"Res Gestae": A look t the criteria for the admissibility in evidence of a hearsay statement.

To be received in a court action, evidence must be both admissible and relevant. Admissible evidence embraces all relevant evidence not subject to a rule of exclusion. Thus, admissibility is a question of law. Relevant evidence forms a wider category than admissible evidence: all admissible facts are relevant, though not all relevant facts are admissible. Indeed, there are two categories of relevant facts, to wit, the facts in issue (sometimes called "the principal facts" or, more pedantically, the "facta probanda") and other facts from the existence of which the existence of facts in issue may be inferred (these latter being called "evidentiary facts" or "facta probantia" or, more simply and usually, "circumstantial evidence"). The question whether a fact is or is not a fact in issue is one determinable by reference to the substantive law and, in civil cases, to the pleadings (if any). On the other hand, the question whether a fact, not in itself in issue, is logically probative of a fact in issue and, accordingly, relevant as "circumstantial evidence" is in each case one for the judge to decide and is not always one easily so done. Circumstantial evidence may exist prior to a fact in issue, subsequent to it or proximately to, or contemporaneously with, it. Such facts as are relevant to facts in issue by reason of their contemporaneity or proximity in time, place or circumstance are frequently designated by the rubric - "res gestae".

"Res gestae" is one of those Latin phrases (so beloved of jurists) which, like too many others, defies precise, unqualified translation into English. (Thus, for example, a Latin-English dictionary in my possession gives "res gestae" as meaning in English, simply "feats","exploits" - words revealing a lot about the Roman love of heroes, victories and physical achievement generally, but hardly juridical!) It is perhaps harmless to see it as "the things done" (as "per" Nokes: "An Introduction to Evidence", 4th ed. Pg. 88) or as just "the story" (vid. Cross: "Evidence", 4th ed. Pg. 502). But the difficulty with "res gestae" does not stop at the imprecision of its translation into English: as a legal concept it is no less nebulous, a fact which has served to earn it the equal scorn of judges and academic writers. Sir Frederick Pollock saw it as an unmeaning term which "merely fudges the truth that there is no universal formula for all the kinds of relevancy" (Pollock-Holmes: "Correspondence", Vol. 2, Pg. 285); LORD TOMLIN suspected it of being "a phrase adopted to provide a respectable legal cloak for a variety of cases of which no formula of precision can be applied" (Homes v. Newman,(1931) 2 Ch. 112 at p. 120); Professor Julius Stone views the law relating to "res gestae" as "the lurking-place of a motley crowd of conceptions in mutual conflict and reciprocating chaos" (55 L.Q.R. 660); but juristic scorn is perhaps no more trenchantly summed than in the words of LORD BLACKBURN

facts not complying with either condition may be inadmissible as irrelevant.) The facts in issue are therefore themselves actually part of the "res gestae" (i.e. "the story") but, since the relevance of a fact in issue would scarcely be the source of debate, what the court usually has to ponder is whether other facts constitute part of the "res gestae": LORD WILBERFORCE in his speech (in Ratten v. R. [1971] 3 All. E.R. 801 at p. 806) recognises three different ways in which the term "res gestae" is used in the context of the law of evidence. The first two relate to facts which form or accompany or are part of the "res gestae". The third relates to evidence of a hearsay statement "made either by the victim of an attack or by a bystander - indicating directly or indirectly the identity of the attacker. The admissibility of the statement", His Lordship continues, "is then said to depend on whether it was made as part of the res gestae". Herein has lain the source of much juristic wrangling ..... Indeed, "before LORD WILBERFORCE's important review of the authorities in Ratten v. R., the law concerning the admissibility of statements under this exception to the hearsay rule [emphasis mine] was in danger of becoming enmeshed in conceptualism of the worst type" (Cross, "op. cit.", pg. 506).

This seems to have been due to a too great concentration on the vague Latin phrase, resulting in turn in an overemphasis on the need for contemporaneity of statement with event as well as on the need for the words to form part of the transaction or "the story". This, of course, lent to the tedious - and often insoluble-problem of determining when the transaction or "story" began and ended.

