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necessarily implies power to enter appropriate decrees in rem. Could not this have been a solution in the lease case, had the court desired to grant relief? In any event, there are justifiable arguments as to why our courts should have a change of heart in suits for specific performance where a res within the territory is to be affected directly, and if our courts place the burden upon the legislature, then it is time the legislature acts.

To conclude, we might briefly look at the label placed by our courts on other types of proceedings under this Act. A bill for discovery and accounting was held to be a proceeding in personam; a bill to quiet title of lands was, by way of dictum, held permissible under the Act of 1859; a bill by a wife, to subject the non-resident husband’s property to proceedings for support, has been allowed; a bill against a non-resident judgment creditor praying that judicial sale proceeds be ordered paid into court was held proper; and a suit by an owner of land to enjoin non-residents, including state police, from interfering with beverage manufacture thereon, was held not an action in rem.

H. LYNN EDWARDS

CHARACTER EVIDENCE IN PENNSYLVANIA—A SUMMARY

The words "character" and "reputation," although frequently used interchangeably, are not synonymous in legal meanings. Character is that which a person actually is, morally. It is his disposition. Reputation is that which a person is by others thought or estimated to be. Character pertains to the real person. Reputation pertains to the apparent person. Character is developed as a result of the doing of specific acts, and, with the possible exception of the situation where a self-analysis is in progress, must of necessity be viewed objectively. Reputation is the community opinion, being a composite estimation of both friends and foes, in which the respective prejudices may be expected to have become neutralized. In this sense, it is submitted that a not improper definition of reputation is that it is objective character. This definition may be justified on the ground that the reputation of the person whose character is the subject of inquiry becomes, in the minds of his observers, his character.

We may say, then, that reputation is merely evidence of actual character, and it is of necessity only an approximation of the truth. However, if the

43Atlantic Seaboard, etc., v. Whitten; supra.
44Boudwin v. Boudwin; supra.

1Hopkins v. Tate, 255 Pa. 56 (1916).
reputation is good, a reasonable inference can be drawn that the character is good. Or, if the reputation is bad, a proper deduction is that the character is bad. It should be borne in mind, though, that one may in fact have a good character although he suffers from a bad reputation, or, conversely, he may in fact have a bad character but rejoice in the knowledge that he has a good reputation.

It should now be obvious that, when the words "character" and "reputation" are used in their proper legal sense, they should be contrasted rather than used synonymously. A failure to recognize and appreciate the distinction in their meanings can result only in confusion of both thought and expression.

Character evidence is important in many and various situations:

I. CHARACTER OF HUMAN BEINGS

A. Criminal cases. The general rule is that evidence of character is inadmissible for the purpose of showing conduct on a particular occasion.

1. The defendant, however, whether he be charged with felony or misdemeanor, may always prove his previous good character, of which his general reputation is evidence, as tending to disprove the conduct of which he is accused, i.e. the commission of the offense with which he is charged. Such evidence tends to show the improbability of the doing of the act by any person of the good character which he attempts to prove he possesses. Here the evidence is really a matter of substantive proof as it tends to show that the defendant is innocent of the commission of the crime. It is an anomalous situation, for an attempt is here being made to prove conduct on a particular occasion by character, but it is compatible with the Anglo-Saxon policy of giving to the defendant in a criminal action the benefit of every doubt. There must, however, be some connection between the character shown and the crime allegedly committed. For example, the character of the defendant for honesty should be shown if he has been indicted for larceny, and his character for chastity should be shown if he has been indicted for adultery; not vice versa.

At this point it must be noted that character must be proved by the general reputation of the defendant in the neighborhood in which he lived at or about the time the act was committed.

It must also be noted that character cannot be proved by conduct on previous occasions, the usual reasons assigned for the rule being that

a. Any person, compelled by particular circumstances, may do a thing which is contrary to his ordinary disposition and customary practice, and

b. Evidence concerning conduct on previous occasions would invariably

raise innumerable collateral issues, resulting in a confusion of the real issues, and in an unreasonably protracted trial.

