

à l'avocat par les clients qui le chargent de leur défense, quand ils ont le même intérêt."

Comment le juge Monk a-t-il pu en face de ces autorités décider que l'avocat n'avait pas d'action solidaire, dans une cause de *Doutre v. Dempsey*, 9 L. C. J., p. 176? Cette décision inexplicable ne me paraît appuyée sur aucune bonne raison.

Action maintenue avec dépens.

F. X. Frenette, pour le demandeur.

M. Bouchard, pour le défendeur.

(C. A.)

RHODE ISLAND SUPREME COURT.

June 17, 1889.

STATE V. MURPHY.

Criminal law—Dying declarations—Res Gestæ.

On the trial of an indictment for murder, two statements made by the deceased, describing his assailant, were admitted in evidence. One was made just after the murderous assault to a man who came at the victim's call. One was made ten or fifteen minutes later to a friend who was summoned at the victim's request. Held, properly received.

Exceptions to the Court of Common Pleas.

STINESS, J. The bill of exceptions shows that upon the trial of an indictment for murder, two statements of the deceased were admitted in evidence, to the effect that he had been assaulted and robbed by two men whom he described. One of these statements was made immediately after the assault, and the other from ten to fifteen minutes later. When first seen by the witness Sweet, the deceased stood at the door of his shop, beckoning to Sweet, who was across the street, crying out: "Come over; I want you right away." He then sank back into a chair, weak and exhausted, his head bleeding, saying he had been robbed and about killed by two men who had not been out of there half a minute. He asked Sweet to call assistance, naming Mr. Osgood, whose place was near by. Sweet talked with the deceased a few minutes, perhaps six or eight; then went to Osgood, returning with him three or four minutes afterward, when the deceased made a similar statement to Osgood.

These statements were admitted against

the defendant's objection as a part of the *res gestæ*. The question is, was the admission of this testimony erroneous?

The admissibility of this kind of testimony has been much discussed, but it is now settled beyond question that, to some extent at least, statements immediately following and connected with a transaction, which otherwise would be mere hearsay, are admissible as a part of the transaction itself. The principle upon which the admission of such evidence rests, is that declarations after an act may, nevertheless, spring so naturally and involuntarily from the thing done as to reveal its character, and thus belong to it and be a part of it, also to rebut all inference of calculation in making the declarations, and thus to entitle them to credit and weight, as evidence of the transaction itself. So numerous have been the adjudications upon this point, that the difficulty does not now lie in ascertaining whether testimony of this kind is admissible, but in determining to what extent and under what circumstances it is admissible.

The most notable case in limiting its scope is *Reg. v. Bedingfield*, 14 Cox Crim. Law Cas. 342, in which Cockburn, C. J., excluded all testimony of declarations after the act done. This ruling was much criticised and led to a vigorous discussion of the subject in public prints; in the course of which the lord chief justice issued a pamphlet in defence of his ruling. An extended quotation from this pamphlet is given in *People v. Ah Lee*, 60 Cal. 85, which we take to be accurate. In the words quoted, 'the chief justice so far qualifies what appears to be the doctrine of the case as to concede the admissibility of statements by the deceased, after the act done, while he is fleeing, under the apprehension of danger, and asking for assistance and protection, even though they be made in the absence of the accused. He styles such flight and appeal the "constructively continuing" act of the wrong-doer, and hence a part of the *res gestæ*. Without stopping to examine the nicety of the discrimination here made, it is enough to note that, even in the opinion of Lord Cockburn, who is considered to have taken extreme ground, statements made by the deceased are not neces-