§ 254 *a*. It may be mentioned in this place, that though papers and other subjects of evidence may have been *illegally taken* from the possession of the party against whom they are offered, or otherwise unlawfully obtained, this is no valid objection to their admissibility, if they are pertinent to the issue. The Court will not take notice how they were obtained, whether lawfully or unlawfully, nor will it form an issue, to determine that question.[1]

Hasler, Ry. & M. 198; Stein *v.* Bowman, 13 Peters, R. 209, 223; Coffin *v.* Jones, 13 Pick. 441, 445; Edgell *v.* Bennett, 7 Vermont R. 536; Williams *v.* Baldwin, Ib. 503, 506, per Royce, J. In Beveridge *v.* Minter, 1 C. & P. 364, where the widow was permitted, by Abbott, C. J., to testify to certain admissions of her deceased husband, relative to the money in question, this point was not considered, the objection being placed wholly on the ground of her interest in the estate. See also 2 Kent, Comm. 180, and note (a), 4th edit.; 2 Stark. Evid. 399; Robbins *v.* King, 2 Leigh's R. 142, 144. See further, Post, § 333–345.

[1] Commonwealth *v.* Dana, 2 Metc. 329, 337; Leggett *v.* Tollewey, 14 East, 302; Jordan *v.* Lewis, Ib. 306, note.

CHAPTER XIV.

OF THE NUMBER OF WITNESSES, AND THE NATURE AND QUANTITY OF PROOF REQUIRED IN PARTICULAR CASES.

§ 255. UNDER this head it is not proposed to go into an extended consideration of the statutes of Treason, or of Frauds, but only to mention briefly some instances in which those statutes, and some other rules of law, have regulated particular cases, taking them out of the operation of the general principles, by which they would otherwise be governed. Thus, in regard to *treasons*, though by the Common Law the crime was sufficiently proved by one credible witness,[1] yet, considering the great weight of the oath or duty of allegiance, against the probability of the fact of treason,[2] it has been deemed expedient to provide[3] that no person shall be indicted

---

[1] Foster's Disc. p. 233; Woodbeck *v.* Keller, 6 Cowen, 120; McNally's Evid. 31.

[2] This is conceived to be the true foundation on which the rule has, in modern times, been enacted. The manner of its first introduction into the statutes was thus stated by the Lord Chancellor, in Lord Stafford's case, T. Raym. 408. "Upon this occasion my Lord Chancellor in the lords house was pleased to communicate a notion concerning the reason of two witnesses in treason, which he said was not very familiar, he believed; and it was this; anciently all or most of the Judges were churchmen and ecclesiastical persons, and by the canon law now, and then, in use all over the Christian world, none can be condemned of heresy but by two lawful and credible witnesses; and bare words may make a heretic, but not a traitor, and anciently heresy was treason; and from thence the parliament thought fit to appoint, that two witnesses ought to be for proof of high treason."

[3] This was first done by Stat. 5 & 6 Ed. 6, c. 11, but was more distinctly enacted by Stat. 7 W. 3, c. 3, § 2. The same regulation has been incorporated into the Constitution of the United States, which provides that — "No person shall be convicted of treason, unless on the testimony of two

or convicted of high treason, but upon the oaths and testimony of two witnesses to the same overt act, or to separate overt acts of the same treason, unless upon his voluntary confession in open Court. We have already seen that a voluntary confession out of Court, if proved by two witnesses, is sufficient to warrant a conviction; and that the crime is well proved if there be one witness to one overt act, and another witness to another overt act, of the same species of treason.[1] It is also settled that when the prisoner's confession is offered, as corroborative of the testimony of such witnesses, it is admissible, though it be proved by only one witness; the law not having excluded confessions, proved in that manner, from the consideration of the Jury, but only provided that they alone shall not be sufficient to convict the prisoner.[2] And as to all matters merely *collateral*, and not conducing to the proof of the overt acts, it may be safely laid down as a general rule, that whatever was evidence at Common Law, is still good evidence under the express constitutional and statutory provision above mentioned.[3]

