Admissions "Against Interest" in Ohio

It has long been a requirement for the admissibility of the statements of a witness submitted to a court for purposes of proving the truth of the matter asserted therein that they be based on his own knowledge of events. This is the rule against the admission of hearsay evidence. In general, the reasons advanced for this rule are that hearsay testimony is really that of a person not on the witness stand and thus not under oath, not available for cross-examination, not confronted by the person against whom he is testifying, and unavailable for observation by the jury as to his demeanor. The rule, however, has been limited by many exceptions.[1] Generally, the exceptions provide that extra-judicial statements may not be related in court unless adequate reason for the unavailability of the declarant as a witness exists and the statement itself is attended by some circumstantial guaranty of trustworthiness.[2] But one well-established rule of evidence dictates that out-of-court statements of a party to an action may be introduced as evidence against him.[3]

Theories of Admission

As to the basis in reason of this rule and thus as to its scope and effect, the authorities are in conflict.[4] Professor Greenleaf indicates that the party-declarant by making the statement has waived not only any objection he might have to its admissibility as evidence, but also the necessity of proof of the fact asserted.[5] He states as follows:

> "Such evidence seems, therefore, more properly admissible as a substitute for the ordinary and legal proof, either in virtue of the direct consent and waiver of the party, as in the case of explicit and solemn admissions; or on grounds of public policy and convenience, as in the case of those implied from assumed character, asquiescence or conduct."

This theory of the waiver of the requirement of proof of the fact admitted has not been applied by the courts. Rather, the declara-

---

[1] 5 Wigmore, Evidence §1361 ff. (3d ed. 1940); 3 Jones, Commentaries on Evidence §1075 (2d ed. 1926).

[2] 5 *id.* §1420 ff.

[3] 4 Wigmore, Evidence §§1048, 1049 (3d ed. 1940); 2 Jones, Commentaries on Evidence §893 ff. (2d ed. 1926); 1 Greenleaf, Evidence §169 (13th ed. 1876).

[4] See Morgan, *Admission as an Exception to the Hearsay Rule*, 30 Yale L. Journal, 355 (1921).

[5] 1 Greenleaf, *supra*, note 3.

tion is usually treated merely as evidence of the fact asserted.[6] The author does not point to any circumstance of trustworthiness justifying such use of an admission. Nor does he indicate a theory of admissibility in the event that the statement is treated merely as competent evidence. Another view is that admissions are received merely to impeach the claim of the opponent in the action,[7] but not to prove the truth of the matter asserted in the statement, thus avoiding any heresay problem. This theory was advanced by Dean Wigmore in one of his earlier editions.[8] However, the courts also have failed to apply this reasoning.[9] Further, the courts have consistently refused to require the laying of a foundation for the introduction of admissions.[10]

A third theory submits that the out of court declarations are not received to prove the truth of the facts asserted therein, but as circumstantial evidence to show the state of mind of the party at a different time. Once the former belief of the declarant is established the facts which must have led to that belief are inferred. These facts, of course, are substantially the ones asserted in the declarant's statement. By this process, the prohibition of the hearsay rule has been avoided, but the same result is reached as if an exception had been created to it.[11] Unlike the earlier two views, this theory reaches results consistent with those of the judicial decisions. However, none of the three have been consistently applied by the courts. Thus it would seem that out of court declarations by a party to a suit are admissible as evidence of the truth of the matter asserted therein, and not as a judicial admission of a

---

[6] 4 WIGMORE, *supra*, note 3, §1048.

[7] This is to be distinguished from the discrediting of a witness by his own prior contradictory statements.

[8] 1 WIGMORE, EVIDENCE §1048 (1st ed. 1904).

