

REFRESHING MEMORY—FROM PLEADINGS.

Where the original memoranda from which a declaration is copied has been destroyed, a witness may be permitted to look at the declaration for the purpose of refreshing his memory.

Matheson v. C.P.R. Co., 35 D.L.R. 514, 10 S.L.R. 285, [1917] 3 W.W.R. 456.

REFERENCE TO NOTES MADE AT TIME OF TRANSACTION.

A witness may properly be asked to refresh his memory by looking at a copy of his notes which he was prepared to verify, as having been made by himself from the original which was a transcript of his stenographic report of the interview between the parties; and refusal to permit that course is ground for a new trial where it is impossible for the Appellate Court to say that its rejection did not materially affect the issue.

Daynes v. B.C. Elec. R. Co., 19 D.L.R. 266, 18 Can. Ry. Cas. 146, 49 Can. S.C.R. 518, reversing 7 D.L.R. 767, 17 B.C.R. 498, 14 Can. Ry. Cas. 309, 22 W.L.R. 549, 3 W.W.R. 193.

(\$ II A—33) — EXAMINATION — LEADING QUESTIONS.

In examining one's own witness, leading questions must not be put to the witness on material points, but are proper on points that are merely introductory and form no part of the substance of the inquiry. The rule against leading one's own witness will be relaxed where nonleading questions fail to bring the mind of the witness to the precise point on which his evidence is desired, and where it may fairly be supposed that this failure arises from a temporary inability of the witness to remember.

Maves v. G.T.P.R. Co., 14 D.L.R. 70, 4 A.L.R. 396, 16 Can. Ry. Cas. 9, 25 W.L.R. 503, 5 W.W.R. 212.

EXAMINATION—LEADING QUESTIONS.

It is not leading a witness to ask him whether something took place before or after a certain event.

Oilphant v. Alexander, 15 D.L.R. 618, 27 W.L.R. 56.

B. CROSS-EXAMINATION.

(\$ II B—35)—CROSS-EXAMINATION.

A convicting magistrate called as a witness in an action for malicious prosecution to prove certain documents, who has been sworn and examined on other matters, is liable to general cross-examination.

Loyne v. Long, 36 D.L.R. 76, 10 S.L.R. 343, [1917] 3 W.W.R. 139.

IN MATTERS OF MOTION.

The law does not permit a cross-examination of witnesses in support of a motion to dismiss an opposition made under the provision of art. 651, C.C.P.

Chevalier v. Montreal, 50 Que. S.C. 418.

(\$ II B—36)—TO DISCREDIT WITNESS.

Where a party to a proceeding puts forward a witness who makes certain statements under oath, and where it is desired

to shew by his own books or those of the person who puts him forward that his statements are not true, the production of such books may be compelled so as to test his accuracy; and when the witness is under cross-examination, the books may be used for that purpose, and to prove that his evidence is not to be relied upon.

Re Baynes Carriage Co., 8 D.L.R. 309, 27 O.L.R. 244.

(\$ II B—37)—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.

R. v. Mulvihill, 18 D.L.R. 189, 22 Can. Cr. Cas. 354, 19 B.C.R. 197, 26 W.L.R. 955, 5 W.W.R. 1229. [Affirmed in 18 D.L.R. 217.]

(\$ II B—43) — CROSS-EXAMINATION — STATEMENT OF ACCUSED IN PRIOR PROCEEDING—ABSENCE OF RECORD.

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.

R. v. Mulvihill, 18 D.L.R. 189, 22 Can. Cr. Cas. 354, 19 B.C.R. 197, 26 W.L.R. 955, 5 W.W.R. 1229. [Affirmed in 18 D.L.R. 217.]

IN CRIMINAL CASES.

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. 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.

R. v. Paul, 5 D.L.R. 347, 19 Can. Cr. Cas. 339, 4 A.L.R. 377, 21 W.L.R. 699.

CROSS-EXAMINATION IN CRIMINAL CASES—DIRECTION OF COURT TO CALL ALLEGED ASSOCIATE IN THE 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