Apt illustration is to be found in R. v. Bedingfield ((1879) 14 Cox C.C. 341) - the best-known English decision on the subject: There, the accused was charged with murder by cutting a woman's throat; his defence was that she had committed suicide. The deceased emerged from a room (in which the accused was subsequently found), her throat cut; she instantly uttered, "See what Bedingfield has done to me!" She then died. COCKBURN, C.J., held this statement inadmissible as hearsay and not forming part of the hallowed "res gestae" because "it was something stated by her after it was all over, whatever it was, and after the act was completed". (It may be instructive to note here that the statement in question was held to be inadmissible as a dying declaration also, as it was not clear that the deceased was - in the words of that doleful formula - "under a settled hopeless expectation of death".)

This decision, always since hotly debated, is seen by LORD WILBERFORCE in "Ratten" ("loc. cit." at pg. 807) as one "more useful as a focus for discussion, than for the decision on the facts" for ".....there could hardly be a case where the

The Judicial Committee held evidence of the telephone conversation "admissible as evidence of fact relevant to an issue", namely,that (a) more than one telephone call had been made (Ratten had stated that a call by him for an ambulance was the only one going out of his house at the material time) and (b) the caller was in a hysterical state. Further, although their Lordships did not find "any hearsay element in the evidence", they nonetheless proceeded "to deal with the appellant's submission on the assumption that there was", and found that the telephone operator's evidence was admissible on the ground that the deceased's words were a hearsay statement forming part of the "res gestae".

The speech of LORD WILBERFORCE in this case may be taken to have restated the criteria for admissibility of such statements and to be a clear exposition of the law as it now stands: The trial judge must, "by preliminary ruling, satisfy himself that the statement was so clearly made in circumstances of spontaneity or involvement in the event that the possibility of concoction can be disregarded" (emphasis mine). Where, however, the statementis found to have been "made by way of narrative of a detached prior event so that the speaker was so disengaged from it as to be able to construct or adapt his account", it ought to be excluded. "The test", the Law Lord asserts, "should not be the uncertain one, whether the making of the statement should be regarded as part of the event or transaction. This may often be difficult to show. But if the drama, leading up to the climax, has commenced and assumed such intensity and pressure that the utterance can safely be regarded as a true reflection of what was unrolling or actually happening, it ought to be received. The expression "res gestae" may conveniently sum up these criteria, but the reality of them must always be kept in mind: it is this that lies behind the best reasoned of the judges' rulings" (emphases mine).

It would appear from this clear statement of the law that judges need no longer (as their major concern) stop to measure out in minutes just how close the statement is to the act; the true test now being whether the statement is "made in circumstances of spontaneity or involvement in the event" as opposed to being made "by way of marrative of a detailed prior event". Applying the criteria laid down in "Ratten", one is constrained to regard "Bedingfield's Case" as incorrectly decided on the facts for, in the words of LORD WILBERFORCE cited earlier, "there could hardly be a case where the words uttered carried more clearly the marks of spontaneity and intense involvement"! One may therefore assume with some measure of confidence that, on a recurrence of similar facts, the decision would be different.

conviction for arson, when at the trial a constable repeated a statement identifying the accused, which statement had been made by a woman some twenty-six minutes after the fire started and some distance from the scene; for their Lordships held that ".....it is essential that the words .....should be, if not absolutely contemporaneous with the action or event, at least so clearly associated with it, in time, place and circumstances, that they are part of the thing done....." (loc. cit." at pg. 487, P.C.). As always, before "Ratten's Case", preoccupation mainly with the quest for"contemporaneity" ! (I noted with not a little interest a recent decision of the Jamaican High Court - R. v. Neville Nemhard; ("Daily Gleaner", February 1975) in which Parnell, J. allowed the wife of the victim of a gunshot to give evidence that she heard a shot, dashed outside her yard, saw her husband sprawled on the ground bleeding, and heard him say "Neville Nemhard and him frien' dem kill me"; then, he died. The prosecution (case presented by Ms. Velma Hylton) argued successfully that the deceased's statement was admissible both as a dying declaration and as part of the "res gestae". Nemhard was convicted.)

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