

consequential only. (Bull. 297, Peake 126.)* I think it probable that an exception would be allowed to the rule of exclusion above mentioned, in the case of instrumental witnesses denying their attestation; for as these are witnesses whom it is necessarily incumbent on the party to produce, and the nature of their testimony is attended with suspicion, the discredit of their characters is a strong corroboration of the evidence, which it is competent to give from other sources, of the authenticity of the instrument (*vide supra*, p. 12, note).

"An exception to the restriction above mentioned, against putting leading questions, is allowed in the case of witnesses appearing to be unwilling† to depose the truth in favour of the party by whom they are adduced. This unwillingness is commonly to be decided by the Judge, according to his impression of the demeanour of the witness upon the trial. The situation of the witness, and the inducements which he may have for withholding a fair account, are also very proper circumstances to be taken into consideration in forming this decision. A son will not be very forward in stating the misconduct of his father of which he has been the only witness: a servant will not, in an action against his master, be very ready to acknowledge the negligence committed by himself. I conceive that the principle which requires a party to abide by the whole of what his own witness has

* The procedure in such a case is, in England, now governed by statute. The Criminal Procedure Act, 1865, s. 3 (re-enacting the Common Law Procedure Act, 1854, s. 22), now provides that in both civil and criminal cases:—"A party producing a witness shall not be allowed to impeach his credit by general evidence of bad character, but he may, in case the witness shall, in the opinion of the Judge, prove adverse, contradict him by other evidence, or by leave of the Judge prove that he has made at other times a statement inconsistent with his present testimony; but before such last-mentioned proof can be given the circumstances of the supposed statement, sufficient to designate the particular occasion, must be mentioned to the witness, and he must be asked whether or not he has made such statement.

† In England the witness must be something more than unwilling, it would seem. He must be hostile, in the opinion of the Judge: *Bastin v. Carew*, Ry. & M. 127; *Price v. Manning*, 42 Ch. D. 372; *Coles v. Coles*, L. R. 1 P. & M. 70: *vide* Roscoe's *Nisi Prius* Evidence, 18th ed., pp. 167 and 178, and cf. pp. 35, 39, 164, *post*.