thing relative to the transaction.[1] But the privilege is his own, and not that of the party; counsel, therefore, will not be allowed to make the objection.[2] And if the witness declines answering, no inference of the truth of the fact is permitted to be drawn from that circumstance.[3] If the prosecution to which he might be exposed is barred by lapse of time, the privilege ceases, and the witness is bound to answer.[4]

§ 452. (2.) Where the witness, by answering, may *subject himself to a civil action, or pecuniary loss*, or charge himself with a debt. This question was very much discussed in England, in Lord Melville's case; and being finally put to the Judges, by the House of Lords, eight Judges, and the Chancellor, were of opinion that a witness, in such case, was bound to answer, and four thought that he was not. To remove the doubts which were thrown over the question by such a diversity of opinion among eminent Judges, a statute was passed,[5] declaring the law to be, that a witness could not legally refuse to answer a question relevant to the matter in issue, merely on the ground that the answer may establish, or tend to establish, that he owes a debt, or is otherwise subject to a civil suit; provided the answer has no tendency to accuse himself, or to expose him to any kind of penalty or forfeiture. In the United States, this act is generally considered as declaratory of the true doctrine of the Common Law; and accordingly, by the current of authorities, the witness is held

[1] Dixon *v.* Vale, 1 C. & P. 278; The State *v.* K ——, 4 N. Hamp. 562; East *v.* Chapman, 1 M. & Malk. 46; 2 C. & P. 570, S. C.; Low *v.* Mitchell, 6 Shepl. 272.

[2] Thomas *v.* Newton, 1 M. & Malk. 48, note; Rex *v.* Adey, 1 M. & Rob. 94.

[3] Rose *v.* Blakemore, Ry. & M. 383.

[4] Roberts *v.* Allatt, 1 M. & Malk. 192; The People *v.* Mather, 4 Wend. 229, 252–255.

[5] 46 Geo. 3, c. 37; Phil. & Am. on Evid. 914, 915; 2 Phil. Evid. 420; 1 Stark. Evid. 165. It is so settled by statute, in New York. 2 Rev. St. 405, § 71.

bound to answer.[1] But neither is the statute, nor the rule of the Common Law, considered as compelling a person, interested in the cause as party, though not named on the record, to testify as a witness in the cause, much less to disclose any thing against his own interest.[2]

§ 453. (3.) Where the answer will subject the witness to a *forfeiture of his estate.* In this case, as well as in the case of an exposure to a criminal prosecution or penalty, it is well settled, that a witness is not bound to answer.[3] And this is an established rule in Equity, as well as at Law.[4]

§ 454. (4.) Where the answer, though it will not expose the witness to any criminal prosecution or penalty, or to any forfeiture of estate, yet has a *direct tendency to degrade his character.* On this point there has been a great diversity of opinion, and the law still remains not perfectly settled by authorities.[5] But the conflict of opinions may be somewhat

[1] Bull *v.* Loveland, 10 Pick. 9; Baird *v.* Cochran, 4 S. & R. 397; Nass *v.* Van Swearingen, 7 S. & R. 192; Taney *v.* Kemp, 4 H. & J. 348; Naylor *v.* Semmes, 4 G. & J. 273; City Bank *v.* Bateman, 7 H. & J. 104; Stoddart *v.* Manning, 2 H. & G. 147; Copp *v.* Upham, 3 N. Hamp. 159; Cox *v.* Hill, 3 Ohio R. 411, 424; Planters' Bank *v.* George, 6 Martin, 679, N. J.; Jones *v.* Lanier, 2 Dev. Law Rep. 480; Conover *v.* Bell, 6 Monroe, 157; Gorham *v.* Carroll, 3 Littel, 221; Zollicoffer *v.* Turney, 6 Yerger, 297; Ward *v.* Sharp, 15 Verm. 115. The contrary seems to have been held in Connecticut. Benjamin *v.* Hathaway, 3 Conn. 528, 532.

[2] Rex *v.* Woburn, 10 East, 395; Mauran *v.* Lamb, 7 Cowen, 174; Appleton *v.* Boyd, 7 Mass. 131; Fenn *v.* Granger, 3 Campb. 177; The People *v.* Irving, 1 Wend. 20; White *v.* Everest, 1 Verm. 181.

[3] Phil. & Am. on Evid. 916; 2 Phil. Evid. 420.

[4] Mitford's Eq. Pl. 157, 161; Story's Eq. Pl. § 607, 846.

