CROWN COURT.

NORWICH WINTER ASSIZES, 1879.

(Before COCKBURN, C.J.)

REG. *v.* BEDINGFIELD. (*a*)

Murder or suicide—Evidence—Statement of deceased—Dying declaration—Res gestæ.

On an indictment for murder, it appearing that the deceased, with her throat cut through, came suddenly out of a room, in which she left the prisoner, who also had his throat cut, and was speechless, and that she said something immediately after coming out of the room, and a few minutes before she died—the question being, murder or suicide

Held, that her statement was not admissible, either as a dying declaration or as part of the res gestæ. Sed quære, whether in such a case the act is complete until death takes place, and whether, as to a dying declaration, it is not a question of fact, upon the surgical evidence, whether, from the nature of the wound, the person must not have been conscious of almost immediate death.

THE prisoner, Henry Bedingfield, was indicted for the murder of a woman at Ipswich.

Carlos Cooper and *Blofeld* for the prosecution.

Simms Reeve for the prisoner.

It appeared that the prisoner had relations with the deceased woman, and had conceived a violent resentment against her on account of her refusing him something he very much desired, and also as appearing to wish to put an end to these relations; he had uttered violent threats against her, and had distinctly threatened to kill her by cutting her throat. She carried on the business of a laundress, with two women as assistants, the prisoner living a little distance from her. On the night before the day on which the act in question occurred, the deceased, from something that had been said, entertained apprehensions about

(*a*) Reported by W. F. FINLASON, Esq., Barrister-at-Law.

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him, and desired a policeman to keep his eye on her house, and he being near at ten at night heard the voice of a man in great anger. Early next morning, earlier than he had ever been there before, he came to her house, and they were together in a room some time. He went out, and she was found by one of the assistants lying senseless on the floor, her head resting on a footstool. He went to a spirit shop and bought some spirits, which he took to the house, and went again into the room where she was, both the assistants being at that time in the yard. In a minute or two the deceased came suddenly out of the house towards the women with her throat cut, and on meeting one of them she said something, pointing backwards to the house. In a few minutes she was dead. In the course of the opening speech on the part of the prosecution it was proposed to state what she said. It was objected on the part of the prisoner that it was not admissible, and

COCKBURN, C.J. said he had carefully considered the question and was clear that it could not be admitted (*a*), and therefore ought not to be stated, as it might have a fatal effect. I regret, he said, that according to the law of England, any statement made by the deceased should not be admissible. Then could it be admissible (*b*) having been made in the absence of the prisoner, as part of the *res gestæ*, but it is not so admissible, for it was not part of anything done, or something said while something was being done, but something said after something done. It was not as if, while being in the room, and while the act was being done, she had said something which was heard.

Counsel for the prosecution consequently did not state what the deceased said, but said they should tender it in evidence, and accordingly, when the witness was called—one of the assistants who heard the statement—she was first asked as to the circumstances, and stated that "the deceased came out of the house bleeding very much at the throat, and seeming very much frightened," and then said something, and died in ten minutes. (*c*)

It was then proposed to prove what she said, but

COCKBURN, C.J. said it was not admissible. Anything, he said, uttered by the deceased at the time the act was being done would be admissible, as, for instance, if she had been heard to say something, as "Don't, Harry!" But here it was something stated by

(*a*) *Quære*, whether it could be properly admitted, except upon the evidence especially as to the nature of the wound, the time of death, and other circumstances showing whether she must not have been conscious of death—circumstances probably not appearing on the depositions.

(*b*) Apparently the Lord Chief Justice had not in his mind the possible admissibility of the statement as a dying declaration, which would depend (in the absence of express evidence) on the evidence of the surgeon as to the nature of the wound and the probable state of the deceased: (See *Reg.* v. *Morgan, ante.*)

(*c*) The question whether these circumstances were not sufficient, at all events coupled with the evidence subsequently given by the surgeon as to the nature of the wound and its probable effect on the system, and her actual death in a few minutes, to show that she must have been under the sense of impending death—was not much argued, the Lord Chief Justice having already intimated that his mind was made up.

her after it was all over, whatever it was, and after the act was completed.

