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## Charter Evidence

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## RECENT CASE NOTES

**CHARACTER EVIDENCE**—Limited to traits involved in the charge, when character is not impeached—Burns' Sec. 2272, 1926 inapplicable when credibility is not attacked. Ernest Keener was convicted of operating a automobile while under the influence of intoxicating liquor. Appeal for error in refusing admission of certain evidence. At trial appellant testified he was not intoxicated at the time charged. State introduced witnesses who testified he was intoxicated at that time. State did not impeach appellant or attack his credibility. Appellant introduced evidence of his general reputation for sobriety, and then offered evidence of his general reputation for morality. This was rejected, and this is assigned as error. **HELD:** When accused is neither impeached nor his credibility attacked, evidence of character not pertaining to traits involved in the offense charged is inadmissible, and no error was committed in excluding it. *Keener v. State*, Appellate Court of Ind., Aug. 30, 1929, 167 N. E. 549.

It is generally admitted that accused may show good character in all criminal issues, and from such generality of admission, certain well defined rules govern the admission of such evidence. Proof of character is not a substantive defence, but a circumstance to be considered along with other evidence. *Wharton Crim. Evid.* Sec. 57, 58a. When introduced by accused (unimpeached) it limited to traits involved in the issue. *State v. Bloom*, 68 Ind. 54, *Kahlenbeck v. State*, 119 Ind. 118, *Walker v. State*, 102 Ind. 502, *Kee v. State*, 28 Ark. 155, *State v. Dalton*, 27 Mo. 12, *People v. Joseph*, 7 Cal. 129, *Wigmore Crim. Evid.* Sec. 59, *Wharton Crim. Evid.* Sec. 59, p. 241.

The criminal statute in regard to admission of character evidence (Burns' Sec. 2272, 1926) is not applicable to support the contention of the appellant, and did not change the rule announced in *State v. Bloom*, *supra*. The law presumes good character until it is attacked. *Walker v. State*, *supra*. Since the character of appellant was not impeached nor his credibility attacked, it is incompetent to support him by evidence of general moral character. *Johnson v. State*, 21 Ind. 329. Mere contradiction among witnesses examined in court supplies no grounds for admitting evidence of general character. 1 *Greenleaf Evid.* Sec. 469. Since evidence of accused's character has probative value only for purpose of showing that accused would not likely commit the offense charged, any traits not involved in the charge would have no value where accused is unimpeached. If it were admitted, in face of the presumption of good character which the State did not attack, and in spite of the lack of probative value, the State would have the right to attack in its broad extent. The law does not contemplate the raising of irrelevant issues such as that.

H. N. F.