[9] DeGroodt v. Skrbina, 111 Ohio St. 108, 144 N.E. 601, 603 (1924); Warder v. Fisher, 48 Wis. 338, 4 N.W. 470 (1880) where the court stated: ". . . When the witness who has made the contradictory statements out of court is also a party to the action, such unsworn statements are received, not only for the purpose of attacking the credibility of the sworn statements of the party, but for the purpose of establishing the truth of the unsworn contradictory statements themselves"; McManus v. Nichols-Chisholm Lumber Co., 105 Minn. 144, 117 N.E. 223 (1908) where the court said: "All admissions by a party, made outside the record, if relevant to the issue, are admissible in evidence, and such evidence has a two-fold effect. It tends . . . to prove the fact in issue to which the admissions relate, and where they contradict the testimony of the party, the evidence tends to discredit him; or in other words, such evidence is admissible to prove the fact admitted and to discredit the party."

[10] DeGroodt v. Skrbina, note 9, *supra;* Conrad v. Kerby, 66 Ohio App. 359, 31 N.E.2d 168 (1940); McManus v. Nichols-Chisholm Lumber Co., note 9, *supra.*

[11] See Note 34 Harv. L. Rev. 205 (1920).

fact or as impeaching evidence. These statements then would seem to fall within the scope of the hearsay rule.

The majority of American jurisdictions have allowed the introduction of admissions without the requirement of the customary elements for the existence of the average exception to the hearsay rule. Thus, it is not required that the declaration state facts contrary to the declarant's interest at the time of the statement[12], nor that the utterance be spontaneous or excited. Why then are admissions an acceptable form of testimony, especially with the declarant usually available as a witness?

It would seem that the circumstantial guarantee of trustworthiness and the element of unavailability of the declarant are not needed in order to override any hearsay objections to the evidence, because such objections do not seem to be present in the case of admissions. Where B's statement of a few months ago is related by a witness as evidence against B in an action, the objection of want of cross-examination does not seem important. B knowing all the facts surrounding the making of the declaration is in an excellent position to question the witness, and he may take the stand himself to explain, deny, or qualify the related statement. This opportunity now afforded B also solves the problem of the jury observing his demeanor. Further, it seems clear that B should not be heard to object to a lack of confrontation or that he was not under oath when he made the statements. As the hearsay objections are absent, it seems valid to say that admissions of a party to the suit are admissible because the hearsay rule is satisfied.[13] In reality, this reasoning would seem to be the basis of the admissibility of admissions.

A Source of Confusion

The admissions of a party-opponent are to be distinguished from the exception to the hearsay rule for declarations against interest.[14] This rule allows testimony as to the declarations of a deceased or insane declarant who is not a party nor in privity with a party to the suit. These declarations must have been characterized by features disserving to the declarant's interest which out-

---

12 4 Wigmore, *supra*, note 3, §1049; State v. Anderson, 10 Or. 448, 454 (1882);

"But the admissibility of a party's own previous statements or declarations in respect to the subject in controversy, or evidence against him, does not in any manner depend upon the question whether they were for or against his interest at the time they were made, or afterwards. The opposite party has a right to introduce them, if relevant and voluntarily made . . . ."

13 This is substantially the position taken by Dean Wigmore in his latest work. See 4 Wigmore, *supra*, note 3, §1048.

14 4 *id.* §1049, 1455 ff.; 2 Jones, *supra*, note 3, §1164 ff.

weight those self-serving.[15] It is usually required that the declarant have no probable motive to falsify and have competent or peculiar knowledge of the facts involved.[16] Obviously, this is a typical exception to the hearsay rule based on attending circumstances of reliability[17] and a necessity created by the unavailability of the declarant.[18]

However, some courts have confused the two doctrines by stating that the admissions of a party-opponent are admissible because they were against the party's interest when he made them.[19] Extrajudicial declarations of a party would seem to satisfy the main hearsay objections as above explained regardless of their disserving or self-serving nature.[20] Where in response to a demand by A for the payment of a debt of one hundred dollars B asserts the debt is only fifty dollars, B has made a self-serving declaration. Yet in a later action by A for the fifty dollars, B's statement is competent as an admission. The self-serving feature should affect the credibility of the evidence, as the statement would seem to be more reliable if the declarant had been relating facts contrary to his pecuniary or

---

[15] 5 WIGMORE, *supra*, note 1, §1464 and cases cited.

