CHAPTER VI.

OF MATTERS OF PUBLIC AND GENERAL INTEREST.

§ 127. HAVING thus illustrated the nature of hearsay evidence, and shown the reasons on which it is generally excluded, we are now to consider the *cases, in which this rule has been relaxed*, and hearsay admitted. The exceptions, thus allowed, will be found to embrace most of the points of inconvenience, resulting from a stern and universal application of the rule, and to remove the principal objections which have been urged against it. These exceptions may be conveniently divided into four classes; — *first*, those relating to matters of public and general interest; — *secondly*, those relating to ancient possession; — *thirdly*, declarations against interest; — *fourthly*, dying declarations, and some others of a miscellaneous nature; and in this order it is proposed to consider them. It is, however, to be observed, that these exceptions are allowed only on the ground of the absence of better evidence, and from the nature and necessity of the case.

§ 128. And *first*, as to matters of *public and general interest*. The terms, *public* and *general*, are sometimes used as synonymous, meaning merely that which concerns a multitude of persons.[1] But in regard to the admissibility of hearsay testimony, a distinction has been taken between them; the term, *public*, being strictly applied to that which concerns all the citizens, and every member of the State; and the term, *general*, being referred to a lesser, though still a large portion, of the community. In matters of public interest, all persons must be presumed conversant, on the principle, that individuals

[1] Weeks *v.* Sparke, 1 M. & S. 690, per Bayley, J.

are presumed to be conversant in their own affairs; and, as common rights are naturally talked of in the community, what is thus dropped in conversation may be presumed to be true.[1] It is the prevailing current of assertion, that is resorted to as evidence, for it is to this that every member of the community is supposed to be privy, and to contribute his share. Evidence of common reputation is, therefore, received, in regard to public facts, (a claim of highway, or a right of ferry, for example,) on ground somewhat similar to that on which public documents, not judicial, are admitted, namely, the interest which all have in their truth, and the consequent probability that they are true.[2] In these matters, in which all are concerned, reputation from any one appears to be receivable; but of course it is almost worthless, unless it comes from persons who are shown to have some means of knowledge, such as, in the case of a highway, by living in the neighborhood; but the want of such proof of their connexion with the subject in question, affects the value only, and not the admissibility of the evidence. On the contrary, where the fact in controversy is one, in which all the members of the community have not an interest, but those only who live in a particular district, or adventure in a particular enterprise, or the like, hearsay from persons wholly unconnected with the place or business, would not only be of no value, but altogether inadmissible.[3]

[1] Morewood *v.* Wood, 14 East, 329, n., per Ld. Kenyon; Weeks *v.* Sparke, 1 M. & S. 686, per Ld. Ellenborough; The Berkley Peerage case, 4 Campb. 416, per Mansfield, C. J.

[2] 1 Stark. Evid. 195; Price *v.* Currell, 6 M. & W. 234.

[3] Crease *v.* Barrett, 1 Crompt. Mees. & Rosc. 929, per Parke, B. By the Roman Law, reputation or common fame, seems to have been admissible in evidence, in all cases; but it was not generally deemed sufficient proof, and, in some cases, not even *semiplena probatio*, unless corroborated; *nisi aliis adminiculis adjuvetur*. Mascardus, De Prob. Vol. 1, Concl. 171, n. 1; Concl. 183, n. 2; Concl. 547, n. 19. It was held sufficient, *plena probatio*, wherever, from the nature of the case, better evidence was not attainable; *ubi à communiter accidentibus, probatio difficilis est, fama plenam solet probationem facere; ut in probatione filiationis*. But Mascardus deems it not sufficient,

§ 129. Thus, in an action of trespass *quare clausum fregit*, where the defendant pleaded in bar a prescriptive right of common in the *locus in quo*, and the plaintiff replied, prescribing the right of his messuage to use the same ground for tillage with corn, until the harvest was ended, traversing the defendant's prescription; it appearing that many persons, beside the defendant, had a right of common there, evidence of reputation as to the plaintiff's right was held admissible, provided it were derived from persons conversant with the neighborhood.[1] But where the question was, whether the city of Chester anciently formed part of the county Palatine, an ancient document, purporting to be a decree of certain law officers and dignitaries of the crown, not having authority as a Court, was held inadmissible evidence on the ground of reputation, they having, from their situations, no peculiar knowledge of the fact.[2] And, on the other hand, where the question was, whether Nottingham castle was within the hundred of Broxtowe, certain ancient orders, made by the Justices at the Quarter Sessions for the county, in which the castle was described as being within that hundred, were held admissible evidence of reputation; the Justices, though not proved to be residents within the county or hundred, being presumed, from the nature and character of their offices alone, to have sufficient acquaintance with the subject, to which

