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Evidence--Admissibility of an Atheist's Dying Declaration

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stronger than the presumption that they were guided by a dictionary.  

The court's method of interpretation might be justified, from a practical standpoint, if its result were sufficiently desirable. However, it does not seem that large repair shops used only secondarily for storage, should be granted exemptions, and license tax levies made on small storage buildings, rented indiscriminately to the public. It appears that such would be the result of the "dictionary-minded" distinction drawn by the West Virginia court.

—JACK C. BURDETT.

EVIDENCE — ADMISSIBILITY OF AN ATHEIST'S DYING DECLARATION. — In a murder prosecution, a question arose as to the admissibility of the dying declaration of an atheist. The dying declarant did not believe in any Supreme Being, or in any future existence beyond death. He did not possess a belief in any form of divine punishment or reward. The court relying on a statute abolishing the requirement that a witness must testify under oath, held the declaration admissible. *Wright v. State.*

The common law admitted dying declarations, within certain limits, as an exception to the hearsay rule. It required that the dying declarant possess a belief in God, in addition to a belief that he was to die very soon. The courts felt that the gravity of death under such circumstances was equal to the solemnity of an oath in court as a guaranty of trustworthiness.

In the principal case the court recognized the common law rule, but held that it was abrogated by the statute making an atheist competent to testify.

It is clear that the statute cited by the court removed the bar of atheism from the declarant’s testimony and made him fully competent to be a witness. There still remains, however, the problem of determining whether the dying declaration is sufficiently


*135 So. 636 (Ala. 1931).*
trustworthy to warrant its being admitted. The case illustrates
the modern trend. There is a feeling that all men hold death in
awe and experience a physical revulsion towards its unknown and
unascertainable consequences. This the courts apparently are
willing to recognize, and rightly so, as sufficient assurance of
trustworthiness, without any requirement of a belief in God or
a hereafter.

There is some authority that the credibility of the dying
declarant may be impeached by a showing of atheism. There
would not seem to be any more valid reason for permitting a
showing of atheism to destroy credibility than to permit it to
make the declaration inadmissible. Why admit a declaration
only to leave it discredited by a clever lawyer playing upon the
religious prejudices of the jury?

—Donald F. Black.

INJUNCTIONS — EQUITABLE SERVITUDES — BOARDING HOUSE
AS "RESIDENCE PURPOSE". — In a suit to enjoin the operation of
a boarding house on property subject to a covenant limiting the
use to residential purposes only, the court, on appeal, dissolved the
injunction holding the operation of a boarding house not violative
of the covenant providing that "said land shall not be used other-
wise than for residence purposes, and shall not be used for a
sanatorium, hospital or infirmary, and no apartment-house shall
be erected thereon". Beek, P. J., dissented vigorously on the
ground that both the spirit and the letter of the covenant were

It is an elementary rule of law that covenants restricting
land should be strictly construed in favor of the free and un-
trammelled use of property. The majority of the court, pur-

3 2 Wigmore on Evidence (1904) § 1443.
5 As to this related problem note (1930) 9 N. C. L. Rev. 77.

1 160 S. E. 393 (Ga. 1931).
2 Jones v. Williams, 56 Wash. 538, 106 Pac. 166 (1910); Hutchinson v. Ulrich, 145 Ill. 336, 34 N. E. 556 (1893); Re Walsh, 175 Mass. 68, 55 N. E. 1043 (1900).