If, and only if, the defendant has elected to put his character in issue, as indicated above, the prosecution may attack that character, but, here again, character must be proved by general reputation and not by specific acts. Character cannot be proved by conduct on previous occasions.

2. The victim's evil, pugnacious, mean, contemptible, violent, revengeful, brutal, or dangerous character, where the offense was against his person, may be shown by the defendant who wants to establish reasonable apprehension of harm if

a. He pleads self-defense, and

b. His offer is accompanied by proof that he knew of his victim's character.

In this situation the defendant must prove such character on the part of the victim, as, colored or influenced by the defendant's knowledge, would lead him to a reasonable belief of imminent harm. The bad character of the victim does not, per se, affect in the slightest degree the character of the offense, but it does corroborate the defense. The purpose of the evidence is to show the defendant's state of mind, and it is obvious that the victim's character must have become known to the defendant. Otherwise it is wholly irrelevant.

It becomes an important subject of inquiry where the circumstances make the precise grade of the crime, such as a homicide, doubtful. It is again to be noted that character must be proved by general reputation and not by specific acts. Character cannot be proved by conduct on previous occasions.

The attention of the reader is here drawn to the decision of the Court in McQuiggan v. Ladd, 79 Vt. 90, 64 Atl. 503 (1906). In that case the court points out that the belief of the defendant is the really important factor, and that belief may be the result of

a. Knowledge of general reputation, and/or

b. Knowledge of facts.

The action of the defendant, colored or influenced by the character of his victim, is affected to the same, or perhaps a greater extent by his knowledge of facts as it is affected by his belief in the truth of a general report. Irrespective of the source of belief, he believes he knows a fact, and it is his actual belief which is important. The kind and degree of resistance offered by the defendant

7 Commonwealth v. Thomas, supra note 6.
10 The discussion of this phase of the subject to this point is also applicable in proper civil cases and will not be repeated under that topic infra.
11 But see obitur dictum in Commonwealth v. Romanic, 311 Pa. 415, 421 (1933).
will be measured by the apparent danger with which he is threatened. If the victim was a practiced pugilist, and if the defendant can show that he knew it as a fact, he should not be restricted to showing that the victim had the general reputation of being a practiced pugilist. The obvious error in such a limitation is that the victim's dexterity with his fists might not have become a matter of common and general knowledge. Another discrepancy is apparent when we consider that the defendant might solely have been responsible for disseminating information which resulted in the acquisition of such reputation by his victim. In such case, the reputation of the victim would become evidence in favor of the defendant. To deny him the privilege to disclose facts known to him from observation or experience is to penalize silence unjustly. It should be borne in mind that it is reasonable belief of imminent harm which excuses the conduct of the defendant, if it is to be excused, and the knowledge from which belief must spring may come from at least two sources. Unfortunately, the view of this Court has not been generally accepted, and we are thrown back to the seemingly immutable rule that character cannot be proved by conduct on previous occasions.12

The previously discussed situation in which the defendant attempts to establish circumstances to show that he was reasonably in apprehension of harm must be carefully distinguished from that in which the defendant pleads self-defense and contends that the victim was the aggressor. In the latter case, the question is what the victim did, and not what the defendant thought he was going to do. The inquiry is one of objective occurrence and not of subjective belief. Here the defendant may introduce evidence of the bad character of the victim in support of his allegation that there was a violent act upon the part of that victim, and the additional element of knowledge is unnecessary. It follows that, when the defendant alleges that the victim was the aggressor, the prosecution, in rebuttal, can introduce evidence of the character of the victim for peaceableness because the victim has been made the accused, and the defendant has become the accuser.13