[16] *Ibid.* See also State v. Campbell, 21 Ohio Dec. 851, 11 Ohio N.P. (N.S.) 673, *aff'd.* 86 Ohio St. 335, 99 N.E. 1133 (1911) where the court quoted, and approved authority as follows: "'Verbal declarations are received in evidence in an action between third parties, when accompanied by the following prerequisites: 1. The declarant must be dead; 2. The declaration must have been against the pecuniary interest of the declarant at the time it was made; 3. The declaration must be of a fact in relation to a matter concerning which the declarant was immediately and personally cognizable; and 4. The court should be satisfied that the declarant had no probable motive to falsify the fact declared.'"

[17] 5 *id.* §147; 1 Greenleaf, Evidence §148 (13th ed. 1876) where it is stated: "The *ground* upon which this evidence is received, is the *extreme improbability of its falsehood.* The regard which men usually pay to their own interest is deemed a sufficient security, both that the declarations were not made under any mistake of fact, or want of information on the part of the declarant, if he had the requisite means of knowledge, and that the matter declared is true."

[18] See Morgan, *Declarations against Interest,* 5 Vand. L. Rev. 451 (1952).

[19] Baird's Estate, 193 Cal. 225, 223 Pac. 974 (1924); see discussion citing note 23, *infra.*

[20] This is said to be the rule in all jurisdictions. 4 WIGMORE, *supra*, note 3, §1048 stating ". . . no Court ever yet excluded an opponent's admission because of such a limitation"; State v. Willis, 71 Conn. 293, 41 Atl. 820 (1898): "Admissions are not admitted as testimony of the declarant in respect to any facts in issue; . . . They are admitted because conduct of a party to the proceeding, in respect to the matter in dispute, whether by acts, speech, or writing, which is clearly inconsistent with the truth of his contention, is a fact relevant to the issue."

proprietary interest.[21] But it is hard to see how the matter of interest affects the existence of the aforementioned hearsay objections. In the case of the declarations against interest exception, the disserving character of the statement aids in giving it sufficient probative value to override any objectionable features, but the traditional hearsay characteristics would seem to remain.

Early Confusion in Ohio

Certain early Ohio cases apparently failed to recognize the existence of the doctrine of admissions and tried to place the statements of a party-opponent within the framework of the exception for declarations against interest.[22] This is illustrated by *Webster v. Paul.*[23] There Paul sought recovery in an action in contract alleging that Webster and Hubbard were partners. Hubbard claiming not to be jointly liable attempted to prove statements of Webster as to the dissolution of the partnership. In holding the evidence inadmissible, the court said:

> "There is a rule which allows declarations against the interest of the persons making them, and for that rule the reason is given. 1 Greenl. Ev., sec. 147. But that rule requires the declarant to be deceased. Here he is living, is a party to the record, and, as the law now stands, might have been examined as a witness..."

This confusion is also illustrated by the court's citation of Greenleaf's section on the declaration against interest exception.[24] Yet the doctrine of admissions would clearly be applicable in this case. In *Thompson v. Thompson,*[25] the court said by dictum that the basis for the competency of admissions is that they are against the interest of the party when made. In support of this assertion, the court again quoted Greenleaf's treatise.[26] A later Ohio case, *Rapp v. Becker,*[27] involving an action to set aside a will, expressly held that the out of court statements of a party were inadmissible. The court said that the declarations were made during the lifetime of the testator, and that they were not against the declarant's interest as she could have had no interest under the will at that time.

---

[21] 4 Wigmore, *supra,* note 3, §1048: "However, any attempt to stress this distinction tends to vain logical quibbles, and should not be made the basis of any instruction on the weight of the evidence."

[22] Richardson v. Hughes, Wright, 648 (1835); Webster v. Paul, 10 Ohio St. 531 (1860); also Samuel Wymond Cooperage Co. v. Thompson, 8 Ohio N.P. 347 (1900), *aff'd* 64 Ohio St. 589, 61 N.E. 1151 (1901).

[23] 10 Ohio St. 531, 536 (1860).

[24] See note 17, *supra.*

[25] 13 Ohio St. 356 (1862); see also Dunn v. Cronise, 9 Ohio 82 (1839).

[26] See note 17, *supra.*

[27] 26 Ohio Cir. Ct. 321 (1904).