[5] The arguments on the respective sides of this question are thus summed up by Mr. Phillips: — "The advocates for a compulsory power in cross-examination, maintain that, as parties are frequently surprised by the appearance of a witness unknown to them, or, if known, entirely unexpected, without such power they would have no adequate means of ascertaining what credit is due to his testimony; that on the cross-examination of spies, informers, and accomplices, this power is more particularly necessary; and that if a witness

reconciled by a distinction, which has been very properly taken between cases, where the testimony is relevant and material to the issue, and cases where the question is not strictly relevant, but is collateral, and is asked only under the latitude allowed in a cross-examination. In the former case, there seems great absurdity in excluding the testimony of a witness, merely because it will tend to degrade himself, when others have a direct interest in that testimony, and it is essential to the establishment of their rights of property, of liberty, or even of life; or to the course of public justice. Upon such a rule, one who had been convicted and punished for an

may not be questioned as to his character, at the moment of trial, the property and even the life of a party must often be endangered. Those on the other side, who maintain that a witness is not compellable to answer such questions, argue to the following effect. They say, the obligation to give evidence arises from the oath, which every witness takes; that by this oath, he binds himself only to speak touching the matters in issue; and that such particular facts as these, whether the witness has been in gaol for felony, or suffered some infamous punishment, or the like, cannot form any part of the issue, as appears evident from this consideration, that the party against whom the witness is called would not be allowed to prove such particular facts by other witnesses. They argue, further, that it would be an extreme grievance to a witness, to be compelled to disclose past transactions of his life, which may have been since forgotten, and to expose his character afresh to evil report, when, perhaps, by his subsequent conduct, he may have recovered the good opinion of the world; that if a witness is privileged from answering a question, though relevant to the matters in issue, because it may tend to subject him to a forfeiture of property, with much more reason ought he to be excused from answering an irrelevant question to the disparagement and forfeiture of his character; that in the case of accomplices, in which this compulsory power of cross-examination is thought to be more particularly necessary, the power may be properly conceded to a certain extent, because accomplices stand in a peculiar situation, being admitted to give evidence only under the implied condition of making a full and true confession of the whole truth; but even accomplices are not to be questioned, in their cross-examination, as to other offences, in which they have not been concerned with the prisoner; that with respect to other witnesses, the best course to be adopted, both in point of convenience and justice, is to allow the question to be asked, at the same time allowing the witness to shelter himself under his privilege of refusing to answer." Phil. & Am. on Evid. p. 917, 918; 2 Phil. Evid. 422.

offence, when called as a witness against an accomplice, would be excused from testifying to any of the transactions, in which he had participated with the accused, and thus the guilty might escape. And, accordingly, the better opinion seems to be, that where the transaction, to which the witness is interrogated, forms any part of the issue to be tried, the witness will be obliged to give evidence, however strongly it may reflect on his character.[1]

§ 455. But where the question is not material to the issue, but is *collateral and irrelevant*, being asked under the license allowed in cross-examination, it stands on another ground. In general, as we have already seen, the rule is, that upon cross-examination to try the credit of a witness, only general questions can be put; and he cannot be asked as to any collateral and independent fact, merely with a view to contradict him afterwards by calling another witness. The danger of such a practice, it is said, is obvious; besides the inconvenience of trying as many collateral issues, as one of the parties might choose to introduce, and which the other could not be prepared to meet.[2] Whenever, therefore, the question put to the witness is plainly of this character, it is easy to perceive, that it falls under this rule, and should be excluded. But the difficulty lies in determining with precision the materiality and relevancy of the question, when it goes to the character of the witness. There is certainly great force in the argument, that where a man's liberty, or his life, depends upon the testimony of another, it is of infinite importance, that

[1] Phil. & Am. on Evid. 916, 917; 2 Phil. Evid. 421; The People *v.* Mather, 4 Wend. 250–254, per Marcy, J.; Peake's Evid. (by Norris), p. 202; Cundell *v.* Pratt, 1 M. & Malk. 108; Swift's Evid. 80; 1 Phil. Evid. 279, note 521, by Cowen & Hill. So in Scotland; Alison's Practice, p. 528.