3. The prosecutrix in indictments for rape.

a. Felonious rape. The defendant charged with this offense can show the bad character of the prosecutrix by showing that she had a bad reputation for chastity because this type of evidence tends to show that, even if the act was committed, consent was given. The defendant must, however, introduce evidence of the general reputation of his accuser, for character cannot be proved by conduct on previous occasions. There is one qualification, although not an exception, to the general rule. That is that the defendant may introduce evidence of improper prior relations with himself. The defendant is not here, however, attempting to prove character because character is not relevant. The character of

13Commonwealth v. Castellana, supra note 12.
his accuser may be of the worst, but this does not, per se, subject her to indiscriminate criminal attacks. The defendant is simply showing circumstances from which it may reasonably be inferred that consent was given upon the occasion in issue.

b. Statutory rape. The purpose of the Act of 1887, P. L. 128 creating this offense is to protect the innocence of the female child who is

1. Under the age of sixteen years, and
2. Of good repute.

The word "repute" as used in the statute means reputation and not character. The good repute of the child will be presumed, and the burden of establishing ill repute rests upon the defendant. But evidence of prior specific instances of improper relations with him or with others is irrelevant and therefore inadmissible because reputation and not character is in issue. As was pointed out in the introductory paragraph of this discussion, there might be innumerable specific acts of impropriety which would in no way affect reputation. Even the acts of the prosecutrix, disclosed by her own admissions, are not evidence that she was not of good repute.

It should be noted that the Act of 1885, P. L. 27 defines the taking of a female child under the age of sixteen years for the purpose of prostitution or sexual intercourse as an offense. The previous bad reputation of the child for chastity is immaterial to the issue and hence of no avail to the defendant.

B. Civil cases. The general rule is that evidence of character is irrelevant.

1. Negligence cases. Where the defendant is charged with a failure to use due care under the circumstances, he can never introduce evidence of his careful, cautious, and prudent character. Neither can the plaintiff introduce evidence of the defendant's character as a reckless person. The reason for these prohibitions is that such evidence does not bear on the issue which is "Was the act negligent?" The mere fact that the defendant had a reputation for being careful or negligent is no proof whatsoever of the fact that he was either careful or negligent upon the occasion in controversy.

The character of a defendant must here be distinguished from his habit. If he has done a specific thing in a specific way for a sufficient length of time, the

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18Commonwealth v. San Juan, supra note 15.
probability is that he did that thing in that way upon the occasion involved in the action. It is said, therefore, that evidence of habit should be admissible.  

A related, but separate, topic should here be noticed. Where an employer is charged with negligence in having hired or retained an incompetent employee, evidence of the employee's:

a. General reputation for incompetency, and  
b. Specific acts of negligence

is admissible provided that this evidence is accompanied with proof of the fact that the employer either knew, or ought to have known, of the employee's incompetence. It should be borne in mind that the occasional negligent acts of an otherwise competent person cannot be shown. It must be shown either that the servant was

a. So habitually negligent as to be generally incompetent, or  
b. So generally incompetent as to be habitually negligent.

Neither can it be shown that the master was negligent in the employment of other servants, for such evidence does not tend to show negligence in the employment of this particular servant. Conduct on a particular occasion cannot be proved by character.

2. Civil offenses which are also criminal offenses. The defendant can never introduce evidence of his good character even though he is charged with the commission of civil offenses, which, if proved, are also criminal offenses. It is the nature of the issue, and not the consequences of the action, which controls. Examples of this type of case are conversion, assault and battery, and seduction.

3. Where character is in issue. Where the damages claimed embrace injury to feelings, and the reparation of reputation is the object of the action, the defendant may show that the plaintiff's character is such that less than a normal injury was inflicted by the acts of the defendant. This is so because character is of particular importance and is a material fact in issue. The evidence of the defendant is not, in this instance, substantive evidence, for it has nothing to do with his commission of the alleged offense. Such evidence is simply an element to be considered in the award of damages and serves to mitigate the amount of recovery. Some of the actions in which the character of the plaintiff is always in issue are libel, slander, false imprisonment, malicious prosecution, seduction, criminal conversation, and assumpsit where the claim is for goods sold and delivered, or work and labor done, where books of original entry are relied upon. When

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22See Craven v. Central Pac. R. Co. (Cal.) 13 P. 878 (1887). There seems to be no Pennsylvania case discussing the point.  
the last three mentioned are the actions, the characters of the daughter, the wife, and the bookkeeper respectively, are also in issue.

