

former bill was for an earlier default and not for those relied upon here. In such a case the doctrine that a second suit must abate has no application.

Exceptions overruled.

All concurred.

Strafford, }
June 28, 1912. }

STATE *v.* WALSH.

INDICTMENT, for rape. The defendant excepted to a denial of his motion to quash the indictment on the ground that a witness who testified before the grand jury was incompetent. Transferred from the February term, 1912, of the superior court by *Plummer, J.*

George T. Hughes, solicitor, for the state.

Arthur L. Foote and *Walter W. Scott*, for the defendant.

YOUNG, J. It is not customary for the court to quash an indictment merely because it may have been produced by the testimony of an incompetent witness. *Commonwealth v. Woodward*, 157 Mass. 516; *State v. Fassett*, 16 Conn. 457; 17 Am. & Eng. Enc. Law 1283, note 7; 20 Cyc. 1347, note 18.

Exception overruled.

All concurred.

Coos, }
Dec. 3, 1912. }

MACKEY, *Adm'r.*, *v.* GRAND TRUNK RAILWAY CO.

CASE, for negligence causing the death of Margaret Duggan, the plaintiff's intestate. Trial by jury at the December term, 1911, of the superior court. At the close of the plaintiff's evidence and subject to his exception, the court (*Mitchell, J.*) withdrew the case from the jury and made certain rulings to which exception was also taken.