LATER OHIO CASES

With these cases among the early Ohio precedents, later statements by the courts concerning a party's admissions *against interest* are perhaps more understandable.[28] In *Goz v. Tenney*,[29] the plaintiff offered defendant's report to his insurance company, and in passing upon its admissibility, the supreme court made the following statement:

> "... any statement against interest is always competent to be shown; it matters not to whom the statement is made. The statement... to an insurance company embodying such declarations against interest is not an exception to this rule..."

In *DeGroodt v. Skrbina*,[30] the court spoke of certain admissible evidence as an "admission against interest." In ruling upon the admissibility of statements of a predecessor in interest, the court in *Latham v. Clark*[31] stated as follows:

> "... where a declarant was in a position to have knowledge of the facts, and such admission is against the interest of the declarant, as where it may be construed to amount to an acknowledgement of an indebtedness to some other person..."

In *Abbott v. Cocke*,[32] the court of appeals made the following statement:

> "The members of this court do not understand that in Ohio there exists any degree of uncertainty concerning the admissibility of a declaration against interest made by the defendant..."

The extra-judicial statements involved in all of these cases were to the pecuniary or proprietary disadvantage of the declarant at the time made, and were admitted in evidence. Thus, none of these cases constitutes a direct holding that a statement *must* be against the maker's pecuniary or proprietary interest. Rather, these statements are at most dicta to the effect that an attempt to introduce an opponent's declaration which is self-serving in nature would fail. Possibly, the use of the words, "against interest," in many of these cases, is with reference to the problem of relevancy. For the

---

[28] Goz v. Tenney, 104 Ohio St. 500, 136 N.E. 215 (1922); Smith v. The Cleveland Ry. Co., 30 Ohio App. 21, 164 N.E. 59 (1928); DeGroodt v. Skrbina, 111 Ohio St. 108, 144 N.E. 601 (1924); McNaughton v. Presbyterian Church, 35 Ohio App. 443, 172 N.E. 561 (1930); Latham v. Clark, 120 Ohio St. 559, 146 N.E. 685 (1925); Taplin-Rice-Clerkin Co. v. McMahen, 31 Ohio App. 365, 166 N.E. 695 (1929); Abbott v. Cocke, 29 Ohio L. Abs. 504 (1938), (*Motion to certify record overruled*, Oct. 13, 1938); 17 O. Jur., Evidence §232: ". . . the rule is well established that admissions and declarations against interest may be given in evidence against the declarant . . ."; METZLER, TRIAL EVIDENCE §177 (1920).

[29] *Ibid.*

[30] *Ibid.*

[31] *Ibid.*

[32] *Ibid.*

statements must exhibit the quality of inconsistency with the facts now asserted by the declarant in the case at bar.[33]

A survey of the recent Ohio cases leaves the writer with an impression that the court's use of the language, "admissions against interest," may be only of vestigal significance. Some Ohio cases have also applied the doctrine of admissions to statements against the interest of the party when he made them, but without an inclusion in the ruling of the words "against interest."[34] The phrase may have been carried over from the older cases, in which the confusion with the declarations against interest exception persisted.

Further, if seems noteworthy that in none of these Ohio cases was the question ever raised and discussed as to whether an extrajudicial admission actually was against the declarant's interest when made. Yet in some it would seem to be arguable.[35] In *Stribley v. Welz*,[36] the plaintiff in an action for a breach of promise to marry introduced as admissions love letters written to her by the defendant. The case does not reveal the content of the letters, but it is reasonable to assume that the defendant's statements were self-serving when written. However, their admissibility was not questioned. In the *McMahen* case,[37] where the defendant in negotiating the sale of a heating unit promised a fifty degree temperature in the plaintiff's garage, the court held the statements competent as admissions against interest. However, a self-serving feature seems to be present. Often people are inclined to distrust a salesman because his statements are said to be to his interest. Dean Wigmore indicates that in a sales situation the false statement that a specific act had been accomplished would be to the salesman's interest.[38] In *Wade v. State*,[39] the defendant's earlier statements to a grand jury were admitted against him. Although it clearly appeared to the court that these statements were induced by a hope of immunity from prosecution, the question of the interest of the declarant

---

[33] 4 WIGMORE, EVIDENCE §1048 (3d ed. 1940).