in cases of pedigree within the memory of man, which he limits to fifty-six years, unless aided by other evidence — *tunc nempe non sufficeret publica vox et fama, sed una cum ipsa deberet tractatus et nominatio probari vel alia adminicula urgentia adhiberi.* Mascard. De Prob. Vol. 1, Concl. 411, n. 1, 2, 6, 7.

[1] Weeks *v.* Sparke, 1 M. & S. 679, 688, per Le Blanc, J. The actual discussion of the subject, in the neighborhood, was a fact also relied on, in the Roman Law, in cases of proof by common fame. "Quando testis vult probare aliquem scivisse, non videtur sufficere, quod dicat ille scivit quia erat vicinus; sed debet addere, in vicinia hoc erat cognitum per famam, vel alio modo; et ideò iste, qui erat vicinus, potuit id scire." J. Menochius, De Præsump. Tom. 2, lib. 6, Præs. 24, n. 17, p. 772.

[2] Rogers *v.* Wood, 2 Barn. & Ad. 245.

their declarations related.[1] Thus it appears that competent knowledge in the declarant is, in all cases, an essential prerequisite to the admission of his testimony; and that though all the citizens are presumed to have that knowledge, in some degree, where the matter is of public concernment; yet, in other matters, of interest to many persons, some particular evidence of such knowledge is required.

§ 130. It is to be observed, that the exception we are now considering is admitted *only in the case of ancient rights*, and in respect to the declarations of *persons supposed to be dead.*[2] It is required by the nature of the rights in question; their origin being generally antecedent to the time of legal memory, and incapable of direct proof by living witnesses, both from this fact, and also from the undefined generality of their nature. It has been held, that where the nature of the case admits it, a foundation for the reception of hearsay evidence, in matters of public and general interest, should first be laid, by proving acts of enjoyment, within the period of living memory.[3] But this doctrine has since been overruled; and it is now held, that such proof is not an essential condition of the reception of evidence of reputation, but is only material as it affects its value when received.[4] Where the nature of the subject does not admit of proof of acts of enjoyment, it is obvious that proof of reputation alone is sufficient. So, where a right or custom is established by documentary evidence, no proof is necessary of any particular instance of its exercise; for, if it were otherwise, and no

[1] Duke of Newcastle *v.* Broxtowe, 4 Barn. & Ad. 273.

[2] Moseley *v.* Davies, 11 Price, 162; Regina *v.* Milton, 1 Car. & Kir. 58; Davis *v.* Fuller, 12 Verm. R. 178.

[3] Per Buller, J. in Morewood *v.* Wood, 14 East, 330, note; Per Le Blanc, J. in Weeks *v.* Sparke, 1 M. & S. 688, 689.

[4] Crease *v.* Barrett, 1 Crompt. Mees. & Ros. 919, 930. See also acc. Curzon *v.* Lomax, 5 Esp. 90, per Ld. Ellenborough; Steel *v.* Prickett, 2 Stark. 463, 466, per Abbott, C. J.; Ratcliff *v.* Chapman, 4 Leon. 242, as explained by Grose, J. in Bebee *v.* Parker, 5 T. R. 32.

instance were to happen within the memory of man, the right or custom would be totally destroyed.[1] In the case of a private right, however, where proof of particular instances of its exercise has first been given, evidence of reputation has sometimes been admitted in confirmation of the actual enjoyment; but it is never allowed against it.[2]

§ 131. Another important qualification of the exception we have been considering, by which evidence of reputation or common fame is admitted, is, that the declaration so received must have been *made before any controversy* arose, touching the matter, to which they relate; or, as it is usually expressed, *ante litem motam.* The ground, on which such evidence is admitted at all, is, that the declarations "are the natural effusions of a party, who must know the truth, and who speaks upon an occasion, when his mind stands in an even position, without any temptation to exceed or fall short of the truth."[3] But no man is presumed to be thus indifferent in regard to matters in actual controversy; for when the contest has begun, people generally take part on the one side or the

[1] Bebee *v.* Parker, 5 T. R. 26, 32; Doe *v.* Sisson, 12 East, 62; Steel *v.* Prickett, 2 Stark. R. 463, 466. A single act, undisturbed, has been held sufficient evidence of a custom, the Court refusing to set aside a verdict finding a custom, upon such evidence alone. Roe *v.* Jeffery, 2 M. & S. 92; Doe *v.* Mason, 3 Wils. 63.

