

SUMMARY OF WORKSHOP PAPER ON
DYING DECLARATION

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*A person who is about to die would not lie, as truth
sits on the lips of a person who is about to die....!*

Introduction :

Dying declaration is based on the maxim “Nemo moriturus praesumitur mentire” It means a man will not meet his maker with a lie in his mouth. The statements made by a person as to the cause of his death or as to circumstances of the transaction resulting in his death is called a dying declaration.

Indian law recognizes the fact that ‘a dying man seldom lies.’ Or ‘truth sits upon the lips of a dying man.’ Section 32(1) of the Indian Evidence Act, 1872 explore the concept of dying declaration. Section 32 deals with the cases related to that person who is dead or who cannot be found. A dying declaration is called as " Leterm Mortem". The word " Leterm Mortem" means " Words said before death".

A dying declaration is admissible in evidence even though it has not

been made on oath and the person making it can-not be cross-examined. It is an exception to the rule of hearsay evidence. Admissibility of a dying declaration as a relevant piece of evidence is guided by the principle of necessity and religious belief of the olden days. The necessity being, that in cases, where victim is the only eye-witness to crime, the exclusion of his statement might defeat the ends of justice. The religious sanction behind admissibility comes from the belief that, a sense of impending death produces in a man's mind the same feeling as that of a conscientious and virtuous man under oath. A person who makes a dying declaration must, however, be competent to make the statement at the time he or she makes it, otherwise, it is inadmissible. A dying declaration is usually introduced by the prosecution, but can be used on behalf of accused as well. Recording of dying declaration is very important task. Utmost care is required to take while recording a dying declaration. If a dying declaration is recorded carefully by the proper person, keeping in mind its essential ingredients, such declaration retains its full value.

OBJECT

- It is a presumption that, "A person who is about to die would not lie".

- It is also said that "Truth sits on the lips of a person who is about to die".
- The victim is exclusive eye witness and hence such evidence should not be excluded. **(P.V. Radhakrishna v. State of Karnataka, Criminal Appeal No. 1018/2002 Decided By Hon'ble Apex Court On 25.07.2003)**

Section 32 Of Indian Evidence Act, 1872

Cases in which statements of relevant fact by person who is dead or cannot be found: Statement, written or verbal, or relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which, under the circumstances of case appears to Court unreasonable, are themselves relevant facts in the following cases: (1) *When it relates to cause of death.* (2) *Or is made in course of business.* (3) *Or against interest of maker.* (4) *Or gives opinion as to public right or custom or matters.* (5) *Or relates to existence of relationship.* (6) *Or is made in will or deed relating to family.* (7) *Or in document relating to transaction mentioned in section 13, clause (a).* (8) *Or is made by several persons & expresses feelings relevant to matter in*

question.

But here, we are concerned only with dying declaration which deals with the cases related to cause of death as mentioned in sub-section (1) of section 32 of Indian Evidence Act.

Section 32 (1) When It Relates To Cause Of Death

When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question. Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question. (See **Ulka Ram v. State of Rajasthan, Crminal Appeal No. 149/2000, Decided by Hon'ble Apex Court on 10.04.2001**)

Illustration: The question is, whether A was murdered by B; or A dies of injuries received in a transaction in course of which she was ravished. The question is, whether A was killed by B under such circumstances that a suit would lie against B by A's widow. Statements made by A as to cause of his or her death,

referring respectively to murder, rape & actionable wrong under consideration are relevant facts.

Scope Of Dying Declaration

- It is a statement written or oral of a person who is dead, with respect to the cause of his death or the circumstances resulting in his death. The statement is relevant in any judicial proceedings where the cause of death of that person is in issue. The second part of section 32 (1) makes it abundantly clear that the statement is admissible in civil as well as criminal proceedings and it is not necessary that the person making the statement should be apprehending death at the time of making the statement. Thus, it may be noted that, the Indian law as to admissibility of dying declaration makes a departure from the English law inasmuch as it is not limited to the cases of homicide and the restriction of expectation of death has not been recognized. Thus, the basis which has been considered to have taken the place of Oath and ensuring the truthfulness of the statement has not been made a condition for its admissibility.
- The court is under an obligation to closely scrutinize all

the pros and cons of the circumstances while valuating a dying declaration since it is not a statement made on oath and is not tested on the touch stone of cross- examination.

