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Admissibility of Record of Previous Convictions to Attack Credibility of Witness

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should not be "estopped" from showing that fact, since one of the essentials of the doctrine of estoppel, namely, injury to the plaintiff, is not present, because an action against the corporation, the very thing he looked forward to, in case of breach, is still available to him.

The objection that in such an action there is no authorized agent upon whom process may be served, is not tenable. It has been decided, that service upon such agent, if regularly made, is good service against the corporation, even though it failed to appoint one in accordance with the act of 1874, before its repeal.¹⁶ The reason being, that it is to be presumed that the corporation appointed such agent as one upon whom service is authorized to be made.¹⁷ There is no substantial objection to following the same course under the act of 1911, more properly, 1915.

In short, the theory is, that plaintiff being still in a position to enforce his rights against the corporation, the agents and officers should not be estopped from asserting the fact that he intended a contract with the corporation and not with them as individuals. The theory fits the cases of domestic corporations as well as those of foreign corporations without resort to an unwarranted over-extension of the doctrine of "estoppel".

Jose E. Oller

ADMISSIBILITY OF RECORD OF PREVIOUS CONVICTIONS TO ATTACK CREDIBILITY OF WITNESS—
The case of *Commonwealth v. Quaranta*, 295 Pa. 264, lays down a proposition regarding the admissibility of records of prior convictions in order to attack a witness' character for veracity. The rule is stated by Mr. Justice Kephart to be, "When a party becomes a witness for himself, he stands in no better position than any other witness not a party.¹ Conduct derogatory to the witness' character for veracity may be proved by showing that he has been convicted of an infamous offense. No collateral issue of fact is thus raised, as the record establishes the fact. But every offense or

¹⁶Hagerman v. Slate Co., 97 Pa. 534 (1881).

¹⁷Case supra; Eastman, Private Corporations, Vol. 1 (2d Ed.) p. 554. Service may be made on any agent within the state, Supra; see 23 L. R. A. 490.

¹Beck v. Hood, 185 Pa. 32 (1898); Commonwealth v. Racco, 225 Pa. 113 (1909).

crime under the law is not relevant to prove one's character for veracity, and, as it is not permissible to show a general bad character because of the abuse that could be made of it by the prosecution,² the only crimes admissible to attack veracity are *such as affect credibility and refer to the conviction of a felony or a misdemeanor in the nature of crimen falsi*.³ In determining what are relevant crimes to affect credibility, the question is ordinarily for the trial judge, and where defendant is a witness, the trial judge is vested with a large discretion as to relevancy, especially if defendant is known to be of criminal habit".⁴

Considerable confusion is found among the previous Pennsylvania decisions but this confusion is not due to the fact that never before has the rule been so stated but rather it is *the result of cross-examining as to mere attempts, arrests and indictments, without conviction*. These raise independent issues and do not assert the fact, as a conviction does.⁵ The court in the present case held inapplicable two cases which decided that "In a trial of a prisoner for one crime, the Commonwealth cannot introduce evidence of his guilt of another independent crime."⁶ In these two cases the rule was laid down not because the evidence was sought to be introduced in order to attack credibility but rather, by these unconnected offenses, to

²Gilchrist v. McKee, 4 Watts 380 (1835); Commonwealth v. Payne, 205 Pa. 101 (1903); Commonwealth v. Williams, 209 Pa. 529 (1904); Weiss v. London G. & A. Co., 285 Pa. 251 (1926); Marshall v. Carr, 271 Pa. 271 (1922).

³Italics by the author; Commonwealth v. Verano, 258 Pa. 42 (1917); Commonwealth v. Robzin, 78 Pa. Superior Ct. 292 (1922); Commonwealth v. Arcurio, 92 Pa. Superior Ct. 404 (1927); Commonwealth v. Doe, 18 District 611 (1909); Commonwealth v. Barry, 8 Pa. County Court 216 (1890); Commonwealth v. Shellenberger, 15 York Legal Record 201; 2 Wigmore on Evidence, Secs. 977-989.

⁴Commonwealth v. Racco, (Supra); Commonwealth v. Payne, (Supra); Commonwealth v. Dorst, 285 Pa. 232 (1926); Commonwealth v. Dietrich, 65 Pa. Superior Ct. 599 (1916); Stout v. Rassel, 2 Yeates 334 (1796); Elliot v. Boyles, 31 Pa. 65 (1858).