[2] Spenceley *v.* De Willott, 7 East, 108, 110, Ld. Ellenborough remarked, that he had ruled this point again and again at the sittings, until he was quite tired of the agitation of the question, and therefore he wished that a bill of exceptions should be tendered by any party dissatisfied with his judgment, that the question might be finally put at rest.

those who are to decide upon that testimony should know, to the greatest extent, how far the witness is to be trusted. They cannot look into his breast, to see what passes there; but must form their opinion on the collateral indications of his good faith and sincerity. Whatever, therefore, may materially assist them in this inquiry, is most essential to the investigation of truth; and it cannot but be material for the Jury to understand the character of the witness, whom they are called upon to believe; and to know whether, although he has not been convicted of any crime, he has not in some measure rendered himself less credible, by his disgraceful conduct.[1] The weight of this argument seems to have been felt by the Judge, in several cases in which questions, tending to disgrace the witness, have been permitted in cross-examination.

§ 456. It is, however, generally conceded, that where the answer, which the witness may give, will *not directly and certainly show his infamy*, but will *only tend* to disgrace him, he may be compelled to answer. Such is the rule in Equity, as held by Lord Eldon;[2] and its principle applies with equal force at Common Law; and accordingly it has been recognised in the Common Law Courts.[3] In questions involving a criminal offence, the rule, as we have seen,[4] is different; the witness being permitted to judge for the most part for himself, and to refuse to answer, wherever it would tend to subject him to a criminal punishment or forfeiture. But here the Court must see for itself, that the answer will directly show his infamy, before it will excuse him from testifying to the fact.[5] Nor does there seem to be any good

[1] 1 Stark. Evid. 170.

[2] Parkhurst *v.* Lowten, 1 Meriv. 400; 2 Swanst. 194, 216, S. C.

[3] The People *v.* Mather, 4 Wend. 232, 252, 254; The State *v.* Patterson, 2 Iredell, R. 346.

[4] Ante, § 451.

[5] Macbride *v.* Macbride, 4 Esp. 242, per Ld. Alvanley; The People *v.* Mather, 4 Wend. 254, per Marcy, J.

reason why a witness should be privileged from answering a question, touching his present situation, employment, and associates, if they are of his own choice; as, for example, in what house or family he resides, what is his ordinary occupation, and whether he is intimately acquainted and conversant with certain persons, and the like; for, however these may disgrace him, his position is one of his own selection.[1]

§ 457. But, on the other hand, where the question *involves the fact of a previous conviction*, it ought not to be asked; because there is higher and better evidence which ought to be offered. If the inquiry is confined in terms to the fact of his having been *subjected to an ignominious punishment*, or to imprisonment alone, it is made, not for the purpose of showing that he was an innocent sufferer, but that he was guilty; and the only competent proof of this guilt is the record of his conviction. Proof of the same nature, namely, documentary evidence, may also be had of the cause of his commitment to prison, whether in execution of a sentence, or on a preliminary charge.[2]

[1] Thus, when a witness was asked, whether she was not cohabiting with a particular individual in a state of incest, Best, C. J. prohibited the question, stating expressly, that he did this only on the ground, that the answer would expose her to punishment. Cundell *v.* Pratt, 1 M. & .Malk. 108.

[2] The People *v.* Herrick, 13 Johns. 84, per Spencer, J.; Clement *v.* Brooks, 13 N. Hamp. R. 92. In Rex *v.* Lewis, 4 Esp. 225, the prosecutor, who was a common informer, was asked, whether he had not been in the house of correction in Sussex; but Ld. Ellenborough interposed and suppressed the question, partly on the old rule of rejecting all questions, the object of which was to degrade the witness; but chiefly because of the injury to the administration of justice, if persons, who came to do their duty to the public, might be subjected to improper investigation. Inquiries of this nature have often been refused, on the old ground alone. As in The State *v.* Bailey, Pennington's R. 304, (2d Ed.); Millman *v.* Tucker, 2 Peake's Cas. 222; Stout *v.* Rassell, 2 Yeates, 334. A witness is also privileged from answering respecting the commission of an offence, though he has received a pardon; "for," said North, C. J., "if he hath his pardon, it doth take away as well

§ 458. There is another class of questions, which do not seem to come within the reasons already stated in favor of permitting this extent of cross-examination; namely, questions, the answers to which, though they may disgrace the witness in other respects, yet *will not affect the credit* due to his testimony. For it is to be remembered, that the object of indulging parties in this latitude of inquiry, is, that the Jury may understand the character of the witness, whom they are asked to believe, in order that his evidence may not pass for more than it is worth. Inquiries, therefore, having no tendency to this end, are clearly impertinent. Such are the questions frequently attempted to be put to the principal female witness, in trials for seduction *per quod servitium amisit*, and on indictments for rape, &c., whether she had not previously been criminal with other men, or with some particular person; which are generally suppressed.[1] So, on an indictment of a female prisoner, for stealing from the person, in a house, the prosecutor cannot be asked, whether at that house any thing improper passed between him and the prisoner.[2]

