

The prisoner was found "guilty." Several questions were stated by the learned Chairman for the opinion of the Court. The second question was this:—

"Was I right in overruling the objection of counsel for the prisoner and in explaining to the jury as I did how they might determine who is an accomplice and the necessity for corroboration?"

The case was heard by MAGEE, J.A., CLUTE, RIDDELL, SUTHERLAND, and MASTEN, JJ.

E. G. Porter, K.C., for the prisoner.

Edward Bayly, K.C., for the Crown.

MAGEE, J.A., delivering the judgment of the Court at the conclusion of the hearing, said, after stating the facts, that the second question must be answered, as to the necessity for corroboration, in the negative.

There is no rule applicable to the evidence of accomplices, or alleged accomplices, who are called as witnesses on behalf of the accused person, such as the rule of practice and experience which exists relative to the evidence of accomplices against him, which requires that the jury be warned against the danger of convicting on such evidence without corroboration. It is well and proper to call the attention of the jury, in criminal as well as civil cases, to the possible interest of any witnesses on either side and the necessity of the jurymen applying their own judgment and common sense to the weight to be attached to the testimony of such witnesses; but that is very different from instructing them that the rule as to corroboration is the same as to both.

In this case there was some corroboration of Nicholson's evidence against the prisoner; and the jury, upon the instructions given to them, might very well have considered that, Nicholson being corroborated, and the other two not (in the jury's judgment), they should not pay attention to the evidence of the latter in the prisoner's favour.

Counsel for the Crown, before this Court, submitted that the verdict of "guilty" was well warranted by the evidence, and that it should not be disturbed unless some substantial wrong or miscarriage had been occasioned: Criminal Code, sec. 1019. But, as the Court could not say that the jury may not have been affected to the prejudice of the prisoner by the instructions given to them, the Court was not assured that there was no substantial wrong.

The conviction should be quashed and a new trial ordered. The prisoner should be admitted to bail in a substantial sum.