

object of the amendment is to prevent the magistrate from refusing to issue process, because in his view the complainant's own unaided statement might be insufficient to make out a case, although supplementary evidence was available. *The King v. James W. Johnston*, 17 Can. Cr. Cas. 369.

SEPARATE CHARGES AGAINST TWO PERSONS FOR IDENTICAL OFFENCE; CROWN USING ONE AFFIDAVIT COMMITTAL FOR TRIAL AS COMPELLABLE WITNESS AGAINST THE OTHER.

(1) Where two persons are charged with the same arson on separate informations laid on the same day, by the same informant and both preliminary enquiries are being heard separately before the same justice, the Crown may after the committal for trial of the first prisoner call him as a witness against the second prisoner, and he will be bound to give evidence. (2) The prisoner already committed was both a competent and compellable witness against another prisoner charged in another proceeding with the identical offence and may be committed for contempt, if he refuses to answer. *Ex parte Ferguson*, 17 Can. Cr. Cas. 437.

RELIGIOUS BELIEF; AFFIRMATION.

(1) A witness in a criminal case is not entitled to affirm in lieu of being sworn unless he states that he objects to the oath on conscientious scruples; a mere statement of his preference to affirm and that he considered it optional is insufficient to make legal his testimony given on affirmation, although no objection was taken until cross-examination. (2) Where a witness upon a material fact has been permitted without legal sanction to testify on affirmation instead of upon oath, the result is a mistrial and a new trial should be ordered under Cr. Code, sec. 1018. *The King v. Deakin*, 19 Can. Cr. Cas. 62. [See *R. v. Curry*, 21 Can. Cr. Cas. 273, 12 D.L.R. 13.]

CROSS-EXAMINATION OF WITNESS; CHARGE OF RAPE; SIMILAR OFFENCE AGAINST WITNESS.

(1) A statement by a female witness on a trial for rape, in response to a question of the counsel for the accused, that she would like to see the prisoner go to prison for life, will not permit the Crown prosecutor to question her as to the commission of a similar offence by the accused against the witness. (2) A cross-examination by counsel for the accused on a trial for rape as to acts of cruelty committed by the accused against the witness and the complaining witness, to which, in addition to answering the question fully, she volunteered the further reply that the accused was also guilty of a similar offence towards her, will not permit the Crown prosecutor to question her as to the details of such

assault. *The King v. Paul*, 19 Can. Cr. Cas. 339, 5 D.L.R. 347.

WITNESS FEES; WITNESS ATTENDING IN ANOTHER CASE.

On the dismissal of an appeal from a summary conviction on which there is a re-hearing, the practice in Saskatchewan does not require that the witness fees of a witness called on such re-hearing shall on taxation be divided because he also attended the sittings on the same day as a witness in another case. [*Hamilton v. Beck*, 3 Terr. L.R. 405, followed; *Scott v. Dalphin*, 6 W.L.R. 371, considered.] *Pakkala v. Hanuksela* (No. 2), 20 Can. Cr. Cas. 260, 8 D.L.R. 107.

HUSBAND AND WIFE; COMPETENCY.

In criminal cases of the class in which the wife is not competent as a witness against her husband, if she is called by the Crown and gives evidence although stating that she came to Court voluntarily and was willing to testify, the conviction cannot stand unless it clearly appears that the evidence she gave did not affect, and could not have affected, the result. [*Makin v. Attorney-General of N.S.W.* [1894] A.C. 57; and *Allen v. The King*, 44 Kan. S.C.R. 331, applied.] *R. v. Allen*, 22 Can. Cr. Cas. 124, 14 D.L.R. 825.

CREDIBILITY; MOTIVE.

Upon a prosecution of a physician for issuing a certificate for the purchase of intoxicating liquor for non-medical purposes contrary to the provisions of the Canada Temperance Act, the credibility of an informer will be adversely affected by any of the following circumstances, if present. (a) the informer being an unknown adventurer. (b) the informer being an employee of the prosecution at a weekly wage to build up cases, (c) the informer making a false statement to the physician in applying for the certificate. *R. v. McAllister*, 22 Can. Cr. Cas. 166, 14 D.L.R. 430.

COMPELLING ATTENDANCE; ATTORNEY-GENERAL.

The magistrate, under sec. 671 of the Criminal Code 1906, is vested with some discretion in issuing subpoenas to witnesses, because of the words of that section "if it appears to the jurors that any person is likely to give material evidence," and may refuse to issue a subpoena if the reasons advanced by the applicant do not show that the witness sought to be examined is likely to give material evidence. A magistrate is justified in refusing to issue a subpoena for the attendance of the Attorney-General before him as a witness if it appears that the Attorney-General could not give material evidence. *R. v. Baines*, [1909] 1 K.B. 258, 21 Cox C.C. 756, applied] *R. v. Allerton*, 22 Can. Cr. Cas. 273, 17 D.L.R. 294.