- **In Ram Nath v. State of Madhya Pradesh (AIR 1953 SC 420), Hon'ble Supreme Court held that:** It is settled law that it is not safe to convict an accused person merely on the evidence of a dying declaration without further corroboration because such a statement is not made on oath and is not subject to cross-examination and because the maker of it might be mentally or physically in a state of compassion and might be drawing upon his imagination while he was making the declaration. Thus, the Supreme Court has laid a stress, as a safeguard, on corroboration of the dying declaration before it is acted upon.
- **But Later In Khushal Rao v. State of Bombay (1958 SCR 552), Hon'ble Apex Court** held this observation to be in the nature of obiter dicta and observed that, *"It cannot be laid down as an absolute rule of law that a dying declaration cannot form the sole basis of the conviction unless it is corroborated."*
- **Thereafter, In Harbans Singh V. State of Punjab (1962**

AIR 439), Hon'ble Supreme Court held that, "It is neither a rule of law nor of prudence that a dying declaration requires corroboration by other evidence before a conviction can be based thereon."

- **Thenceforth, Further In State of U. P. v. Ram Sagar Yadav (1985 AIR 416)** Hon'ble Supreme Court observed that, "The primary effort of the court is to find out whether the dying declaration is true. If it is, no question of corroboration arises. It is only if the circumstances surrounding the dying declaration are not clear or convincing then the court may, for its assurance, look for corroboration to the dying declaration.

Dying Declaration: An Exception To Rule Against Hearsay

- **Black's Law Dictionary defines hearsay as,** "A statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.
- The general rule is that in order to prove fact best evidence must be furnished and direct evidence is the best evidence. Hence, as a general rule the admissibility of hearsay

evidence is excluded though there are exceptions to it. Dying declaration is one of the exceptions to the direct evidence as stated above and the necessity is for its admissibility. The victim, a prominent witness to the occurrence, being dead in the absence of any other witness, exclusion of the dying declaration may lead to the acquittal of the accused resulting in miscarriage of justice. Hence, there is need for this exception.

- It may be stated here that the law requires that the evidence in a court of justice should be given on oath. An oath is an application of the religious sanction. A witness who violates the sanctity of oath by narrating facts untrue to his knowledge exposes himself to be punished for perjury. Furthermore, the testimony of a witness in a court is liable to be scrutinized and tested by cross-examination, but the dying declaration is not subject to any of the above safeguards to guarantee its truth.

Dying Declaration Under English Law

- Under the English law the earliest statement or a declaration by a dying man as to the cause of his death is admissible evidence in a trial.

- As to the principle underlying the acceptance of dying declaration **Lord Eyre C. B. observed that:** The principle on which this species of evidence is admitted is, that they are declarations made in extremity, when the party is at the point of death, and when every hope of this world is gone; when every motive of falsehood is silenced, and the mind is induced by the most powerful consideration to speak the truth; a situation so solemn and awful is considered by law as creating an obligation equal to that which is imposed by a positive oath administered in the court of justice. Thus, the rationale is that no one would wish to die with a lie on his lips.
- Under the English law dying declaration is admissible only in cases of homicide. "Where the death of the deceased is the subject of the charge, and the circumstances of the death are the subject of the dying declaration." Therefore, the dying declaration is not admissible in civil cases as also in criminal cases excepting prosecution for homicide.
- The Indian law does not insist on element of expectation of death while the English law does. Therefore, one may feel that whether Section 32 (1) needs be amended to include the word "expectation of death' to make its admissibility

more in consonance with the reasons for which it has been enshrined in the Indian Evidence Act.

Form Of Dying Declaration

There is no particular form of dying declaration. But crucial factors such as to who had stabbed the deceased and what are required to be included in the dying declaration. A dying declaration may be in the following forms:

- Written form;
- Verbal form;
- Gestures and Signs form;
- A dying declaration may be in the form of narrations. It is preferred that it should be written in the vernacular which the patient understands and speaks.

Question Answer Form

- The best form of dying declaration is in the form of questions and answers. However, whenever a dying declaration is being recorded in the form of questions and answers, precaution should be taken that exactly what questions are asked and what answers are given by the

patient, should be written.

