STUDENT NOTE

EVIDENCE—THE OPINION RULE AS APPLICABLE TO DYING DECLARATIONS IN WEST VIRGINIA—ANOTHER VIEW.—The extra-judicial assertions of a deceased person made under the belief of impending death—though hearsay—are admissible in evidence at the trial of a person charged with the homicide of the declarant to prove the circumstances surrounding the death. The problem discussed in this note is whether such declarations must also satisfy the requirement that testimonial evidence must be based on facts rather than opinion, that is, does the opinion rule apply to these declarations?

Before attempting to progress towards the solution of this problem (if a solution exists), the few West Virginia cases that tend to cast some light on this rather obscure point must be considered. A brief statement of each case will be offered before any critical analysis is attempted. In State v. Burnett a dying declaration was discussed. The court stated that the declaration was inadmissible because it contained mere declarations of opinion and would have been inadmissible if the declarant had been so

1 5 Wigmore, Evidence §§ 1451-1454 (3d ed. 1940).
2 47 W. Va. 731, 35 S.E. 983 (1900).