§ 256. It may be proper in this place to observe, that, in treason, the rule is that no evidence can be given of any overt act which is not expressly laid in the indictment. But the meaning of the rule is, not that the whole detail of facts should be set forth, but that no overt act, amounting to a distinct independent charge, though falling under the same head of treason, shall be given in evidence, unless it be expressly laid in the indictment. If, however, it will conduce to the proof of any of the overt acts which are laid, it may

witnesses to the same overt act, or on confession in open Court." Const. U. S. Art. 3, § 3; Laws U. S. Vol. 2, ch. 36, § 1. The same provision exists in the statutes of most, if not of all the States in the Union.

[1] Ante, § 235; Lord Stafford's case, 7 Howell's St. Tr. 1527; Foster's Disc. 237; 1 Burr's Trial, 196.

[2] Willis's case, 15 Howell's St. Tr. 623, 624, 625; Crossfield's case, 26 Howell's St. Tr. 55, 56, 57; Foster's Disc. 241.

[3] Ante, § 235; Foster's Disc. 240, 242; 1 East, P. C. 130.

be admitted as evidence of such overt acts.[1] This rule is not peculiar to prosecutions for treason; though, in consequence of the oppressive character of some former state prosecutions for that crime, it has been deemed expedient expressly to enact it in the later statutes of treason. It is nothing more than a particular application of a fundamental doctrine of the law of remedy and of evidence, namely, that the proof must correspond with the allegations, and be confined to the point in issue.[2] The issue in treason is, whether the prisoner committed that crime, by doing the treasonable act stated in the indictment; as, in slander, the question is, whether the defendant injured the plaintiff by maliciously uttering the falsehoods laid in the declaration; and evidence of collateral facts is admitted or rejected on the like principle in either case, accordingly as it does or does not tend to establish the specific charge. Therefore the declarations of the prisoner, and seditious language used by him, are admissible in evidence as explanatory of his conduct, and of the nature and object of the conspiracy in which he was engaged.[3] And after proof of the overt act of treason, in the county mentioned in the indictment, other acts of treason tending to prove the overt acts laid, though done in a foreign country, may be given in evidence.[4]

§ 257. In proof of the crime of *perjury*, also, it was formerly held that two witnesses were necessary, because otherwise there would be nothing more than the oath of one man against another, upon which the Jury could not safely convict.[4] But

[1] Foster's Disc. p. 245; 1 Phil. Evid. 471; Deacon's case, 18 Howell's St. Tr. 366; Foster, R. 9, S. C.; Regicide's case, J. Kely. 8, 9; 1 East, P. C. 121, 122, 123; 2 Stark. Evid. 800, 801.

[2] Ante, § 51, 52, 53.

[3] Rex *v.* Watson, 2 Stark. R. 116, 134.

[4] Deacon's case, 16 Howell's St. Tr. 367; Foster, R. 9, S. C.; Sir Henry Vane's case, 4th res., 6 Howell's St. Tr. 123, 129, n.; 1 East, P. C. 125, 126.

[4] 1 Stark. Evid. 443; 4 Hawk. P. C., B. 2, ch. 46, § 10; 4 Bl. Comm. 358; 2 Russ. on Crimes, 1791.

this strictness has long since been relaxed; the true principle of the rule being merely this, that the evidence must be something more than sufficient to counterbalance the oath of the prisoner and the legal presumption of his innocence.[1] The oath of the opposing witness, therefore, will not avail, unless it be corroborated by other independent circumstances. But it is not precisely accurate to say, that these additional circumstances must be tantamount to another witness. The same effect being given to the oath of the prisoner, as though it were the oath of a credible witness, the scale of evidence is exactly balanced, and the equilibrium must be destroyed, by material and independent circumstances, before the party can