- Where the dying declaration was not recorded in question-answer form, it was held that it could not be discarded for that reason alone. A statement recorded in the narrative may be more natural because it may give the version of the incident as perceived by the victim.

Gestures & Signs Form

- Where a person is not capable of speaking or writing he can make a gesture in the form of yes or no, by nodding and even such type of dying declaration is valid.
- The value of the sign language would depend upon as to who recorded the signs, what gestures and nods were made, what were the questions asked, whether simple or complicated and how effective and understandable the nods and gestures were.

In Queen-Empress v. Abdullah (1885 ILR 7 ALL 385): Accused had cut the throat of the deceased girl and because of that, she was not able to speak. So she indicated the name of the accused by the signs of her hand. It was held by the full bench of Hon'ble Allahabad High Court that, "If the injured person is unable to speak, he can

make dying declaration by signs and gestures in response to the question.”

Language Of Dying Declaration

Where the deceased made the statement in Kannada and Urdu languages, it was held that the statement could not be discarded on that ground alone, or on the ground that it was recorded only in Kannada. Where the statement was in Telugu and the doctor recorded it in English but the precaution of explaining the statement to the injured person by another doctor was taken, the statement was held to be a valid dying declaration.

In **Ramesh Gyanoba Kamble Vs. State of Maharashtra** reported in **2011 ALL MR (Cri) 3536 (F.B.)** the Court observed that

“ Plea that recorder of dying declaration should repeat words spoken by deceased as to cause of his death or circumstances relating in his death is not tenable.

In the eventuality of declarant surviving, the dying declaration is to be treated as a statement under S.164 and not a previous statement under S.161. It can be used for “Corroboration or Contradiction” unlike statement under

S.161 which can be used only for “Contradiction”.

If a dying declaration is recorded properly by following due procedure and its contents are held to be proved, it can form basis for conviction without corroboration irrespective of fact whether recorder repeats contents thereof in his deposition before court.”

Oral Dying Declaration

The Hon'ble Apex Court emphasized the need for corroboration of such declaration particularly in a case of this kind where the oral statement was made by the injured person to his mother and she being an interested witness. Such declaration has to be considered with care and caution. A statement made orally by the person who was struck down with a stick blow on head and which was narrated by the witness who lodged the F.I.R. as a part of the F.I.R. was accepted as a reliable statement for the purpose of Section 32.

Incomplete Dying Declaration

Where deceased fails to complete the main sentence (as for instance, the genesis or motive for the crime) a dying declaration would be unreliable. However, if the deceased has narrated a full

story, but fails to answer the last formal question as to what more he wanted to say, the declaration can be relied upon.

DOCTOR'S STATEMENT

In the case of a bride burning, the doctor to whom the deceased was taken for treatment deposed that soon after her admission, she said that her husband had poured kerosene on her clothes and set her ablaze. The doctor made a note of it in the case papers. The testimony of the doctor became supported by the contemporaneous record. The Court said that the doctor had no reason to falsely depose against the accused or prepare false case papers.

Who May Record Dying declaration?

- Keeping in mind the deteriorating condition of the declarant, it can be recorded by anybody e.g. public servant like doctor or any other person.
- It cannot be said that a dying declaration recorded by a police officer is always invalid.
- If any dying declaration is not recorded by the competent Magistrate, it is better that signatures of the witnesses are taken who are present at the time of recording it.

Condition Precedents For Admissibility Of Dying Declaration:

- The declarant who gave dying declaration should die.
- The dying declaration must be complete.
- It must be voluntary and uninfluenced.
- The cause of death must be explained by the declarant or at least the circumstances which resulted in his death must be explained.
- The declarant who makes dying declaration, must be conscious and coherent.
- The declarant must be of sound state in mind.
- The cause of death of declarant must be in question.

Factors To Be Considered While Appreciating Dying declaration

It is for the court to see that dying declaration inspires full confidence as the maker of the dying declaration is not available for cross-examination. Court should be satisfied that there was no possibility of tutoring or prompting. Certificate of doctor should mention that victim was in a fit state of mind. Dying declaration may be in the form of questions and answers and

answers being written in the words of the person making the dying declaration. But court cannot be too technical. The declarant is in a fit condition of mind to give the statement when recording was started and remained in fit condition of mind until the recording of dying declaration is completed. The fact of fit condition of mind of declarant can be best certified by the doctor. Yet, in case of where it was not possible to take fitness certificate from the doctor, dying declaration has retained its full sanctity if there are other witnesses to testify that declarant was in fit condition of the mind. However, it should not be under the influence of anybody or prepared by prompting, tutoring or imagination.

