Evidence--Rape--Complaint

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EVIDENCE—RAPE—COMPLAINT.—In a prosecution for attempt to commit rape, the husband of the prosecutrix was permitted to testify, in corroboration of his wife, as to the particulars of the offence as related to him by his wife six hours after it occurred. Held, it is reversible error to permit a witness to testify to the particulars. State v. Peck, 110 S. E. 715 (W. Va., 1922.)

Formerly it was laid down that one could corroborate his witness by evidence showing that he had been consistent with himself, but, as a general doctrine, that ceased to be the law in England a
hundred years ago. 15 Am. L. Rev. 830. But by the rules of evidence prevailing now, statements made by a witness out of court are not admissible to corroborate his testimony until it has been assailed. State v. Rorabacker, 10 Iowa 154; Commonwealth v. Cleary, 72 Mass. 175. Yet notwithstanding these later developed principles, there is in the case of rape, a well established exception whereby the testimony of the prosecutrix can be corroborated by showing she made a complaint shortly after the alleged offence. This exception is an historical survival of the ancient practice requiring the woman to make hue and cry. Bracton, folio 147a. Later in the historical development of the law Lord Hale commented upon the rule by saying, "these and the like are concurring evidences to give greater probability to her testimony." 1 Hale P. C., 632, 633. All the courts assert that this evidence is admissible merely to confirm the prosecutrix's testimony, and not as a substantive testimony to prove the truth of the fact alleged. Johnson v. State, 17 Ohio St. 393; Stevens v. People, 158 Ill. 111, 41 N. E. 856. It follows, therefore, that the unsound doctrine of res gestae has no application inasmuch as it applies only to cases where the evidence is offered to prove the truth of the fact asserted. Regina v. Guttridge, 9 C. & P 471; Commonwealth v. Cleary, supra. While there is a conflict of opinion as to the scope of the confirmatory evidence that is admissible, the great weight of authority, both in this country, and in England, would limit it to the bare complaint, prohibiting the witness from reciting to the jury the particulars of the alleged offence as narrated by the prosecutrix. See, 33 Cyc. 1463 and cases there cited; 3 Greenleaf, Evidence, 213; 2 Bishop, Criminal Procedure, 963; 1 Russell, Crimes, 688. The reason for excluding the detail while admitting the bare fact of the complaint has never been clear, and consequently the minority, including several English cases and four American jurisdictions, vigorously maintain that the rule admitting particulars is sounder on principle and better for ascertainment of truth—the ultimate object of the law of evidence. State v. Kinnly, 44 Conn. 155; State v. Byrne, 47 Conn. 485; Territory v. Schilling, 17 Hawaii 249; Dunn v. State, 45 Ohio St. 252; Philips v. State, 9 Humph. (Tenn.) 246; Rex v. Wood, 14 Cox C. C. 46. In England the soundness of the rule excluding particulars was seriously questioned by Baron Parke when he said, "For reasons which I never could understand the usage to exclude particular
has obtained." Regina v. Walker, 2 Mood & Rob. 212. In 1877 Bramwell permitted the full particulars for the purpose of corroboration. Regina v. Wood, supra. In 1896 the Court for Crown Cases Reserved affirmed this holding. Rex v. Lillyman, 2 Q. B. 167. It is submitted that in view of the facts that the exception is well engrafted into the law and that its solely admitted purpose is to corroborate the truthfulness of the prosecutrix's testimony, the rule permitting particulars is more conducive to the ascertainment of truth. "If her story were untrue greater would be the opportunity for detection, and accused would be helped in his defense. If her story is true, the evidence would show constancy in the charge even to details, and the truth would more clearly appear." Benton v. Starr, 58 Conn. 285, 20 Atl. 450.

—M. H. M.

Evidence—Similar Facts and Circumstances.—In a proceeding to condemn a right-of-way for the purpose of erecting a high-tension electric line, evidence of sales of other land of similar character, though not in the immediate vicinity, was admitted for the purpose of aiding the jury in assessing the value of the land taken and damages to the residue. Held, the evidence was properly admitted. Virginian Power Co. v. Brotherton, 110 S. E. 546 (W. Va. 1922.)

The West Virginia Supreme Court of Appeals has heretofore properly held that evidence of the value of town lots is not competent evidence of the value of country land. Buckhannon etc. R. Co. v. Great Scott Coal & Coke Co., 75 W. Va. 423, 83 S. E. 1031. In that case the court stated that evidence of prices paid others by the condemnor for land and damages to the residue, though located in the same vicinity, is not proper evidence to go to the jury on the question of damages. Ibid., syl. 12. In a subsequent case the price paid by the condemnor for a lot in the immediate vicinity of the condemned lot was held admissible, the court distinguishing this case from the former case on the ground that here the entire lot was being taken, so that there was no element of damages to the residue to be considered. Baltimore etc. R. Co. v. Bonafield's Heirs, 79 W. Va. 287, 90 S. E. 868. In view of the fact that the element of damages to the residue was under consideration in the principal case, the latter seems to be a tacit overruling of the twelfth point of the syllabus of Buckhannon etc. R.