[1] The history of this relaxation of the sternness of the old rule is thus stated by Mr. Justice Wayne, in delivering the opinion of the Court, in The United States *v.* Wood, 14 Peters, 440, 441. "At first two witnesses were required to convict in a case of perjury; both swearing directly adversely from the defendant's oath. Contemporaneously with this requisition, the larger number of witnesses on one side or the other prevailed. Then, a single witness, corroborated by other witnesses, swearing to circumstances, bearing directly upon the imputed *corpus delicti* of a defendant, was deemed sufficient. Next, as in the case of Rex *v.* Knill, 5 B. & A. 929, note, with a long interval between it and the preceding, a witness, who gave proof only of the contradictory oaths of the defendant on two occasions, one being an examination before the House of Lords, and the other an examination before the House of Commons, was held to be sufficient; though this principle had been acted on as early as 1764, by Justice Yates, as may be seen in the note to the case of the King *v.* Harris, 5 B. & A. 937, and was acquiesced in by Lord Mansfield, and Justices Wilmot and Aston. We are aware, that, in a note to Rex *v.* Mayhew, 6 C. & P. 315, a doubt is implied concerning the case decided by Justice Yates; but it has the stamp of authenticity, from its having been referred to in a case happening ten years afterwards before Justice Chambre, as will appear by the note in 6 B. & A. 937. Afterwards, a single witness, with the defendant's bill of costs (not sworn to) in lieu of a second witness, delivered by the defendant to the prosecutor, was held sufficient to contradict his oath; and in that case Lord Denman says, 'A letter written by the defendant, contradicting his statement on oath, would be sufficient to make it unnecessary to have a second witness.' 6 C. & P. 315. We thus see that this rule, in its proper application, has been expanded beyond its literal terms, as cases have occurred, in which proofs have been offered equivalent to the end intended to be accomplished by the rule."

be convicted. The additional evidence needs not be such as, standing by itself, would justify a conviction in a case where the testimony of a single witness would suffice for that purpose. But it must be at least strongly corroborative of the testimony of the accusing witness;[1] or, in the quaint but but energetic language of Parker, C. J., "a strong and clear evidence, and more numerous than the evidence given for the defendant."[2]

§ 257 *a.* When there are several assignments of perjury in the same indictment, it does not seem to be clearly settled, whether, in addition to the testimony of a single witness, there must be corroborative proof with respect to each; but the better opinion is, that such proof is necessary; and that too, although all the perjuries assigned were committed at one time and place.[3] For instance, if a person, on putting in his schedule in the insolvent debtors' court, or on other the like occasion, has sworn that he has paid certain creditors, and is then indicted for perjury on several assignments, each specifying a particular creditor who has not been paid, a single witness with respect to each debt will not, it seems, suffice, though it may be very difficult to obtain any fuller evidence.[4]

[1] Woodbeck *v.* Keller, 6 Cowen, 118, 121, per Sutherland, J.; Champney's case, 2 Lew. Cr. Cas. 258.

[2] The Queen *v.* Muscot, 10 Mod. 194. See also The State *v.* Molier, 1 Dev. 263, 265; The State *v.* Hayward, 1 Nott & McCord, 547; Rex *v.* Mayhew, 6 C. & P. 315; Roscoe on Crim. Evid. 686, 687; Clark's Executors *v.* Van Riemsdyk, 9 Cranch, 160. "It must corroborate him in something more than some slight particulars. Yates's case, 1 Car. & Marsh. 139. More recently, corroborative evidence, in cases where more than one witness is required by law, has been defined by Dr. Lushington, to be not merely evidence showing that the account is probable, but evidence, proving facts *ejusdem generis*, and tending to produce the same results. Simmons *v.* Simmons, 11 Jur. 830.

[3] R. *v.* Virrier, 12 A. & E. 317, 324, per Ld. Denman.

[4] R. *v.* Parker, C. & Marsh. 639, 645–647, per Tindal, C. J. In R. *v.* Mudie, 1 M. & Rob. 128, 129, Lord Tenterden, under similar circumstances, refused to stop the case, saying that, if the defendant was convicted, he might move for a new trial. He was, however, acquitted. See the (London) Law Review, &c. for May, 1846, p. 128.

