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## Evidence--Similar Facts and Circumstances

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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.

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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.*

*Co. v. Great Scott Coal & Coke Co., supra*, unless a further distinction is to be made between land taken for a railroad right-of-way and that taken for a right-of-way for an electric line.

In a case of this kind the owner is entitled to the fair value of his land. In determining that value, evidence of the sales of other land *similar in character* in the same vicinity is undoubtedly relevant, but may be misleading if the circumstances under which such sales were consummated were such that the sales were actually made at a greater or less sum than the fair value of the property. See 1 WIGMORE, EVIDENCE, § 463. For instance, if either the vendor or the vendee attached any sentimental value to the land, or if the sale was made when either party was under any necessity or compulsion to buy or sell, the price actually paid might not be a fair representation of the true value of the land sold. See *Matter of Thompson*, 127 N. Y. 468, 28 N. E. 389; *Seaboard Air Line v. Chamblin*, 108 Va. 42, 60 S. E. 727. Thus, it will be understood that evidence of this kind tends to introduce collateral issues, and for this reason it is objectionable. See *Amoskeag Mfg. Co. v. Head*, 59 N. H. 332. The court, in each case, should decide whether the evidential value of such evidence outweighs its objectionable qualities, and if so the evidence should be admitted. Of course, this should be left largely to the discretion of the trial court, and no case should be reversed unless it is manifest that injustice has been done by admitting the objectionable evidence. See *Forest Preserve Dist. v. Caraher*, 299 Ill. 11, 132 N. E. 211. See also 15 HARV. L. REV. 74. It is submitted that the court was right in the principal case in refusing to reverse on this ground.

—W. F. K.

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TORTS—PERSONAL INJURY—PUNITIVE DAMAGES.—Action in case by the plaintiff for damages resulting from an automobile collision. Exception was taken by the defendant to an instruction of the trial court regarding the assessment of punitive damages. The instruction objected to was as follows: "If you further find that the defendant did the injuries complained of in a wanton or wilful manner or from a reckless indifference to the rights and safety of the plaintiff or his property, you may find such further damages as you may believe the plaintiff is entitled to." *Held*, the instruction is faulty and the exception is sustained. *Swiger v. Runnion*, 111 S. E. 318 (W. Va. 1922).