[2] White *v.* Lisle, 4 Mad. R 214, 225. See Morewood *v.* Wood, 14 East, 330, n., per Buller, J.; Weeks *v.* Sparke, 1 M. & S. 690, per Bayley, J.; Rogers *v.* Allen, 1 Campb. 309; Richards *v.* Bassett, 10 B. & C. 662, 663, per Littledale, J. A doctrine nearly similar is held by the civilians, in cases of ancient private rights. Thus, Mascardus, after stating, upon the authority of many jurists, that *Dominium in antiquis probari per famam, traditum est, — veluti si fama sit, hanc domum fuisse Dantis Poetæ, vel alterius, qui decessit, jam sunt centum anni, et nemo vidit, qui viderit, quem refert,* &c., subsequently qualifies this general proposition in these words; — *Primo limita principalem conclusionem, ut non procedat, nisi cum fama concurrant alia adminicula, saltem presentis possessionis,* &c. Mascard. De Prob. Vol. 2, Concl. 547, n. 1, 14.

[3] Per Ld. Eldon, in Whitelocke *v.* Baker, 13 Ves. 514; Rex *v.* Cotton, 3 Campb. 444, 446, per Dampier, J.

other; their minds are in a ferment; and, if they are disposed to speak the truth, facts are seen by them through a false medium. To avoid, therefore, the mischiefs which would otherwise result, all *ex parte* declarations, even though made upon oath, referring to a date subsequent to the beginning of the controversy, are rejected.[1] This rule of evidence was familiar in the Roman law; but the term *lis mota* was there applied strictly to the commencement of the action, and was not referred to any earlier period of the controversy.[2] But in our law, the term *lis* is taken in the classical and larger sense of *controversy;* and by *lis mota* is understood the commencement of the controversy, and not the commencement of the suit.[3] The commencement of the controversy has been further defined by Mr. Baron Alderson, in a case of pedigree, to be "the arising of that state of facts, on which the claim is founded, without any thing more."[4]

§ 132. The *lis mota,* in the sense of our law, carries with it the further idea of a *controversy upon the same particular subject in issue.* For, if the matter under discussion at the time of trial was not in controversy at the time, to which the declarations offered in evidence relate, they are admissible, notwithstanding a controversy did then exist upon some other branch of the same general subject. The value of general reputation, as evidence of the true state of facts, depends upon

[1] The Berkley Peerage case, 4 Campb. 401, 409, 412, 413; Monkton *v.* The Attorney General, 2 Russ. & My. 160, 161; Richards *v.* Bassett, 10 B. & C. 657.

[2] *Lis est, ut primum in jus, vel in judicium ventum est; antequam in judicium veniatur, controversia est, non lis.* Cujac. Opera Posth. Tom. 5, col. 193, B. and col. 162, D. *Lis inchoata est ordinata per libellum, est satisdationem, licet non sit lis contesta.* Corpis Juris Glossatum, Tom. 1, col. 553, ad Dig. lib. iv. tit. 6, l. 12. *Lis mota censetur, etiamsi solus actor egerit.* Calv. Lex. Verb. Lis mota.

[3] Per Mansfield, C. J. in the Berkley Peerage case, 4 Campb. 417; Monkton *v.* The Attor. Gen. 2 Russ. & My. 161.

