CLAYTON PETERSON..... APPELLANT; 1917

AND *May 16. *June 22.

HIS MAJESTY THE KING.....RESPONDENT.

ON APPEAL FROM THE SUPREME COURT OF SASKATCHEWAN.

Perjury—Evidence—Corroborative evidence—Criminal Code, section 1002.

The appellant was convicted of perjury for swearing that "he did not get from one Frank Brunner a cheque for four thousand dollars." Brunner swore that he gave the cheque in question to the appellant and the only evidence relied on as corroborative of his was that of one Smith, bank manager, who swore that he cashed the cheque for the appellant.

Held, that the evidence of Brunner was "corroborated in some material particular * * * implicating the accused," by the evidence of Smith, as required by section 1002 of the Criminal Code.

APPEAL from the judgment of the Supreme Court of Saskatchewan, rendered on a case reserved for the opinion of the Court by the trial judge.

The facts on which the questions of law for decision depend are sufficiently stated in the above headnote.

H. S. MacDonald K.C. for the appellant.

Sampson K.C. for the respondent.

THE CHIEF JUSTICE.—The appellant was not charged with having, when examined as a witness before the Commission appointed by the Legislative Assembly, denied the receipt by him of a cheque for $4,000 signed by one Brunner. The charge in the indictment is that Clayton Peterson swore he "did not get from Frank Brunner a cheque for four thousand

*PRESENT:—Sir Charles Fitzpatrick C.J. and Davies, Idington, Duff and Anglin JJ.

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dollars." Examined as a witness at the trial, the appellant maintained his position. Brunner, on the other hand, swore that he did give the accused the cheque. In these circumstances, one Smith, a bank manager, was examined to prove that he cashed for Peterson a cheque of Brunner for $4,000. That evidence was clearly admissible to prove the possession by Peterson of the cheque in question, which was a fact tending to corroborate in a material particular the actual delivery of the cheque by Brunner to Peterson and that is the gravamen of the perjury charge. Corroboration may result from any evidence which tends to give certainty to the contention in support of which it is advanced. Although the fact that A. is found in possession of B's cheque may not be absolute corroboration of the statement that B. gave A. the cheque, that possession being consistent with the possession obtained otherwise than through B., considered in connection with all the other evidence, the fact of possession may help the jury to come to a conclusion as to the truth or falsity of the statement. I am disposed to think that, although the judge's charge might have been more explicit, the jury could reasonably come to the conclusion they reached and there was no mistrial.

The appeal should be dismissed with costs.

DAVIES J.—The sole question in this criminal appeal is whether the evidence of Frank Brunner, who testified that he had given to the appellant a cheque for $4,000 for or upon account of the Licensed Victuallers Association, was

corroborated in some material particular by evidence implicating the accused

as required by section 1002 of the Criminal Code.

The case reserved for the opinion of the court by the trial judge states that

The accused was convicted of perjury for swearing that "he did not get from Frank Brunner a cheque for four thousand dollars upon the Licensed Victuallers Association."

Brunner swore that he gave the cheque in question to the accused. The only corroborative evidence was that of Smith, the manager of the Bank of Ottawa, who swore that he cashed the cheque for Peterson.

The cheque in question was not Brunner's cheque, but the cheque of the Licensed Victuallers Association, and was signed by Brunner, as treasurer, and one Wilson, the secretary of that Association. Under these circumstances, is the fact that Peterson had this cheque in his possession corroborative evidence that it was given to him by Brunner?

A majority of the Supreme Court of Saskatchewan held that it was, and I agree with them.

In his evidence, Peterson testified, not only that he did not get the $4,000 cheque from Brunner, but that he did not get such a cheque at all or any money, except about $200.

I agree with Chief Justice Haultain that this clear and unequivocal statement by Peterson excludes the theory or inference advanced in argument that he might have got the cheque from some one else than Brunner.

This being so, Smith the bank manager's evidence must be held to be corroborative of Brunner's statement that he gave the cheque in question to Peterson.

Smith swears he received the $4,000 cheque of the Licensed Victuallers Association from Peterson on the 13th December, 1913 (the day Brunner says he gave it to Peterson), and cashed it for him.

I would therefore dismiss the appeal.

