

## APPELLATE DIVISION.

SECOND DIVISIONAL COURT.

JANUARY 13TH, 1920.

\*REX v. FRECHETTE.

*Criminal Law—Theft—Evidence Given on Behalf of the Accused by Alleged Accomplices—Necessity for Corroboration—Judge's Charge—Misdirection—Substantial Wrong or Miscarriage—Criminal Code, sec. 1019—New Trial.*

Case stated by the Chairman of the Court of General Sessions of the Peace for the County of Hastings.

The indictment upon which the prisoner was convicted charged him with the theft of a quantity of whisky, the property of the Grand Trunk Railway Company. He was an engine-driver on the railway. It was alleged—and evidence was given to prove—that several others were concerned with him in the commission of the offence.

One of these alleged accomplices, named Nicholson, a fireman on the prisoner's engine, gave evidence on behalf of the Crown; and two others of them, Summers and Logan, who were separately indicted, were called for the defence. At the trial, the propriety of requiring the evidence of the accomplice who was called by the Crown to be corroborated was recognised, and the learned Chairman instructed the jury in that regard.

Summers and Logan, testifying for the prisoner, denied, as did the prisoner, that any part was taken by themselves or him in the theft of the liquor, several cases of which had been stolen from a car of the railway company.

In the stated case it was said that counsel for the Crown, in addressing the jury, argued that the two witnesses for the defence were accomplices, and that it was necessary that the evidence of each should be corroborated. Counsel for the prisoner objected that they were not properly proven to be accomplices. The Chairman then ruled against the objection; and, in his charge to the jury, explained to them the point taken by the counsel for the Crown, and told them that, if they considered that the three witnesses were accomplices, they ought not to accept their evidence without corroboration, and one accomplice could not corroborate another.

Afterwards the Chairman, after objection taken when the jury had retired, recalled them and told them that the evidence of an accomplice ought not to be accepted in itself, but the jury might accept it if they chose to do so and might found their verdict on it, but the rule of law was that it ought not to be accepted unless it was corroborated.