§ 258. The principle that one witness with corroborating circumstances is sufficient to establish the charge of perjury, leads to the conclusion that *circumstances, without any witness*, when they exist in documentary or written testimony, may combine to the same effect; as they may combine, altogether unaided by oral proof, except the evidence of their authenticity, to prove any other fact, connected with the declarations of persons, or the business of human life. The principle is, that circumstances necessarily make a part of the proofs of human transactions; that such as have been reduced to writing, in unequivocal terms, when the writing has been proved to be authentic, cannot be made more certain by evidence *aliunde;* and that such as have not been reduced to writing, whether they relate to the declarations or conduct of men, can only be proved by oral testimony. Accordingly, it is now held that a living witness of the *corpus delicti* may be dispensed with, and documentary or written evidence be relied upon, to convict of perjury, — *first*, where the falsehood of the matter sworn by the prisoner is directly proved by documentary or written evidence springing from himself, with circumstances showing the corrupt intent; *secondly*, in cases where the matter so sworn is contradicted by a public record, proved to have been well known to the prisoner when he took the oath, the oath only being proved to have been taken; and, *thirdly*, in cases where the party is charged with taking an oath, contrary to what he must necessarily have known to be true; the falsehood being shown by his own letters relating to the fact sworn to, or by any other written testimony, existing and being found in his possession, and which has been treated by him as containing the evidence of the fact recited in it.[1]

[1] The United States *v.* Wood, 14 Peters, 440, 441. In this case, under the latter head of the rule here stated, it was held, that, if the Jury were satisfied of the corrupt intent, the prisoner might well be convicted of perjury, in taking, at the custom-house in New York, the "owner's oath in cases where goods, wares, or merchandise have been actually purchased," upon the evidence of the invoice-book of his father, John Wood of Saddleworth, England, and of thirty-five letters from the prisoner to his father, disclosing a combination between them to defraud the United States, by invoicing and entering the goods shipped at less than their actual cost.

§ 259. If the evidence adduced in proof of the crime of perjury consists of *two opposing statements of the prisoner*, and nothing more, he cannot be convicted. For if one only was delivered under oath, it must be presumed, from the solemnity of the sanction, that that declaration was the truth, and the other an error or a falsehood; though the latter, being inconsistent with what he has sworn, may form important evidence, with other circumstances, against him.[1] And if both the contradictory statements were delivered under oath, there is still nothing to show which of them is false, where no other evidence of the falsity is given. If, indeed, it can be shown that, before giving the testimony on which perjury is assigned, the accused had been tampered with;[2] or, if there be other circumstances in the case, tending to prove that the statement offered in evidence against the accused was in fact true, a legal conviction may be obtained.[3] And "although the Jury may believe that on the one or the other occasion the prisoner swore to what was not true, yet it is not a necessary consequence that he committed perjury. For there are cases in which a person might very honestly and conscientiously swear to a particular fact, from the best of his recollection and belief, and from other circumstances subsequently be convinced that he was wrong, and swear to the reverse, without meaning to swear falsely either time."[4]

[1] See Alison's Principles of the Criminal Law of Scotland, p. 481.

[2] Anon. 5 B. & A. 939, 940, note. And see 2 Russ. Cr. & M. 653, note.

[3] Rex *v.* Knill, 5 B. & A. 929, 930, note.