[34] Satchell v. Doram, 4 Ohio St. 542 (1855); Edgar v. Richardson, 33 Ohio St. 581 (1878); Freas v. Sullivan, 130 Ohio St. 486, 200 N.E. 639 (1936) where syllabus eight reads as follows: "Admissions of alleged tort-feasor, made two weeks after a collision relative to his individual responsibility in causing such a collision, are competent against such tort-feasor."

[35] Stribley v. Welz, 8 Ohio Cir. Ct. 571 (1894); Taplin-Rice-Clerkin Co. v. McMahen, note 28, *supra;* Wade v. State, 15 Ohio Cir. Dec. 279, 2 Ohio Cir. Ct., N. S., 189 (1903), *aff'd.* 70 Ohio St. 463, 72 N.E. 1166 (1904); McDevitt v. Morrow, 57 Ohio L. Abs. 281, 94 N.E.2d 2 (1952).

[36] 8 Ohio Cir. Ct. 571 (1894).

[37] See note 28, *supra.*

[38] 4 WIGMORE, *supra,* note 33, §1048 n. 4.

[39] See note 35, *supra.*

in making them was not considered. In *McDevitt v. Morrow*,[40] the allegations in a petition to cancel a deed, that the deed had been executed and delivered, constituted an "admission against interest" to prove the delivery of the deed. Although allegations in a pleading are usually self-serving, this evidence was admitted without objection. Perhaps this question of the declarant's interest at the time he made the statement did not concern the court because the use of the terminology, "against interest," was solely with regard to the matter of relevacy.[41]

If it can be said, as the older Ohio cases indicated, that an admission of a party-opponent must be against his interest at the time he made the statement as is required by the declarations against interest exception to the hearsay rule,[42] then it would seem that it is solely the declarant's pecuniary or proprietary interest that is involved.[43] Yet it has been held in Ohio that the admissions of a defendant are admissible against him regarding transactions that affect only his liability to a criminal penalty.[44] In *State v. Mueller*,[45] conversations with a defendant at his office were competent as admissions that he was illegally practicing medicine without a license in violation of OHIO REV. CODE § 4731.41. In *State v. Hirsch*[46] involving a prosecution for occupying a room with an apparatus for recording wagers in violation of OHIO REV. CODE § 2915.09 statements of the defendant to a police officer were admitted in evidence. These cases are authority for the proposition that the Ohio courts have abandoned the conception that the requirement as to the interest of the declarant at the time he made the statement is the same for admissions as for declarations against interest. It could be said that these courts have taken the position that the statements are also admissible if they are against the opponent's penal interest when made. This seems unlikely, however, in view of the fact that the English and American courts have consistently imposed the requirement of pecuniary and proprietary interest upon statements admissible because of their disserving features.[47]

Another line of cases has developed in Ohio in which the ques-

---

[40] *Ibid.*

[41] See discussion citing note 33, *supra.*

[42] See discussion citing note 22, *supra.*

[43] See note 16, *supra,* and note 60, *infra.*

[44] State v. Mueller, 41 Ohio App. 102, 179 N.E. 503 (1931), *error dismissed* 124 Ohio St. 655, 181 N.E. 880 (1931); State v. Hirsch, 23 Ohio Op. 128, 8 Ohio Supp. 128 (1948).

[45] See note 44, *supra.*

[46] *Ibid.*

[47] 5 WIGMORE, *supra,* note 1, §1476; Neighbors v. State, 121 Ohio St. 525, 169 N.E. 839 (1930); Donnely v. United States, 228 U.S. 243 (1913). For a contrary holding, see Sutter v. Easterly, 354 Mo. 282, 189 S.W.2d 284 (1945).

tion of the true nature of admissions was directly presented. The introduction of the admissions was claimed to be objectionable because the declarant had not been questioned in court as to the statement. These courts distinguished between the admissions doctrine and the introduction of a witness's prior inconsistent statements which requires the laying of a foundation. In stating the basis for the competency of admissions, they made no reference to any necessity that statements be against the maker's interest. In *DeGroodt v. Skrbina*,[48] the court quoted 2 JONES, COMMENTARIES ON EVIDENCE § 236:

