APPELLATE JURISDICTION.

Criminal Regular Appeal No. 187 *of* 1871.

THE QUEEN *against* ROSS.

To establish the offence of giving false evidence direct proof of the falsity of the statement on which the perjury is assigned is essential. But, as legitimate evidence for this purpose, the law makes no distinction between the testimony of a witness directly falsifying such statement and the contradictory statement of the person charged, although not made on oath. Such a statement when satisfactorily proved is quite as good evidence in proof of the charge as the criminatory statement of a person charged with any other offence and on precisely the same ground,—That it is an admission of the accused person inconsistent with his innocence.

As to the weight to be given to contradictory statements, the sound rule is that a charge of perjury is not maintainable upon proof of one such statement not on oath, or more than one if proved by a single witness only, unless supported by confirmatory evidence tending to show the falsity of the statement in the charge.

With respect to the kind or amount of confirmatory proof required, it must be considered in each case whether the particular evidence offered is sufficient to induce a belief in the truth of the contradictory statement or direct testimony.

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THIS was an appeal against the sentence of O. B. Irvine, the Acting Session Judge of Bellary, in case No. 48 of the Calendar for 1871.

The prisoner was convicted under Sec. 193 of the Indian Penal Code, for that he being summoned as a witness in a certain Calendar case on the file of the Cantonment Magistrate of Bellary, and being bound by oath to state the truth, intentionally gave false evidence by knowingly and falsely stating that he had given Muttu (the defendant in the above mentioned case) leave to take certain doors, whereas he well knew that he had not given them to the said Muttu.

The *Acting Advocate-General* and *Miller*, for the appellant.

The facts are sufficient set forth in the following

JUDGMENT:—The record in this case was called for because of the doubt which the Court was led to entertain as to there being sufficient proof of the wilful falsity of the statement set forth in the charge upon which the appellant has been convicted. After a full consideration of the evidence, we think the case open to a doubt sufficient to render the conviction not safely sustainable.

(*a*) Present : Scotland, C. J. and Innes, J.

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It was urged by the Acting Advocate-General, on behalf of the appellant, that the evidence does not amount to legal proof of the offence of giving false evidence, inasmuch as nothing appears which tends directly to show the falsity of the statement upon which the perjury is assigned, except contradictory statements of the appellant, and, not having been made on oath, those statements are not legitimate evidence in disproof of the truth of the statement in the charge. This, we are of opinion, is not a tenable objection.

There is no doubt that to establish the offence of giving false evidence direct proof of the falsity of the statement on which the perjury is assigned is essential. But, as legitimate evidence for this purpose, the law makes no distinction between the testimony of a witness directly falsifying such statement, and the contradictory statement of the person charged, although not made on oath. Such a statement, when satisfactorily proved, is quite as good evidence in proof of the charge as the criminatory statement of a person charged with any other offence and on precisely the same ground: that it is an admission of the accused person inconsistent with his innocence. The case of *The Queen* v. *Hook*, 27, L. J., Mag. Cas., 222, is a very strong authority for this position. There a conviction for perjury resting, like that in the present case, almost entirely upon oral contradictory statements of the accused not on oath, was upheld by five Judges. The late Lord Chief Baron Pollock in his judgment observes, "No distinction can, I think, be taken between a statement made on oath and one not on oath if made seriously. More than one witness was called to show that on several occasions Hook had stated the exact contrary to what he swore. That is evidence to be received against him."

The weight to be given to contradictory statements is another question. As to that we apprehend the sound rule to be that a charge of perjury is not maintainable upon proof of one such statement not on oath, or more than one if proved by a single witness only, unless supported by confirmatory evidence tending to show the falsity of the statement in the charge: and this on the principle (applicable alike to a case of two contradictory statements on oath, or of direct testimony of falsity by one witness alone) that without such

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confirmatory evidence it could not safely be concluded which of the two opposite statements was false, or which oath was reliable. A good conviction, it is true, may take place on proof of two contradictory statements without confirmatory evidence as to the falsity of either, when both are on oath and made the subject of separate charges, but that is because the Code of Criminal Procedure provides for a conviction in such a case upon an alternative finding as to the truth or falsity of one or the other statement (*Palany Chetty's case*, IV, M. H. C. R., 51).

With respect to the kind or amount of confirmatory proof required no general rule can be laid down. In each case it must be considered whether the particular evidence offered is sufficient to induce a belief in the truth of the contradictory statement or direct testimony. See *The Queen* v. *Boulter*, 21, L. J., Mag. Cas., 57. But there is no doubt that in every case of perjury repeated contradictory statements whether on oath or not on oath, or statements inconsistent with the truth of what is alleged in the charge to be false, when proved by different witnesses, are good confirmatory proof. This is very distinctly pointed out in *The Queen* v. *Mayhew*, 6, C. & P., 315, and the judgments in *The Queen* v. *Hook*.

Applying those rules to the present case, what is the effect of the evidence? Is is certain that the appellant meant by his statement in the charge that he had done or said what was equivalent to permission to take the doors, and there is distinct proof of several statements made by him to three witnesses directly contradictory of that. On the 19th he said to the Police Constable, in answer to his enquires about the charge, that the horsekeeper had stolen the doors. The next morning the Police Inspector Mr. Shortt called, in consequence of the receipt of the letter (C) asking the release of the horsekeeper, and he deposes that in the conversation then had the appellant said, that the horsekeeper had come to him and said that he had intended asking for the doors but that he did not believe him, and was very emphatic in his assertion that the doors had been stolen. He also deposes that on the 24th and on the 25th March (the day of the horsekeeper's trial) the appellant said he had been summoned as a witness by the

horsekeeper and that he was foolish to do so as he could give no evidence in his favor. Again, it is proved by Mr. Firth (7th witness) that, on the 23rd March, the appellant stated to him that his doors had been stolen. That the horsekeeper said he intended asking for them but he did not believe him. This is not only sufficient proof of the contradictory statements, but each witness's testimony is confirmatory of the truth of what was repeated in the distinct statements, and so is the letter (C) which contains a similar statement as to the horsekeeper's saying he intended asking. Additional confirmation, too, is afforded by the evidence of the 2nd witness who saw the doors removed and concealed. The acts deposed to by that witness appear irreconcileable with leave of any kind having been given or supposed to be given.

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This is cogent evidence to show the untruthfulness of the statement in the charge, but there appears to be room for a doubt in favor of the appellant's statement in defence, that what he had said on oath accorded with facts brought to his recollection subsequent to the charge of theft. Between the time of the latest statements to Mr. Shortt and the appellant's examination, a representation of circumstances altering his belief might have been made, and although the statement does not give the impression that it referred to so recent an occurrence and the likelihood is that he would be reminded of such circumstances before the day of trial when he was summoned as a witness for the horsekeeper, still the evidence cannot, we think, be safely said to exclude belief in such a representation having taken place in that interval. The fact that the appellant swore in contradiction to what he had so recently before said rather tends to support that belief. These considerations and the circumstances of the appellant's character and position in life; and the absence of anything suggestive even of the least material advantage to be gained, or personal motive served by screening the horsekeeper from the charge that he had himself laid, give rise to a doubt in our minds as to the wilful falsity of the statement in the charge, which, after some hesitation, we think enough to justify our considering the evidence not conclusive proof of the appellant's guilt. The conviction and sentence, therefore, will be annulled and the appellant discharged.

Conviction annulled.