[4] Walker *v.* Countess of Beauchamp, 6 C. & P. 552, 561. But see Reilly *v.* Fitzgerald, 1 Drury, (Ir.) R. 122, where this is questioned.

its being the concurrent belief of minds unbiassed, and in a situation favorable to a knowledge of the truth; and referring to a period when this fountain of evidence was not rendered turbid by agitation. But the discussion of other topics, however similar in their general nature, at the time referred to, does not necessarily lead to the inference, that the particular point in issue was also controverted, and, therefore, is not deemed sufficient to exclude the sort of proof we are now considering. Thus, where, in a suit between a copyholder and the lord of the manor, the point in controversy was, whether the customary fine, payable upon the renewal of a life-lease, was to be assessed by the jury of the lord's court, or by the reasonable discretion of the lord himself; depositions taken for the plaintiff, in an ancient suit by a copyholder against a former lord of the manor, where the controversy was upon the copyholder's right to be admitted at all, and not upon the terms of admission, in which depositions the customary fine was mentioned as to be assessed by the lord or his steward, were held admissible evidence of what was then understood to be the undisputed custom.[1] In this case it was observed by one of the learned Judges, that "the distinction had been correctly taken, that where the *lis mota* was on the very point, the declarations of persons would not be evidence; because you cannot be sure, that in admitting the depositions of witnesses, selected and brought forward on a particular side of the question, who embark, to a certain degree, with the feelings and prejudices belonging to that particular side, you are drawing evidence from perfectly unpolluted sources. But where the point in controversy is foreign to that which was before controverted, there never has been a *lis mota*, and consequently the objection does not apply."

§ 133. Declarations made after the controversy has originated, are excluded, even though proof is offered that the

[1] Freeman *v.* Phillips, 4 M. & S. 486, 497; Elliott *v.* Piersol, 1 Peters, 328, 337.

existence of the controversy was not known to the declarant. The question of his ignorance or knowledge of this fact is one which the Courts will not try; partly because of the danger of an erroneous decision of the principal fact by the Jury, from the raising of too many collateral issues, thereby introducing great confusion into the cause; and partly from the fruitlessness of the inquiry, it being from its very nature impossible, in most cases, to prove that the existence of the controversy was not known. The declarant, in these cases, is always absent, and generally dead. The light afforded by his declarations is at best extremely feeble, and far from being certain; and, if introduced, with the proof on both sides, in regard to his knowledge of the controversy, it would induce darkness and confusion, perilling the decision without the probability of any compensating good to the parties. It is therefore excluded, as more likely to prove injurious than beneficial.[1]

§ 134. It has sometimes been laid down, as an exception to the rule, excluding declarations made *post litem motam*, that declarations concerning *pedigree* will not be invalidated by the circumstance, that they were made during family discussions, and for the purpose of preventing future controversy; and the instance given, by way of illustration, is that of a solemn act of parents, under their hands, declaring the legiti-

[1] The Berkley Peerage case, 4 Campb. 417, per Mansfield, C. J.; Ante, § 124. This distinction, and the reasons of it, were recognised in the Roman law; but there the rule was to admit the declarations, though made *post litem motam*, if they were made at a place so very far remote from the scene of the controversy, as to remove all suspicion that the declarant had heard of its existence. Thus it is stated by *Mascardus;* — "Istud autem quod diximus, debere testes deponere ante litem motam, sic est accipiendum, ut verum sit, si ibidem, ubi res agitur, audierit; at si alibi, in loco qui longissimè distaret, sic intellexerit, etiam post litem motam testes de auditu admittuntur. Longinquitas enim loci in causa est, ut omnis suspicio abesse videatur, quæ quidem suspicio adesse potest, quando testis de auditu post litem motam ibidem, ubi res agitur, deponit." Mascard. De Probat. Vol. 1, p. 401 [429], Concl. 410, n. 5, 6.

macy of a child. But it is conceived, that evidence of this sort is admissible, not by way of exception to any rule, but because it is, in its own nature, original evidence; constituting part of the fact of the recognition of existing relations of consanguinity or affinity; and falling naturally under the head of the expression of existing sentiments and affections, or of declarations against the interest, and peculiarly within the knowlege of the party making them, or of verbal acts, part of the *res gestæ*.[1]

§ 135. Where evidence of reputation is admitted, in cases of public or general interest, it is not necessary that the witness should be able to *specify from whom he heard the declarations.* For that, in much the greater number of cases, would be impossible; as the names of persons long since dead, by whom declarations upon topics of common repute have at some time or other been made, are mostly forgotten.[2] And, if the declarant is known, and appears to have stood *in pari casu* with the party offering his declarations in evidence, so that he could not, if living, have been personally examined as a witness to the fact, of which he speaks, this is no valid objection to the admissibility of his declarations. The reason is, the absence of opportunity and motive to consult his interest, at the time of speaking. Whatever secret wish or bias he may have had in the matter, there was, at that time, no excited interest called forth in his breast, or, at least, no means were afforded of promoting, nor danger incurred of injuring any interest of his own; nor could any such be the necessary result of his declarations. Whereas, on a trial, in itself and of necessity directly affecting his interest, there is a double objection to admitting his evidence, in the concurrence

[1] Ante, § 102–108, 131; Goodright *v.* Moss, Cowp. 591; Monkton *v.* The Attor. Gen. 2 Russ. & My. 147, 160, 161, 164; Slaney *v.* Wade, 1 My. & Cr. 338; The Berkley Peerage case, 4 Campb. 418, per Mansfield, C. J.

