Volume 47 | Issue 4 Article 13

June 1941

Marriage and Divorce--Alimony in Annulment Proceedings

H. P. S.
West Virginia University College of Law

B. D. T.
West Virginia University College of Law

lapse of time was about ten minutes. Under the old rule requiring strict contemporaneity, the declarations would not be admissible. But the court, though speaking in terms of "*res gestae,*" let the evidence in as a "spontaneous exclamation."

If the use of "*res gestae*" as a generic term were frankly abandoned, it would constitute, it is believed, little more than a clarifying change in form. The case of *Reynolds v. Grant Co.*[15] represents a step in this commendable direction. "The proper restriction of the term," says the court, "confines it to those declarations which are not only considered to be a part of the thing done, but which depend for their admission in evidence upon the fact that the declarant at the time of making the declarations was, as a consequence of the thing done, under such stress of emotion or excitement as to render the declarations spontaneous to the point of being almost involuntary, precluding the reflection that gives rise to falsehood."[16]

J. S. M.

MARRIAGE AND DIVORCE — ALIMONY IN ANNULMENT PROCEEDINGS. — After a ceremonial marriage in Maryland, *H* and *W*, residents of West Virginia, returned to this state, but never cohabited as husband and wife. *H*, an infant, by next of friend, sued to have a decree entered to annul the marriage. *Held,* that although under our statute the court has no jurisdiction to annul

---

whether a statement is a part of the *res gestae,* the particular circumstances and the mental and physical condition being of considerable importance, it is often a vital fact in ascertaining whether a declaration is a spontaneous and contemporaneous one. Here, because of the indefiniteness of time and the absence of facts and circumstances which might bring the alleged statements within the hearsay rule, the declarations should not have been admitted). *Cf.* State v. McKinney, 88 W. Va. 400, 106 S. E. 894 (1921) (a statement made by *D* several hours after an alleged offense, admitting the act and stating a motive, held inadmissible, it being no part of the *res gestae.*

[15] 117 W. Va. 615, 186 S. E. 603 (1936) (in excluding remarks of a store manager made when a customer had slipped and fallen on the floor, that another person had fallen at the same place that morning, because it was not shown that he himself had seen such person fall, the court stated that this was no more than "hearsay evidence of hearsay evidence").

[16] *Id.* at 620. The court's definition continues: "It is thought that in all instances where such circumstances do not exist, while the declaration in question may be admissible in evidence either because the hearsay rule does not properly apply to exclude it or because it comes within some other exception to that rule, it is not, correctly speaking, admitted because it is a part of the *res gestae.*"

Cf. 1 JONES, EVIDENCE 638: "The judicial trend is towards relaxation of the rule of absolute and identical contemporaneity and a substitution in its place of the test of spontaneity and logical relation to the principal event." See page 638, n. 19, citing cases and law review articles.

the marriage,[1] it can allow *W* alimony *pendente lite* and attorney's fees. *Bell v. Bell.*[2]

The only case in West Virginia concerning alimony *pendente lite* in an annulment suit was *Meredith v. Shakespeare,*[3] in which the court on general equitable principles decided that since the marriage was void *ab initio* no alimony *pendente lite* could be allowed. The principal case is to be distinguished in that it was decided under the present statute[4] and not on general equitable principles. It is clear that such allowances are granted in divorce actions,[5] but the controversial point is whether *pendente lite* allowances will be granted in proceedings to annul a voidable marriage under this section. The court, in the principal case, has interpreted the intent of the legislature to be that the word "suit"[6] includes not only divorce actions but also annulment proceedings. From the general language of the statute, it would seem that the court was correct, in that this statute should apply to annulment as well as divorce where the marriage is voidable.

H. P. S.
B. D. T.

TAXATION — APPEAL FROM CIRCUIT COURT ON ISSUE OF VALUATION. — *P* owned two tracts of unimproved mountain land, each of which prior to 1939 had been assessed for taxation at six dollars per acre. That year the assessor raised the value of the larger tract to ten dollars per acre and of the smaller tract to fifteen dollars per acre, and each of these assessments was approved by the board of equalization and review. The circuit court sustained the valuation of the larger tract and reduced that of the smaller

---

[1] W. VA. CODE (Michie, 1937) c. 48, art. 1, § 17.
[2] 8 S. E. (2d) 183 (W. Va. 1940).
[3] 97 W. Va. 514, 125 S. E. 374 (1924).
[4] "The court . . . may, at any time after commencement of the suit and reasonable notice to the man, make any order that may be proper to compel the man to pay any sum necessary for the maintenance of the woman, and to enable her to carry on or defend the suit in the trial court and on appeal should one be taken . . ." W. VA. CODE (Michie, 1937) c. 48, art. 2, § 13.
[5] *Ibid.*
[6] "The court . . . may, at any time after commencement of the *suit* . . .", *ibid.*; "The *suit* for annulling or affirming a marriage, or for divorce", *id.* at c. 48, art. 2, § 9; "No *suit* to annul or affirm a marriage shall be maintainable unless at the commencement of the *suit* one of the parties is a bona fide resident of this State . . .", *id.* at c. 48, art. 2, § 7. (Italics supplied.) Reasoning by analogy the manner in which "suit" is used in c. 48, art. 2, §§ 9 and 7, as including annulment as well as divorce, then when read in connection with c. 48, art. 2, § 13, the term "suit" would seem to include annulment as well as divorce.