

then reputation is of course admissible as being in issue.⁶ But if we take the latter view, then, the actual use and character of the house becoming the issue, the question arises whether reputation is admissible under the present exception to prove it. The subject of the reputation is not an individual's moral trait, and therefore is without the ordinary scope of the present exception. Nevertheless, having regard to the circumstances from which such a reputation arises, and the difficulty of obtaining other evidence in the ordinary way from unimpeachable witnesses, it seems unquestionable that reputation should be admitted as trustworthy and necessary evidence.⁷

(3) The offence of being a common thief, or a common gambler, or other common offender, or of keeping a common nuisance, is one which by some Courts, sometimes under statute, has been regarded as provable by reputation;⁸ but perhaps the notion here enters that reputation is a part of the issue. The mode of proving such an offence by specific acts has already been noticed (*ante*, § 203).

Whether the foregoing offences can lawfully be constituted by repute alone is a constitutional question already dealt with (*ante*, § 1354).

§ 1621. Same: (4) Sanity; (5) Temperance; (6) Expert Qualifications; (7) Negligence; (8) Animal's Character. (4) So far as the principle of necessity (*ante*, § 1610) is concerned, there is usually ample available evi-

⁶ The cases are collected *ante*, § 78.

⁷ Admitted: 1901, *Re Fong Yuk*, 8 Br. C. 118, 120 (deportation of a prostitute; reputation of the house in which the woman formerly lived, admissible); 1899, *Demartini v. Anderson*, 127 Cal. 33, 59 Pac. 207 (lease for a house of prostitution; reputation of the house, admitted); 1885, *Hogau v. State*, 78 Ga. 82; Ia. Code 1897, § 4944 (on a charge of keeping a house of ill-fame, the prosecution may introduce "general reputation of such house as so kept" to show its character); 1896, *Egan v. Gordon*, 65 Minn. 505, 88 N. W. 103 (in an action to recover rent); 1895, *State v. Hendricks*, 15 Mont. 194, 39 Pac. 94 (provided there is corroboration by facts of such use); 1858, *State v. McDowell*, Dudley 345, 350 ("In a case in which character is its very gist, I am willing to make that which everybody says the evidence"); Wis. Stats. 1896, § 4561g (in prosecutions for keeping a house of ill-fame, etc., "common or general reputation" is admissible). Excluded: 1878, *Wooster v. State*, 55 Ala. 221; 1903, *Ramsey v. Smith*, — Id. —, 35 So. 325 (sale of a piano to a plaintiff for use in a house of prostitution; reputation not admitted to show the character of the house); 1846, *Caldwell v. State*, 17 Conn. 467, 472; 1900, *Howard v. People*, 27 Colo. 398, 81 Pac. 595 (keeping a house of ill-fame; petition of citizens to city council, inadmissible as constituting reputation); 1898, *Shaffer v. State*, 87 Md. 124, 39 Atl. 313 (keeping a disorderly house; its reputation inadmissible, until St. 1897, c. 522); 1885, *Handy v. State*, 83 Miss. 206; 1864, *State v. Foley*, 45 N. H. 468; 1863, *Konyor v. State*, 28 N. Y. 203, 209 ("The general rule is that hearsay evidence is incompetent to establish any specific fact which is in

its nature susceptible of being proved by the witnesses who speak from their own knowledge"); 1897, *Nelson v. Terr.*, 5 Okl. 512, 49 Pac. 920; 1815, *Com. v. Stewart*, 1 S. & R. 342; 1833, U. S. v. Jourdain, 4 Cr. C. C. 338, overruling U. S. v. Gray, 1826, 2 Id. 675; 1895, *State v. Plant*, 67 Vt. 454, 32 Atl. 237; 1894, *Barker v. Com.*, 90 Va. 820, 20 S. E. 776.

So, also, excluding reputation of the defendant himself as keeper (compare the cases cited *ante*, § 78, note 3): 1858, *State v. Hand*, 7 Ia. 411; 1833, U. S. v. Jourdain, 4 Cr. C. C. 338; U. S. v. Warner, *ib.* 342.

It may be noted that in these cases it is not always easy to determine whether the Court proceeds upon the present principle or that of § 78, *ante*.

⁸ 1901, *Kissel v. Lewis*, 158 Ind. 233, 59 N. E. 478 (disorderly beer-garden as a nuisance; reputation admitted, partly as affecting the depreciation of the value of plaintiff's premises); Ia. Code 1897, § 5003 ("general reputation" of a place, admissible for prosecution to show the character of the place on a charge of keeping an opium resort); 1878, *World v. State*, 50 Md. 49, 54 (reputation admissible under St. 1864, c. 38, to show a defendant to be a "common thief"; and though the reputation must be shown to exist within the statutory period, reputation before that time is relevant to show it); Or. Cr. C. § 1924 (opium offences; "general reputation shall be received in evidence to establish the character of any building as an opium den"); Vt. St. 1894, § 4529 (general reputation admissible to prove a place a liquor-nuisance). *Contra*: 1834, *Com. v. Hopkins*, 2 Dana Ky. 419 (common gambler).