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all calumny, as liableness to punishment, and sets him right against all objection." Rex *v.* Reading, 7 Howell's St. Tr. 296. It may also be observed, as a further reason for not interrogating a witness respecting his conviction and punishment for a crime, that he may not understand the legal character of the crime, for which he was punished, and so may admit himself guilty of an offence which he never committed. In Rex *v.* Edwards, 4 T. R 440, the question was not asked of a witness, but of one who offered himself as bail for another, indicted of grand larceny.

[1] Dodd *v.* Norris, 3 Campb. 519; Rex *v.* Hodgdon, Russ. & Ry. 211; Vaughn *v.* Perrine, Pennigt. R. 534. But where the prosecution is under a bastardy act, the issue being upon the paternity of the child, this inquiry to its mother, if restricted to the proper time, is material, and she will be held to answer. Swift's Evid. p. 81. See also Macbride *v.* Macbride, 4 Esp. 242; Bate *v.* Hill, 1 C. & P. 100. In Rex *v.* Teal et al. 11 East, 307, 311, which was an indictment for conspiring falsely to charge one with being the father of a bastard child, similar inquiries were permitted to be made of the mother, who was one of the conspirators, but was admitted a witness for the prosecution. See Post, Vol. 2, § 577.

[2] Rex *v.* Pitcher, 1 C. & P. 85.

§ 459. But where the question *does not fall within either of the classes mentioned* in the three preceding sections, *and goes clearly to the credit* of the witness for veracity, it is not easy to perceive why he should be privileged from answering, notwithstanding it may disgrace him. The examination being governed and kept within bounds by the discretion of the Judge, all inquiries into transactions of a remote date will of course be suppressed; for the interests of justice do not require that the errors of any man's life, long since repented of and forgiven by the community, should be recalled to remembrance, and their memory be perpetuated in judicial documents, at the pleasure of any future litigant. The State has a deep interest in the inducements to reformation, held out by the protecting veil, which is thus cast over the past offences of the penitent. But where the inquiry relates to transactions comparatively recent, bearing directly upon the present character and moral principles of the witness, and therefore essential to the due estimation of his testimony by the Jury, learned Judges have of late been disposed to allow it.[1] Thus, it has been held, that a witness called by one party, may be asked in cross-examination, whether he had not attempted to dissuade a witness for the other party from attending the trial.[2] So, where one was indicted for larceny, and the principal witness for the prosecution was his servant boy, the learned Judge allowed the prisoner's counsel to ask the boy, whether he had not been charged with robbing his master, and whether he had not afterwards said he would be revenged of him, and would soon fix him in gaol.[3] Similar

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[1] This relaxation of the old rule was recognised, some years ago, by Lord Eldon. "It used to be said," he observed, "that a witness could not be called on to discredit himself; but there seems to be something like a departure from that; I mean, that in modern times, the Courts have permitted questions to show, from transactions not in issue, that the witness is of impeached character, and therefore not so credible." Parkhurst *v.* Lowten, 2 Swanst. 216.

[2] Harris *v.* Tippett, 2 Campb. 637.

[3] Rex *v.* Yewin, cited 2 Campb. 638.

inquiries have been permitted in other cases.[1] The great question, however, whether a witness may not be bound in some cases to answer an interrogatory to his own moral degradation, where, though it is collateral to the main issue, it is relevant to his character for veracity, has not yet been brought into direct and solemn judgment, and must therefore be regarded as an open question, notwithstanding the practice of eminent Judges at *nisi prius*, in favor of the inquiry, under the limitations we have above stated.[2]

§ 460. Though there may be cases, in which a witness is not bound to answer a question which goes directly to disgrace him, yet *the question may be asked*, wherever the answer, if the witness should waive his privilege, would be received as evidence.[3] It has been said, that if the witness declines to answer, his refusal may well be urged against his credit with the Jury.[4] But in several cases this inference has been repudiated by the Court; for it is the duty of the Court, as well as the objects of the rule, to protect the witness from disgrace, even in the opinion of the Jury and other persons present;

[1] Rex *v.* Watson, 2 Stark. R. 116, 149; Rex *v.* Teal et al. 11 East, 311; Cundell *v.* Pratt, 1 M. & Malk. 108; Rex *v.* Barnard, 1 C. & P. 85, note (a); Rex *v.* Gilroy, Ib.; Frost *v.* Holloway, cited in Phil. & Am. on Evid. 921, note (1); 2 Phil. Evid. 425.