[4] Per Holroyd, J. in Jackson's case, 1 Lewin's Cr. Cas. 270. This very reasonable doctrine is in perfect accordance with the rule of the Criminal Law of Scotland, as laid down by Mr. Alison, in his lucid and elegant treatise on that subject,in the following terms. — "When contradictory and inconsistent oaths have been emitted, the mere contradiction is not decisive evidence of the existence of perjury in one or other of them; but the prosecutor must establish which was the true one, and libel on the other as containing the

§ 260. The principles above stated, in regard to the proof of perjury, apply with equal force to the case of *an answer in Chancery*. Formerly, when a material fact was directly put in issue by the answer, the Courts of Equity followed the maxim of the Roman Law, *Responsio unius non omninò audiatur*, and required the evidence of two witnesses, as the foundation of a decree. But of late years the rule has been referred more strictly to the equitable principle on which it is founded, namely, the right to credit which the defendant may claim, equal to that of any other witness in all cases where his answer is "positively, clearly, and precisely" responsive to any matter stated in the bill. For the plaintiff, by calling on the defendant to answer an allegation which he makes, thereby admits the answer to be evidence.[1] In such case, if the defendant in express terms negatives the allegations in the bill, and the bill is supported by the evidence of only a single witness, affirming what has been so denied, the Court will neither make a decree, nor send the case to be tried at law; but will simply dismiss the bill.[2] But the corroborating testimony of an additional witness, or of circumstances, may give a turn either way to the balance. And even the evidence

falsehood. Where depositions contradictory to each other have been emitted by the same person on the same matter, it may with certainty be concluded that one or other of them is false. But it is not relevant to infer perjury in so loose a manner; but the prosecutor must go a step farther, and specify distinctly which of the two contains the falsehood, and peril his case upon the means he possesses of proving perjury in that deposition. To admit the opposite course, and allow the prosecutor to libel on both depositions, and make out his charge by comparing them together, without distinguishing which contains the truth and which the falsehood, would be directly contrary to the precision justly required in criminal proceedings. In the older practice this distinction does not seem to have been distinctly recognised; but it is now justly considered indispensable, that the perjury should be specified existing in one, and the other deposition referred to *in modum probationis*, to make out, along with other circumstances, where the truth really lay." See Alison's Crim. Law of Scotland, p. 476.

[1] Gresley on Evid. p. 4.

[2] Cooth *v.* Jackson, 6 Ves. 40, per Ld. Eldon.

arising from circumstances alone may be stronger than the testimony of any single witness.[1]

§ 260 *a*. It has also been held, that the testimony of one witness alone is not sufficient to establish a *usage of trade*, of which all dealers in that particular line are bound to take notice, and are presumed to be informed.[2]

[1] Pember *v.* Mathers, 1 Bro. Ch. R. 52; 2 Story on Eq. Jur. § 1528; Gresley on Evid. p. 4; Clark *v.* Van Riemsdyk, 9 Cranch, 160; Keys *v.* Williams, 3 Y. & C. 55; Dawson *v.* Massey, 1 Ball. & Beat. 234; Maddox *v.* Sullivan, 2 Rich. Eq. R. 4.

[2] Wood *v.* Hickok, 2 Wend. 501; Parrott *v.* Thacher, 9 Pick. 426; Thomas *v.* Graves, 1 Const. Rep. 150, [308]; Post, Vol. 2, § 252. As attempts have been made, in some recent instances, to introduce into Ecclesiastical Councils in the United States, the old and absurd rules of the Canon Law of England, foreign, as they are, to the nature and genius of American institutions; the following statement of the light in which those rules are at present regarded in England, will not be unacceptable to the reader. It is taken from the (London) Law Review, &c. for May, 1846, pp. 132–135. "In the Ecclesiastical Courts, the rule requiring a plurality of witnesses is carried far beyond the verge of common sense; and, although no recent decision of those Courts has, we believe, been pronounced, expressly determining that five, seven, or more witnesses are essential to constitute full proof, yet the authority of Dr. Ayliffe, who states that, according to the canon law, this amount of evidence is required in some matters, has been very lately cited with apparent assent, if not approbation, by the learned Sir Herbert Jenner Fust.[1] The case, in support of which the above high

