

acquitted that he has spoken the truth? If a prisoner is to be thus summarily punished, should not a Judge, in order to be logical as well as just, similarly punish the witnesses for the prosecution where a verdict of acquittal has been secured, or at least should they not be committed to the custody of the sheriff, and a prosecution for perjury ordered against them? Why not also thus treat all witnesses who have testified on behalf of an unsuccessful party, and, therefore, presumably given false testimony?

It appears to me that the simple solution of these problems would be to treat all witnesses alike. Is it not conceivable that a jury on the prosecution for perjury alleged to have been committed by a prisoner in his own behalf in the course of a prosecution against him for a different offence, might acquit? Stranger things have happened in the course of the administration of criminal justice.

When framing this section of the code removing the proscription against the reception of the testimony of the accused, surely its author did not contemplate that the menace would be held over the prisoner's head, that if he failed to convince the jury of the truthfulness of his story his punishment would be increased. With this threat hanging over him, well might the most innocent accused hesitate to enter the witness box in the endeavor to unweave the tangled web with which a skillful detective has, perhaps, surrounded him. The cause that prompts this treatment of the accused is, doubtless, to be traced to the rule under which for long ages his testimony was rigidly excluded; and now, since the interdiction has been removed, the bias created by the rule takes the form of this increased and improper punishment.

The parliamentary enactment which rendered the testimony of the accused admissible is a standing confession that the rule excluding it was unjust, not only to the accused but also to the public; for, as observed by Judge Wallace in his able article on "Progress of Criminal Legislation in Canada," at p. 704 of your last volume, "Quite frequently a guilty prisoner goes upon the stand and is convicted mainly or partly as the result of his own evidence." That the rule excluding such evidence was illogical, granting the premise that "a man is presumed innocent until he is found guilty," which still remains a maxim of our criminal law, has always been manifest to the crudest reason. The exclusion was based on the assumption that the temptation to perjury