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Evidence--Impeaching Credibility by Previous Conviction

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construction of the statute would be to confer on courts of equity jurisdiction to entertain suits for the recovery of damages for assault and battery, adultery, seduction, or any other wrong to the person or property of another, solely by virtue of an attachment sued out on any of the grounds mentioned in the statute. Surely, such was not the legislative intent.

—E. H. Y.

EVIDENCE—IMPEACHING CREDIBILITY BY PREVIOUS CONVICTION—

While D, on trial for forgery, was being cross-examined as a witness on his own behalf, he was asked if he had not previously been convicted for breaking jail, while he was being confined for complicity in breaking into a drugstore. It was moved to strike out the question and answer, but the trial court refused to do so, on the ground that it was competent evidence as affecting the credibility of the witness. Held, that this was error. *State v. Webb*, 128 S. E. 97 (W. Va. 1925).

In its opinion the Supreme Court of Appeals draws a distinction between the accused as a witness and other witnesses for the defense. It has been stated that upon the examination of a witness called to impeach the credibility of another witness,—in this case, for the state,—questions involving general character other than those directly concerning the witness' veracity, are not permitted. *Uhl v. Commonwealth*, 6 Gratt. 706. It is difficult to see why this rule should not apply to all witnesses. The reason for following the rule in the principal case is thus stated by Lively, J., "Many persons have been convicted of crimes and misdemeanors engendered by heat of passion and inconsiderate action, infirmities in human nature which are more or less prevalent in all. We can see no reason why such convictions would affect the credibility or veracity of such a person who is being tried for a subsequent and wholly unconnected offense." It would seem that this reasoning should apply with equal force to any witness. Yet the court, in this same case, discusses and sustains the distinction in *State v. Hill*, 52 W. Va. 296, in which it is laid down that a witness for the defense,—other than the accused,—may be asked, in order to discredit him, if he has been confined in the penitentiary. A defendant, testifying in his own behalf, is protected on cross-examination by the same rules, regarding the admissibility of evidence as are

all other witnesses, and questions impeaching *his* evidence must be confined to reputation for truth and must not embrace moral character in general. *State v. White*, 81 W. Va. 516. The inconsistency between the two preceding cases,—caused by saying that the same rules apply on cross-examination to *all* witnesses as to the *accused* as a witness,—is apparent. That the court has perpetuated the distinction is shown in *State v. Walker*, 92 W. Va. 499 at 506, where it was held that when a witness for the defense, other than the accused, is asked a degrading question in order to impeach his credibility, it is competent for that purpose. (Apparently only for the reason that these witnesses previously had been convicted of minor offenses; which, however, did not involve truthfulness of disposition). In *State v. White, supra*, at 521, the rule as laid down,—that evidence used to impeach a witness must be confined to reputation for truth, and does not embrace moral character in general,—would seem to be broad enough to cover all witnesses, although in that case for other than the accused as a witness it would be dictum. Apparently, but as dictum, this would seem to follow *Uhl v. Commonwealth, supra*. The rule laid down in the principal case would seem to be a correct one, but should be extended to apply to all witnesses, because the problem involved is the probability of the witness telling the truth on the stand, and the only trait of character that is pertinent is that for truth-telling. Character for truth is always admissible, but the courts differ as to whether bad moral character in general, or some specific bad quality in particular, should be admissible to impeach credibility. WIGMORE, EVIDENCE, § 922. Dean Wigmore gives as the reasons for admitting only character for truth to impeach credibility that a bad disposition does not necessarily involve a lack of veracity, that an ordinary witness's estimate of another's bad character rests largely on personal prejudice or antagonism, and that the unpleasant features of the witness stand are increased when such abuse of the witness is allowed as follows when general bad character, or a specific bad trait, is admitted to impeach credibility. *Ibid.* Naturally and logically, when veracity-character alone is allowed to impeach credibility, only those crimes relevant to show lack of truthfulness of disposition,—forgery and cheating, for instance,—should be used. *Ibid.*, § 926.

—C. P. W.