Statements of An Agent as Evidence Against His Principal in Pennsylvania

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However, in view of the increasing frequency with which the problem of excessive and inadequate awards of damages confronts the courts, it can fairly be considered one of policy and expediency rather than one solely of right. Greater control over juries is often a practical necessity, which is denied satisfaction by a static conception of the right to trial by jury. Since expediency of remedy may often take priority over conservative constitutionality of remedy, in the minds of litigants, a solution to this problem should be a matter of some concern. In this light,

Seemingly, if the jury system is to be retained, it would be a practically desirable modification to confer upon trial and appellate courts the power to correct directly awards of damages. However, assuming the wisdom of the modification, if properly administered, further court or legislative action is unlikely in the light of current authorities. General recognition of the power claimed by Pennsylvania's court of last resort cannot now be forecast.

Thomas Wood, Jr.

STATEMENTS OF AN AGENT AS EVIDENCE AGAINST HIS PRINCIPAL IN PENNSYLVANIA

It is a general rule that declarations of an agent made by him in connection with his employment are admissible against his principal. The reason for allowing such statements to be introduced into evidence is pointed out in Baltimore and Ohio Relief Association v. Post, where the court said through Paxson, J.,

"What an agent says in the course of his employment, and within his authority, is evidence against his employer, because it thus becomes the act of the principal. Thus, if A is the agent of B to make a contract for the latter, what A says in regard to the contract at the time it is being made is part of the contract: it is the equivalent of the sayings or acknowledgments of the principal. They may be explanatory of the agreement, or [may] determine the quality of the act which they accompany, and therefore must be binding on the principal as the act or agreement itself. The declarations or admissions of an agent in such cases are admissible, not for the purpose of establishing the truth of the facts stated but as representations by which the principal is bound as if he made them himself, and which are equally binding whether the fact be true or false."

1Henry, Pennsylvania Trial Evidence (3rd ed. 1939) sec. 76.
2122 Pa. 579, 13 Atl. 885 (1888).
The statements of the agent are admissible whether they be spoken or written. In order to admit the declarations of one person as evidence against another as his principal it is necessary that several requirements be met. First, the one making the statement must be, in fact, the agent of the one against whom they are to be admitted, and this fact of agency must be proved before the statements can be considered as evidence against the alleged principal. This can be done in any one of several ways. It may be shown by a contract of agency, by circumstances showing an implied agency by a course of dealing on the part of the agent in a particular capacity, and recognition of these acts by the principal, by declarations of the principal, by the testimony of the agent (but not by his declarations), or by showing that an agent of limited powers has been in the habit of exercising greater powers with the knowledge of his principal.

It must also be shown that the agent had some authority to make the statement. In some situations apparent authority is sufficient. In Haspel v. McLaughlin-Lyons the secretary of a building association made a remark to a member of the association to the effect that the member would not have to make any more payments. Subsequently, in an action to compel the member to pay an assessment against her shares, the statement by the secretary was not admitted against the association, for it did not appear that the secretary had any authority to make the statement. A third requirement is that the statements must be made in connection with the agency.

In addition one of the following facts must be shown before the statement can be admitted against his principal.

"It must appear that the agent was specifically authorized to make them; or his powers must have been such as to constitute him the general representative of the principal, having the management of the entire business; or the admissions must have formed part of the

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6Ibid.
7Trego v. Huzzard, 19 Pa. 441 (1852).
10Baltimore and Ohio Employees' Relief Association v. Post, 122 Pa. 579, 15 Atl. 885 (1888); Comp v. The Carlisle Deposit Bank, 94 Pa. 409 (1880); Wilt v. Vickers, 8 Watts 227 (Pa. 1839); Haspel v. McLaughlin-Lyons, 38 Pa. Super. 334 (1909); Ralph v. Fon Dersmith, 3 Pa. Super. 618 (1897); 20 AM. JUR. 505.
11These situations are noted later in the text.
13Northwestern Mutual Life Ins. Co. v. Roth, 87 Pa. 409 (1878); Wilt v. Vickers, 8 Watts 227 (Pa. 1839); 20 AM. JUR. 505.
consideration of a contract; or, if they are non-contractual, they must have been part of the res gestae."

It is the primary purpose of this note to analyze this rule and to collect the cases which indicate how the requirements of the rule are satisfied. The discussion as to the first of these requirements will be more easily understood if it is taken up after the third and fourth.

Let us consider, first, then, the rule that statements of an agent can be admitted against the principal if they form part of the consideration of a contract. This rule has been followed for a long time in Pennsylvania. It was recognized and discussed in *Hough v. Doyle* where Mr. Justice Rogers said,

"When it is proved that one is the agent of another, whatever the agent does, or says, or writes, in the making of a contract, as agent, is admissible in evidence against the principal, because it is part of the contract which he makes for his principal, and which therefore binds him, but it is not admissible as the agent's account of what passes. For example, the declaration of a servant, employed to sell a horse, is evidence to charge the master with warranty, if made at the time of the sale; if made at any other time, the facts must be proved by the servant himself. The admissions of an agent, not made at the time of the transaction, but subsequently, are not evidence. Thus the letters of an agent to his principal, containing a narrative of the transaction, in which he had been employed are not admissible in evidence against the principal."

