

1-1931

## Evidence-Res Gestae-Relevancy

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EVIDENCE—*Res Gestae*—RELEVANCY—A truck driver alleged to have been driving negligently struck the plaintiff while making a delivery for his principle. The statements of the driver made immediately after the accident were admitted by the lower court in answer to the question—“What was the first statement made by Mr. Van Strohn immediately after the collision?” The defendant moved to strike out the following answer as not a part of the *res gestae*: “Don’t call the police; we are covered by insurance; I have two deliveries to make—I am late.” The trial court refused to strike out the statements and the defendant appeals. *Held*, the answer should be stricken out. The statement does not throw light upon the facts of the collision and it does not measure up to the requirements of *res gestae*. *Red Star Yeast Co. v. Shackelford*, Appellate Court of Indiana, May 2, 1930, 171 N. E. 302.

The answer to be a part of the *res gestae* must be spontaneous, non-self-serving, and made approximately at the time of the accident. *Harrison v. U. S.*, 200 Fed. 674, 119 C. C. A. 78; *Louisville Ry. Co. v. Buck*, 116 Ind. 556, 19 N. E. 453. The least evidence of narration or fabrication will exclude the statements as a part of the *res gestae*. *Stephenson v. State*, 110 Ind. 358, 11 N. E. 360. *Chicago Division Ry. Co. v. State*, 128 Ill. 545. Does the statement of the witness in the principle case show that it is fabricated, self serving or reasoned? The statement when examined shows plainly that it is a reasoned one. It was made for the purpose of persuading the plaintiff or others near the accident to allow the driver to continue upon his deliveries without delay. It was spoken with design. *Louisville Ry. Co. v. Buck*, 116 Ind. 556, 19 N. E. 453. And should therefore be stricken. *People v. Lawrence*, 143 Cal. 148, 76 Pac. 893; *People v. Williams*, 127 Calif. 216, 59 Pac. 581.

But the action before the court was one for damages alleged to have arisen out of the negligent acts of defendant’s agent, who made this statement in question. Can the assertions of the agent be said to aid in deter-

mining whether the agent was negligent; did it illucidate the point in controversy? It appears that the statement does not aid in the determination of the facts of the collision. Hence, the statements are irrelevant in determining the point in controversy in this suit. *Gose v. True*, 197 Iowa 1094; 198 N. W. 528; *Home Insurance Co. of N. Y. City v. Marple*, 1 Ind. App. 411, 27 N. E. 633, 635; *Missouri Pacific Ry. Co. and I. G. N. Ry. Co. v. T. B. Collier*, 62 Tex. 318; *Ward v. Linnerman*, 201 Ky. 131, 255 S. W. 1036. Statements which do not illucidate or explain the point in controversy are irrevelent and inadmissable even if a part of the *res gestae*. *Lund v. Inhabitants of Tyngsborough*, 9 Cush (Mass.) 36.

J. B. E.