⁵Ramsey v. Johnson, 2 Pen. & Watts 293 (1831); Commonwealth v. Verano, (Supra); Commonwealth v. Arcurio, (Supra); Commonwealth v. Keegan, 70 Pa. Superior Ct. 436 (1919); Stout v. Rassel, (Supra); 2 Wigmore on Evidence, (Supra); Buck v. Commonwealth, 107 Pa. 486 (1884).

⁶Commonwealth v. Haines, 257 Pa. 289 (1917); Commonwealth v. Gibson, 275 Pa. 338 (1922).

prove the guilt of the defendant as to the crime for which he was on trial.

The basis of this question is founded in historical reasons for *disqualifying* a witness. At the early common law in England, the test set forth by Justice Kephart was used to disqualify and not to attack credibility. The reasons are: first, the structure of the social classes in England was to a considerable degree founded upon freedom from the ignominy of convictions for any such crime; secondly, the disqualification was regarded as a punishment; and thirdly, these crimes were regarded as involving moral turpitude, and hence, in no event, was the witness to be allowed to testify.⁷ From these reasons, the rules as to admissibility of such evidence to attack credibility was founded.

The rule as set forth by the court is apparently the majority view, according to Mr. Justice Kephart's opinion, but from an analysis of Dean Wigmore's treatment of the subject we find that this is not so and further, that this rule is really a reversion to the early common law rule. Wigmore queries, "What crimes are relevant to indicate bad character as to credibility?" Answering he enumerates three classes. First, "Whatever offenses were formerly treated as disqualifying one as a witness shall now be treated as available for impeachment. Second, if in a given jurisdiction general bad character is allowable for impeachment, then any offense will serve to indicate such bad character. Third, if character for veracity only is allowable for impeachment then only such specific offenses may be used as indicate a lack of veracity character."⁸ He then attempts to classify the American jurisdictions and says, "In the United States however, only veracity character is admitted in the great majority of jurisdictions", classifying Pennsylvania as one of these jurisdictions.⁹

The instant case, however, would seem to controvert this classification for we see here the peculiar result of a combination of rules one and three, resulting, in effect, in rule two as to its operation. This singular result is based upon the Court's own definition of the rule. The court attempts to state a definite rule and then says the *discretion* as to admissibility is vested in the trial judge. We submit that whenever there is a discretion granted, there is at least a possibility of the abuse of such discretion especially

⁷2 Wigmore on Evidence, Secs. 519 and 520.

⁸2 Wigmore on Evidence, Sec. 980.

⁹2 Wigmore on Evidence, Sec. 923 and cases cited.

in "the cases of defendants of known criminal habit." The court says, "Every offense is not relevant * * * the only crimes admissible to attack veracity are such as affect credibility and refer to the conviction of a felony or a misdemeanor in the nature of *crimen falsi* * * * in determining such crimes * * * the discretion is in the trial judge". Furthermore, where the trial judge admits the record in his discretion, it has often been repeated by the Supreme Court that the decision will not be reviewed except for an abuse of such discretion.¹⁰ By submitting this criticism it is not to be taken that we are overcome by a maudlin sympathy for criminals, but rather we feel that our courts should at least be consistent and state our rule to be as it really will in effect operate, namely, "If in a given jurisdiction general bad character is allowable for impeachment, then any offense will serve to indicate such bad character".¹¹

The present case and the early decisions can not be reconciled except by accepting the above view. Some earlier cases hold that "a witness may be *interrogated* as to his conviction of such offenses as affect his credibility but it is not the proper practice to ask him as to his guilt of some other alleged crime not connected with the case on trial and for which he has never been convicted".¹² Others state that "credit of a witness can be impeached only by his general character".¹³ In most of the previous decisions the main question is often blurred by attempts to question witnesses as to previous arrests and indictments without producing the record of conviction for such offenses. It is obvious that such questions should not be permitted for it is entirely possible for an innocent man to be arrested or indicted. Most cases have refused to allow such questions,¹⁴ but others state that this is also within the discretion of the trial judge.¹⁵ This much at least has been settled by the

¹⁰Van Horn v. P. R. T., 295 Pa. 525 (1929).

¹¹2 Wigmore on Evidence, Sec. 980.

¹²Commonwealth v. Racco, (Supra); Commonwealth v. Varano, (Supra); Commonwealth v. Arcurio, (Supra).

¹³Elliot v. Boyles, (Supra); Stout v. Russell, (Supra); Ramsey v. Johnson, (Supra); Hallihan v. Scranton Rwy. Co., 15 Pa. District 401 (1906).

¹⁴Elliot v. Boyles, (Supra); Stout v. Russell, (Supra); Gilchrist v. McKee, (Supra); See cases under footnote 2.