[2] Moseley *v.* Davies, 11 Price, 162, 174, per Richards, C. B.; Harwood *v.* Sims, Wightw. 112.

both of the temptation of interest, and the excitement of the *lis mota*.[1]

§ 136. Indeed the rejection of the evidence of reputation, in cases of public or general interest, because it may have come from persons *in pari casu* with the party offering it, would be inconsistent with the qualification of the rule, which has already been mentioned, namely, that the statement thus admitted must appear to have been made by persons having competent knowledge of the subject.[2] Without such knowledge, the testimony is worthless. In matters of public right, all persons are presumed to possess that degree of knowledge, which serves to give some weight to their declarations respecting them, because all have a common interest. But in subjects interesting to a comparatively small portion of the community, as a city, or parish, a foundation for admitting evidence of reputation, or the declarations of ancient and deceased persons, must first be laid, by showing that from their situation, they probably were conversant with the matter of which they were speaking.[3]

[1] Moseley *v.* Davies, 11 Price, 179, per Graham, B.; Deacle *v.* Hancock, 13 Price, 236, 237; Nichols *v.* Parker, 14 East, 331, note; Harwood *v.* Sims, Wightw. 112; Freeman *v.* Phillips, 4 M. & S. 486, 491, cited and approved by Lyndhurst, C. B. in Davies *v.* Morgan, 1 C. & J. 593, 594; Monkton *v.* Attorney General, 2 Russ. & My. 159, 160, per Ld. Ch. Brougham; Reed *v.* Jackson, 1 East, 355, 357; Chapman *v.* Cowlan, 13 East, 10.

[2] Ante, § 128, 129.

[3] Weeks *v.* Sparke, 1 M. & S. 679, 686, 690; Doe d. Molesworth *v.* Sleeman, 1 New Pr. Cas. 170; Morewood *v.* Wood, 14 East, 327, note; Crease *v.* Barrett, 1 Cr. M. & Ros. 929; Duke of Newcastle *v.* Broxtowe, 4 B. & Ad. 273; Rogers *v.* Wood, 2 B. & Ad. 245. The Roman law, as stated by Mascardus, agrees with the doctrine in the text. "*Confines probantur per testes. Verum scias velim, testes in hac materia, qui vicini, et circum ibi habitant, esse magis idoneos quam alios. Si testes non sentiant commodum vel incommodum immediatum, possint pro sua communitate deponere. Licet hujusmodi testes sint de universitate, et deponant super confinibus suæ universitatis, probant, dummodum præcipuum ipsi commodum non sentiant, licet inferant commodum in universum.*" Mascard. De Probat. Vol. 1, p. 389, 390, Concl. 395, n. 1, 2, 19, 9.

§ 137. The probable *want of competent knowledge* in the declarant is the reason generally assigned for rejecting evidence of reputation or common fame, in matters of mere *private right*. "Evidence of reputation, upon general points, is receivable," said Lord Kenyon, "because, all mankind being interested therein, it is natural to suppose that they may be conversant with the subjects, and that they should discourse together about them, having all the same means of information. But how can this apply to private titles, either with regard to particular customs, or private prescriptions? How is it possible for strangers to know any thing of what concerns only private titles?"[1] The case of prescriptive rights has sometimes been mentioned as an exception; but it is believed that where evidence of reputation has been admitted in such cases, it will be found that the right was one in which many persons were equally interested. The weight of authority, as well as the reason of the rule, seem alike to forbid the admission of this kind of evidence, except in cases of a public or *quasi* public nature.[2]

[1] Morewood *v.* Wood, 14 East, 329, note, per Ld. Kenyon; 1 Stark. Evid. 30, 31; Clothier *v.* Chapman, 14 East, 331, note; Reed *v.* Jackson, 1 East, 357; Outram *v.* Morewood, 5 T. R. 121, 123; Weeks *v.* Sparke, 1 M. & S. 679.

