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as to be unconscionable or fraudulent,⁸ and such was not the situation here. In holding that mere inadequacy of consideration is in itself a bar to specific performance the court relied on *Walker v. Bohannan*,⁹ a Missouri case, in which the court said that in order that specific performance be decreed by equity "the contract must be based upon an adequate and legal consideration, so that its performance upon the one hand, but not upon the other, would bespeak an unconscionable advantage and wrong, demanding in good conscience relief in equity. . ." This statement was not necessary to the decision in the Walker case, and it is quite possible that what the court meant was simply that the consideration must be sufficient to support a promise, a requirement basic in contract law. Such seems to be the proper interpretation of the term "adequate and legal consideration," used in the Walker case.

J. C. L. '36.

EVIDENCE—WITNESSES—CHARACTER—IMPEACHMENT.—The credibility of a witness may universally be impeached by showing that his character for truth and veracity is bad, and in some jurisdictions inquiries relative to the general moral character of the witness are permissible as a proper mode of impeachment.¹ The courts in these latter jurisdictions faced something of a dilemma when statutes removing the common law disqualifications allowed the accused in a criminal prosecution to take the stand in his own

⁸ *Bean v. Valle*, (1829) 2 Mo. 126; *Kirkpatrick v. Wiley* (1906) 197 Mo. 123, 95 S. W. 213; *Evans v. Evans* (1906) 196 Mo. 1, 93 S. W. 969; *Holmes v. Fresh* (1845) 9 Mo. 201; *Scott v. Habinck* (1919) 188 Ia. 155, 174 N. W. 1. In regard to the whole problem see "Missouri Law on Performance of Oral Contracts as a Method of Validation when Statute of Frauds Is Invoked," by Professor Tyrrell Williams in 20 *St. Louis Law Rev.* 106 (1935).

⁹ (1912) 243 Mo. 119, 147 S. W. 1024. In this case the following requirements were set out: "(1) the alleged oral contract must be clear, explicit, and definite; (2) it must be proven as pleaded; (3) such contract cannot be established by conversations either too ancient on the one hand, or too loose or casual upon the other; (4) the alleged oral contract must itself be fair and not unconscionable; (5) the proof of the contract as pleaded must be such as to leave no reasonable doubt in the mind of the chancellor that the contract as alleged was in fact made, and that the full performance, so far as lies in the hands of the parties to perform, has been had; (6) and the work constituting performance must be such as is referable solely to the contract sought to be enforced and not such as might be reasonably referable to some other and different contract; (7) the contract must be based upon an adequate and legal consideration, so that its performance upon the one hand, but not upon the other, would bespeak an unconscionable advantage and wrong, demanding in good conscience relief in equity; (8) proof of mere disposition to devise by will or convey by deed by way of gift, or as a reward for services, is not sufficient, but there must be shown a real contract to devise by will or convey by deed made before the acts of performance relied upon were had." In this case specific performance was denied because the contract was not sufficiently established.

¹ 2 *Wigmore, Evidence*, secs. 922-923; 28 *R. C. L.* 622; *State vs. Scott* (1933) 332 Mo. 255, 58 S. W. (2d) 275, 90 *A. L. R.* 860; See also annotation 90 *A. L. R.* 870.

behalf, thus presenting him in a dual capacity, that of an accused and that of a witness.² As the accused his general moral character was not open to attack, unless he first put it in issue, if the objective was to use it as proof of guilt or innocence, but as a witness the defendant was subject to impeachment precisely as any other witness.³ No particular problem arose when the accused took the stand in those courts where impeachment inquiries were limited to the witness's character for truth and veracity. The dilemma presented itself in those tribunals where evidence of general moral character was proper for impeachment purposes, but improper to prejudice or affect the defendant as a defendant, and yet it was inevitable that the evidence would do both. Missouri courts recognized the difficulty but consistently held that incidental prejudice to the accused through admission of evidence of bad moral character would not preclude its proper admission for impeachment purposes.⁴

In the recent case of *State v. Williams*,⁵ a negro woman, for shooting and killing her paramour, was convicted of murder in the second degree. After she had left the witness stand, the state was permitted to show in rebuttal by six witnesses that her general reputation for morality in the community prior to the homicide was bad. Objection was made to its introduction on the ground that the defendant had not put her character in issue. The Supreme Court after reviewing the Missouri cases, all following the "morality" rule, beginning with *State v. Shields*⁶ decided in 1850 as to ordinary witnesses, and *State v. Clinton*⁷ decided in 1878 as to a defendant-witness, and after examining the reasons and principles underlying the two rules, held that the trial court had committed error in admitting testimony as to general character for morality for impeachment purposes, thereby specifically overruling the controlling doctrine in more than thirty previous cases and aligning Missouri with the weight of authority which adopts the "truth and veracity" rule.⁸

In view of the Missouri statute⁹ it apparently follows that the decision cannot be limited solely to cases in which the accused becomes a witness, and the court expressly did not so confine its opinion, but extends to the impeachment of all witnesses.

