THE ACCOMPLICE AS A WITNESS.[1]

I may be permitted to preface what I am about to say by the words of the great Blackstone—the Pothier of the Englishmen. In his opening remarks in a first lecture delivered by him in 1758, at Oxford University, and which lectures ultimately became *Blackstone's Commentaries*, he said:

> The general expectation of so numerous and respectable an audience; the novelty, and I may add, the importance of the duty required from this Chair, must inevitably be productive of great diffidence and apprehension in him who has the honour to be placed in it.

I feel the honor; I am aware of the novelty of my position; I am not without apprehension, and my diffidence almost forces me to offer an excuse for my appearance before you.

In the early days of last autumn, when your President asked me to speak before your Association, I hesitated, not from lack of appreciation of the honor, or a reluctance to contribute to the good work which I know this Association is carrying on, but, rather, from a consciousness of my own limitations, and from a remembrance of the able and learned predecessors who have, on different occasions, occupied the position, it is now my lot to fill.

I then selected my subject, *The Accomplice as a Witness*, and I deferred, as long as I in reason could, the fatal day when the present operation should take place.

A very distinguished and learned Lecturer on scientific subjects was once asked by a scientific Society to deliver a lecture. He accepted, but from time to time, and with persistence, delayed and postponed the date; finally, further delay was impossible, and he faced his audience. He apologized or excused the many postponements by the statement, that it was out of consideration for his audience that he had suggested or requested the postponement, and he added, his principal reason was, that there was always the hope that death might overtake him, and his audience would thereby escape the infliction. You are not fortunate in that respect, and I am before you, and will proceed to a brief consideration of my subject.

[1] This was a lecture delivered by the Honourable R. A. E. Greenshields, Acting Chief Justice Superior Court, Montreal, at a dinner of the Junior Bar of Quebec, held on the 9th March, 1929.

Do not anticipate anything in the way of research work, if the word *research* can be properly applied to the treatment of a legal subject. Anything in the way of novelty you will probably fail to discover. If, however, I succeed in capturing for a short time your interest, I shall have fully realized my hope and expectation. If, in addition, I may, by chance, say something which will be of practical use to the active practitioner, that circumstance will greatly add to the gratification I feel in being allowed to address you.

My subject as stated would, naturally, suggest the form my consideration will take. For simplicity I will divide my subject into two parts:

(1) Who in law and in fact is an accomplice:
(2) His position before the Court as a witness.

I.

The accomplice in the commission of a crime has always had a prominent place in the Criminal law in England. His history, as revealed in the English Common law, is interesting, and is an excellent illustration of the growth or building up of the great corpus of the Common law of England in criminal matters, a body of law solidly established on a foundation of experience, equity and justice. The *accessory* was sometimes known as an *accomplice*. It is, however, opportune here, to point out, that the words *accessory* and *accomplice* are not interchangeable. Under the English Common law, there was the distinction between the principal in the first degree and the principal in the second degree. That distinction exists in some of the States of the Union to the South of us. It does not exist in our law. I refer to it only for the purpose of pointing out and making clear the distinction between the *principal*, the *accessory* and the *accomplice*.

> Whoever actually commits or takes part in the actual commission of a crime is a principal in the first degree, whether he is on the spot when the crime is committed or not, and if a crime is committed partly in one place and partly in another, everyone who commits any part of it at any place is a principal in the first degree.[2]

The same Author defines the principal in the second degree as being "one who aids or abets the actual commission of the crime, either at the place where it is committed, or elsewhere." Under the English law the principals in the second degree were not considered as accessories, even before or after the fact.

[2] Stephen Digest of Criminal Law, 7th ed., p. 42.

On the other hand, an accessory before the fact, as defined by Stephen, is "one who directly or indirectly *counsels, procures* or *commands* any person to commit any felony or piracy which is committed in consequence of such counselling, procuring or commanding."

He was not a principal either in the first or the second degree. If he were present when the crime which he counselled, procured or commanded was committed, not by his hand, but by the hand of another, he was not an *accessory,* but was a principal in the second degree. There was in England an *accessory* known as the *accessory in fact,* as distinguished from the *accessory before or after the fact.* The *accessory after the fact* is one who, knowing a felony to have been committed by another, receives, comforts or assists him in order to enable him to escape from punishment, or rescues him after arrest, or, having him in custody, intentionally suffers him to escape or opposes his arrest. All this is of little, not even passing, interest at the present time. There is no *accessory before the fact.* He is a principal. Our Code, sec. 69, makes that clear beyond doubt.