IDINGTON J.—I am of the opinion that the evidence of Brunner that he gave appellant the cheque in question was, in the language of section 1002 of the Criminal Code, "corroborated in some material parti-

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cular * * * implicating the accused" by the evidence of Smith, the manager of the bank, that on the same day on which the cheque was dated and alleged to have been given, the appellant was in possession thereof and that it was cashed by him.

I therefore think the appeal should be dismissed.

DUFF J.—The question presented by this appeal as argued before us is really an academic question, because the argument very largely proceeded upon an abstract from the facts, not by any means presenting the full force of the case made by the Crown. The facts I am about to state in themselves shew the contention of the appellant to be beyond the pale of argument.

At a meeting of the executive committee of the Licensed Victuallers' Association in Regina, it was arranged that the appellant Peterson was to use money in connection with the Association's opposition to a bill then before the legislature of Saskatchewan, and the appellant and one Brunner, who was the treasurer of the Association, were authorized to employ the funds of the Association for that purpose. The occurrences at this meeting were proved by the evidence of the witness, George Sharpe. Brunner's evidence is explicit to the effect that on December 13th, 1913, he gave Peterson a cheque for $4,000, a cheque of the Licensed Victuallers' Association, signed by Brunner as treasurer, and by another officer of the Association; and Smith, the bank manager, proves by his evidence that on the same day a cheque answering the description of that which Brunner says he gave the appellant was cashed by the appellant. The evidence of the appellant, upon which the charge is based, was to the effect that he "did not get from Frank Brunner a cheque for $4,000 upon the account of the Licensed Victuallers' Association."

The ground of appeal is alleged non-compliance with the condition of section 1002 of the Criminal Code, which prescribes that upon a charge of perjury, the accused shall not be convicted on the evidence of one witness

> unless such witness is corroborated in some material particular by evidence implicating the accused.

It appears to me, as I have already said, that in view of the evidence of Sharp and Smith the contention is not seriously arguable. The principle to be applied is stated by Mr. Justice Wightman in *Reg.* v. *Boyes*(1), at p. 320.

> It is not necessary that there should be corroborative evidence as to the very fact, it is enough that there should be such as would confirm the jury in the belief that the accomplice is speaking the truth.

In the circumstances mentioned, Brunner's official position as treasurer of the Association, the authority given by the Association to Peterson and Brunner jointly to employ the funds of the Association, the fact relied upon as corroborative evidence that on the very day on which Brunner says he gave the cheque to Peterson, Peterson had such a cheque and cashed it affords, it appears to me, superabundant corroboration within the requirements of section 1002.

ANGLIN J.—The question on this appeal is whether there was any evidence proper to be submitted to a jury as corroboration of the testimony of Frank Brunner that he had given to the appellant Peterson a cheque for $4,000 upon the account of the Licensed Victuallers Association. Section 1002 of the Criminal Code prescribes that upon an accusation for perjury the accused shall not

(1) 1 B. & S. 311.

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be convicted upon the evidence of one witness unless such witness is corroborated in some material particular by evidence implicating the accused.

The appellant was charged with having committed perjury in swearing that he

did not get from Frank Brunner a cheque for $4,000 upon the account of the Licensed Victuallers Association.

The corroboration relied on by the Crown was the testimony of Mr. Smith, manager of the Bank of Ottawa, that the appellant had brought to his bank, on the same day on which Brunner swore that he had given it to him, a cheque for $4,000 on the account of the Licensed Victuallers Association, and that this cheque was cashed and its proceeds handed to the appellant. In my opinion, the facts deposed to by Smith, that on the very day on which Brunner swore he had given Peterson the cheque, the latter was in possession of it and cashed it, was evidence implicating the accused, which the learned trial judge could not properly have withdrawn from the jury as corroborative in material particulars of the testimony of Brunner, within the meaning of section 1002 of the Code. The weight to be attached to it was, of course, entirely for the jury to determine. But that it might confirm the jury in the belief that Brunner was speaking the truth, seems to me not to admit of question; *Reg.* v. *Boyes*(1); *Rex.* v. *Daun*(2); *Rex v. Scheller* (3); *Radford* v. *Macdonald*(4).

Appeal dismissed with costs.

(1) 1 B. & S. 311, 320.
(2) 12 Ont. L.R. 227.
(3) 23 Can. Cr. C. 1; 16 D.L.R. 462.
(4) 18 Ont. App. R. 167.