

IMPEACHING THE CREDIBILITY OF WITNESSES.

swear that they, from their knowledge of the witness, believe him to be unworthy of credit upon his oath. Such persons, he goes on to say, may not, upon their examination-in-chief, give reasons for their belief, but they may be asked their reasons in cross-examination, and their answers cannot be contradicted. *Art. 123.* This point has been subjected to very minute discussion in Chancery, where the application to put in such evidence was made, after publication, the alleged matter of impeachment having been discovered only after the general examination of witnesses. In *Purcell v. McNamara*, 8 Ves. 323, it was agreed that, after publication, it was competent to examine any witness to this point whether he would believe that man upon his oath. Lord Eldon refers to this decision with approval in a later case of *Charles v. Brock*, 10 Ves. 50, and continues,—“It is not competent even at law to ask the ground of that opinion; but the general question only is permitted.” He says also, in this case, “In examining a witness to credit, the examination is either to be confined to general credit; that is, by producing witnesses to swear that the person is not to be believed upon his oath, or by contradicting the witness you seek to discredit as to particular matters deposed to by him.” The *syllabus* to the case in 10 Ves. puts the point thus: “The general question only is permitted; whether he is to be believed on his oath?” Refer also to *Penny v. Worts*, 2 De G. & Sm. 527, and *Anon* 3 V. & B. 93. In *Mawson v. Hartink*, 4 Esp. 102, Garrow, of counsel, put the question in this way, “Have you the means of knowing what the general character of this witness was; and from such knowledge of his general character would you believe him on his oath?” Lord Ellenborough ruled that this question might be put in that way,

as it would then be open for the opposite side to ask, as to the means of knowing the witness's character; so that it would be judged what degree of credit was due to the question from the means that the witness then called had of informing himself and forming his judgment. The same counsel, when on the bench, as Mr. Baron Garrow, gave his views on this point in *Rez v. Dispham*, 4 C. & P. 392. A witness was called who stated that he had known the witness impeached for three years, and would not believe him on his oath. The Judge then asked “Have you such a knowledge of his general character and conduct that you can conscientiously say that from what you know of him it is impossible to place the least reliance on the truth of any statement that he may make?” And in summing up to the jury, he said a man may have been guilty of such immoral and profligate conduct for a length of time as to convince respectable persons that his statements are wholly unworthy of belief. The question, therefore, really amounts to this, has the witness such a want of moral character that other persons cannot trust a word he says.

In *Sharp v. Scoging*, Holt N. P. Ca. 541, the practice which obtained then, 1817, is very clearly stated. A witness named Chilcott proved the case of the plaintiffs. The defendant then called witnesses who swore they would not believe Chilcott on oath. Gibbs, C. J., said: “When you endeavour to destroy the credit of a witness, you are permitted to call other witnesses who know him, and to ask them this general question,—would you believe such a man upon his oath? You cannot ask them as to particular acts of criminality. But as no man is to be permitted to destroy a witness's character without having grounds to state why he thinks him unworthy of credit, you may ask him his