The decision would not seem to affect the general rule that the inquiry as to character affecting credibility must relate primarily to the time when

² 2 Wigmore, *Evidence*, sec. 889; R. S. Mo. (1929) 3692.

³ 2 Wigmore, *Evidence*, sec. 890; 28 R. C. L. 620; R. S. Mo. (1929) 3692 specifically provides that a defendant testifying for himself in a criminal cause "may be contradicted and impeached as any other witness in the case."

⁴ The cases are collected and commented upon in *State v. Scott*, supra n. 1, and again in *State v. Williams* (1935 Mo.) 87 S. W. (2d) 175. Restrictions were sometimes put upon the rule and it was often criticized.

⁵ Supra, note 4.

⁶ 13 Mo. 236, 53 Am. Dec. 147.

⁷ 67 Mo. 380, 29 Am. Rep. 506.

⁸ 2 Wigmore, *Evidence*, sec. 923.

⁹ R. S. Mo. (1929) 3692 providing that accused may be impeached as any other witness.

the witness testifies, but that that is largely within discretion of the trial court;¹⁰ nor the rule that the inquiry should usually be confined to the witness's reputation in the locality where he resides.¹¹ Specific acts of wrongdoing or misconduct are not proper proof of character for impeaching credibility,¹² except as they may be brought out in cross examination.¹³ The decision in the principal case would logically preclude any evidence as to particular traits other than that for truth and veracity.¹⁴ Conviction of some crimes is everywhere allowed to be used as affecting credibility.¹⁵

R. S. L. '36.

TORTS—CORPORATIONS—SLANDER.—In the case of *Atterbury v. Brink's Express Co. et al.*¹ recently (Feb. 17, 1936) decided by the Kansas City Court of Appeals, Missouri, the plaintiff, a messenger of the Brink's Express Co., brought suit for slander against the Brink's Express Co. and against the manager of its Kansas City office, one Mick, who uttered the defamatory statement. The court held that the statement uttered by Mick would justify finding that the words charged or necessarily imputed that the plaintiff had committed a crime and thereby constituted slander per se. The court for all practical purposes affirmed the lower court's decision in favor of the plaintiff, but reversed and remanded the case because of an error in the plaintiff's pleadings with which we are not concerned here.

The case raises the important question which apparently was not even considered by the court of the liability of an employer for the slanderous words uttered by an employee, a question on which there is a distinct diversity of opinion.

¹⁰ 2 Wigmore, *Evidence*, secs. 927-928; 28 R. C. L. 632; 70 C. J. 828; *State v. Scott*, supra n. 1; *Page v. Payne* (1922) 293 Mo. 600, 240 S. W. 156; *State v. Parker* (1888) 96 Mo. 382, 9 S. W. 728; *Wood v. Matthews* (1881) 73 Mo. 477; *Baillie v. Hudson* (1926) 278 S. W. 1056; *Winn v. Modern Woodmen of America* (1909) 138 Mo. App. 701, 119 S. W. 536.

¹¹ 28 R. C. L. 631; see also 2 Wigmore, *Evidence*, sec. 930 and 70 C. J. 831; *Ulrich v. Chicago B. & Q. R. Co.* (1920) 281 Mo. 697, 220 S. W. 682; *State v. Parker*, supra n. 10; *Waddingham v. Hulett* (1887) 92 Mo. 528 5 S. W. 27; *Johnson v. Martindale* (1926 Mo. App.) 288 S. W. 970.

¹² 28 R. C. L. 623; 70 C. J. 834; see also 2 Wigmore, *Evidence*, sec. 924; *State v. Williams* (1934) 335 Mo. 234, 71 S. W. (2d) 732 (not the principal case); *State v. Cox* (1924 Mo.) 263 S. W. 215; *Winn v. Modern Woodmen of America*, supra n. 10; *State v. Sassman* (1908) 214 Mo. 695, 114 S. W. 590.

¹³ *State v. Williams*, supra n. 12; *State v. Sherry* (1933 Mo.) 64 S. W. (2d) 238; *State v. Nasello* (1930) 325 Mo. 442, 30 S. W. (2d) 132.

¹⁴ Mo. courts have allowed inquiries as to particular traits; *State v. Grant* (1883) 79 Mo. 113, 49 Am. Rep. 218; *State v. Pollard* (1903) 174 Mo. 607, 74 S. W. 969; *Winn v. Modern Woodmen of America*, supra n. 10; but have also held such evidence inadmissible, *State v. Gant* (1931 Mo.) 33 S. W. (2d) 970; *State v. Irvin* (1929) 324 Mo. 217, 22 S. W. (2d) 772 (particular trait involved in offence alleged).

¹⁵ 2 Wigmore, *Evidence*, sec. 926; 28 R. C. L. 624; *State v. Hawes* (1933 Mo.) 60 S. W. (2d) 684; *State v. Harrison* (1930) 24 S. W. (2d) 985; *State v. Forsha* (1905) 190 Mo. 296, 88 S. W. 746, 4 L. R. A. (N. S.) 576.

¹ 90 S. W. (2d) 807.