¹⁵Rhone v. Borland, 7 Atlantic Reporter 151 (Pa. 1886); Commonwealth v. Dorst, (Supra); Weiss v. London G. & A. Co., (Supra);

decision in *Commonwealth v. Quaranta*,¹⁶ the record of the conviction only is admissible.

On first glance the rule seems to be meritable on the basis of simplicity. However, the real difficulty arises in determining what crimes involve the element of *crimen falsi*. The authorities all admit that the term and its elements are quite difficult of exact definition. It has been defined as "Any crime which may injuriously affect the administration of justice, by the introduction of falsehood and fraud. The meaning of this term at common law is not well defined. It has been held to include forgery, perjury, subornation of perjury, suppression of testimony by bribery, conspiracy to procure the absence of a witness, conspiracy to accuse of crime, barrotry. The effect of a conviction of a crime of this class is infamy and incompetence to testify".¹⁷ Comparing this definition with the cases and the records admitted to attack credibility we find larceny,¹⁸ battery,¹⁹ driving an automobile while intoxicated,²⁰ manslaughter,²¹ adultery,²² burglary,²³ assault,²⁴ stealing whiskey,²⁵ larceny by bailee and obtaining money under false pretenses,²⁶ extortion,²⁷ as crimes involving the veracity of a witness. There probably are many others which could be enumerated. This comparison, we believe, shows the inconsistency of the new appellate ruling and to our mind strengthens the argument that the second rule, set forth above, should be the rule in this commonwealth.

There is perhaps some justification for allowing records of previous convictions for crimes involving the elements of *crimen falsi* (if they can be so determined) but admission

Commonwealth v. Goldberg, 18 Delaware County 42 (1927); *Commonwealth v. Racco*, (Supra).

¹⁶*Commonwealth v. Quaranta*, (Supra).

¹⁷*Bouvier's Law Dictionary*, Baldwin's Edition, 1928; *Commonwealth v. Ohio & Penn. R. R.*, 1 Grant's Cases 329 (1855); *United States v. Sims*, 161 Federal Reporter 1008 (1907).

¹⁸*Commonwealth v. Varano*, (Supra).

¹⁹*Commonwealth v. Racco*, (Supra).

²⁰*Commonwealth v. Grill*, 19 Berks County 555 (1927).

²¹*Commonwealth v. Barry*, (Supra).

²²*Commonwealth v. Arcurio*, (Supra).

²³*Commonwealth v. Doe*, 79 Pa. Superior Ct. 162 (1922).

²⁴*Commonwealth v. Lisowski*, 274 Pa. 222 (1922).

²⁵*Commonwealth v. Pezzner*, 78 Pa. Superior Ct. 286 (1922).

²⁶*Commonwealth v. Vis*, 81 Pa. Superior Ct. 384 (1923).

²⁷*Commonwealth v. Valenti*, 19 Delaware County 221 (1928).

of such records as to prior felonies, can have no logical bearing upon whether the witness in the present instance is telling the truth. The Quaranta case itself does not disclose the fact, but from the record we learn that the defendant was some time previously convicted of highway robbery. We must bear in mind that the purpose for which these records are to be admitted is solely to discredit the witness, in other words, to attack his veracity. "Veracity is the quality or state of being veracious, or true; habitual observance of the truth".²⁸ Credibility is "Worthiness of belief".²⁹ Observing this, we query, is it not possible for a man to be a felon and yet have a scrupulous regard for the truth? Very often, force of circumstances may compel a man to rob, to steal and so on; but to perjure, to obstruct justice really does involve the element of a deliberate intent to lie or to forestall the truth. Unquestionably, the introduction of evidence of a felony, merely because it is a felony, does injure the defendant. In practical effect he is thus forced to combat not only the crime for which he is being tried but the undeterminable injury resulting from bringing in the record of the unconnected crime, under the guise of attacking credibility.

It appears to us that the better method of attacking veracity is by bringing in witnesses as to his *reputation* for veracity. A man may have been convicted of the crime of manslaughter and yet be regarded by his neighbors and community as truthful despite his previous offense. On the other hand, if he has not been convicted of any such felony, his reputation for veracity may still be attacked by the same evidence of reputation. In other words, we believe that the criterion for veracity is not his previous conviction but what his reputation for veracity is among the members of his community. In lieu of such test, then the only fair test is for our legislature to enumerate the offenses, conviction of which may be shown to attack a witness' veracity character. Even though a witness may be of "known criminal repute" he is still under our laws entitled to a fair trial.

Arthur Markowitz

²⁸Webster's Dictionary.

²⁹Bouvier's Dictionary (Supra).