The *accessory after the fact* still has his place in our Code (sec. 71), and the Code definition is entirely satisfactory the only remark I make is, that the *accessory after the fact* may have no knowledge of the intention of any one to commit the crime. Not having this knowledge, he could not aid, abet, counsel or assist in the commission of the crime. The crime must have been completely committed by someone before any act of another can make him an *accessory after the fact.* In other words, an *accessory after the fact* must be aware that the person to whom he is giving assistance has already completely committed an offence.

With this knowledge, if he does overt acts which the law would recognize as acts of assistance in order to conceal the crime committed by another, or prevent the author of the crime from receiving his just punishment, then he becomes an *accessory after the fact.*

I have referred at this, perhaps, at too great length, to enable me to say that the *accessory after the fact* is not an accomplice within the meaning of our law.

What is an accomplice?

Essentially, the accomplice is a *particeps criminis.* He is, as *The New English Dictionary* describes him, "an associate in guilt; a partner in crime." The distinction between the accomplice and the accessory has always been recognized. Harrison, C.J., in *Reg* v. *Smith.*[3]

[3] (1876) 38 U.C., Q.B., 218, at p. 227.

The words aider, abettor, *accessory* and accomplice, as applied to crime, are often used as having the same meaning, but they are by no means synonymous.

I would accept the following definition of an accomplice:

Every person of legal responsibility who, knowingly and voluntarily, cooperates with or aids or assists or advises or encourages another in the commission of a crime, he is an accomplice.

It will be at once seen, that the question, whether a person is or is not an accomplice, must be determined as a question of law and fact.

When the question arises on a trial, it is the duty of the presiding Judge to instruct the jury as to what, in law, constitutes a man an accomplice. It will then be left to the jury to decide, upon the proof made, whether the person called as a witness for the Crown is, upon the facts proven, an accomplice.

The foregoing remarks are of no particular importance and what I have stated is comparatively free from difficulty. The witness is called as an ordinary witness, and is subject, in his examination, to the ordinary rules. If his testimony is objectionable on legal grounds, it is excluded. On the other hand, testimony, legally admissible, cannot be and is not excluded because the witness is suspected of being, or may be considered as an accomplice. It is when the proof in the case has all gone to the jury, counsel for the prisoner and for His Majesty the King have exhausted their eloquence in their addresses, and it comes to the Judge's charge or direction, that the interesting and, perhaps, difficult point is reached.

If it appears to the presiding Judge that the witness examined by the Crown is, or may be called, a *particeps criminis*—an accomplice, then it is the duty (and I use the word advisedly) of the trial Judge to do something, or rather, to say something.

By way of preparation, or introduction, to what he should later say, the trial Judge should explain to the jury, what, in law, an accomplice is, or should give such clear and concise definition as he may be able, of what the law calls an accomplice. He should then draw the jurors' attention to the facts established, which would connect the witness in any way with the commission of the crime, and he should ask the jury to conclude in their own minds, and without further interference by him, as to whether what the witness is proved to have done, makes him, having regard to the law received from the trial Judge, an accomplice.

It is true the decision of the jury upon this question is not as conclusive as its finding in fact on the guilt or innocence of a prisoner.

An Appellate Court may, notwithstanding the opinion of the jury that a witness was an accomplice, readily find that the facts do not justify such a finding, and the Appellate Court may readily discharge the witness from the disability attaching to the testimony of an accomplice.

This brings me to the second part of my subject.

II.

We then have the witness examined, and the proper direction given by the trial Judge to the jury on the question, as to whether he was an accomplice, and I assume that the Judge and jury are of like opinion, that the witness was a *particeps criminis*, a partner in the crime for which the prisoner stands charged. What is to be done with his testimony? What special direction to the jury shall be given by the trial Judge?