> " 'It has always been competent to show admissions made by the parties to the record whether the admissions were made while testifying as a witness, or were made upon the streets. Such statements are evidence for the adverse party. If the testimony is of such a character as to constitute an admission of the party, it is not necessary to lay the foundation for its reception... The reason for the admission of such statements is both clear and compelling. They are admitted because conduct of a party to the proceeding, in respect to the matter in dispute, whether by acts, speech, or writing, which is clearly inconsistent with the truth of his contention, is a fact revelant to the issue...' "

Rather, this language of the court is consistent with the orthodox explanation of the doctrine.[49]

THE SITUATION IN OTHER JURISDICTIONS

The use of the phrase, "admissions against interest," is common to several states besides Ohio.[50] However, no case has been

---

[48] See note 28, *supra*.

[49] See discussion citing note 13, *supra*.

[50] Togni v. Slocomb, 12 Cal. App. 733, 108 Pac. 723 (1910): "This was clearly admissible as an admission against interest, and as indicative of appellant's understanding of what property he was purchasing"; Donoghue v. Hayden, 38 Cal. App. 550, 208 Pac. 1007, 1008 (1922): "It was voluntarily made and it constituted an admission against interest"; 10 Cal. Jur., Evidence §307; La Sell v. Tri-States Theatre Corporation, 235 Iowa 492, 17 N.W.2d. 89, 94 (1945); Northrup v. Colter, 150 Mo. App. 639, 131 S.W. 364, 366 (1910); "...the oral testimony as to plaintiff's advising Capt. Alt to accept the proposition neither tended to prove an admission against interest, nor that he had accepted a proposition which was never made"; Grodsky v. Consolidated Bag Co., 324 Mo. 1067, 26 S.W.2d 618, 620 (1930): "There is a clear distinction as to admissibility of declarations by a witness not a party to the action . . . , and declarations against interest by a party to the action"; Gentry v. Benge, 129 Neb. 493, 261 N.W. 854, 855 (1935): "It is a well-settled rule that admissions of a party against interest made in court or out of court . . . are admissible in evidence against such party"; Kellner v. Whaley, 148 Neb. 259, 27 N.W.2d 183, 189 (1947): "Any statement made by or attributable to a party to an action which constitutes an admission against his interest and tends to establish or disprove any material fact in the case is competent against him"; Kiener v. Steinfeld, 137 N.J.L. 679, 61 A.2d 305,

found which rejected an opponent's extra-judicial statement because it was not against his interest at the time it was made.[51] Some of the decisions of these jurisdictions have indicated that the reason prompting the use of words "against interest" may be other than to require that the statement be made against the opponent's interest.[52] In the *Bintz* case,[53] the New York court indicated that the admission need not be made against the party's interest. Yet other New York cases contain language similar to that of the Ohio cases.[54] In the *Pansini* case,[55] the California court used language indicating that the words, "against interest," may relate only to the problem of relevancy mentioned earlier.[56]

> "... as shown by the cases cited by appellants on this point, in order to bring a statement or declaration within the operation of the rule contended for it must be shown that the statement or declaration was signed or made by the party *against whose interest it is sought to have it apply;* and that is not the situation here presented." (Emphasis supplied).

In the Hoeffner case,[57] the Missouri court stated as follows:

> "... an admission against interest comprises any statement of a party inconsistent with his claim in an action and therefore amounting to proof against him..."