From this it is seen that the agent's declarations must be made by him as agent and at the time of the making of the contract. However, it is not necessary that he have actual authority to make the statements; apparent authority is sufficient. These three facts are all that need to be shown to satisfy this requirement and there is no difficulty in understanding it. Therefore, a collection of cases would seem unnecessary. However, one case may be noted as an illustration. A railroad company was selling subscriptions to its stock. The subscriptions stated that work on the road would begin as soon as sufficient funds were acquired. A prospective subscriber asked how much this would be, and a director of the company told him $150,000. He thereupon subscribed for stock. The

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154 Rawle 290 (Pa. 1833).

statement of the director was admitted against the company in a suit to compel the subscriber to pay for the stock before the sum of $150,000 was acquired.\textsuperscript{17}

The admissions of declarations of an agent into evidence as part of the res gestae presents more of a problem. To be admitted the statement must be within the scope of the agent's authority,\textsuperscript{18} but it is not necessary that he have actual authority to make it.\textsuperscript{19} Professor Wigmore maintains that the phrase "res gestae" should not be used in connection with the admitting of a remark of an agent against his principal.\textsuperscript{20} However, the requirements, as laid down by the Pennsylvania Court, as to the facts which must be present in order to admit such statements as res gestae, are the same as must be met in order to admit any declaration on this theory,\textsuperscript{21} and therefore there does not seem to be anything improper about calling such evidence res gestae. The court has not always used the same language in all the cases in discussing these requirements. In one case the remarks of the agent were excluded as they were not made "contemporaneous with, and qualifying or explaining the acts in which he was engaged as agent."\textsuperscript{22}

In another case in which the agent was involved in an accident, his declarations were refused as evidence because they were not "so immediately connected with it [the accident] as necessarily to form a part of its history."\textsuperscript{23} In McGrath \textit{v. Penna. Sugar Co.}\textsuperscript{24} the court said,

"It must appear that the statement was spontaneous and reasonably contemporaneous, though the fact that a short interval of time after the accident has elapsed does not necessarily render the declaration inadmissible. . . . If the transaction, however, is completed, the declarations subsequently made,—not part of it,—are objectionable, . . . and a mere narrative of past events cannot be received, . . . nor expressions of opinion as to the cause or effect of the accident, . . . though made immediately after the infliction of the injury."

The substance of these statements is that the declaration of an agent to be admitted as res gestae must be made as a part of a transaction in which he is acting as agent and must be made either while so acting or immediately thereafter, and the statement must not be opinion as to the cause or effect of the accident.

Let us now consider some of the cases which have applied this res gestae theory to statements of an agent. Declaration of a secretary of a school board with respect to the delivery of goods which the board had ordered and had

\textsuperscript{17}Caley \textit{v. Philadelphia and Chester County Railroad}, 80 Pa. 363 (1876).
\textsuperscript{18}Mueller's Estate, 159 Pa. 590, 28 Atl. 491 (1894).
\textsuperscript{20}Wigmore, \textit{Evidence} (2d ed. 1923) sec. 7769.
\textsuperscript{22}Fawcett \textit{v. Bigley}, 59 Pa. 41 (1869).
\textsuperscript{23}Bigley \textit{et al. v. Williams}, 80 Pa. 107 (1876).
\textsuperscript{24}282 Pa. 265, 127 Atl. 780 (1925).
directed to be delivered to the secretary were permitted to be introduced against the board as res gestae. Remarks of a borough street commissioner made while working on the borough streets were evidence against the borough. A statement by a mayor in a speech at a meeting of the city council was admitted against the city. In all of these cases the statements were made before the transaction was completed. But, as has already been noted, a declaration of an agent may be admitted though a short interval of time has elapsed. Clearly a statement made after a day or a week has passed cannot be considered part of the res gestae. There are many cases which recognize this. A remark by an agent made after a lapse of five or six hours was held inadmissible against the principal as was one made within an hour, and one about a half-hour after an accident occurred. In McGrath v. Penna. Sugar Co. the statement of the agent was made about two minutes after the accident happened. It was excluded because it was merely an opinion of the agent as to the cause of the accident, and the court did not discuss at all the nearness in time of the statement to the accident. However, the fact that it was excluded only as being opinion may indicate that the court felt that it was made soon enough after the accident to be considered part of the res gestae. The court has never set forth any definite time within which a declaration of an agent must be made if it is to be res gestae, and it does not seem that any such time could properly be established. The rule is that the statement must be part of the event, and whether or not it is such would seem to depend on the circumstances of each case rather than on the lapse of any arbitrarily established interval of time.

