

whether they may be asked if they have already received a punishment, which does not disqualify their testimony, or whether they may be interrogated as to any circumstances of improper conduct, not immediately connected with the subject of their examination, and also, whether their refusal to answer inquiries upon these subjects can be observed upon as affecting the credit of their testimony, are questions of great importance upon which there is a very considerable difference of opinion. Some judges are very strongly of opinion, that these inquiries ought not to be allowed; but it has been understood to be the more prevalent opinion, and is clearly supported by the course of practice which has actually prevailed that these inquiries should be admitted. Mr. Peake, in the second edition of his 'Law of Evidence,' states the argument in support of these opposite opinions, in a very fair and perspicuous manner; and the right and propriety of the examination alluded to are maintained with considerable ability in a pamphlet entitled, 'An Argument in favour of the rights of Cross-Examination.' I have at all times felt a very considerable difficulty in the consideration of this subject, but as a knowledge of a witness's habits and pursuits, his conduct and disposition, will naturally influence the regard which is paid to his assertions, I think that the preponderance of argument is in favour of the opinion, that an examination, by which these may be ascertained cannot, upon any general principles, be suppressed as irrelevant or improper; and that those arguments respecting a witness's conduct ought not to be rejected, which may tend to terminate the regard that the mind, without reference to technical rules or legal considerations, would pay to his testimony. At the same time, I think that this is a liberty which,*

* These are matters of cross-examination rather than of examination in chief, and are dealt with *post*, pp. 64—70.

So far as previous convictions are concerned, the law in England is now settled by statute. In civil cases, s. 25 of the Common Law Procedure Act, 1854, and in criminal cases, s. 6 of the Criminal Procedure Act, 1865, "Mr. Denman's Act," provided that witnesses may be asked