A dying declaration authenticated by thumb impression where the author had sustained 100 percent burns may be a factor to doubt it. If a declarant made more than one dying declarations and if these are not at variance with each other in essence they retain their full value. If these declarations are inconsistent or contradictory, such dying declarations lose their value. When interested witnesses were attending the deceased when he was making a dying declaration and because of the injuries, the deceased is neither physically or mentally fit, no

reliance can be placed on such dying declaration, in the absence of evidence to show that the deceased was physically and mentally capable of making the dying declaration and was not the victim of any tutoring. The death of a married woman in the matrimonial home three or four months after her statements expressing the danger to her life has been held to be a statement explaining the circumstances of her death.

Evidentiary Value of Dying Declaration

Evidentiary value of a dying declaration depends upon the case to case and fact to fact. In **K. R. Reddy v. Public Prosecutor [1976 (3) SCC 618]** evidentiary value of dying declaration was observed as under:-

- The dying declaration is undoubtedly admissible under section 32 and not being statement on oath so that its truth could be tested by cross-examination.
- The court has to apply the scrutiny and the closest circumspection of the statement before acting upon it.
- Great solemnity and sanctity is attached to the words of a dying man because a person on the verge of death is not likely to tell lies or to connect a case as to implicate an

innocent person, yet the court has to be on guard against the statement of the deceased being a result of either tutoring, prompting or a product of his imagination.

- The court must be satisfied that the deceased was in a fit state of mind to make the statement after the deceased had a clear opportunity to observe and identify his assailants and that he was making the statement without any influence or rancor.
- Once the court is satisfied that the dying declaration is true and voluntary, it can be sufficient to record the conviction even without further corroboration.

In Khushal Rao v. State of Bombay, Supra, Hon'ble Apex Court laid down following principles: (See also *Panneerselvam v. State of Tamil Nadu - [2008] 17 SCC 190*)

- There is no absolute rule of law that a dying declaration cannot be the sole basis of conviction unless corroborated. A true and voluntary declaration needs no corroboration.
- A dying declaration is not a weaker kind of evidence than any other piece of evidence.
- Each case must be determined on its own facts keeping in

view the circumstances in which the dying declaration was made.

- A dying declaration stands on the same footing as other piece of evidence and has to be judged in the light of surrounding circumstances and with reference to the principle governing the weight of evidence.
- A dying declaration which has been recorded by a competent Magistrate in the proper manner, that is to say, in the form of questions and answers and as far as practicable in the words of the maker of the declaration, stands on a much higher footing than a dying declaration which depends upon oral testimony which may suffer from all the infirmities of human memory and human character.
- In order to test the reliability of a dying declaration the court has to keep in view the circumstances like the opportunity of the dying man for observation, for example, whether there was sufficient light if the crime was committed in the night; whether the capacity of man to remember the facts stated had not been impaired at the time he was making the statement by circumstances beyond his control; that the statement has been consistent

throughout if he had several opportunities of making a dying declaration apart from the official record of it; and that the statement had been made at the earliest opportunity and was not the result of tutoring by interested party.

In **Laxman Vs. State of Maharashtra** reported in **AIR 2002 SC 2973** the supreme court observed that “the justice theory regarding acceptability of a dying declaration is that such declaration is made in extremity, when the party is at the point of death and when every hope of this world is gone, when every motive to falsehood is silenced, and the man is induced by the most powerful consideration to speak only the truth. Notwithstanding the same, great caution must be exercised in considering the weight to be given to this specie of evidence on account of the existence of many circumstances which may affect their truth. The situation in which a man is on death bed is so solemn and serene, is the reason in law to accept the veracity of his statement. It is for this reason the requirements of oath and cross-examination are dispensed with. Since the accused has no