[1] Evans *v.* Evans, 1 Roberts, Ecc. R. 171. The passage cited from Ayliffe, Par 444, is as follows: — "Full proof is made by two or three witnesses at the least. For there are some matters which, according to the *canon* law, do require, five, seven, or more witnesses to make full proof." The same learned commentator, a little further on, after explaining that "*liquid* proof is that which appears to the Judge from the act of Court, since that cannot properly be said to be *manifest* or *notorious;*" adds,— "By the *canon* law a Jew is not admitted to give evidence against a Christian, *especially if he be a clergyman*, for by *that law*, the *proofs against a clergyman ought to be much clearer than against a layman*," — Par. 448. Dr. Ayliffe does not mention what matters require this superabundant proof, but we have already said (vol. i. p. 380, n.) that, in the case of a Cardinal charged with incontinence, the *probatio*, in order to be *plena*, must be established by no less than seven *eye* witnesses; so improbable does it appear to the Church that one of her highest dignitaries should be guilty of such an offence, and so anxious is she to avoid all possibility of judicial scandal. This is adopting with a vengeance the principles of David Hume with respect to miracles.

§ 261. There are also certain *sales*, for the proof of which

authority was quoted, was a suit for a divorce.[1] In a previous action for criminal conversation, a special jury had given 500*l.* damages to the husband, who, with a *female* servant,[2] had found his wife and the adulterer together in bed. This last fact was deposed to by the servant; but as she was the only witness called to prove it, and as her testimony was uncorroborated, the learned Judge did not feel himself at liberty to grant the promoter's prayer. This doctrine, that the testimony of a single witness, though omni exceptione major, is insufficient to support a decree in the Ecclesiastical Courts, when such testimony stands unsupported by adminicular circumstances, has been frequently propounded by Lord Stowell, both in suits for divorce,[3] for defamation,[4] and for brawling;[5] and, before the new Will Act was passed,[6] Sir John Nicholl disregarded similar evidence, as not amounting to legal proof of a testamentary act.[7] In the case, too, of Mackenzie *v.* Yeo,[8] when a codicil was propounded, purporting to have been duly executed, and was deposed to by one attesting witness only, the other having married the legatee, Sir Herbert Jenner Fust refused to grant probate, though he admitted the witness was unexceptionable, on the ground that his testimony was not confirmed by adminicular circumstances, and that the probabilities of the case inclined against the factum of such an instrument. In another case,[9] however, the same learned Judge admitted a paper to probate on the testimony of one attesting witness, who had been examined a few days after the death of the testator, though the other witness, whose deposition had not been taken till two years and a half afterwards, declared that the will was not signed in his presence. In this case there was a formal attestation clause, and that fact was regarded by the Court as favoring the supposition of a due execution. Though the cases cited above certainly establish beyond dispute, that, by the Canon Law, as recognised in our spiritual Courts, one uncorroborated witness is insufficient, they as certainly decide, that, in ordinary cases at least, two or more witnesses need not depose to the principal fact; but that it will suffice if one be called to swear to such fact, and the other or others

[1] Evans *v.* Evans, 1 Roberts, Ecc. R. 165.

[2] The fact that the witness was a woman does not seem to have formed an element in the judgment of the Court, though Dr. Ayliffe assures his readers, with becoming gravity, that "by the canon law, more credit is given to male than to female witnesses." Par. 545.

[3] Donellan *v.* Donellan, 2 Hagg. 144, (Suppl.)

[4] Crompton *v.* Butler, 1 Cons. R. 460.

[5] Hutchins *v.* Denziloe, 1 Cons. R. 181, 182.

[6] 7 W. 4, and 1 Vict. c. 26, which by s. 34, applies to wills made after the 1st of January, 1838.

[7] Theakston *v.* Marson, 4 Hagg. 313, 314.

[8] 3 Curteis, 125.

