

of the criminal enterprise and in furtherance of the criminal object.

"If the acts and declarations took place at a subsequent period, and are, therefore, merely narrative of past occurrences, they must be rejected. To be admissible, they must have been concomitant with the principal act, and so connected with it as to constitute a part of the *res gestae*." *State v. Larkin*, 49 N. H. 39, 44.

In the instant case the confession or declaration was made months after the offense was committed, after arrest, and not in the presence of the other defendant. It may be that in the latter event they may, under certain conditions, become admissible. We do not have to decide this here. The Court should have instructed the jury on the limited effect of the confession, and its proper application, even though no further written request was made before arguments. The matter was sufficiently called to the Court's attention (1) immediately after the introduction of the testimony, and (2) immediately after the charge, to require proper instructions. *Burke v. Railroad*, 82 N. H. 350, 361, and cases cited. Failure to have granted the requests is reversible error.

The other exceptions need not be considered at this time as they may not recur in another trial.

New trial.

All concurred.

Rockingham, } No. 3548.
Apr. 2, 1946. }

HARRY C. ESTES v. GEORGE ARTHUR LEATHERS.

Chretien & Craig (by brief), for the plaintiff.

William H. Sleeper (by brief), for the defendant.

MARBLE, C. J. With certain exceptions not here material, the provisions of the Employers' Liability and Workmen's Compensation Act apply to workmen engaged in "any industry, enterprise or business in which five or more persons are employed by a common employer." R. L., c. 216, s. 1, *par.* II. The word "persons" as used in this paragraph is given a restricted meaning and has reference to workmen only. *White v. Company*, 90 N. H. 315.

The plaintiff was one of four workmen comprising a mill crew, so called. It was his duty to "roll the logs off the carriage for the sawyer to saw."

Plaintiff's counsel suggest that inasmuch as the defendant owned and operated five portable sawmills in this state, each mill being part of one common enterprise, the members of the mill crews engaged in the operation of all five mills could properly be counted to make up the number of workmen necessary to bring the defendant under the provisions of chapter 216.

Certain compensation acts in other jurisdictions have been given the suggested interpretation. Horovitz, *Workmen's Compensation*, 185; 2 Schneider, *Workmen's Compensation* (3d ed.), s. 593. It is unnecessary, however, to determine the applicability of the rule to the purpose and language of our own statute.

The defendant had in his employ at the mill in Atkinson a regular mill crew of four men together with at least two pitmen, whose duty it was to take from the pit of the mill the boards that had been sawed and stack them. It was not essential, in order for the Act to apply, that all of these employees should work in connection with or in proximity to the saw. *White v. Company*, *supra*. Each was a workman and each was employed by the defendant in the regular course

of the defendant's business of sawing logs. Each could therefore be counted as a person "employed by a common employer" within the meaning of section 1, paragraph II, of the Act.

The defendant's request was correctly denied.

Judgment on the verdict.

All concurred.

Strafford, } No. 3575.
Apr. 2, 1946. }

EDOUARD THERRIEN *v.* ALCIDE N. THERRIEN, *Adm'r, & a.*

Cooper, Hall & Grimes (Mr. Burt R. Cooper orally), for the plaintiff.

Guy Smart, guardian ad litem for minor heirs, furnished no brief.

KENISON, J. In the absence of a contrary public policy or prohibitory legislation express or implied, it is the rule in this State that the expressed intention of the grantor will override, whenever possible,