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 from a very early date. Such declarations are subject not only to the general rules which determine the admissibility of evidence, but also to other limitations and restrictions not within the scope of this note. 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; that whatever would exclude the statement

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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 199 (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).