

§ 1620. **Kind of Character**; (1) *Chastity*; (2) *House of ill-fame*; (3) *Common Offender*. That species of character of which reputation is strictly and properly a trustworthy evidence is moral character, i. e. traits of permanent moral constitution, such as peaceableness, honesty, veracity, and the like, or their opposites. But obviously the line between those personal qualities which are properly provable by reputation and those which are not is a difficult one to draw; it cannot be definitely fixed by way of deduction from principle. The considerations of principle (noted *ante*, § 1610) still leave it arguable in some classes of cases whether reputation is a proper source of proof within the general scope of the principle.

(1) As to *chastity* or its opposite, no doubt has ever arisen, except in a single and peculiar action. In the statutory action or prosecution for seduction of a woman of "previously chaste character," the question first arises whether this "character" is actual character or reputation. Assuming the former view to be taken, then, although actual character is the fact in issue, there is no reason why reputation should not be admissible, as in all other issues, to prove the chaste or unchaste character.¹ But in some jurisdictions the Court's adoption of the view that actual character is the fact in issue has led it erroneously to exclude reputation as evidence of that character.² It may be added that reputation is of course not admissible to prove a specific act of fornication,³ or a condition of pregnancy.⁴

(2) On a charge of *keeping a house of ill-fame* or a *disorderly house*, the same distinction between actual character and reputation serves to solve the difficulty. (a) So far as the offence involves in the issue the *kind of persons resorting to it*, it is possible to maintain that either their reputation or their actual character is the fact in issue; if the former, then those persons' reputation is of course admissible as being in issue;⁵ if the latter, then their reputation is admissible under the present exception as evidence of their personal moral character, and upon this point, naturally, no doubt has ever arisen. (b) So far as the habitual use or "character" of the *house* itself is concerned, the same question again arises, whether the fact in issue is the "fame," i. e. reputation of it, or the actual habit and character of it. If we accept the former view (and here much depends on the statutory wording),

¹ 1897, *Carroll v. State*, 74 Miss. 888, 22 So. 295 (where chastity is essential, in a charge of seduction, reputation is evidence of actual chastity).

² 1888, *Hunsey v. State*, 88 Ala. 34, 36, 5 So. 484; 1871, *State v. Shean*, 32 Ia. 88, 92 (because actual chastity is required, reputation is excluded, either of unchastity or chastity, its use as hearsay to prove the actual character being ignored; but then, to disprove the commission of acts of lewdness charged, the actual character is declared relevant, and reputation is received to prove it; a paradoxical ruling); 1899, *State v. Heinheimer*, 109 id. 824, 80 N. W. 669 (unchaste repnte, excluded); 1898, *State v. Sumner*, 143 Mo. 220, 45 S. W. 254 (bad repnte excluded, because by statute chastity was im-

material); 1863, *Kenyon v. State*, 26 N. Y. 203, 308 ("It could not have been intended to substitute reputation for character in this its primary and true sense"; but *Balcom, J.*, diss.). *Contra, sensu*: 1893, *State v. Lenihan*, 88 Ia. 870, 873, 58 N. W. 292 (good repnte, admitted in rebuttal); 1892, *State v. Lockerby*, 50 Minn. 363, 52 N. W. 958 (admissible "in corroboration" of the complaining witness).

For this difference of statutes and their interpretation, see more fully *ante*, § 205.

³ 1822, *Treat v. Browning*, 4 Conn. 408, 414 (fornication and the having a bastard child); 1839, *Overstreet v. State*, 3 How. Miss. 328 (charge of fornication).

⁴ 1835, *Boies v. McAllister*, 12 Mo. 308.

⁵ The cases are collected *ante*, §§ 78, 204.