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Evidence--Admissibility of Confession by Third Party to Exculpate Accused

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EVIDENCE — ADMISSIBILITY OF CONFESSION BY THIRD PARTY TO EXCULPATE ACCUSED — DECLARATION AGAINST INTEREST.— A conviction of homicide was had on purely circumstantial evidence, which pointed as strongly to a third party as to accused. This third party confessed to several witnesses, before his death, that he had committed the crime. *Held*, the confession was admissible in favor of the accused as a declaration against interest. *Hines v. Commonwealth*, 117 S. E. 843 (Va. 1923).

The exception of the hearsay rule under which declarations against interests are admitted is well known. It is generally limited to declaration against the pecuniary or proprietary interests of the declarant. See II WIGMORE, EVIDENCE, § 1476. Formerly all declarations of deceased persons were admitted when made against any interest of the declarant. *Barker v. Ray*, 2 Russ 63, 67, 38 Eng. Reprint 259, 261, and note 264 (1826); *Middleton v. Melton*, 10 B. & C. 317, 109 Eng. Reprint 467 (1829); *Peck v. Gilmer*, 4 Dev. & Bat. 257, 20 N. C. 391 (1839). The almost unanimous weight of authority today is that declarations against the penal interests of the declarant are not admissible. 37 L. R. A. (N. S.) 346, note and cases cited; 22 C. J. *tit. Evidence*, § 215, and cases cited. The reasons assigned for the exclusion of this sort of evidence are those generally urged against hearsay. *Brown v. State*, 99 Miss. 719, 55 So. 961, 37 L. R. A. (N. S.) 345. These same objections apply as strongly to declarations against pecuniary interests. Mr. Wigmore, in his argument for the admission of declarations against penal interests, points out that in most of the cases the declarant was not shown to be deceased or otherwise unavailable as a witness and therefore the declaration would not be admitted under any view of the exception. See II WIGMORE, EVIDENCE, § 1477. In a dissenting opinion, concurred in by Mr. Justice Lurton and Mr. Justice Hughes, Mr. Justice Holmes said: "The exception to the hearsay rule in cases of declaration against interest is well known; no other statement is so much against interest as a confession of murder." *Donnelly v. U. S.*, 228 U. S. 243, 57 L. Ed. 820, Ann. Cas. 1913, 710. The relevancy is as clear, the necessity as great, and the guarantee of truth as potent as when the declaration is against pecuniary interest. The principal case is in accord with the modern tendency of decisions and legislation to enlarge the admissibility of hearsay where hearsay evidence must be admitted or a failure of justice result. The

admissibility of such evidence arises from necessity, the certainty that it is true, and from the want of motive to falsify. *Coleman v. Frazier*, 4 Rich. Law 146, (S. C. 1850) 53 Am. Dec. 727. A man is more likely to lie about land or money than he is to make a false statement which will put him under the necessity of defending his life or liberty. The following opinions support the principal case: *Coleman v. Frazier, supra*; *Stanley v. State*, 48 Tex. Cr. 537, 89 S. W. 643; *Blocker v. State*, 55 Tex. Cr. 30, 114 S. W. 814, 131 Am. St. Rep. 772; *Harrison v. State*, 47 Tex. Cr. 393, 83 S. W. 699; *Pace v. State*, 61 Tex. Cr. 436, 135 S. W. 379.

— A. M. C.

DEEDS—CONSIDERATION OF SUPPORT—RESCISSION.—A father conveyed his land to his two sons in consideration of their agreement to support and maintain him during his life. After the grantees had supported him for eighteen months they died, each leaving a widow and infant children. The grantor brought suit to set aside the deed. *Held*, Equity will not rescind the conveyance but will administer the property for the benefit of all the parties, rendering the grantor his reasonable maintenance and preserving for the widows and children all that remain. *Marcum v. Marcum*, 120 S. E. 73 (W. Va. 1923).

In such cases, when the grantee refuses or fails to perform, the courts grant relief in various forms. Some refuse equitable relief altogether and confine the grantor to his action on the agreement for damages. *Self v. Billings*, 139 Ga. 400, 77 S. E. 562; *Schott v. Schott*, 168 Cal. 342, 143 Pac. 595; *Gardner v. Knight*, 124 Ala. 273, 27 So. 298. Others enforce the condition or agreement as an equitable lien or mortgage, or hold the conveyance creates a continuing obligation in the nature of a trust. *Storey-Bracher Lumber Co. v. Burnett*, 61 Ore. 298, 123 Pac. 66; *Abbott v. Sanders*, 80 Vt. 179, 66 Atl. 1032; *Grant v. Bell*, 26 R. I. 288, 58 Atl. 951. Perhaps the majority allow the conveyance to be set aside. *Wilfong v. Johnson*, 41 W. Va. 283, 23 S. E. 730; *O'Ferrall v. O'Ferrall*, 276 Ill. 132, 114 N. E. 561; *Martinez v. Martinez*, 57 Colo. 292, 141 Pac. 469; *Young v. Young*, 157 Wis. 424, 147 N. W. 361; *Glocke v. Glocke*, 113 Wis. 308, 89 N. W. 118; *Priest v. Murphy*, 103 Ark. 464, 149 S. W. 98; See I TIFFANY, REAL PROPERTY, 2nd. ed., § 89. Vari-