power of cross-examination, the court insist that the dying declaration should be of such a nature as to inspire full confidence of the court in its truthfulness and correctness. The court, however has to always be on guard to see that the statement of the deceased was not as a result of either tutoring or prompting or a product of imagination. The court also must further decide that the deceased was in a fit state of mind and had the opportunity to observe and identify the assailant. Normally, therefore, the court in order to satisfy whether the deceased was in a fit mental condition to make the dying declaration look up to the medical opinion. But where the eyewitnesses state that the deceased was in a fit and conscious state to make the declaration, the medical opinion will not prevail, nor can it be said that since there is no certification of the doctor as to the fitness of the mind of the declarant, the dying declaration is not acceptable. A dying declaration can be oral or in writing and in any adequate method of communication whether by words or by signs or otherwise will suffice provided the indication is positive and definite. In most cases, however, such statements are made orally before death ensues and is reduced to writing by someone

like a magistrate or a doctor or a police officer. When it is recorded, no oath is necessary nor is the presence of a magistrate absolutely necessary, although to assure authenticity it is usual to call a magistrate, if available for recording the statement of a man about to die. There is no requirement of law that a dying declaration must necessarily be made to a magistrate and when such statement is recorded by a magistrate there is no specified statutory form for such recording. Consequently, what evidential value or weight has to be attached to such statement necessarily depends on the facts and circumstances of each particular case. What is essentially required is that the person who records a dying declaration must be satisfied that the deceased was in a fit state of mind. Where it is proved by the testimony of the magistrate that the declarant was fit to make the statement even without examination by the doctor, the declaration can be acted upon, provided the court ultimately holds the same to be voluntary and truthful. A certification by the doctor is essentially a rule of caution and therefore the voluntary and truthful nature of the declaration can be established otherwise.”

**In State of UP v. Madan Mohan (AIR 1989 SC 1519),
Hon'ble Apex Court Held that:**

- It is for the court to see that dying declaration inspires full confidence as the maker of the dying declaration is not available for cross-examination
- Court should satisfy that there was no possibility of tutoring or prompting.
- Certificate of the doctor should mention that victim was in a fit state of mind. Magistrate recording his own satisfaction about the fit mental condition of the declarant was not acceptable especially if the doctor was available.
- Dying declaration should be recorded by the executive magistrate and police officer to record the dying declaration only if condition of the deceased was so precarious that no other alternative was left.
- Dying declaration may be in the form of questions and answers and answers being written in the words of the person making the dying declaration. But court cannot be too technical.

In Sham Shankar Kankaria v. State of Maharashtra - (2006)

13 SCC 165):

Hon'ble Apex Court held that, The situation in which a person is on death bed is so solemn and serene when he is dying that the grave position in which he is placed, is the reason in law to accept veracity of his statement. It is for this reason the requirements of oath and cross-examination are dispensed with. If dying declaration is excluded it will result in miscarriage of justice because the victim being generally the only eyewitness in a serious crime, the exclusion of the statement would leave the court without a scrap of evidence.

In Munnu Raja V. State Of MP (AIR 1976 2199 (SC)):

First information report got recorded by the police has been taken as dying declaration. But, in State of Punjab v. Kikar Singh, 2002 (30 RCR (Criminal) 568 (P&H) (DB), it is held that "When patient remained admitted in hospital for sufficient days i.e. for 8 days FIR cannot be treated as dying declaration".

In State v. Maregowda (2002 (1) RCR (Criminal) 376 (Karnataka) (DB): *It is held that "A suicide note written found in the clothes of the deceased is in the nature of dying declaration and is admissible in evidence."*

In Pakala Narayana Swami vs Emperor ((1939) 41 BOMLR 428):

The statement of Pakala Narayana Swamy's wife, "He is going to Berhampur to get back his amount" was considered as a dying declaration".

In Gulam Hussain Vs State of Delhi (Decided By Hon'ble Supreme Court on 4.8.2000):

Held that, The submission that dying declaration can not be accepted as recorded by I.O. has no substance because at the time of recording the statement PW 22 Balwan Singh did not possess the capacity of an investigating officer as the investigation had not commenced by then. Therefore, statement to PW 22 Balwan Singh is treated as a dying declaration.

In Surajdeo Ojha v. State of Bihar (1980 Supp SCC 769):

It is ruled that, Merely because a dying declaration is a brief statement, it is not to be discarded. On the contrary, the shortness of the statement itself guarantees truth.

