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Evidence--Res Gestae--Spontaneous Exclamations

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question is not disputed. And as he had authority to contract for the partnership, B, along with A, must be considered a party to the contract. See ROWLEY, PARTNERSHIP, 542. Now, when B devised his title to C, it seems that C would be placed in the same position with reference to the contract as that occupied by B. This would seem to make C a privy to the contract. *Craig v. Johnson*, 3 Marsh. J. J. (Ky.) 572. See 32 CYC. 388. And as such she would be entitled to set up the Statute of Frauds. See *Sonneman v. Merz*, 221 Ill. 362, 77 N. E. 550, 551. The Statute is available to the subsequent guaranties of a party to the contract. *Gibson v. Stalnaker*, 106 S. E. 243 (W. Va. 1921); *Ugland v. Farmers' etc. Bank*, 23 N. D. 536, 137 N. W. 572. See 16 ANN. CAS. 412; 25 R. C. L. 734. Likewise, to the heirs and personal representatives. *Bailey v. Henry*, 125 Tenn. 390, 143 S. W. 1124; *Donovan v. Walsh*, 130 N. E. 841 (Mass. 1921); *Clarke v. Philomath College*, 195 Pac. 822 (Ore. 1921); *Zellman v. Wassman*, 193 Pac. 84 (Cal. 1920). An escheator has also been allowed to set it up. *Sebben v. Trezevant*, 3 Dessaus. (S. C.) 213. And there is at least *dictum* to the effect that it is available to a residuary legatee. See *Sebben v. Trezevant*, 3 Dessaus. (S. C.) 213, 220. It seems, therefore, that the court erred in applying the law to the facts of the principal case, and that it should have allowed C to set up the Statute of Frauds.

—W. F. K.

EVIDENCE — *Res Gestae* — SPONTANEOUS EXCLAMATIONS. — The defendant, a boy of 14 years, was alone in his father's place of business when one De Pue entered and presented him with a diamond ring. On his father's return the boy left. De Pue died and the administrator of his estate brought an action of detinue to recover the ring. Defendant's mother testified that defendant, on the evening in question, ran into the house and showed her the ring and told her De Pue had given it to him. The evidence was admitted in the lower court. *Held*, the donee's statements as to the gift are not admissible as *res gestae*. *De Pue v. Steber*, 108 S. E. 590 (W. Va. 1921).

A few cases will illustrate the difficulty in trying to ascertain the exact meaning of the doctrine of *res gestae*. A statement of an engineer made an hour after the accident and several hundred yards away is not a part of the *res gestae*. *Hawker v. Baltimore & Ohio R. Co.*, 15 W. Va. 628. Declarations made on the day after a

gift held part of the *res gestae*. *Thomas v. Lewis*, 89 Va. 1, 15 S. E. 389. On trial for murder, evidence that a few minutes after the shooting, deceased said that defendant shot her, is not admissible as part of the *res gestae*. *People v. Wong Ark*, 95 Cal. 125, 30 Pac. 1115. No hard and fast rule can be laid down as to the admissibility of evidence as part of the *res gestae*. The difficulty of formulating a description of the *res gestae* which will serve for all cases seems insurmountable. *Cox v. State*, 184 Ala. 443, 63 So. 592. Courts are not harmonious in their treatment of the principle upon which the admissibility of the evidence (as *res gestae*) rests. *Louisville R. Co. v. Johnson*, 131 Ky. 277, 115 So. 201. The rule is sometimes made to do extensive service, so much so that a textwriter has said that the shibboleth, *res gestae*, is put to such indiscriminate service that it is to be approached with a feeling of despair. *Schalter v. Le Blanc*, 121 La. 919, 49 So. 921. Questions of this kind must be left largely to judicial discretion. *State v. Arnold*, 47 S. C. 9, 24 S. E. 926; 22 C. J. 448. Such evidence may be admitted on other grounds. Wigmore, in his work on evidence, advocates the total abolition of the use of the empty phrase, *res gestae*, and the substitution of a rational principle of law, which he calls the doctrine of "spontaneous exclamations." The doctrine is that any declaration made under the influence of an exciting cause which renders the reflexive faculties momentarily dormant, and while such faculties remain dormant, are admissible as spontaneous exclamations. 3 WIGMORE, EVIDENCE, § 1745. A statement by decedent, made immediately after he was wounded that accused had stabbed him, is admissible as a spontaneous exclamation. *People v. Del Vermo*, 192 N. Y. 470, 85 N. E. 690. The statements of an injured party who has been rendered unconscious from a blow, immediately upon regaining consciousness are admissible as part of the *res gestae* where it appears that such statements are spontaneous. *Starcher v. South Penn Co.*, 81 W. Va. 587, 95 S. E. 28. In the last mentioned case the court quotes Wigmore on the subject of spontaneous exclamations and then decides that the declarations, though some time after the act, are a part of the *res gestae*. In the principle case the court points out that nothing connects the act with the declarations, except the boy's possession of the ring and possibly an excited state of mind; and that the declaration is excluded on the ground of narration of the past event and remoteness in time. The doctrine of "spontaneous exclamations" is not referred to.

The better view is that such evidence should be admitted, if at all, under the doctrine of "spontaneous exclamations." *People v. Del Vermo, supra*. It might be argued in the principle case that if the exciting cause existed up to the time of the defendant's declarations that the evidence would be admissible as spontaneous exclamation. Why not do away with an irrational doctrine that can not be logically applied and accept one that is both logical and applicable? See, Thomas P. Hardman, "*Spontaneous Exclamations v. Res Gestae*," 25 W. Va. L. QUAR. 341.

—R. G. K.

WEST VIRGINIA BAR ASSOCIATION NOTES:
NEWS OF THE PROFESSION

NECROLOGY.—The following members of the West Virginia bar have died recently:

James F. Brown, Charleston,
W. G. Barnhart, Charleston,
William P. Hubbard, Wheeling,
J. Hop Woods, Philippi,
Stephen G. Jackson, Clarksburg.

SUPREME COURT OF APPEALS.—Honorable Charles W. Lynch, at the end of nine years faithful, efficient and able service on the Supreme Court of Appeals, retired from the bench on December 31, and Honorable James A. Meredith, of Fairmont, W. Va., has been named to fill the vacancy.

Judge Harold A. Ritz of the Supreme Court of Appeals, and president of that Court for the past year, has been chosen to give a course of lectures on the subject of Sales in the law school of the Northwestern University at Chicago, next summer.

ASSOCIATION OF AMERICAN LAW SCHOOLS.—At its annual meeting held in Chicago, December 28-31, 1921, the Association of American Law Schools passed a resolution providing that its member schools should require two years of college work as a prerequisite to the study of law, to become effective in 1925. This action is in conformity with that of the American Bar Association taken at its annual meeting held at Cincinnati, August 31, 1921.