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Evidence--Hearsay--Res Gestae Exception--Necessity That Declarant Have Knowledge--Qualifications of Ordinary Witness

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tiff alleges negligence on the part of defendant corporation in knowingly permitting the floor of its store to remain in an unsafe condition. Plaintiff seeks to show defendant’s knowledge by means of a statement, allegedly made by defendant’s manager immediately after the accident, to the effect that someone else had fallen in the same spot earlier that day. Held, that the statement of the manager was not admissible as part of the res gestae because the source of the manager’s information was not shown. Reynolds v. W. T. Grant Co. 1

As a rule hearsay is inadmissible for the reason that statements, unsworn and not subject to cross-examination, 2 are untrustworthy. 3 To this rule there are certain exceptions. In general, these exceptions require that there be (1) a necessity for the admission of the hearsay statement, and (2) some circumstantial guarantee of trustworthiness. 4 The so-called res gestae exception 5 possesses, in addition, the requirement that the hearsay declarant must possess the ordinary qualifications of a witness in regard to knowledge and the like. 6 This requirement is apparently so generally recognized and accepted that it receives little attention in discussions of exceptions to the hearsay rule. 7 Probably for the same reason — i.e., the obvious nature of the requirement — the West Virginia court is, it appears, rarely called upon to enforce the requirement 8 because in the instant case the court cites no

1 186 S. E. 603 (W. Va. 1936). The court also refused to admit the alleged statement as a declaration against interest, the refusal being based on the ground that the statement was “... not shown to have been related to an act being performed by him [declarant] directly under his authority as agent.” . . .”
2 See 3 Wigmore, Evidence (2d ed. 1923) § 1365, discussing cross-examination and confrontation. Wigmore says of the latter that it is often referred to as an additional test of statements offered testimonially but that in discussions of the hearsay rule “confrontation” may be taken as merely another name for the opportunity of cross-examination.
3 3 Wigmore, Evidence § 1362; 1 Greenleaf, Evidence (16th ed. 1899) § 114a.
4 3 Wigmore, Evidence § 1420; 1 Greenleaf, Evidence § 114a.
5 See 3 Wigmore, Evidence §§ 1767, 1768, 1745-1757; see also Note (1918) 25 W. Va. L. Q. 341 discussing res gestae and “spontaneous exclamations”; In the present case the court seems to treat res gestae and spontaneous exclamations as synonymous.
6 3 Wigmore, Evidence § 1424; 1 Greenleaf, Evidence § 114a; see also 2 Wigmore, Evidence § 667 which, in discussing “knowledge” as a testimonial qualification, says that what the witness represents as his knowledge must be an impression derived from the exercise of his own senses and must be founded on his personal observations.
7 See 3 Wigmore, Evidence §§ 1445, 1471, 1485, 1530, 1568, 1591, stating the knowledge qualifications under various exceptions. See also ibid. § 1751 in which Wigmore, discussing “spontaneous exclamations” says, “This re-
West Virginia decision in support of its holding. However, the court does cite four cases from other jurisdictions which are squarely in point and which set forth the requirement of the hearsay declarant's knowledge qualifications in unequivocal terms.\(^9\)

A closely analogous situation exists in the case of dying declarations — another exception to the hearsay rule.\(^10\) The West Virginia court has said that hearsay statements sought to be admitted under this exception must be such as would be admissible if the declarant were in court testifying.\(^11\) The requirement thus laid down would seem to be applicable, by analogy, to the so-called res gestae exception.\(^12\)

V. V. C.

**Municipal Corporations — Extra-Territorial Powers — Authority to Build Sewage Disposal Plant Outside the State.**

In a recent West Virginia case the Supreme Court of Appeals held that a municipality had the power to acquire property and erect a sewage disposal plant in an adjoining state. *Bernard v. City of Bluefield.*\(^1\)

The court cited as authority for its holding the only two similar decisions\(^2\) among the few cases raising the problem of the extra-territorial exercise of powers by municipalities outside the state of their creation.

\(^{9}\) See generally Greenleaf, *Evidence* § 114.

\(^{10}\) See 3 Wigmore, *Evidence* §§ 1430-1452.

\(^{11}\) See also 3 Wigmore, *Evidence* § 1445; 4 Elliott, *Evidence* (1905) § 3033.

\(^{12}\) See n. 5.

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1 186 S. E. 298 (W. Va. 1936).

2 Langdon v. City of Walla Walla, 112 Wash. 446, 193 Pac. 1 (1920); Superior Water, Light & Power Co. v. City of Superior, 174 Wis. 257, 181 N. W. 113; id, 176 Wis. 627, 183 N. W. 254 (1922).