tion, although no objection was taken until cross-examination.

The King v. Deakin, 19 Can. Cr. Cas. 62, 16 B.C.R. 271, 19 W.L.R. 43.

(§ I A—8)—Competency notwithstanding death sentence.

A person under sentence of death is competent as a witness on the trial of another for a criminal offence. [R. v. Hach, 16 Can. Cr. Cas. 196, followed; R. v. Webb, 11 Cox C.C. 133, distinguished.] Section 1064, Cr. Code, giving special directions for the safe custody of a convict sentenced to death does not interfere with the powers conferred by s. 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, 21 D.L.R. 378, 24 Can. Cr. Cas. 66, 25 Man. L.R. 218, 8 W.W.R. 166, 30 W.L.R. 803.

(§ I A—9)—Persons jointly charged—Accomplices.

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.

R. v. McClain, 23 D.L.R. 312, 23 Can. Cr. Cas. 488, 8 A.L.R. 73, 7 W.W.R. 1134, 30 W.L.R. 388.

(§ I A—10)—Competency of counsel as witness.

Counsel may in strictness testify for the party whose case he is conducting, although the practice is highly undesirable. [Cobbett v. Hudson, 1 El. & Bl. 11, followed.]

Robert Bell Engine v. Gagne, 20 D.L.R. 235, 7 S.L.R. 154, 7 W.W.R. 62, 29 W.L.R. 322.

(§ I A—14)—Compelling attendance—Criminal law—Subpoena for Attorney-General.

The magistrate, under s. 671, Cr. Code, is vested with some discretion in issuing subpœnas to witnesses, because of the words of that section "if it appears to the justice that any person is likely to give material evidence," and may refuse to issue a subpœna if the reasons advanced by the applicant do not shew that the witness sought to be examined is likely to give material evidence. A magistrate is justified in refusing to issue a subpœna 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, 17 D.L.R. 294, 22 Can. Cr. Cas. 273, 19 B.C.R. 493, 27 W.L.R. 894, 6 W.W.R. 522.

B. Husband and Wife.

(§ I B—15)—Husband or wife—Criminal trial.

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; Allen v. The King, 44 Can. S.C.R. 331, applied.]

R. v. Allen, 14 D.L.R. 825, 22 Can. Cr. Cas. 124, 41 N.B.R. 516.

(§ I B—16)—Wife as witness against husband — Criminal law — Nonsupport triable under summary conviction procedure.

The evidence of the wife is not admissible against her husband on the hearing before a magistrate of a charge under Cr. Code, s. 242a (amendment of 1913), whereby it was made an offence punishable on summary conviction for a husband to neglect without lawful excuse to provide for his wife and children when destitute, as no corresponding amendment was made to the Canada Evidence Act when s. 242a was added to the Code.

R. v. Allen, 17 D.L.R. 719, 23 Can. Cr. Cas. 67, 50 C.L.J. 543.

II. Examination.

See also Discovery.

A. In general.

(§ II A—30) — Expert witness — Hypothetical question.

It is not necessary to embody in a question put to an expert as a hypothetical question all the facts relating to the subject upon which the opinion of the witness is asked. It is sufficient that one fact which has been proven, or more than one, be stated to the witness, and he is told to assume the truth of the fact stated, and his opinion is asked upon it.

Wilson v. Bell, 45 N.B.R. 442.

(§ II A—32)—Refreshing memory—Consistency of statements.

For the purpose of rehabilitating a witness, and shewing that he is consistent with himself, evidence may be given to shew that the witness had made the same or substantially the same statement as that given in his testimony, prior to the inconsistent statement. [See R. v. Anderson, 16 D.L.R. 203, and annotation following.]

R. v. Neigel, 39 D.L.R. 154, 13 A.L.R. 137, 29 Can. Cr. Cas. 232, [1918] 1 W.W.R. 477.