Here I wish to state, with emphasis, that what the trial Judge may or may not do is in no way connected or governed by the rules or law of evidence. The accomplice has been examined; he is a compellable witness, and his testimony has been subjected to all the rules of evidence applicable to any other witness. Such part of his offered testimony as was inadmissible, has been excluded; he has been permitted to answer all legal questions; everything that has been done has been legally done. What remains to be done must not be treated as a matter of evidence. It is no such thing. I am not unaware that it has been by many confused with rules or laws of evidence, and as a result of such confusion serious error has arisen. At the trial, the time for applying rules of evidence has passed, and we have reached the point where the Jury is called upon to decide on the value of legally admitted evidence or proof.

In order to make as clear as possible my view of the whole matter, I propose to ask you to go back several centuries in the history of the development of the Common law of England upon this subject. When we say that we will go back to a time "beyond which the memory of man runneth not to the contrary", we are supposed to refer to the time of the good Queen Anne. Previous to the Statute, 5 Anne, cap. 32, sec. 4, which was assented to in 1706, the Courts and Judges of England had been dealing with this question of accomplices as witnesses. This Statute makes the following provision:

> If any person or persons, being out of prison, shall from and after the said 10th day of May, 1706, commit any burglary or felony, as aforesaid, and afterwards discover two or more persons who did, have or hereafter shall

commit any such burglaries or felonies, and that such two or more persons discovered shall be convicted of such burglary or felony, any such discoverer shall himself have the like reward and allowance of £40 hereby promised to be paid to the person or persons who shall apprehend and convict house breakers and shall be entitled to the gracious pardon of Her Majesty.

This was rather an encouraging provision, and it simply meant, that if any accomplice who was not in prison should commit a felony and afterwards denounced his confederates not only in the particular felony committed by him, but felonies thereafter committed by them, and shall succeed in convicting such persons then he shall be entitled, as of absolute right, to the pardon of the Crown. That Statute was a modification of 10-11 William III., cap. 23, sec. 5, which was assented to in 1699.

The person who made the discovery or denouncement of his confederates or partners in crime, was called an *Approver*, or sometimes an *Appellor*. The process or procedure by which he could secure the pardon was known as the *Approvement*, or *Appeal*. I propose to refer to it at some length, as I am satisfied it is, as Leach states, in vol. I. of his *Crown Law*, published in the early part of the 19th Century, the origin or source of the whole matter of dealing with accomplices as witnesses.

I refer to the statement of Lord Mansfield, delivered in 1775, in the case of *Rex* v. *Rudd*,[4] to describe the process or procedure known as the *Approvement*:

> A person desiring an Approver must be one indicted of the offence and in custody on that indictment; he must confess himself guilty of the offence and desire to accuse his accomplice; he must likewise, upon oath, discover not only the particular offence for which he is indicted, but all persons and felonies which he knows of; and after all this it is in the discretion of the Court whether they will assign him a Coroner and admit him to be an approver or not; for if on his confession it appears that he is a principal and tempted the others, the Court may refuse and reject him as an Approver. When he is admitted as such, it must appear that what he has discovered is true, and that he has discovered the whole truth. For this purpose the Coroner puts his appeal into form, and when the prisoner returns into Court he must repeat his appeal without any help from the Court or from any bystander, and the law is so nice that if he vary in a single circumstance the whole falls to the ground, and he is condemned to be hanged; or if he fail in the colour of the horse so rigorous is the law that he is condemned to be hanged; much more if he fails in essentials. The same consequence follows if he does not discover the whole truth, and in all these cases the Approver is convicted on his own confession.

I restate the matter as stated by Lord Chief Justice Hale:[5]

[4] 1 Cowper, p. 335.
[5] 2 *Hale, Pleas of the Crown*, p. 229.