---

306 (1949): "There can be no doubt of the admissibility in evidence of admissions against interest"; Reed v. McCord, 18 App. Div. 381, 46 N.Y.S. 407 (1897) *aff'd* in 160 N.Y. 330, 54 N.E. 737 (1897): "It may be assumed that, at the time of the inquest, he acted as an employer usually would act . . . , and that this admission against his interest was not without some foundation of information"; Jackson v. Dickman, 256 App. Div. 925, 9 N.Y.S.2d 688 (1939) *reargument denied* 256 App. Div. 1003, 11 N.Y.S.2d 1003 (1939): "It is not a prerequisite to the receipt of an admission made by a party against his interest that such an admission be under oath"; Stanford v. Holloway, 25 Tenn. App. 379, 157 S.W.2d 864, 870 (1942): "The statement . . . should not be taken as an admission against interest"; Stewart v. Miller, —— Tex. Civ. App. ——, 271 S.W. 311, 316 (1925): ". . . his subsequent acts and declarations were not competent as admissions against interest"; American Nat. Ins. Co. v. Villegas, —— Tex. Civ. App. ——, 32 S.W.2d 1109, 1111 (1930): "The evidence was admissible as admissions against interest"; 17 Tex. Jur., Evidence §224. This collection of cases is by no means comprehensive, but is merely intended as an example of the situation in some other jurisdictions.

[51] 4 WIGMORE, *supra*, note 28, §1048.

[52] Bintz v. Mid City Co., 223 App. Div. 533, 229 N.Y.S. 390 (1928); Pansini v. Weber, 53 Cal. App. 2d 1, 127 P. 2d 288 (1942); Hoeffner v. Western Leather Clothing Co., ——— Mo. App. ———, 161 S.W.2d 722 (1942); Sobrowolski v. Glowacki, 136 N.J.L. 167, 54 A.2d 758 (1948); Dvorak v. Kucera, 130 Neb. 34; 264 N.W. 737 (1936).

[53] See note 52, *supra*.

[54] See note 50, *supra*.

[55] See note 52, *supra*.

[56] See discussion citing note 33, *supra*.

[57] See note 52, *supra*.

In the *Sobrowolski* case[58] the New Jersey court made the following statement:

> "admissions against interest are receivable against the party-opponent because they have the quality of inconsistency with his present claim, *i.e.*, with the facts affirmed in the pleadings or in the testimony...."

In the *Dvorak* case,[59] the Nebraska court indicated as follows:

> "...The evidence offered was in the nature of admissions, but such are ordinarily received only when against the interest of the party making them, not as evidence in his favor."

These definitions indicate that admission is competent as evidence because it is against the party's interest at the time of the trial. They do not indicate that the statement must be to the defendant's pecuniary or proprietary disadvantage when made even though the courts refer to the evidence as an admission "against interest."

It is improbable that the words, "against interest," used in many of the Ohio cases, state a requirement that the admission be against interest when made. Cases arising under the declarations against interest exception to the hearsay rule often involve a careful consideration of the question of whether the statements were actually against the declarant's interest when made.[60] But as pointed out earlier, such has not been the case with the admissions doctrine. However, the frequent use of the words is understandable in light of the very early Ohio cases,[61] and of the fact that very often admissions are in fact made against the declarant's interest. Further, as the words, "against interest," may be construed to apply to the relevancy problem, they would not appear to be used out of place even to a court that would not require admissions to be made against the declarant's interest. The way would seem to be open for an Ohio court when directly presented with the question to hold that an admission need not be against the interest of the opponent at the time he made it, thus following the weight of American authority.

Conclusion

The admissions of a party-opponent seem to be competent as evidence because the hearsay objections are not present in the case of these extra-judicial statements. Therefore, it would not seem to

---

58 *Ibid.*

59 *Ibid.*

60 See note 16 *supra;* Bird v. Hueston, 10 Ohio St. 418 (1859); In Re Rahe's Estate, 12 Ohio Dec. 590 (1902); Second Nat. Bank of Bucyrus v. First Nat. Bank of Columbus, 7 Ohio App. 68 (1917); Helmig v. Kramer, 48 Ohio App. 71, 192 N.E. 388 (1934).

61 See discussion citing note 22, *supra.*

be required that the statements be against the pecuniary or proprietary interest of the declarant when they are made. However, some courts have stated that this is a requirement for their admissibility. The Ohio cases frequently contain the language, "admissions against interest." It is believed that this is not to require that the statements be made against the opponent's interest, but merely that the admissions be relevant by being against the opponent's interest at the time of the trial.

Robert E. McGinnis