[2] Elliott *v.* Pearl, 10 Peters, 412; Richards *v.* Bassett, 10 B. & C. 657, 662, 663, per Littledale, J.; Ante, § 130. The following are cases of a *quasi* public nature; though they are usually, but, on the foregoing principles, erroneously cited in favor of the admissibility of evidence of reputation in cases of mere private right. Bp. of Meath *v.* Ld. Belfield, Bull. N. P. 295, where the question was, who presented a former incumbent of a parish; a fact interesting to all the parishioners; — Price *v.* Littlewood, 3 Campb. 288, where an old entry in the vestry book, by the churchwardens, showing by what persons certain parts of the church were repaired, in consideration of their occupancy of pews, was admitted, to show title to a pew, in one under whom the plaintiff claimed; — Barnes *v.* Mawson, 1 M. & S. 77, which was a question of boundary between two large districts of a manor, called the Old and New Lands; — Anscomb *v.* Shore, 1 Taunt. 261, where the right of common prescribed for was claimed by all the inhabitants of Hampton; — Blackett *v.* Lowes, 2 M. & S. 494, 500, where the question was as to the general usage of all the tenants of a manor, the defendant being one, to cut certain woods; — Brett *v.* Beales, 1 Mood. & Malk. 416, which was a claim of ancient tolls belonging to the corporation of Cambridge; — White *v.* Lisle, 4 Madd. Ch. R. 214, 224, 225, where evidence of reputation, in regard to a *parochial modus*, was held admissible, because "a class or district of persons was concerned;" but denied in regard to a *farm modus*, because none but the occupant of the farm was concerned. In Davies *v.* Lewis, 2 Chitty, R. 535, the declarations offered in evidence were clearly admissible, as being those of tenants in possession, stating under whom they held. See Ante, § 108.

§ 138. This principle may serve to explain and reconcile what is said in the books, respecting the admissibility of *reputation* in regard to *particular facts*. Upon general points, as we have seen, such evidence is receivable, because of the general interest which the community have in them; but particular facts of a private nature not being notorious, may be misrepresented or misunderstood, and may have been connected with other facts, by which, if known, their effect might be limited or explained. Reputation as to the existence of such particular facts is therefore rejected. But, if the particular fact is proved *aliunde*, evidence of general reputation may be received, to qualify and explain it. Thus, in a suit for tithes, where a parochial modus of six pence per acre was set up, it was conceded, that evidence of reputation of the payment of that sum for one piece of land would not be admissible; but it was held, that such evidence would be admissible to the fact that it had always been customary to pay that sum for all the lands in the parish.[1] And where the question on the record was, whether a turnpike was within the limits of a certain town, evidence of general reputation was admitted to show that the bounds of the town extended as far as a certain close; but not that formerly there were houses, where none then stood; the latter being a particular fact, in which the public had no interest.[2] So where, upon

[1] Harwood *v.* Sims, Wightw. 112, more fully reported and explained in Moseley *v.* Davies, 11 Price, 162, 169 – 172; Chatfield *v.* Fryer, 1 Price, 253; Wells *v.* Jesus College, 7 C. & P. 284; Leathes *v.* Newith, 4 Price, 355.

[2] Ireland *v.* Powell, Salop. Spr. Ass. 1802, per Chambre, J.; Peake's Evid. 13, 14, (Norris's Ed. p. 27.)

an information against the sheriff of the county of Chester, for not executing a death-warrant, the question was, whether the sheriff of the county, or the sheriffs of the city, were to execute sentence of death, traditionary evidence that the sheriffs of the county had always been exempted from the performance of that duty was rejected, it being a private question between two individuals; the public having an interest only that execution be done, and not in the person by whom it was performed.[1] The question, of the admissibility of this sort of evidence seems, therefore, to turn upon the nature of the reputed fact, whether it was interesting to one party only, or to many. If it were of a public or general nature, it falls within the exception we are now considering, by which hearsay evidence, under the restrictions already mentioned, is admitted. But if it had no connexion with the exercise of any public right, nor with the discharge of any public duty, nor with any other matter of general interest, it falls within the general rule, by which hearsay evidence is excluded.[2]

