position; but even his ready wit did not suffice to prevent the court from expressing the opinion that his opinion as judge was sounder than his argument as counsel.

---

*SWORN AND UNSWORN STATEMENTS CONTRASTED.*

Grave miscarriage of justice not infrequently occurs from the adoption, by some of those charged with the duty of weighing evidence, of a sort of mechanical rule in the process. One very common instance is the case of a witness whose statements out of court are inconsistent with, or directly contradictory of, his testimony upon the witness stand. It too often happens—indeed it is doubtful whether it does not happen in the great majority of cases—that the judicial functionary who has to pronounce upon such evidence adopts the easy rule, that the sworn statement must be taken in preference to that which was not made upon oath.

The temptation to do this is very great, inasmuch as judges and juries not unnaturally shrink from findings that virtually pronounce a fellow-mortal guilty of the heinous moral and legal offence of perjury. They well know that a man would much rather be called a liar than a perjurer; and they have an apparent warrant for assuming that he is more likely to be guilty of the minor fault.

Now one could not quarrel with this disposition, merely *as* a disposition. It is a very natural one. The view just stated is one that ought to be taken into account in all such cases. But the making this view a conclusive rule may result in a serious abuse, by shutting out all further inquiry or consideration by its operation. The attitude of mind we object to is that in which the inquirer simply says: "We have here a sworn statement on the one hand, and, on the other hand, we have against it, contradictory statements by the same witness upon other occasions when he was not on oath; but we are bound to take his sworn statement in preference to any number of unsworn ones."

Neither the law nor the experience of mankind justifies any such rule. If any such rule were contemplated by the law, to what purpose would be the 22nd and 23rd sections of 17 & 18 Vict. c. 35 (Imp.) Why confer (or, rather, confirm; for the legislation was really declaratory) the right of proving such contradictory statements, if this absurd principle is to make them absolutely nugatory?