Upon confessing the felony and praying a Coroner to be assigned, the courth doth three things:

1° They assign him a Coroner to take his appeal;

2° They prefix him a time to make his appeal, sometimes three, sometimes four days;

3° He shall be removed and out of straight custody and make his appeal before the Coroner that he may not have any just pretence to say it was by duress or constraint, and, therefore, if upon the coming back of the Approver to the Court he abandons his appeal as being made by duress and against his will the Coroner shall be examined touching it, upon oath, and if he affirms (that is the Coroner) it was made *de don gré*, the appeal shall stand but the Approver shall be hanged. The Coroner must put his appeal into form, and when the prisoner comes back into Court he must repeat his appeal, and shall not be helped by the Court or any bystander, and if he omits in repeating his appeal in any manner of moment, as the colour of the horse, or the time of the day, he shall be hanged, for if he mistakes any such circumstances which must needs come from his own memory and information, it is a sign that it is feigned. If he makes not his appeal before the Coroner in the time fixed, he shall be hanged; if he makes it and disavows it when he comes into Court, he shall, upon the examination of the Coroner, upon oath, be hanged. If he appeals one who by his own confession is not in the Kingdom, he shall be hanged. After his appeal is made, he shall have an allowance of one penny per day by the book of 12 Edward IV. But he shall have nothing at all till he hath convicted the appellee.

If his testimony is not received and his confederates whom he denounced, are not convicted, then he stands convicted and shall be hanged.

It can be seen the risk the accomplice took when he turned what I call in modern terminology, "King's evidence."

Hale continues:

Therefore, this course of admitting of approvers hath been long disavowed and the truth is that more mischief hath come to good men by these kind of approvements, by false accusations by desperate villains than benefit to the public by the discovery and convicting of real offenders; gaolers have their own profits, often constraining prisoners to appeal or approve honest men, and therefore provision made against it by 1 Edward III.

And upon this reason it is that as of later times the admission of such appeals hath been wholly disavowed for in times when they were admitted a great strictness was held upon such appeals.

I return again, for a moment, to the pronouncement of Lord Mansfield. It is interesting, as showing the connection between the process of approvement and the rule of law now in force. He adds:

A further rigorous circumstance is, that it is necessary to the approver's own safety that the Jury should believe him, for if the partners in his crime are not convicted, the approver himself is hanged.

Great inconvenience arose out of this practice of approvement. No doubt if it was not absolutely necessary for the execution of the law against notorious offenders that accomplices should be received as witnesses the

practice is liable to many objections, and though under this practice they are clearly competent witnesses, their single testimony alone is seldom of sufficient weight with the Jury to convict the offenders; it being so strong a temptation to a man to commit perjury if by accusing another he can escape himself.

These words were spoken by Lord Mansfield in 1775, and he there refers to a case long previous to that, where Mr. Justice Gould laid down the same rule. Lord Mansfield continues:

Let us see what has come in the room of this practice of approvement. A kind of hope that accomplices who behaved fairly and disclosed the whole truth and bring others to justice should themselves escape punishment and be pardoned. This is in the nature of a recommendation to mercy. But no authority is given to a Justice of the Peace to pardon an offender and to tell him he shall be a witness against others. The accomplice is not sure of his pardon, but gives his evidence in vinculis in custody, and it depends on the title he has from his behaviour whether he shall be pardoned or executed.

From that time and in uninterrupted succession the Courts in England have held the accomplice to be a competent witness and subject to all the rules of evidence as any other witness. The right of the truthful accomplice to a recommendation to mercy has been acknowledged. His evidence or testimony has always been subject to scrutiny, and jurors have ever been warned of the danger of convicting on his testimony alone. For centuries this has been followed by the English Courts, not as a rule of evidence, perhaps not as a rule of law, but as a rule of practice, founded on experience, and, as I have said, equity and justice.

I venture the statement, that from the last part of the 16th Century, there has not been disagreement among the English Judges upon this question. Differences have arisen in matters of detail. Whether a witness was or was not an accomplice has given rise to discussion and difference. Whether the accomplice's testimony had been corroborated opens the door to divers opinions, but the general rule has been followed. It may be that it was only in 1916 that the Criminal Court of Appeal in England declared that rule of practice to be a rule of law. That rule is, that the trial Judge should tell the jury that it is within their legal province to convict upon the uncorroborated evidence of an accomplice, but, at the same time, he should warn the jury of the danger of convicting on the unsupported testimony of an accomplice. If the Judge fail to give that warning, in whatever words he may see fit to use, the conviction will not stand. In 1916, in the well known case of *Rex* and *Baskerville*,[6] the Lord Chief Justice of England stated:

[6] [1916] 2 K.B., p. 658.

