CROSS-EXAMINATION OF ACCUSED; QUESTION AFFECTING CREDIBILITY.

When the accused becomes a witness on his own behalf he may be cross-examined as to whether he has been convicted of any offence, even though the conviction is altogether irrelevant to the matter in issue, the inquiry being relevant as affecting the credibility of the accused. [Ward v. Sinfield, 49 L.J.C.P. 696, and Canada Evidence Act, 1906, sec. 12, referred to.] An accused person on a murder trial giving testimony on his own behalf may be asked whether or not he made a certain statement at the inquest although the original depositions are not available in court; and he has no right to demand before answering that he be informed of what was taken down in the depositions; but if use is to be made of the latter to contradict him the original deposition should be produced. (Per Gallihar, J.A.) Where the accused giving evidence on his own behalf in a criminal trial is asked, in the course of his cross-examination as to some previous offence about some irrelevant fact, the Crown is bound by his answer and cannot tender testimony in contradiction thereof. [R. v. Muma, 17 Can. Cr. Cas. 285, 22 O.L.R. 227, approved.] R. v. Mulvihill, 22 Can. Cr. Cas. 354, 18 D.L.R. 189, affirmed in 23 Can. Cr. Cas. 194, 18 D.L.R. 217.

[Referred to in R. v. De Mesquito, 24 Can. Cr. Cas. 407.]

CROSS-EXAMINATION; DIRECTION OF COURT; ASSOCIATE IN OFFENCE.

Where, on charges of assisting a prisoner to escape and of conspiring with the prisoner for that purpose, the indictment is laid without calling before the grand jury the prisoner, who had been re-captured, the trial judge is not bound to give a direction asked by the accused that the prisoner be called as a witness for general cross-examination without making such witness a witness for the accused, nor a direction that the Crown make the prisoner its witness, if the Crown is prepared to permit counsel for the accused to interview such prisoner as to the evidence he can give and offers to facilitate his being called as a witness for the defence if desired. [R. v. Holden, 8 C. & P. 606; R. v. Stroner, 1 C. & K. 650, distinguished.] R. v. Hagel and Westlake, 23 Can. Cr. Cas. 151, 16 D.L.R. 378.

RE-CALLING WITNESS AS TO CREDIBILITY; DISCRETION.

The Judge trying a criminal case without a jury has a discretion to refuse to re-call one of the accused who had given evidence on his own behalf for the purpose of giving further evidence tendered merely to confirm the credibility of one of his own witnesses as to a circumstance brought out on the latter's cross-examination which was not relevant to any fact in issue. R. v. Prentice, 23 Can. Cr. Cas. 436, 20 D.L.R. 791.

PRIVILEGE; SOLICITOR AND CLIENT.

The authorization or direction to a solicitor to send a letter on behalf of the client is not within the privilege between solicitor and client, and the latter, called as a witness in a criminal case in which he was the complainant, cannot on that ground decline to answer a question put by counsel for the accused whether he, the witness, had not authorized his solicitor, at or about the time the accused brought civil proceedings against the complainant, to write a particular letter which the solicitor had sent to the solicitor for the accused. R. v. Prentice, 23 Can. Cr. Cas. 436, 20 D.L.R. 791.

COMPETENCY; ACCOMPLICE; PLEADING GUILTY.

Where two persons were jointly charged with theft and one pleaded guilty and the other not guilty, the former may be called as a witness against the latter although sentence had not yet been passed upon the plea of guilt; in such a matter it must be left to the discretion of the presiding Judge to decide what is the fairest and most convenient course to pursue in the particular case, and whether there should be an adjournment of the trial or an immediate sentence of the accomplice; and where he is holding the trial without a jury, it is not error for the Judge to take cognizance of the accomplice's evidence before sentencing him, although in receiving the testimony the Judge expressed a view favouring a different course had there been a jury. [Winsor v. The Queen, L.R. 1 Q.B. 390, and R. v. Payne, L.R. 1 C.C.R. 349, discussed.] R. v. McClain, 23 Can. Cr. Cas. 488, 23 D.L.R. 312.

COMPETENCY OF PERSON UNDER DEATH SENTENCE.

A person under sentence of death is competent as a witness on the trial of another for a criminal offence. [R. v. Hatch, 16 Can. Cr. Cas. 196, followed; R. v. Webb, 11 Cox C.C. 133, distinguished.] Sec. 1064 of the Criminal Code giving special directions for the safe custody of a convict sentenced to death does not interfere with the powers conferred by sec. 977 upon Courts of criminal jurisdiction to order the convict to be produced as a witness on the trial of an indictable offence. R. v. Kuzin, 24 Can. Cr. Cas. 66, 21 D.L.R. 378

TAMPERING WITH WITNESS; PROSECUTION PENDING; LIQUOR ACT.

Tampering with a witness on any prosecution under a provincial liquor license Act (R.S.O. 1914, ch. 215, sec. 78 and R.S.C. 1906, ch. 152, sec. 150), does not include tampering with a possible witness before the commencement of the prosecution.