it, *whether they bore the same name or different names.*"). The italicized statement seems to infer that even though no common plan ran throughout, and if the person defrauded differed on each occasion, the same decision would result. This opinion, though of very little assistance, does not vary the rule of the Everhardt and Dolan cases. If construed as being decided on the theory of common plan, it is entirely alien to them; if, as being decided on the theory of admission to show abstract intent, it has the same characteristic possessed by those cases, in demanding only similarity in time, place and circumstance and not on the face of the document. Whether or not the similarity of the person defrauded, was a controlling factor when the court considered, if it did, the theory of admitting prior similar crimes to prove intent when no common scheme is shown, remains a judicial secret.