955, 5 W.W.R. 1229. [Affirmed in 18 D.L.R. 217, 23 Can. Cr. Cas. 194, 49 Can. S.C.R. 587, 6 W.W.R. 462.]

(§ III—55) — UNRELIABLE WITNESS — EFFECT ON JURY.

If a jury believes that a witness cannot be relied upon, the only result should be the rejection of his testimony by them in considering their verdict; it should not affect the other legal evidence in the case.

Alexe v. Canadian Western Lumber Co., 8 D.L.R. 1, 22 W.L.R. 559, 3 W.W.R. 267.

(§ III—57)—DISCREDITING OWN WITNESS—USE OF PRIOR STATEMENTS.

The right, affirmed by s. 9 of the Canada Evidence Act, R.S.C. 1906, c. 145, of shewing that one's own witness, if found by the court to be hostile, had made a previous statement inconsistent with his present testimony, does not enable the party calling the witness to use the latter's previous statement as evidence of the facts contained therein the previous statement is admissible only for the purpose of impeaching the credit of the adverse witness who has denied that he had made it, and the jury should be so instructed.

R. v. Duckworth, 31 D.L.R. 570, 26 Can. Cr. Cas. 314, 37 O.L.R. 197.

Where an adverse witness, whether a party to the action or not, is called to prove a case, but his evidence disproves it, the party calling him may yet establish his case by other witnesses, called not to discredit him but to contradict him on facts material to the issue. A party at a trial is not concluded by a statement of one of his witnesses brought out on cross-examination, where it appears that the witness, who was opposed in interest to the party calling him, was called merely to establish certain material facts necessary to enable the party calling him to make out a case.

Spenard v. Rutledge, 10 D.L.R. 682, 23 Man. L.R. 47, 23 W.L.R. 623, 3 W.W.R. 1088, reversing 5 D.L.R. 649, 22 W.L.R. 12, 2 W.W.R. 900.

ADVERSE WITNESS.

It is ground for ordering a new trial that evidence of a statement made by a Crown witness to the police, and taken down in writing on their inquiry into the crime, was improperly admitted for the Crown on the witness' failure to identify at the trial as belonging to the accused certain clothing which in his statement to the police he had identified as such, when there had been no finding by the Trial Judge, under s. 9 of the Canada Evidence Act, that the witness was adverse, and that such statement was read by the Crown counsel to the jury and referred to by the Trial Judge as being in evidence, although the latter, in his charge, advised the jury not to base a finding on the statement so admitted. [Allen v. The King, 18 Can. Cr. Cas. 1, 44 Can. S.C.R. 331, and Ibrahim v. The King, [1914] A.C. 616, 83 L.J.P.C. 185, applied.]

R. v. May, 21 D.L.R. 728, 23 Can. Cr. Cas. 469, 21 B.C.R. 23, 7 W.W.R. 1261, 30 W.L.R. 488.

(§ III—58)—CORROBORATION—CHARGE OF FORGERY—CR. CODE, 1906, S. 1002.

The corroboration required by s. 1002 Cr. Code, on a charge of forgery, is additional evidence that will fortify and strengthen the credibility of the main witness and justify the evidence being accepted and acted upon if it is believed and is otherwise sufficient.

R. v. Scheller, 16 D.L.R. 462, 23 Can. Cr. Cas. 1, 7 S.L.R. 239, 6 W.W.R. 261, 27 W.L.R. 621.

RELEVANCY.

Facts which tend to render more probable the truth of a witness' testimony on any material point are admissible in corroboration thereof although otherwise irrelevant to the issue, and although happening before the date of the fact to be corroborated. [Wilcox v. Gotfrey, 26 L.T.N.S. 481, applied.]

R. v. Rabinovitch, 21 D.L.R. 600, 23 Can. Cr. Cas. 496, 25 Man. L.R. 341, 30 W.L.R. 609.

CORROBORATION—ORAL TESTIMONY.

The "evidence" of the claimant which requires corroboration under s. 12 of the Alberta Evidence Act, 1910, 2nd sess. c. 3, in order to recover against the estate of a deceased person means the oral testimony of the claimant.

Brocklebank v. Barter, 22 D.L.R. 209, 8 A.L.R. 262, 30 W.L.R. 159.

PRISONER'S TESTIMONY ON PERJURY CHARGE—INCONSISTENCIES WITH FORMER TESTIMONY.

Where the accused gives evidence on his own behalf in defence of a charge of perjury, material variances in such testimony from that in respect of which the charge is brought may in themselves supply the statutory corroboration which Cr. Code, s. 1002, requires, namely, that the accused shall not be convicted "upon the evidence of one witness, unless such witness is corroborated in some material particular by evidence implicating the accused."

R. v. Nash, 17 D.L.R. 725, 23 Can. Cr. Cas. 38, 7 A.L.R. 449, 28 W.L.R. 960, 6 W.W.R. 1390.

CRIMINAL TRIAL—CR. CODE, S. 1002.

The evidence of witnesses called for the defence may be looked at for the purpose of finding the corroboration required by statute (Cr. Code, s. 1002) for conviction of certain offences. [R. v. Girvin, 45 Can. S.C.R. 167; R. v. Fraser, 7 Cr. App. R. 99, followed.]

R. v. Wakelyn, 10 D.L.R. 455, 21 Can. Cr. Cas. 111, 5 A.L.R. 464, 23 W.L.R. 807, 4 W.W.R. 170.

Evidence which is consistent with two views is not corroborative of either, but if the accused has denied under oath the correctness of one of such views, the evidence becomes corroborative as to the other.

R. v. Peterson, 32 D.L.R. 295, 27 Can. Cr.