We are now ready to discuss the part of this rule which allows statements of an agent to be admitted against his principal if the agent was specifically authorized to make them. The only question presented here is whether the agent must have actual authority to make the statement or if it is enough if he has merely apparent authority. The use of the word “specifically” seems to clearly indicate that there must be actual authority, and the language used by the court in The Oil City Fuel and Supply Co. v. Boundy makes it even more certain. It was there said, “It will be seen that this statement of the agent was not specially

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29The Oil City Fuel and Supply Co. v. Boundy, 122 Pa. 449, 15 Atl. 865 (1888).
31Bigley et al. v. Williams, 80 Pa. 107 (1876).
32282 Pa. 253, 127 Atl. 780 (1923).
authorized; he was not instructed to go and do the negligent act." It was in this case that the rule was first promulgated. Surely the court intended that the agent should have actual authority to make the statement in order to meet this requirement. But there have been several cases since the rule was first set forth which cast some doubt as to whether actual authority must be shown. In these cases the agent had only apparent authority and the court did not expressly say that the statement was res gestae or consideration for a contract, but admitted the declarations with little or no discussion. However, in all of these cases, with a possible exception of one, the admission of the remark of the agent into evidence can be explained as being res gestae or consideration for the contract, although the court did not expressly say that this was why the statement was admitted. For example, in Baker v. Westmoreland & Cambria Gas Co., a statement made by the lineman of the company that there was no danger in connecting a certain pipe was admitted in an action against the company to recover damages for injuries resulting from making the connection, although the lineman did not have actual authority to make the statement. The court said the lineman was acting within the scope of his authority when he made the statement. It was made before the transaction was completed and was not merely his opinion as to the cause or effect of the accident. Thus, the facts which must be present if a declaration of an agent is to be admitted as res gestae were present here. The trial court permitted the statement to be introduced as res gestae, and although the appellate court did not mention this, it said that the evidence was properly admitted. Certainly this statement was part of the res gestae. Marcus v. Gimbel Brothers is another such case which can be similarly explained. The only case which the writer found in which a remark of the agent was allowed as evidence against the principal although he did not have actual authority to make it and although it did not appear to be res gestae or the consideration for a contract was Callender v. Kelly. In that case the plaintiff had deposited bonds with a trust company. Later the treasurer of the company told her that the bonds were still safe and would be given to her any time she wanted them. The statement was held to be admissible against the trust company. The court said it was competent, and relevant to the issue, as showing her dealings with the company in relation to the bonds in controversy. There was no further discussion of the question. If this case is to be considered as standing for the proposition that a statement of an agent can be admitted against his principal although nothing more is shown than that he had apparent authority to make the statement, then it should not be followed, for it is the only case of this nature and the court has

34157 Pa. 593, 27 Atl. 789 (1893).
3523 Pa. 200, 80 Atl. 75 (1911).
36190 Pa. 455, 42 Atl. 957 (1899).
frequently repeated that the agent should have specific authority if his statements are to be admitted under this part of the rule.\(^{37}\)

There now remains to be considered the rule that a statement of a general agent can be admitted against his principal. It seems clear that apparent authority would be sufficient here. This rule, when it was originally set forth in *The Oil City Fuel and Supply Co. v. Boundy*, changed the law as it had previously existed in Pennsylvania. In a case decided a few years before the court held that the statement of the superintendent of a railroad company, who had entire control and management of the road, could not be admitted against the company.\(^{38}\)

There is no difficulty in understanding how the requirements of the present rule are met. The only possible problem is what constitutes a general agent for the purpose of this rule. However, this should not cause much difficulty as the rule itself establishes the test, and it seems to be the same as the one which is applied in the substantive law of agency. In connection with the rule it is said that the agent's "powers must have been such as to constitute him the general representative of the principal having the management of the entire business."\(^{39}\) In the law of agency "a general agent is one who is authorized to do all acts connected with a particular trade, business or employment."\(^{40}\) There are no cases under this rule in which statements have been admitted in evidence as declarations of a general agent and so none can be cited as a specific example of whom the court considers to be a general agent for the purpose of this rule, but statements of a burgess have been excluded as evidence against the borough,\(^{41}\) as have remarks of a superintendent as evidence against his employer.\(^{42}\)

To summarize briefly: Declarations of an agent may be introduced into evidence against his principal if (1) the fact of agency is shown, (2) some authority to make the statement is proved, (3) it appears that the remark was made in connection with the agency, and (4) it appears either that the agent had actual authority to make the statement or that he was a general agent or that the statement was part of the consideration for a contract or that it was res gestae.

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\(^{37}\)See cases cited *supra*, note 14.


\(^{39}\)The Oil City Fuel and Supply Co. v. Boundy, 122 Pa. 449 at 460, 15 Atl. 865 (1888).

\(^{40}\)Patterson v. Van Loon, 186 Pa. 367, 40 Atl. 495 (1898).
