

striking out the award of imprisonment. *Regina v. Dunning* (1887), 4 O.R. 52.

WHIPPING.

Suspension in *habeas corpus* proceedings; Quashing writ of *habeas corpus*; Directions. 11 Can. Cr. Cas. 159.

WILFUL ACTS.

Meaning of "wilful" as applied to statutory crimes. 8 Can. Cr. Cas. 136, 140.

WITHDRAWAL.

OF SUMMARY PROCEEDINGS; LEAVE OF MAGISTRATE.

(1) After the evidence has been heard in summary proceedings the justice is not bound either to convict or discharge the defendant; he may allow the prosecutor to withdraw the charge. (2) Such withdrawal may be allowed even when another information covering the same offence has been laid by the same prosecutor against the same defendant, and the determination thereof is still pending. *Ex parte Wyman*, 5 Can. Cr. Cas. 58.

[Followed in *Ex parte Mitchell*, 16 Can. Cr. Cas. 212; disapproved in *R. v. Chew Deb*, 21 Can. Cr. Cas. 20, 9 D.L.R. 266.]

SUMMARY CONVICTION; LEAVE TO WITHDRAW CASE; PROCEDURE.

On a summary trial, where all the evidence offered by the prosecution has been heard and the case closed, the prosecutor cannot, upon objection taken that material proof is lacking, withdraw the charge and lay a new information charging the identical offence. [*Ex parte Wyman*, 5 Can. Cr. Cas. 58, disapproved; *Bradshaw v. Vaughan*, 30 L.J.C.P. 93, followed.] Where on the trial of summary conviction proceedings the evidence produced is insufficient to prove the charge, the duty of the magistrate is to dismiss it and grant a certificate of the dismissal as provided by the Criminal Code, 1906. [Criminal Code, 1906, secs. 720, 726, referred to.] *R. v. Chew Deb*, 21 Can. Cr. Cas. 20, 9 D.L.R. 266.

SUMMARY CONVICTION; WITHDRAWAL OF COMPLAINT.

The person who has laid the complaint in a summary proceeding for keeping a disorderly house and who thereafter declares under oath before the magistrate that she laid the charge without understanding it and under duress of detectives may be permitted to withdraw it and so terminate the proceedings. [*Baxter v. Gordon Ironsides and Fares Co.*, 13 O.L.R. 598, and *Tamblyn v. Westcott*, 23 Can. Cr. Cas. 391, 21 D.L.R. 31 referred to.] *R. v. Rousseau*, 24 Can. Cr. Cas. 396.

WITNESS.

See also Evidence.

Certificate for protection of witness giving incriminating answers under Controverted Elections Act. (Can.) 1 Can. Cr. Cas. 389.

Claim of privilege by, in civil case, as affecting subsequent criminal proceedings. 1 Can. Cr. Cas. 487, 501.

Former deposition of; Admissibility to contradict testimony. 1 Can. Cr. Cas. 137.

Protection of, against incriminating questions, where privilege claimed. 1 Can. Cr. Cas. 397.

Note on protection of witness from arrest. 2 Can. Cr. Cas. 281.

Resident in another province. 3 Can. Cr. Cas. 581.

Warrant to arrest material witness. 3 Can. Cr. Cas. 581.

Bringing up a prisoner as a witness. 3 Can. Cr. Cas. 582.

Evidence taken under commission. 3 Can. Cr. Cas. 583.

Note on cross-examination of accused tendering himself as a witness. 5 Can. Cr. Cas. 413.

Competent witness also compellable; Canada Evidence Act construed. 7 Can. Cr. Cas. 139.

Failure to call certain witnesses; Privilege from comment at trial respecting. 7 Can. Cr. Cas. 38.

Incriminating answers; Objection to answer; Canada Evidence Act. 4 Can. Cr. Cas. 269.

Competency of wife as witness in criminal prosecution against husband; Non-support; Cr. Code, sec. 242A; 23 Can. Cr. Cas. 69.

ADMISSIBILITY OF EVIDENCE OF DEFENDANT.

On the trial of an offence against a city by-law in the erection of a wood building within the fire limits, the defendant is not either a competent or compellable witness; and, therefore, where in such a case the defendant's evidence was received, and a conviction made against him, it was quashed with costs. *Regina v. Hart*, 20 O.R. 611.

CO-DEFENDANT A COMPETENT WITNESS.

Four prisoners being indicted together for robbery, one severed in his challenges from the other three, who were first tried:—Held, that he was a competent witness on their behalf. *Regina v. Jerrett* (1863), 22 U.C.Q.B. 499.

COMPELLING THE ATTENDANCE OF; RE-ARREST AFTER ESCAPE.

Plaintiff was summoned to appear as a witness for the prosecution on the trial of an information for a violation of the Canada Temperance Act of 1878. He was served with the summons, and was paid the regular fees for travel and attendance, but disobeyed the summons, and made no excuse. The magistrate before whom the information was laid issued four warrants,