[2] See 1 Stark. Evid. 167–172; Phil. & Am. on Evid. 916–920; 2 Phil. Evid. 423–428; Peake's Evid. by Norris, p. 202–204; Cowen & Hill's notes 520, 521, 522, to 1 Phil. Evid. p. 276, 282. In Respublica *v.* Gibbs, 3 Yeates, 429, where the old rule of excluding the inquiry was discussed on general grounds, and approved, the inquiry was clearly inadmissible on another account, as the answer would go to a forfeiture of the witness's right of suffrage and of citizenship.

[3] 2 Phil. Evid. 423–428; 1 Stark. Evid. 172; Southard *v.* Rexford, 6 Cowen, 254. But it should be remembered, that if the question is collateral to the issue, the answer cannot be contradicted. In such cases, the prudent practitioner will seldom put a question, unless it be one which, if answered either way, will benefit his client. Such was the question put by the prisoner's counsel, in Rex *v.* Pitcher, Ante, § 458. See 1 C. & P. 85, note (a).

[4] 1 Stark. Evid. 172; Rose *v.* Blakemore, Ry. & M. 382, per Brougham, arg.

and there would be an end of this protection, if a demurrer to the question were to be taken as an admission of the fact inquired into.[1]

§ 461. After a witness has been examined in chief, his *credit may be impeached* in various modes, besides that of exhibiting the improbabilities of a story, by a cross-examination. (1.) By *disproving the facts* stated by him, by the testimony of other witnesses. (2.) By general evidence affecting his credit for veracity. But in *impeaching the credit* of a witness, the examination must be confined to his general reputation, and not be permitted as to particular facts; for every man is supposed to be capable of supporting the one, but it is not likely that he should be prepared to answer the other, without notice; and unless his general character and behavior be in issue, he has no notice.[2] This point has been much discussed, but may now be considered at rest.[3] The regular mode of examining into the general reputation is to inquire of the witness whether he knows the general reputation of the person in question among his neighbors; and what that reputation is. In the English Courts the course is further to inquire whether, from such knowledge, the witness would believe that person, upon his oath.[4] In the American Courts the same course has been pursued;[5] but its propriety has of

[1] Rose *v.* Blakemore, Ry. & M. 382, per Abbott, Ld. Ch. J.; Rex *v.* Watson, 2 Stark. R. 158, per Holroyd, J.; Lloyd *v.* Passingham, 16 Ves. 64; Ante, § 451.

[2] Bull. N. P. 296, 297. The mischief of raising collateral issues is also adverted to, as one of the reasons of this rule. "Look ye," said Holt, Ld. C. J., "you may bring witnesses to give an account of the general tenor of the witness's conversation; but you do not think, sure, that we will try, at this time, whether he be guilty of robbery." Rex *v.* Rookwood, 4 St. Tr. 681; 13 Howell's St. Tr. 211, S. C.; 1 Stark. Evid. 182. It is competent, however, for the party against whom a witness has been called, to show that he has been bribed to give his evidence. Attor. Gen. *v.* Hitchcock, 11 Jur. 478.

[3] See 2 Phil. Evid. 431; Swift's Evid. 143.

[4] Phil. & Am. on Evid. 925; Mawson *v.* Hartsink, 4 Esp. 104, per Ld. Ellenborough; 1 Stark. Evid. 182; Carlos *v.* Brook, 10 Ves. 50.

[5] The People *v.* Mather, 4 Wend. 257, 258; The State *v.* Boswell,

late been questioned, and perhaps the weight of authority is now against permitting the witness to testify as to his own opinion.[1] In answer to such evidence, the other party may cross-examine those witnesses, as to their means of knowledge, and the grounds of their opinion; or may attack their general character, and by fresh evidence support the character of his own witness.[2] The inquiry must be made as to his general

2 Dev. R. 209, 211; Anon. 1 Hill, S. Car. R. 258; Cowen & Hill's note 531, to 1 Phil. Evid. 293; Ford *v.* Ford, 7 Humph. 92.