It has long been a rule of practice for the Judge to warn the Jury of the danger of convicting a prisoner on the uncorroborated testimony of an accomplice or accomplices, and it is in the discretion of the Judge to advise them not to convict upon such evidence, but the Judge should point out to the Jury that it is within their legal province to convict upon such unconfirmed testimony.

And he added, after referring to the constant and unvaried jurisprudence of England:

This rule of practice has become virtually equivalent to a rule of law, and since the Criminal Appeal Act came into operation this Court has held, that in the absence of such warning by the Judge the conviction must be quashed.

There is no doubt that the Lord Chief Justice correctly stated the law as it is and has been for years in England. It is a part of the Common law of England. There is no Statute enacting such a rule of practice, or such a rule of law. It is part of the great corpus or body of the Common law of England. That Common law of England is in force still in the Dominion of Canada.

In the case of *Brousseau* and *The King*,[7] it was held:

The Criminal Common law of England is still in force in Canada, except in so far as repealed either expressly or by implication.

When our Criminal Code was under consideration before the Parliament of Canada, the then Minister of Justice, Sir John Thompson, in moving the second reading of the Criminal Code before Parliament, said:

The common law will still exist and be referred to, and in that respect the Code will have the elasticity so much desired by those who are opposed to codification on general principles.

As has been said, the Parliament of Canada never intended by the Criminal Code to repeal the Common law, and did not repeal the Common law of England except where it expressly or by implication operates a repeal.

In every Province of Canada the rule—call it a rule of practice or a rule of law—has been followed and is recognized to-day as a rule of law. Before coming to the Province of Quebec I will make a brief reference to the rule in the United States, which, of course, got its Criminal law from England.

The American rule has been stated and restated times without number. I quote what I find in *Corpus Juris*:[8]

[7] 56 Can. S.C.R., 22.
[8] Vol. XVI., p. 694, par. 1420.

The fact that a person is an accomplice in the commission of a crime goes to his credibility as a witness; and it is well settled, as a general rule, that an accomplice is not, as a matter of law, entitled to the full credit given to other witnesses. The rule in this respect being the same whether the accomplice is introduced by the prosecution or the defence . . . . . While the testimony of an accomplice is treated like that of other witnesses, and considered for all purposes, and may be believed, such testimony is not regarded with favour but should be received with caution; should be closely scrutinized and viewed with distrust, and even under the common law rule that it is not essential that the testimony of accomplices be corroborated the Jury should be instructed as to the danger of convicting upon the evidence of an accomplice.

At par. 1424, it is further added:

Even where the Common law rule is recognized it is in practical effect very strictly limited; the view being asserted, that while the jury may convict upon the uncorroborated testimony of an accomplice, they ought not to do so. In accordance with this view it is a very general practice, to caution or to advise the Jury against convicting on the uncorroborated testimony of an accomplice. And indeed, it has been held to be the duty of the Court to adopt this course although the more generally accepted view is, that the giving of such instruction is a more matter of practice and not a rule of law, and the omission to give it in the discretion of the Court, is not reversible error.

In some, if not many of the States of the Union, Statutes have been enacted requiring corroboration of the testimony of an accomplice. These Statutes take the form of sections 1002 and 1003 of our Code.

Let us now come to a brief consideration of the jurisprudence of our Province. There is even in the Province of Quebec some recognition given to the principles which finds expression in the words *stare decisis*.

Long before the Court of Criminal Appeal in England pronounced itself or laid down the rule as being the rule of law in the case of the *King* v. *Baskerville*, above referred to, a Canadian Judge—not a member of the Bench of what we are accustomed to call, one of the English Provinces, but a Judge, and a most excellent Judge, of the Province of Quebec, and a most excellent French speaking Judge, and that Judge I am glad to say, lived in the most excellent City of Quebec—made an excellent pronouncement upon this question that I am now considering. I refer to the late Charles Langelier, a Judge of the Sessions of the Peace of the City of Quebec. He was speaking in the case of the *King* v. *Saint-Pierre*.[9] I quote and am glad to quote what he there said:

[9] 19 C.C.C., p. 82.

The first question that arises is the following: Can an accused be condemned on the sole evidence of his accomplice, or is it necessary that the evidence of the latter be corroborated?

