the trading classes, the information of the seller as to the ability of the purchaser to pay is derived from reputation and most generally from no other source whatever. To shut out from the jury the same evidence upon which the entire community acts would present a singular result.[1]

1863, *Atwater*, J., in *Nininger* v. *Knox*, 8 Minn. 140, 147: "It would seem that the fact of insolvency, from its nature, must usually exclude direct proof, as no one save the person himself could ordinarily safely swear that a man had no property, or insufficient to meet his liabilities, at a given time. . . . The fact of insolvency is of such a nature that the opportunities of the public for forming a correct judgment in the matter must be usually as ample as those existing to form a judgment of character in any other respect, and indeed more so."

In the greater number of jurisdictions, reputation is accordingly admissible to show insolvency or solvency.[2] Distinguish the circumstantial use of reputation as evidence of *knowledge* by a purchaser of a debtor's insolvency (*ante*, § 253).

It has also been held occasionally that the *wealth* of a party (usually in proving damages for breach of promise of marriage) may be evidenced by reputation;[3] but this seems unsound.

§ 1624. **Reputation to prove Partnership.** The use of reputation to prove the existence of an agreement of partnership does not seem justifiable either by the necessity of the case or by the trustworthiness of the evidence; for not only may the testimony of the alleged partners, their admissions, and the written agreement if any, be ordinarily obtained, but the possibilities of a misleading reputation are particularly strong. These considerations have been more than once clearly set forth judicially:

1835, *Waite*, J., in *Brown* v. *Crandall*, 11 Conn. 92, 95: "[The rule is that] hearsay evidence is incompetent to establish any specific fact which fact is in its nature susceptible of being proved by witnesses who speak from their own knowledge. . . . [If reputation here were admissible,] a person of doubtful credit might cause a report to be circulated that another was in partnership with him, for the very purpose of maintaining his credit. His creditors also might aid in circulating the report for the purpose of furnishing evidence to enable them to collect their debts. There is nothing in the nature of the fact to be proved requiring the admission of such testimony."

1838, *Cowen*, J., in *Halliday* v. *McDougall*, 20 Wend. 81, 90 (after quoting the reason-

[1] Citing Weeks v. Sparke, *ante*, § 1587.

[2] *Accord:* 1845, Lawson v. Orear, 7 Ala. 788, per Goldthwaite, J.; 1861, McNeill v. Arnold, 22 Ark. 482, *semble;* 1871, Hayes v. Wells, 34 Md. 518; 1864, Angell v. Rosenbury, 12 Mich. 241, 252; 1863, Nininger v. Knox, 8 Minn. 140, 147 (quoted *supra*); 1875, Burr v. Wilson, 22 id. 206, 211; 1893, West v. Bank, 54 id. 466, 469, 56 N. W. 54; 1895, Hahn v. Penney, 60 id. 487, 62 N. W. 1129; 1900, Garrett v. Weinberg, 59 S. C. 162, 37 S. E. 51; 1846, Hard v. Brown, 18 Vt. 97 (where the solvency of R. was material in determining the adequacy of his note as "sufficient security" under a contract); 1860, Noyes v. Brown, 32 id. 430; 1860, Bank of Middlebury v. Rutland, 33 id. 430. *Contra:* 1837, Ward v. Herndon, 5 Port. 382, 385 (undecided; here, of a debtor guaranteed by the defendant); 1843, Branch Bank v. Parker, 5 Ala. 738; 1858, Price v. Mazange, 31 id. 701, 708 (fraudulent mortgage); 1876, Holten v. Board, 55 Ind. 199; 1903, Wolfson v. Allen B. Co., 120 Ia. 455, 94 N. W. 910 (financial condition of vendees procured by the plaintiff as commission agent for the defendant); 1903, Coleman v. Lewis, 183 Mass. 485, 67 N. E. 603 (but here admitted to corroborate testimony to an indorser's waiver of presentment).

[3] *Accord:* 1895, Stratton v. Dole, 45 Nebr. 472, 63 N. W. 875; 1864, Kniffen v. McConnell, 30 N. Y. 285, 289; in State v. Cochran, 1828, 2 Dev. 65, reputation was thus admitted on another issue. *Contra:* 1894, Bliss v. Johnson, 162 Mass. 323, 38 N. E. 446 (not received to show lack of means of one claiming to have loaned money); 1902, Birum v. Johnson, 87 Minn. 382, 92 N. W. 1.