

dence of sanity or *insanity* other than reputation. So far as the principle of trustworthiness (*ante*, § 1610) is concerned, although all the conditions that obtain for moral character obtain equally for sanity, yet opinions upon a standard of sanity differ so much that a reputation, without the opportunity to test its ground by cross-examination, would hardly be trustworthy. It is thus generally agreed that reputation is not admissible for this purpose:

1849, *Nisbet, J.*, in *Foster v. Brooks*, 6 Ga. 290: "If reputation of insanity is competent, then reputation of sanity must be also. By this kind of evidence a fool may be proved a wise man, and a philosopher a fool. Public opinion declared Copernicus a fool when he promulgated the planetary system, and Columbus a fool when he announced the sublime idea of a New World. Hazardous in the extreme would it be to the rights of parties under the law, if they were allowed to depend upon the opinion of a neighborhood of the sanity of individuals. Hearsay evidence is excluded because a witness ought to be subjected to cross-examination, that being a test of truth. It ought to appear what were his powers of perception, his opportunities of observation, his attentiveness in observing, the strength of his recollection, and his disposition to speak the truth."<sup>1</sup>

The use of a verdict or other *inquisition of lunacy* rests on a different principle (*post*, § 1671).

(5) A person's character or habit as *temperate*, or the reverse, in the use of intoxicating liquor, is sufficiently open to other sources of proof; and reputation is therefore unnecessary.<sup>2</sup>

(6) The qualifications of an *expert* or professional man, whether as a witness testifying on matters of skill, or as a party charged with lack of skill, ought to be provable by reputation. So far as personal opinion by witnesses is excluded (*post*, § 1984), there remains practically no other mode of proof than the present, except such tests as can be obtained on the stand by cross-examination (*ante*, §§ 938, 992). Moreover, professional (not popular) reputation is usually highly trustworthy. The rulings have generally excluded reputation;<sup>3</sup> but the question arises comparatively seldom, partly because

<sup>1</sup> *Accord*: 1882, *People v. Pico*, 62 Cal. 53; 1880, *State v. Hoyt*, 47 Conn. 518, 539 (here for paternal insanity); 1900, *Snell v. U. S.*, 16 D. C. App. 501, 511; 1860, *Choice v. State*, 31 Ga. 424, 470; 1838, *Yeates v. Reed*, 4 Blackf. 463, 466; 1885, *Walker v. State*, 102 Ind. 507, 1 N. E. 856; 1876, *Ashcraft v. De Armond*, 44 La. 233 (rumor in a neighborhood, inadmissible); 1868, *Townsend v. Pepperell*, 99 Mass. 40, 46 (settlement of insane pauper; common speech of the neighborhood as to her insanity, excluded); 1884, *Barker v. Pope*, 91 N. C. 168; 1894, *State v. Coley*, 114 Id. 879, 885, 19 S. E. 708; 1875, *Lancaster Co. Nat'l Bank v. Moore*, 78 Pa. 407, 415; 1881, *Yanke v. State*, 51 Wla. 469, 8 N. W. 276. *Contra*: 1760, *Earl Ferrers' Trial*, 19 How. St. Tr. 932, 937 (confinement in a private asylum, admitted); 1868, *Com. v. Andrews*, Mass., *Davis' Rep.* 134 (murder; insanity of deceased ancestors, held provable by reputation); 1859, *State v. Christinas*, 6 Jones L. 471, 475 (admissible to prove hereditary insanity of other

members of the family, so as to avoid complicated issues as to particular conduct).

<sup>2</sup> 1893, *Stevens v. R. Co.*, 100 Cal. 534, 570, 35 Pac. 165 (as to intemperance, excluded; the opinion misunderstands the point); 1894, *Cogrove v. Pitman*, 103 Id. 268, 273, 37 Pac. 232, *semble* (reputation not sufficient to prove a habit of intemperance); 1823, *Brindle v. M'Ilvaine*, 10 S. & R. 285 ("causes of physical depravity of the mental faculties are susceptible of a particular description by those who have witnessed them").

<sup>3</sup> *Excluded*: 1870, *DePune v. State*, 44 Ala. 39 (witness); 1886, *Holtzman v. Hoy*, 118 Ill. 534, 8 N. E. 632 (negligent treatment by a physician; professional skill held to be in issue, but not provable for defendant by his reputation "in the community and amongst the profession"; the opinion is unsatisfactory, because it ignores the offer of reputation in the profession; no authority cited); 1901, *Clark v. Com.*, 111 Ky. 443, 63 S. W. 740 (abortion; de-