[1] Gass *v.* Stinson, 2 Sumn. 610, per Story, J.; Kimmel *v.* Kimmel, 3 S. & R. 336 – 338; Wike *v.* Lightner, 11 S. & R. 198; Swift's Evid. 143; Phillips *v.* Kingfield, 1 Appleton's R. 375. In this last case the subject was ably examined by Shepley, J., who observed — "The opinions of a witness are not legal testimony except in special cases; such, for example, as experts in some profession or art, those of the witnesses to a will, and in our practice, opinions on the value of property. In other cases, the witness is not to substitute his opinion for that of the Jury; nor are they to rely upon any such opinion instead of exercising their own judgment, taking into consideration the whole testimony. When they have the testimony that the reputation of a witness is good or bad for truth, connecting it with his manner of testifying and with the other testimony in the case, they have the elements from which to form a correct conclusion, whether any and what credit should be given to his testimony. To permit the opinion of a witness, that another witness should not be believed, to be received and acted upon by a Jury, is to allow the prejudices, passions, and feelings of that witness, to form, in part at least, the elements of their judgment. To authorize the question to be put, whether the witness would believe another witness on oath, although sustained by no inconsiderable weight of authority, is to depart from sound principles and established rules of law respecting the kind of testimony to be admitted for the consideration of a Jury, and their duties in deciding upon it. It moreover would permit the introduction and indulgence in Courts of Justice of personal and party hostilities, and of every unworthy motive, by which man can be actuated, to form the basis of an opinion to be expressed to a Jury to influence their decision." 1 Applet. R. 379. But *quære*, whether a witness to impeach reputation may not be asked in cross-examination, if he would not believe the principal witness on oath.

[2] 2 Phil. Evid. 432; Mawson *v.* Hartsink, 4 Esp. 104, per Ld. Ellenborough; 1 Stark. Evid. 182. It is not usual to cross-examine witnesses to character, unless there is some definite charge upon which to cross-examine them. Rex *v.* Hodgkiss, 7 C. & P. 298. Nor can such witnesses be contradicted as to collateral facts. Lee's case, 2 Lewin, Cr. Cas. 154.

reputation, where he is best known. It is not enough that the impeaching witness professes merely to state what he has heard "others" say; for those others may be but few. He must be able to state what is *generally said* of the person, by those among whom he dwells, or with whom he is chiefly conversant; for it is this only that constitutes his general reputation or character.[1] And, ordinarily, the witness ought himself to come from the neighborhood of the person whose character is in question. If he is a stranger, sent hither by the adverse party to learn his character, he will not be allowed to testify as to the result of his inquiries.[2]

[1] Boynton *v.* Kellog, 3 Mass. 192, per Parsons, C. J.; Wike *v.* Lightner, 11 S. & R. 198, 199, 200; Kimmel *v.* Kimmel, 3 S. & R. 337, 338; Phillips *v.* Kingfield, 1 Applet. R. 375.

[2] Douglass *v.* Tousey, 2 Wend. 352. Whether this inquiry into the general reputation or character of the witness should be restricted to his reputation for truth and veracity, or may be made in general terms, involving his entire moral character and estimation in society, is a point upon which the American practice is not uniform. All are agreed, that the true and primary inquiry is into his general character for truth and veracity, and to this point, in the northern States, it is still confined. But in several of the other States greater latitude is allowed. In South Carolina, the true mode is said to be, first to ask what is his general character, and if this is said to be bad, then, to inquire whether the witness would believe him on oath; leaving the party who adduced him, to inquire whether, notwithstanding his bad character in other respects, he has not preserved his character for truth. Anon. 1 Hill, S. Car. R. 251, 258, 259. In Kentucky, the same general range of inquiry is permitted; and is thus defended by one of the learned Judges. "Every person conversant with human nature, must be sensible of the kindred nature of the vices to which it is addicted. So true is this, that, to ascertain the existence of one vice, of a particular character, is frequently to prove the existence of more at the same time, in the same individual. Add to this, that persons of infamous character may, and do frequently exist, who have formed no character as to their lack of truth; and society may have never had the opportunity of ascertaining, that they are false in their words or oaths. At the same time they may be so notoriously guilty of acting falsehood, in frauds, forgeries, and other crimes, as would leave no doubt of their being capable of speaking and swearing it, especially as they may frequently depose falsehood with greater security against detection, than practise those other vices. In such cases, and with