The general rule is that the plaintiff cannot introduce evidence of his reputation to prove that his character is good until his character has been attacked by the defendant.

This is true because a person's reputation is presumed to be good until the presumption is rebutted by proof to the contrary. There seems, however, to be one exception to this rule, and that is in an action for malicious prosecution. One of the essential elements of the tort, and in fact the gist of the action, is want of probable cause, or lack of reasonable ground for belief by the original plaintiff. Therefore, the plaintiff in the action for malicious prosecution may establish his good reputation by proof of the same in the presentation of his case in chief.

C. All cases. The character of a witness for truth and veracity is an issue and open to inquiry as soon as he has testified. This is so irrespective of whether he is a party to the proceedings. Two of the rules previously noted here again make their appearance and are as follows:

1. The character of the witness for truth and veracity must be attacked before he is privileged to introduce evidence of good character.

2. Impeachment of witnesses, and restoration of their credibility, cannot be accomplished by evidence of truth and veracity, or the lack of either, in specific instances. The general reputation for truth and veracity must be shown. Character cannot be proved by conduct.

II. Character of inanimate objects. The rules with reference to inanimate objects are contrary to those which are applicable to individuals, the reason therefor being that the character of individuals is subject to change, while that of inanimate objects remains virtually constant. The character of an iron pipe, as it relates to the probability of its frightening a horse, can be proved by prior specific instances.

26Milliken v. Long, 188 Pa. 411 (1898).
27Crouse v. Miller, 10 S. & R. 154 (1818).
29Glace v. Hummel, 10 Dist. 110 (1900).
30A discussion of the methods of attacking credibility is not within the scope of this note. For an interesting discussion as to the "Admissibility of Record of Previous Conviction to Attack Credibility of Witness," see 34 Dickinson Law Review 175. Also see 124 Pa. Super. Ct. 231 for an interesting case on the subject.
33Potter v. The Natural Gas Company of West Virginia, 183 Pa. 575 (1897).
There is another class of cases where evidence of prior specific instances may be introduced, and that is where it is necessary to impute to the defendant knowledge of the existence of a defect.\(^4\)

Evidence in both of the above instances can be weakened by the introduction in rebuttal of evidence to the effect that conditions in preceding instances were substantially different from those in the one under consideration.\(^5\)

It remains only to caution the reader that the discussion as to character of inanimate objects has reference, except as above noted, to the character of a condition and not to the condition itself because we here have the rule that the existence of a condition cannot be proved by prior specific instances. Perhaps an illustration will help. It could not be proved that an engine had jumped the track at a given point by showing that other engines had previously jumped the track there. But, if the fact that the particular engine had jumped the track was established by independent evidence, then evidence as to others having done so would be admissible to show either that

1. The character of the condition at the given point was dangerous, or
2. The defendant knew, or ought to have known, of the existence of the defect.

J. Murray Buterbaugh

OPTOMETRY IS A PROFESSION

During the last few years, we have become accustomed to read among the advertisements of many large department stores that one of the services that is offered to their patrons is a well equipped optical department. These stores have assured the public that their staff is composed of the most capable optometrists and that they are able to provide glasses for a quite reasonable price. In a very late, and rather unique case\(^1\) the Supreme Court of Pennsylvania decided that this practice can no longer be carried on. This case is interesting from two different standpoints. It was necessary for the court to decide that optometry is a profession in order for them to reach the result desired. The case also illustrates the granting of relief by a court of equity to members of a profession in the form of an injunction against others not authorized to engage in that profession.