[9] Gove *v.* Gawen, 3 Curteis, 151.

the law requires a deed, or other *written document*. Thus, by

speak merely to confirmatory circumstances. Nay, it would seem, from some expressions used, that, as in cases of perjury, documentary or written testimony, or the statements or conduct of the party libelled, may supply the place of a second witness.[1] If, indeed, proceedings be instituted under the provisions of some statute, which expressly enacts that the offence shall be proved by two lawful witnesses, as for instance, the Act of 5 & 6 Edw. 6, c. 4, which relates to brawling in a church or churchyard, the Court might feel some delicacy about presuming that such an enactment would be satisfied, by calling one witness to the fact and one to the circumstances.[2] It seems that this rule of the canonists depends less on the authority of the civilians than on the Mosaic code, which enacts, that one witness shall not rise up against a man for any iniquity; but at the mouth of two or three witnesses shall the matter be established.[3] Indeed, the decretal of Pope Gregory the Ninth, which enforces the observance of this doctrine,[4] expressly cites St. Paul as an authority, where he tells the Corinthians that 'in ore duorum vel trium testium stat omne verbum.'[5] Now, however well suited this rule might have been to the peculiar circumstances of the Jewish nation, who like the Hindus of old, the modern Greeks, and other enslaved and oppressed people, entertained no very exalted notions on the subject of truth; and who on one most remarkable occasion gave conclusive proof, that even the necessity for calling two witnesses was no valid protection against the crime of perjury;[6] — it may well be doubted whether, in the present civilized age, such a doctrine, instead of a protection, has not become an impediment to justice, and whether, as such, it should not be abrogated. That this was the opinion of the Common Law Judges in far earlier times than the present, is apparent from several old decisions, which restrict the rule to causes of merely spiritual conusance, and determine, that all temporal matters which incidentally arise before the ecclesiastical courts may, and indeed must, be proved there, as elsewhere, by such evidence as the Common Law would allow."[7]

[1] In Kenrick *v.* Kenrick, 4 Hagg. 114, the testimony of a single witness to adultery being corroborated by evidence of the misconduct of the wife, was held to be sufficient, Sir John Nicholl distinctly stating, "that there need not be two witnesses; one witness and circumstances in corroboration are all that the law in these cases requires," p. 136, 137, and Dr. Lushington even admitting, that "he was not prepared to say that one clear and unimpeached witness was insufficient," p. 130. See also 3 Burn. Eccl. L. 304.

[2] Hutchins *v.* Denziloe, 1 Cons. R. 182, per Lord Stowell.

[3] Deut. c. 19, v. 15; Deut. c. 17, v. 6; Numbers, c. 35, v. 30.

[4] Dec. Greg. lib. 2, tit. 20, c. 23.

[5] 2 Cor. c. 13, v. 1.

[6] St. Matthew, c. 26, v. 60, 61.

[7] Richardson *v.* Desborough, Ventr. 291; Shotter *v.* Friend, 2 Salk. 547; Breedon *v.* Gill, Lord Raym. 221. See further, 3 Burn. Eccl. L. 304-308.

the statutes of the United States,[1] and of Great Britain,[2] the *grand bill of sale* is made essential to the complete transfer of any *ship or vessel;* though, as between the parties themselves, a title may be acquired by the vendee without such document. Whether this documentary evidence is required by the law of nations or not, is not perfectly settled; but the weight of opinion is clearly on the side of its necessity, and that without this, and the other usual documents, no national character is attached to the vessel.[3]

§ 262. Written evidence is also required of the several transactions mentioned in the *Statute of Frauds*, passed in the reign of Charles II., the provisions of which have been enacted, generally in the same words, in nearly all of the United States.[4] The rules of evidence contained in this celebrated statute are calculated for the exclusion of perjury, by requiring, in the cases therein mentioned, some more satisfactory and convincing testimony than mere oral evidence affords. The statute dispenses with no proof of consideration which was previously required, and gives no efficacy to written contracts which they did not previously possess.[5] Its policy is to impose such requisites upon private transfers of property as, without being hindrances to fair transactions, may be either totally inconsistent with dishonest projects, or

---

[1] United States Navigation Act of 1792, ch. 45, § 14; Stat. 1793, ch. 52; Abbott on Shipping, by Story, p. 45, n. (2); 3 Kent, Comm. 143, 149.