§ 139. Hitherto we have mentioned oral declarations, as the medium of proving traditionary reputation, in matters of public and general interest. *The principle*, however, upon which these are admitted, *applies to documentary and all other kinds of proof denominated hearsay.* If the matter in controversy is ancient, and not susceptible of better evidence, any proof in the nature of traditionary declarations is receivable, whether it be oral or written; subject to the qualifications we have stated. Thus, deeds, leases, and other private documents, have been admitted, as declaratory of the public matters recited in them.[1] Maps, also, showing the boundaries of towns and parishes, are admissible, if it appear that they have been made by persons having adequate knowledge.[2] Verdicts, also, are receivable evidence of reputation, in questions of public or general interest.[3] Thus, for example, where a public right of way was in question, the plaintiff was allowed to show a verdict rendered in his own favor, against a defendant in another suit, in which the same right of way was in issue; but Lord Kenyon observed, that such evidence was perhaps not entitled to much weight, and certainly was not conclusive. The circumstance, that the verdict was *post litem motam*, does not affect its admissibility.[4]

[1] Rex *v.* Antrobus, 2 Ad. & El. 788, 794.

[2] White *v.* Lisle, 4 Madd. Ch. R. 214, 224, 225; Bp. of Meath *v.* Ld. Belfield, 1 Wils. 215; Bull. N. P. 295; Weeks *v.* Sparke, 1 M. & S. 679; Withnell *v.* Gartham, 1 Esp. 322; Doe *v.* Thomas, 14 East, 323; Ph. & Am. on Evid. 258; 1 Stark. Evid. 34, 35; Outram *v.* Morewood, 5 T. R. 121, 123; Rex *v.* Eriswell, 3 T. R. 709, per Grose, J. Where particular knowledge of a fact is sought to be brought home to a party, evidence of the general reputation and belief of the existence of that fact, among his neighbors, is admissible to the Jury, as tending to show that he also had knowledge of it, as well as they. Brander *v.* Ferridy, 16 Louisiana R. 296.

[1] Curzon *v.* Lomax, 5 Esp. 60; Brett *v.* Beales, 1 M. & M. 416; Claxton *v.* Dare, 10 B. & C. 17; Clarkson *v.* Woodhouse, 5 T. R. 412, n.; 3 Doug. 189, S. C.; Barnes *v.* Mawson, 1 M. & S. 77, 78; Coombs *v.* Coether, 1 M. & M. 398; Bebee *v.* Parker, 5 T. R. 26; Freeman *v.* Phillips, 4 M. & S. 486; Crease *v.* Barrett, 1 Cr. Mees. & Ros. 923; Denn *v.* Spray, 1 T. R. 466; Bullen *v.* Michel, 4 Dow, 298; Taylor *v.* Cook, 8 Price, 650.

[2] 1 Phil. Evid. 251, 252; Alcock *v.* Cooke, 2 Moore & Payne, 625; 5 Bing. 340, S. C. Upon a question of boundary between two farms, it being proved that the boundary of one of them was identical with that of a hamlet, evidence of reputation as to the bounds of the hamlet was held admissible. Thomas *v.* Jenkins, 1 N. & P. 588. But an old map of a parish, produced from the parish chest, and which was made under a private inclosure act, was held inadmissible evidence of boundary, without proof of the inclosure act. Reg. *v.* Milton, 1 C. & K. 58.

[3] But an interlocutory decree for preserving the *status quo*, until a final decision upon the right should be had, no final decree ever having been made, is inadmissible as evidence of reputation. Pim *v.* Curell, 6 M. & W. 234.

[4] Reed *v.* Jackson, 1 East, 355, 357; Bull. N. P. 233; City of London *v.* Clarke, Carth. 181; Rhodes *v.* Ainsworth, 1 B. & Ald. 87, 89, per Holroyd, J.; Lancum *v.* Lovell, 9 Bing. 465, 469; Cort *v.* Birkbeck, 1 Doug. 218, 222, per Ld. Mansfield; Case of the Manchester Mills, 1 Doug. 221, n.; Berry *v.* Banner, Peake's Cas. 156; Biddulph *v.* Ather, 2 Wils. 23; Brisco *v.* Lomax, 3 N. & P. 388; Evans *v.* Rees, 2 P. & D. 627; 10 Ad. & El. 151, S. C.