without hope of recovery. Looking at the decisions, the language of Eyre, C.B., is, "When every hope in this world is gone;" of Willes, J., "There must be a settled hopeless expectation of death in the declarant" To make this kind of evidence admissible the burden of proof lies on the prosecution, and we must be perfectly satisfied beyond doubt that the deceased was at the time under an unqualified expectation of impending death. Here the declarant herself suggests the interlined words, "at present." The counsel for the prosecution would have us give no effect whatever to them; but they must have had some meaning. She may have meant by them—I desire to alter and qualify my previous statement; I mean to say, not that I have absolutely no hope of recovery, but that I have no present hope of recovery. If the words admit of two constructions, one in favor and one against the prisoner, we should adopt that one which would be *in favorem vitæ*. But the interlineation and alteration here was caused by the magistrate's clerk asking the declarant to correct any mistake, and, the case being one of life and death, she in effect says—There is a mistake, and I desire it to be corrected. The words, therefore, have a definite and fixed meaning, namely, to qualify the statement read to her.

BYLES, J., said that, having tried the case, he wished to state that from the first he entertained a strong doubt upon the question, but as there was no other evidence to leave to the jury he had thought it best to reserve the case. The law properly regarded the admissibility of this kind of evidence with jealousy. There was no power of cross-examining the declarant—no means of indicting for perjury; great danger of mistakes. What the declarant said in effect was, "If I don't get better, I shall die."

Conviction quashed.

UNITED STATES REPORT.

SUPREME COURT OF ILLINOIS.

THE CHICAGO & GREAT EASTERN RAILWAY COMPANY, ET AL v. MARSHALL.

Dying declarations.

In no case, save that of a public prosecution for a felonious homicide, can the dying de larations of the party killed be received in evidence. In civil cases they are not admissible.

BREESE, C.J.—The only question of any real importance presented by this record, which we are disposed to discuss, is, were the dying declarations of the boy admissible in evidence to charge the defendants?

The action was case to recover damages for death occasioned by the careless management of a railroad locomotive, and brought by the father of the boy killed, as his next of kin and personal representative.

This is a new question in this court, and quite an interesting one, which we lack time to discuss at very great length. A few principles of evidence will be noticed, and such opinions as text writers on evidence or courts of justice may have declared on the point.

The general rule is, that *hearsay* evidence, that is, statements coming from one not a party in interest, and not a party to the proceeding, and not made under oath, are not admissible, for the reason that such statements are not subjected to the ordinary tests required by law for ascertaining their truth; the author of the statement not being exposed to cross-examination in the presence of a court of justice, and not speaking under the penal sanctions of an oath, with no opportunity to investigate his character and motives, and his deportment not subject to observation; and the misconstructions to which such evidence is exposed, from the ignorance or inattention of the hearers, or from criminal motives, are powerful objections.

There are, however, well established exceptions to this rule, whether wisely so or not, is certainly a grave question, and among them are dying declarations. These are understood to be statements made by a person under the immediate apprehensions of death, and who did die soon after. In 1 Phil. Ev., 215, it is said, the declarations of a person who has received a mortal injury, made under the apprehension of death, are constantly admitted in criminal prosecutions, and are not liable to the common objection against hearsay evidence, partly for the reason that the awful situation of the dying person is considered to be as powerful over his conscience as the obligation of an oath, and partly on a supposed want of interest, on the verge of the next world, dispensing with the necessity of a cross-examination. Without questioning the soundness of this last reason, obnoxious as it may be to fair criticism, it may be safely said, the exception itself deprives an accused party of a most inestimable privilege secured to him by the ninth section of Article 13 of our State Constitution, "to meet the witnesses face to face," so that by cross-examination the truth may be eliminated.

The exception is in derogation of common right, for, independent of constitutions and laws, an accused person has the right to hear the witness, who is to condemn him, in his presence, so that he may be subjected to the most rigid inquisition. To hang a man, on the statements of one who is on his dying bed, racked with pain, incapable in most cases of giving a full and accurate account of the transaction, weakened in body and in mind; and, though in *articulo mortis*, harboring some vindictive feeling against him who has brought him to that condition, is, to say the least, and has always been, a dangerous innovation upon settled principles of evidence; and no court ought to be disposed to extend it, to enhance cases to which it did not, in its inception apply. The rule itself has no great antiquity to recommend it, it having been first declared, by Lord Chief Baron Eyre, at the Old Bailey, in 1787, in Woodcorlis case, 1 Leach, Crown Law 500, in which the montrouss doctrine was held, that although the *declarant* did not apprehend she was in a critical state, in momentary expectation of death, soon to appear before the throne of the Eternal—and, although the witnesses could give no satisfactory information as to the sentiments of her mind upon that subject, and the surgeon testifying that she did not seem to be at all sensible of the danger of her situation, and never saying whether she thought she should live or die; the court held, on its own conviction, that she was in a condition rendering almost immediate death inevitable; and, as persons about her thought she was dying, her declarations, made