[2] Stat. 6 Geo. 4, c. 109, 4 Geo. 4, c. 48; 3 & 4 W. 4, c. 55, § 31; Abbott on Shipping, by Shee, p. 47 – 52.

[3] Abbott on Shipping, by Story, p. 1, n. (1), and cases there cited; Ib. p. 27, n. (1); Ib. p. 45, n. (2); Ohl *v.* The Eagle Ins. Co. 4 Mason, 172; Jacobsen's Sea Laws, B. 1, ch. 2, p. 17.

[4] 29 Car. 2, c. 3; 4 Kent, Comm. 95, and note (b), (4th edit.) The Civil Code of Louisiana, art. 2415, without adopting in terms the provisions of the statute of frauds, declares generally, that all verbal sales of immovable property or slaves shall be void. 4 Kent, Comm. 450, note (a), (4th edit.)

[5] 2 Stark. Evid. 341.

tend to multiply the chances of detection.[1] The object of the present work will not admit of an extended consideration

---

[1] Roberts on Frauds, Pref. xxii. This statute introduced no new principle into the law; it was new in England only in the mode of proof which it required. Some protective regulations, of the same nature, may be found in the early codes of most of the Northern nations, as well as in the laws of the Anglo-Saxon princes; the prevention of frauds and perjuries being sought, agreeably to the simplicity of those unlettered times, by requiring a certain number of witnesses to a valid sale, and sometimes by restricting such sales to particular places. In the Anglo-Saxon laws, such regulations were quite familiar; and the Statute of Frauds was merely the revival of obsolete provisions, demanded by the circumstances of the times, and adapted, in a new mode of proof, to the improved condition and habits of the trading community. By the laws of Lotharius and Edric, Kings of Kent, § 16, if a Kentish man purchased any thing in London, it must be done in the presence of two or three good citizens, or of the mayor of the city. (Canciani, Leges Barbarorum Antiquæ, Vol. 4, p. 231.) The laws of King Edward the Elder (De jure et lite, § 1,) required the testimony of the mayor, or some other credible person, to every sale, and prohibited all sales out of the city. (Cancian. ub. sup. p. 256.) King Athelstan prohibited sales in the country, above the value of xx pence; and for those in the city, he required the same formalities as in the laws of Edward. (Ib. p. 261, 262, LL. Athelstani, § 12.) By the laws of King Ethelred, every freeman was required to have his surety, (fidejussor,) without whom, as well as other evidence, there could be no valid sale or barter. "Nullus homo faciat alterutrum, nec emat, nec permutet, nisi fidejussorem habeat, et testimonium." (Ib. p. 287, LL. Ethelredi. § 1, 4.) In the Concilium Seculare of Canute, § 22, it was provided, that there should be no sale, above the value of four pence, whether in the city or country, without the presence of four witnesses. (Ib. p. 305.) The same rule, in nearly the same words, was enacted by William the Conqueror. (Ib. p. 357, LL. Gul. Conq. § 43.) Afterwards in the Charter of the Conqueror, (§ 60,) no cattle, ("nulla viva pecunia," scil. animalia,) could be legally sold, unless in the cities, and in the presence of three witnesses. (Cancian. ub. sup. p. 360, Leges, Anglo-Saxonicæ, p. 198, note (o). Among the ancient Sueones and Goths, no sale was originally permitted, but in the presence of witnesses, and (per mediatores,) through the medium of brokers. The witnesses were required, in order to preserve the evidence of the sale; and the brokers, or mediators, (ut pretium moderarentur,) to prevent extortion, and to see to the title. But these formalities were afterwards dispensed with, except in the sale of articles of value, (res pretiosæ,) or of great amount. (Cancian. ub. sup. p. 231, n. 4.) Alienations of lands were made only (publicis literis) by documents legally authenticated. By the Danish Law, lands in the city or