

received as the declarations or admissions of the principal, constituting a part of the *res gestæ*, and as binding upon him, as if made by himself.

But such declarations, made by an agent *after* the transaction, though in relation to it, constitute no part of the *res gestæ*, and are not binding on the principal, as evidence against him. *Franklin Bank vs Steam Company*, 11, *G. & J.*, 28.

The rule, therefore, requires, before the declarations of an agent can be given in evidence against his principal, that it shall appear, they were made at the *time* of, and *accompanying* the transaction enquired of; or otherwise, they will come within the general rule, excluding hearsay evidence; being no part of the transaction, but only statements respecting it, and must if material, be proved by the testimony of the agent and not by proof of his declarations.

The attempt in this case is to prove the situation of certain trust estates; held by a trustee, in trust, for Mrs. Williams, the accounts of which, it is said, were kept in the books of her husband.

It is not shown *when* the entries were made, or the transactions, the record of which is presumed to be in those books, took place.

The books called for are supposed to contain entries and accounts, embracing many years and numerous transactions, and these entries, it is said, are evidence against the wife, though it has not been, nor can it be shown, that they were made under circumstances which constituted them a part of the *res gestæ*; that is, a part of the transaction which they record, and if not, they are to be treated as mere hearsay evidence, and of course to be excluded.

It is, I think, impossible to contend with success, that if the relation of husband and wife did not subsist between Mr. and Mrs. Williams, and viewing them merely as occupying the relation of principal and agent, that the books of the latter could be received in evidence against the former; and my conviction is very strong, that the existence of the former relation furnishes no ground for a relaxation of the rule which confines the admissible declarations of an agent within the limits which have been mentioned. The receipt of an agent