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"THE SYLLABUS IS THE LAW"

In *Koonce v. Doolittle* the Supreme Court of Appeals of West Virginia said:

> "This court only makes *the more important points of law* a part of the *syllabus for the general information of the legal profession and public*."[1]

This little-known but significant statement by our court of last resort is perhaps the best short description of the purpose and function of the syllabus in West Virginia. Thus in the recent case of *Drake v. Parker*,[2] the Supreme Court of Appeals held, among other things, that certain witnesses were not competent to testify concerning the contents and acknowledgment of a writing because

[1] 48 W. Va. 592, 594, 37 S. E. 644 (1900). (Italics ours.)

[2] 7 S. E. (2d) 651 (W. Va. 1940).

it was a "personal transaction" with a decedent, and therefore to permit such testimony would be in violation of the West Virginia statute which makes the survivor of a personal transaction with a decedent an incompetent witness in regard to such a transaction.[3] A determination of the competency or incompetency of these witnesses was, it would seem, necessary for the decision of the particular case because proof of a material issue (the contents and acknowledgment of a writing) depended in large part on their testimony. Hence the determination of their incompetency must be classed not as *obiter dictum* but as decision. Yet this point was not included in the syllabus, presumably for the reason that it was not considered among "the more important points of law" decided by the court, and so its inclusion as a part of the syllabus did not come within the professed purpose of the syllabus, namely, to summarize such points "for the general information of the legal profession and the public". This case is merely an example of numerous instances in which our court has not made one of the "points of law a part of the syllabus". In such cases (if not in all cases) the oft-asserted theory that the syllabus is the law in West Virginia would seem to be pretty much at variance with the realities; in such cases the syllabus is at best only a partial expression of the *ratio decidendi*.[4] To what extent, if any, it is ever a complete articulation of the law of a case is a question that has been discussed at some length in a recent issue of the *Quarterly*.[5]

THOMAS P. HARDMAN.

[3] W. VA. REV. CODE (1931) c. 57, art. 3, § 1.

[4] *Cf., e.g.,* Wilson *et al.* v. Brennan *et al.,* 114 W. Va. 777, 174 S. E. 696 (1934) where the syllabus of a very complicated case says only: "The determination of reasonable rates is not ordinarily within the competency of the courts." This compendium, if it is intended as an expression of the *ratio decidendi* of the case, may well be regarded as rather esoteric. *Cf.* Long v. Potts, 70 W. Va. 719, 75 S. E. 62 (1912), in which the court, though it decided the case before it, did not write any syllabus at all.

[5] See Hardman, *"The Law"—in West Virginia* (1940) 47 W. VA. L. Q. 23.