Formerly it was not necessary, but in the course of political trials which took place in England, particularly under Henry the Eighth, there was a protest against convicting upon the evidence of an accomplice alone.

It was only towards the end of the 17th Century that the Courts began to recommend to the Jurymen not to return verdicts of guilty on the sole evidence of an accomplice. But such practice in England was not based upon any text of law; it was simply an expression of the Judge of his opinion in advising the Jury founded upon the weight of evidence.

This doctrine was universally acknowledged not as a rule of evidence, but as advice from the Judge to the Jury, who could on their view of the facts acquit or condemn the accused on the evidence of an accomplice.

The learned Judge refers to the dictum of Lord Abinger, in the case of *Rex* v. *Farler*,[10] of which he approves. That dictum is as follows:

It is a practice which deserves all the reverence of law, that Judges have uniformly told Jurors that they ought not to pay any respect to the testimony of an accomplice unless the accomplice is corroborated in some material particular.

The danger is, that when a man is fined, and knows that his own fault is detected, he purchases immunity by falsely accusing others.

I would not go the length of his Lordship, who so spoke. I would not tell the jury, that they should pay no respect to the testimony of the accomplice unless his testimony be corroborated. Judge Langelier then continues his statement as follows:

With us, the well established jurisprudence is, that the Judge in addressing the Jury must put it on its guard and instruct it that the evidence of an accomplice must be corroborated.

The learned Judge spoke thus in 1911. He found in that case that there was corroboration, and he convicted. On appeal to the Court of King's Bench, Mr. Justice Trenholme, speaking for the Court said:

In England the practice is, that no conviction can be had on the uncorroborated evidence of an accomplice, and it is customary for the Judges there to warn the Jury that they ought not to convict unless they think that the evidence of an accomplice is corroborated. But it is to be observed that it is not a rule of law even in England that an accomplice must be corroborated but only a practice.

This goes farther than we go to-day.

In a later case, in 1918, *Rex* v. *Dumont*,[11] the same learned Judge was considering the same question, and in part he said:

[10] 8 C. & P. 106.
[11] 29 C.C.C., p. 442.

But what should be decided when it is the case of an accomplice? This question has been dealt with at length by the Court of Criminal Appeals in England in 1916, in the case of *The King* v. *Baskerville*. The Lord Chief Justice of England, Lord Reading, in that case, definitely settles the jurisprudence on this point. Lord Reading says: 'Now that we have stated the law to be applied in future cases, we trust that it will be unnecessary again to refer to the earlier decisions in this Court.'

Judge Langelier then proceeds to examine the law, and he says this:

There is no statutory law which directs that the evidence of an accomplice must be corroborated, but it is an admitted rule to-day that the Judge should warn the Jury not to accept such evidence without corroboration. If he does not do so, his admission will be a sufficient ground for setting aside the verdict if it is against the accused. But if after this warning the Jury has faith enough in the evidence given by the accomplice only their verdict will not be set aside if the prisoner is declared guilty. This, however, rarely happens.

I have rarely seen a better statement of the whole matter. In 1920 the Court of Appeal, in *The King* and *Boycal*,[12] unanimously held, as a rule of law, not as a rule of evidence, that "in a trial for murder, if the evidence of an accomplice is not corroborated, the jury should not be told to acquit the prisoner, but the jury should be warned of the danger of convicting." The judgment further stated, that the law as laid down in the case of the *King* and *Baskerville*, is the law that should be followed in this Province and by the Court of Appeal.

In 1927 the same Court, in the case of *Rifkin* v. *Rex*,[13] unanimously quashed a conviction because the trial Judge neglected to comply with the law, and the Court accepted, as a rule of law, the rule laid down in the case of the *King* v. *Beebe*,[14] which followed *Rex* v. *Baskerville*.

Later we have the case of *Gouin* where all the Judges agreed as to the necessity of the giving of the warning, but the majority were of opinion that the presiding Judge, Mr. Justice Wilson, had sufficiently complied with the rule of law. The Supreme Court of Canada, in its judgment, as reported,[15] found error in the Judge's charge, in that he told the jury that they *should* convict if they believed the accomplice's story, rather than telling them, that "it was within their power to convict."

