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STUDENT NOTE

EVIDENCE—THE OPINION RULE AS APPLICABLE TO DYING DECLARATIONS IN WEST VIRGINIA.—Dying declarations have been admissible in evidence as an exception to the hearsay rule[1] from a very early date.[2] Such declarations are subject not only to the general rules which determine the admissibility of evidence,[3] but also to other limitations and restrictions not within the scope of this note.[4] The cases usually state, in the form following, or in form to a like effect, that the declarations are substitutes for sworn testimony and must be such narrative statements as a witness might properly give on the stand if living;[5] that whatever would exclude the statement

[1] Pippin v. Commonwealth, 117 Va. 919, 86 S.E. 152 (1915); 5 WIGMORE, EVIDENCE § 1430 (3d ed. 1940); 26 AM. JUR. 426.

[2] 5 WIGMORE, EVIDENCE § 1430, dates it back as far as the first half of the 1700's.

[3] Coots v. Commonwealth, 295 Ky. 637, 175 S.W.2d 139 (1943); Commonwealth v. Fugmann, 330 Pa. 4, 198 Atl. 99 (1938); State v. Burnett, 47 W. Va. 731, 35 S.E. 983 (1900) (by implication); see also 26 AM. JUR. 430.

[4] Dying declarations are also restricted to the identification of the accused and the deceased, to the act of killing and the circumstances producing and attending the act and forming a part of the res gestae. State v. Shelton, 116 W. Va. 75, 178 S.E. 633 (1935); State v. Graham, 94 W. Va. 67, 117 S.E. 699 (1923); Crookham v. State, 5 W. Va. 510 (1871); Hill v. Commonwealth, 2 Gratt. 594 (Va. 1845).

[5] The reports abound in statements to this effect. Only the West Virginia cases and one other leading case are cited: State v. McLane, 126 W. Va. 219, 224, 27 S.E.2d 604 (1943); State v. Hood, 63 W. Va. 182, 185, 59 S.E. 971 (1907); State v. Burnett, 47 W. Va. 731, 738, 35 S.E. 983 (1900); Marshall v. State, 219 Ala. 83, 121 So. 72, 63 A.L.R. 560 (1929).