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EVIDENCE-TWO WITNESSES RULE IN ACTION FOR PERJURY

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EVIDENCE—TWO WITNESSES RULE IN ACTION FOR PERJURY—The petitioner was convicted of perjury. The trial judge refused to give the following instruction to the jury: "The government must establish the falsity of the statement alleged to have been made by the defendant under oath, by the testimony of two independent witnesses or one witness and corroborating circumstances. Unless that has been done, you must find the defendant not guilty." The petitioner was convicted and the circuit court of appeals affirmed the district court. Held, the refusal of the district judge to instruct the jury as requested was reversible error. *Weiler v. United States,* (U.S. 1945) 65 S. Ct. 548.

The ancient rule, adhered to by the great weight of authority, requires the testimony of two witnesses or the testimony of one witness supported by corroborating evidence to secure a conviction for perjury.1 It has been held that the corroborating evidence needed to support the oath of one witness may be of the circumstantial variety while at the same time denying that circumstantial evidence, alone, would be sufficient to support a conviction of perjury.2 It is hard to see why the crime of perjury should differ from other crimes such as murder, arson and the like which are capable of proof by circumstantial evidence. Some jurisdictions have allowed proof of perjury by circumstantial evidence alone.3 Various courts that purport to follow the general rule have made exceptions to it in certain situations.4 In view of the exceptions made to the general rule and criticism of it by the leading textwriter on evidence,5 the decision of the Supreme Court in the principal case can hardly be commended. The court's main ground for refusing to reject the rule is, "the fear that innocent witnesses might be un­duly harassed or convicted in perjury prosecutions if a less stringent rule were adopted."6 The policy ground upon which the court in the Story case,7 rejected

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1 7 Wigmore, Evidence, 3d ed., §§ 2030-2044 (1940).
2 Allen v. United States, (C.C.A. 4th, 1912) 194 F. 664; 15 A.L.R. 634 (1921) and cases there cited.
4 Schonfeld v. United States, (C.C.A. 2d, 1921) 277 F. 935, where false swearing in bankruptcy proceedings was held not to equal the enormity of the crime of perjury; all the government need prove is false swearing beyond a reasonable doubt; Commonwealth v. Sumrak, (Pa. Sup. Ct. 1942) 25 A. (2d) 605, where the accused is shown to have made two conflicting statements under oath, the problem is simply one of deter­mining whether perjury was committed on the occasion charged; Mallard v. State, 19 Ga. App. 99, 90 S.E. 1044 (1916), the rule does not apply to the case where proof of the crime is necessarily based upon circumstantial evidence; Jones v. State, 70 Ga. App. 431, 28 S.E. (2d) 373 (1943), distinguishes between subornation of perjury and perjury, and holds that the former does not fall within the general rule but that the only evidence needed to sustain a conviction is the testimony of the person suborned.
5 7 Wigmore, Evidence, § 2041 (1940), "The rule is in its nature now utterly incongruous in our system. The quantitative theory of testimony, if consistently applied, should enforce a similar rule for every criminal charge, now that the accused is competent to testify, 'Oath against Oath,' as a reason for the rule, is indefensible."
6 Principal case at 550.
7 In State v. Story, 148 Minn. 398, 182 N.W. 613 (1921), the court stated, "The
the rule seems to the writer to be more in accord with the actualities of the situation. Individuals would be adequately protected by the requirement that the evidence necessary to secure a conviction must establish guilt beyond a reasonable doubt.

\[ \text{Milton D. Solomon, S.Ed.} \]

lightness with which, we are pained to say, the oath of a witness is too often treated, does not warrant us in making conviction of the crime of perjury the most difficult of all crimes of which state courts have jurisdiction."