[12] 31 K.B., 391.
[13] 42 K.B., p. 395 et seq.
[14] 19 Cr. App. Cases, 22.
[15] [1926] S.C.R. 539.

In a later case of *The King* v. *Brunet,* the same principle was recognized and declared to be the law of this Province. In the *Brunet* case, there was a difference of opinion among the Judges, some being of opinion that the witness was not an accomplice, others being of the opinion, that there was corroboration. The Supreme Court quashed the conviction, reaffirmed the rule of law as being a rule in force in Canada, and that is the last word of judicial pronouncement upon the matter.

I wish here and now to further emphasize the fact, that this rule is not a rule of evidence. It has nothing to do whatever with the admissibility or the exclusion of testimony. Therefore, any law of evidence, or any rule of evidence, peculiarly applicable to the Province of Quebec, if there be any, does not enter into the consideration of the matter. A trial Judge, who warns a jury in such words as seems to him best of the danger of convicting a person on the uncorroborated testimony of an accomplice, violates no rule of evidence, but recognizes a rule of law with respect to the credibility or weight to be given the testimony legally given and properly admitted of the accomplice.

I could point out, by analogy, other rules followed by our Courts which might be called "rules of practice," but which are entitled to all the reverence of rules of law. I refer to one. If an officer of the law, blue-coated and bedecked with brass buttons, takes into custody a suspected person, and with a view of making a case, proceeds to tell him (his prisoner) that he knows and is convinced of his guilt, but would like to get the story from him. He assures his prisoner that if he tells his story frankly, such influence as he can exert, and it is considerable, will be used to lighten his sentence, and on the strength of it his prisoner makes a so-called confession. If a trial Judge allows that confession to go to the jury, under those circumstances, and a verdict of guilty intervenes, that verdict will be quashed. The judgment quashing that verdict is based upon the principle, that the Crown must affirmatively establish that the confession or admission was freely given and not extracted or extorted by fear of consequence or hope of reward. We have no statutory law to justify such a holding. The only reference in the Criminal Code is the Sec. 685, which deals with the voluntary statement of a prisoner before the Magistrate. It has nothing to do with a person in authority obtaining a confession or admission from a prisoner or a suspected criminal. The rule is founded on the Common law of England, which has existed for centuries, and it is a rule of a law to-day, and unlike the rule I have been considering, it is a rule of

evidence; it is a rule governing the admissibility of proof; it is a rule founded, as the other, on justice and equity, and is justified by long experience.

Even in the days when technicalities prevailed, and the English prisoner had few rights, this was one that was always recognized We find a remnant of it to-day. When a prisoner is arraigned before the trial Court, he is told to hold up his right hand, and the indictment is read to him. Perhaps some of you are unaware of the origin of that custom. In England, in the olden days, the prisoner was placed in the dock manacled and heavily laden with chains. The clanking of the chains was the music of the Court room. When he was called upon to plead to the indictment, even then, it was recognized that he must be free, and all evidence of duress, force or captivity was removed; his chains were loosened and his manacles unlocked. Sometimes, however, it was found that the officer in charge, either through fear of attack or indifference, or even laziness, omitted to remove the chains and manacles, and to secure proof that the prisoner's hands, at least, were free, he was told to exhibit one to the full view of the Court. He was told to hold up his right hand. That is the origin of the practice which is followed to this day, and it has no other significance than to sanctify the rule, that what a prisoner says after his arrest must be free, voluntary and untrammelled.

I conclude with the emphatic statement, and I make it as clear and as emphatic as possible, that if a prisoner is convicted of an indictable offence on the unsupported, uncorroborated testimony of a witness, who is admitted to be an accomplice, a partner in crime of the prisoner, and the trial Judge realizing this, omits, neglects or refuses, upon request, to warn the jury, in some words, and the words are not sacramental, of the danger of convicting upon that testimony, that conviction will be quashed.

Note well, that my statement is free from any doubt that the witness is an accomplice. I assume that he is. Let it be well understood, that my statement assumes the entire absence of support or corroboration. My statement also assumes entire absence of any reference by the trial Judge to the danger of convicting. In such a case, without hesitation, and with unanimity the conviction will be quashed.