In State of U.P. v. Madan Mohan, (1989) 3 SCC 390:

It is observed that, Where prosecution version is different from the dying declaration, it can not be acted upon.

In Mohanlal Gehani v. State of Maharashtra, (1982) 1 SCC 700 & Puran Chand v. State of Haryana (2010) 6 SCC 566:

It is held that, Where there are more than one statement in the nature of dying declaration, one first in point of time must be preferred.

In Nand Kumar v. state of Maharashtra (1987 (3) BomCR 139):

It is ruled that, It is perfectly permissible to reject a part of dying declaration if it is found to be untrue and if it can be separated.

Medical Statement Of Fitness:

- *Medical opinion cannot wipe out the direct testimony of the eyewitness stating that the deceased was in fit and conscious state to make the dying declaration. [Nanhau Ram vs State Of MP (AIR 1988 SC 912)]*
- *Even the "History" given by the injured recorded by the doctor in the case file has been considered as dying declaration if it is mentioned that the patient told in the history that incident occurred in such and such manner which was responsible for the death of the victim [State of*

Karnataka v. Shariff (Criminal Appeal No. 662/1995, Decided on 27.01.2003)].

Exceptions To Dying Declaration

The exceptions of 'Dying declaration' stipulate, where the statements made by dying persons are not admissible:

- ***If the cause of death of the deceased is not in question:*** *If the deceased made statement before his death anything except the cause of his death, that declaration is not admissible in evidence.*
- ***If the declarer is not a competent witness:*** *Declarer must be competent witness. A dying declaration of a child is inadmissible. In Amar singh v. State of Madhya Pradesh, 1996 Cr LJ (MP) 1582, it is held that without proof of mental or physical fitness, the dying declaration is not reliable.*
- ***Inconsistent declaration:*** *Inconsistent dying declaration has no evidential value.*
- ***Doubtful features:*** *In Ramilaben v. State of Gujarat (AIR 2002 SC 2996): Injured died 7-8 hours after incident, four dying declarations recorded but none carried medical*

certificate. There were other doubtful features too, so it is not acted upon.

- ***Influenced declaration:*** *It must be noted that dying declaration should not be under influence of anyone.*
- ***Untrue declaration:*** *It is perfectly permissible to reject a part of dying declaration if it is found to be untrue and if it can be separated.*
- ***Incomplete declaration:*** *Incomplete declarations are not admissible.*
- ***If statement relates to death of another person:*** *If statement made by deceased does not relate to his death, but to the death of another person, it is not relevant.*
- ***Contradictory statements:*** *If a declarant made more than one dying declarations and all are contradictory, then those all declarations lose their value.*
- ***Unsound person:*** *The statement of unsound mind can not be relied upon.*
- ***If dying declaration is not according to prosecution:*** *If dying declaration is inconsistent with the case of prosecution it is not admissible.*

CONCLUSION:

Keeping in mind the above mentioned opinions of various courts it is suggested that whenever dying declaration is to be recorded it should be recorded very carefully keeping in view the sanctity which the courts attach to this piece of evidence. It retains its full value if it can justify that victim could identify the assailant, version narrated by victim is intrinsically sound and accords with probabilities and any material evidence is not proved wrong by any other reliable evidence. It is perfectly permissible to reject a part of dying declaration if it is found to be untrue and if it can be separated. Conviction can be based on it without corroboration if it is true and voluntary. Dying declaration becomes unreliable if it is not as per prosecution version.

LORD LUSH, L.J., Quoted that, *“A dying declaration is admitted in evidence because it is presumed that no person who is immediately going into the presence of his Maker, will do so with a lie on his lips. But the person making the declaration must entertain settled hopeless expectation of immediate death. If he thinks he will die tomorrow it will not do.”*

LORD EYRE, C.B., also held that *“The principle on which this species of evidence is admitted is, that they are declarations*

made in extremity, when the party is at the point of death, and when every hope of the world is gone, when every motive to falsehood is silenced, and the mind is induced by the most powerful considerations to speak the truth. A situation so solemn and awful is considered by the law as creating an obligation equal to that which is imposed by the law as creating an obligation equal to that which is imposed by a positive oath administered in the court of justice.”

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