EVIDENCE—RES GESTAE—PERMISSIBLE PERIOD COVERED—[Missouri].—Plaintiff's husband went to Chicago in the fall of 1925 to seek work. Plaintiff received letters from him for about a year thereafter but not since. Having made diligent efforts to locate him at his last known address, she demanded payment of his life insurance in 1928 after a hired investigator had obtained "proofs of death." In an action on the policy, she related a conversation with a cousin in Chicago, who told her that deceased had been killed in an auto accident, and with deceased's landlord who told her his roomer had died. M testified that he went to deceased's Chicago address and was told that deceased had died. B testified that she examined the records of the Chicago Bureau of Missing Persons and produced a certified copy of the death certificate of an unknown person similar to insured. The defense, that the policy lapsed before the seven year statutory presumption of death arose, presented the issue whether the evidence submitted was admissible to establish that insured died prior to the lapse of the policy in 1931. The admission of plaintiff's testimony was affirmed by the Kansas City Court of Appeals on the theory that the steps in the two year search for deceased constituted *res gestae*.[1] On certiorari for alleged conflict of opinion with controlling decisions of the Supreme Court, *held* for the insurer, the Supreme Court being unable to "discover the presence of circumstances * * * such as would make the statements of [M and B] admissible as part of the *res gestae*."[2]

The Supreme Court refused to accede to the Court of Appeals' conclusion that the "tendency of recent adjudication is to extend rather than to narrow the scope of the introduction of evidence as part of the *res gestae*," and that "time is not necessarily a controlling element of principle in the matter of *res gestae*."[3] It has been repeatedly held that the ultimate test of admissibility of statements as *res gestae* is spontaneity and logical relation to the main event demonstrated by their utterance at a time so near as to preclude the idea of deliberation and fabrication.[4] Where a boy fell under a street car, statements made at the scene from five to eight minutes after the accident were ruled admissible; while statements made from fifteen to twenty minutes after the same accident and after the declarant had been removed to a house about seventy-five feet away were held inadmissible.[5]

1. Bailey v. Metropolitan Life Ins. Co. (Mo. App. 1938) 115 S. W. (2d) 151.

2. State ex rel. Metropolitan Life Ins. Co. v. Shain (Mo. 1938) 121 S. W. (2d) 789.

3. Bailey v. Metropolitan Life Ins. Co. (Mo. App. 1938) 115 S. W. (2d) 151, 157.

4. Landau v. Travelers' Ins. Co. (1924) 305 Mo. 563, 267 S. W. 367; National Life & Accident Ins. Co. v. Follett (Tenn. 1935) 80 S. W. (2d) 99; Beunette v. Hader (1935) 337 Mo. 977, 87 S. W. (2d) 413; Woods v. Southern Ry. Co. (Mo. 1934) 73 S. W. (2d) 374; Slayback Van Order Co. v. Eiben (1935) 115 N. J. L. 497, 177 Atl. 671; Roh v. Opocensky (1934) 126 Neb. 518, 253 N. W. 680; Tennis v. Interstate Consolidated Rapid Transit Ry. (1891) 45 Kan. 503, 25 Pac. 876; 3 Wigmore, *Evidence* (2d ed. 1923) 744-5, sec. 1750 (b).

5. Leahey v. Cass Ave. & Fair Grounds Ry. (1888) 97 Mo. 165, 10 S. W. 58.

A brakeman's statements made four or five minutes after the accident, in answer to the questions of persons who were rendering first aid, as to how the accident happened, have been held too remote in point of time to be spontaneous.[6] But in an action for accidental death benefits under a life policy, statements of the declarant that "he fell" were held admissible when made from one to nine minutes after the occurrence.[7] A statement of a tenant who was burned in a gas explosion, made five minutes after the explosion, was held admissible,[8] as was an insured's statement that he had been "hijacked," less than one hour after he had left a train.[9] Statements of a party injured at noon, made to her physician between one and four hours later and after declarant had been removed to her home, were held admissible.[10] But a statement made fifteen minutes after an auto accident but immediately after declarant left the auto were held inadmissible as not spontaneous.[11] Where the injured person was unconscious from the time of the accident until immediately before making the statement one and one-half hours later, the statement was held admissible.[12] Statements of deceased to his physician, made from several hours to three days after the accident, have been held inadmissible as not spontaneous,[13] and so have statements made after declarant walked three-quarters of a mile from the scene of a killing.[14] An engineer's statement two to three hours after the accident, tending to show the engineer to have been negligent, have been deemed inadmissible against his employer,[15] as also have replies of an engineer, whose engine had just killed a trespasser, to questions asked five minutes later as to the accident.[16] Even when complicated by the element of the speaker's intermediate unconsciousness, the *res gestae* exception to the hearsay rule is seen to involve at most a matter of minutes or hours, with even more stringent requirements where, as here, no such special circumstance appears. The Supreme Court in holding the evidence inadmissible has soundly declined to commit Missouri to a rule which would permit the unprecedented lapse of two years and which would seem calculated to divorce the *res gestae* rule completely from its basis in the assumed verity of spontaneous unpremeditated utterance.

L. E. M.

6. Woods v. Southern Ry. Co. (Mo. 1934) 73 S. W. (2d) 374.
7. Sullivan v. Metropolitan Life Ins. Co. (1934) 96 Mont. 254, 29 P. (2d) 1046.
8. Public Utilities Corp. of Arkansas v. Cordell (1931) 184 Ark. 878, 43 S. W. (2d) 746.
9. Standard Acc. Ins. Co. v. Baker (1930) 145 Okla. 100, 291 Pac. 962.
10. Harriman v. Stowe (1874) 57 Mo. 93.
11. Holland v. Owners' Automobile Ins. Co. (1934) 149 Miss. 543, 115 So. 782.
12. Demeter v. Rosenberg (1934) 114 N. J. L. 55, 175 Atl. 621.
13. Globe Accident Ins. Co. v. Gerisch (1896) 163 Ill. 625, 45 N. E. 563.
14. Gardner v. People (1841) 4 Ill. 83.
15. Walker v. O'Connell (1898) 59 Kan. 306, 52 Pac. 894.
16. Tennis v. Interstate Consolidated Rapid Transit Ry. (1891) 45 Kan. 503, 25 Pac. 876.