lars of the case are referred to in 21 CANADA LAW JOURNAL, 71, and 10 Ont. Pr. R. 467.

W. N. Miller, and *Rae*, for plaintiffs.

J. Macgregor, for administrator.

J. A. Paterson, for creditors.

THE MASTER IN ORDINARY.—Under the former reference I had held—not without authority—that the salutary rule of judicial experience, which distrusts the admissions of an accomplice in a criminal act unless corroborated, was applicable to the evidence on the issues of fact in this case.

There is no presumption of law against the evidence of an accomplice. It is not a rule of law, but only a general and prudential practice of judges which, as Lord Abinger said, "deserves all the reverence of law," that juries are cautioned not to respect the unsupported testimony of an accomplice: *Reg* v. *Farler*, 8 C. & P. 106. The judicial caution only affects the credibility of the accomplice; but if the jury is satisfied of his truthfulness, they may disregard the caution of the judge and give their verdict in accordance with his evidence, and it will not be disturbed: *Reg* v. *Stubbs*, 1 Jur. N. S. 1,115. Nor is the caution limited to criminal cases. It is equally applicable to cases of fraud. The rule of the civil law, *Nemo alliegans turpitudinem suam est audiendus*, though formerly applied to witnesses, is now only applicable to the case of a party seeking relief. A witness, if an accomplice in a fraud, may be sworn in a civil suit; but a jury would be advised to view his evidence with the same scrupulous jealousy they would that of a *particeps criminis*.

"In cases pregnant with fraud, resting on the attesting witnesses alone, these witnesses must be beyond suspicion; and if at all shaken in credit, no part of their evidence can be relied on:" *Bridges* v. *King*, 1 Hag. Ec. Cas. 288.

A witness, if *particeps fraudis*, is not legally infamous, and may be sworn in a civil action, as well as a *particeps criminis* in a criminal action; although it would be difficult for a jury to give much credit to him if his participation in the fraud should turn out to be true: *Bean* v. *Bean*, 12 Mass. 20. The testimony of a witness, who is a participant in a fraud, ought to be strongly corroborated: *Kittering* v. *Parker*, 8 Ind. 44.

An American text-writer on evidence in civil cases says: "In cases where the statements of a witness are those of a *particeps criminis*, slight credit will be given:" "where the witness is *particeps criminis*, his testimony with corroboration is entitled to little weight:" *Wharton's Evid. Civ. Cas.* s. 414

Equally clear are the opinions of English judges. In *Cotton* v. *Luttrell*, 1 Atk. 451, the evidence of a witness was objected to because there was clear evidence of her participation in the fraud and malpractices charged, but Lord Hardwicke held that the objection only went to her credit, not to her competency.

Lord Eldon, in *Howard* v. *Braithwaite*, 1 V. & B. 302, thus referred to the practice of judges in discrediting witnesses, whose evidence invalidated instruments they had signed: "Lord Mansfield often said he would hear those witnesses, but would give no credit to them. Lord Kenyon followed him in that. I have suffered from both these great judges to this extent: that if the witnesses are to be heard, their credit is to be duly examined, but their testimony is to be received with all the jealousy necessarily—for the safety of mankind—attaching to a man who, upon his oath, asserts that be false which he has by his solemn act attested to be true. Every circumstance, therefore, is to be regarded with a strong inclination to believe that which he did was right, and that he swears under a mistake."

And he added if the question was to be tried at law, "I have not doubt a judge would tell a jury, they must look at his evidence with the most anxious jealousy—that the safety of mankind requires it."

In *Bootle* v. *Blundell*, 19 Ves. 494, the same learned judge again quoted Lord Mansfield as saying that "a witness impeaching his own act, instead of credit, deserved the pillory;" and he then added "Admitting, however, that such evidence is to be received with most scruplous jealousy, I should not, upon the evidence of those two witnesses, have directed the jury to find any other verdict" than the one which disregarded the evidence of the witnesses referred to.

These references seem to warrant the conclusion that the salutary and prudential practice of judicial cautions to juries to regard with distrust the testimony of a witness, who is an accomplice in a crime, though not a rule of law, applies equally to the testimony of a witness, who is an accomplice in a fraud; in fact, to all civil and criminal cases where witnesses are allowed *suam allegare turpitudinem*.

If during Monteith's lifetime, civil and criminal actions had been instituted respecting these warehouse receipts, Herson would be a competent witness against him. But can it be contended that a judge trying each action would caution a jury as to his evidence in the criminal, and not in the civil action?

Further evidence has been given on this reference, presumably as a corroboration of Herson's testimony. But I do not find that it comes within the definition of corroborative evidence. It can, I