It was submitted, on the part of the prosecution, that the statement was admissible as a dying declaration, the case to be proved being that the woman's throat was cut completely and the artery severed, so that she was dying, and was actually dead in a few minutes; but

COCKBURN, C.J. said the statement was not admissible as a dying declaration, because it did not appear that the woman was aware that she was dying. (*a*)

(*a*) At the era of the Revolution it was not doubted that the declarations of the deceased, made after the fatal stroke, were admissible in evidence, apparently without requiring any other evidence that the person must have known he was dying beyond the fact that he was dying and was speedily dead. Thus on a trial for murder, where the deceased had received nine wounds with a sword, and was dying, the counsel for the prosecution offered to give in evidence several declarations made by the deceased on his death bed, whereby he charged the prisoners with having barbarously murdered him; and the court, without hesitation, let in the evidence; upon which they called the clergyman who attended the deceased, and who swore that being desired by some friends to press the deceased to say what provocation he had given them to use him in that manner (with repeatedly stabbing him), he declared, as a dying man, that he gave no provocation, but that they barbarously murdered him (1 Strange, 449) subsequently, however, admitting that he had struck one of them with a small cane, which, of course, would be too slight a provocation to excuse not merely a single wound with a deadly weapon, but repeated, barbarous, and murderous wounds, repeated not less than nine times, running him through the body over and over again, evidently with murderous intent. The mere fact that the party said he was dying or described himself as dying, would, of course, be immaterial if, in fact, he was not dying and did not die for some time; and on the other hand if from the event it appears that he was dying, and from the nature of the wounds it was manifest that he must have felt himself dying, the statement is to be regarded rightly as a dying declaration, whether or not the person described himself as dying; and there are probably no modes of violent death in which a few minutes before death the party does not feel that he is dying, and certainly it is difficult to conceive a person dying a violent death from some mode of murder who must not so feel within a few minutes of death. Hence the doctrine on the subject, settled in the middle of the last century, was, that it may depend on the nature of the wound or cause of death, and that from this alone it may be inferred, without further or express evidence, that the party making the declaration must have known that he was dying: (East's Pleas of the Crown, vol. 1, p. 357.) The apprehension of danger may appear either from the express declaration of the deceased at the time, or may be inferred from the nature of the wound, the state of the deceased, or other circumstances indicating it: (*Ibid.*) And though, as a learned judge once said, some of the recent decisions on the question have gone to the extent not only of over-scrupulousness but of superstition, their general scope and effect is in accordance with the old doctrine. Thus, per Patteson, J.: "It is not necessary to prove by expressions of the deceased that he was in apprehension of almost immediate death; but the judge will consider from all the circumstances whether the deceased had or had not any hope of recovery: (*R.* v. *Bonner*, 6 C. & P. 386.) Any decisions apparently contrary are in cases in which statements of the deceased themselves raised doubts from their ambiguity as to whether the deceased thought he was dying or had a hope of recovery. But the old doctrine that the nature of the wound may be sufficient without any express evidence was laid down by Erle, C.J. in a case of a mortal wound by shooting: (*R.* v. *Cleary*, 2 Fos. & Fin. 853.) In a case exactly like the present, tried before Denman, J., at Maidstone Lent Assizes, 1875 (*ante*, p. 337), the case of a soldier whose throat had been cut by a comrade, and who could not speak, and had just strength to write his name before he died, the learned judge after consulting Cockburn, C.J., did not doubt the statement was admissible, though, from a misconception of the effect of the ruling of Erle, C.J., in *Reg.* v. *Cleary*, he said he should, if the evidence was given, reserve the point, and, as there was abundant evidence without it, it was not pressed, and the prisoner was convicted and executed.

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It was urged that the woman must have known it, as she was actually dying at the time, but

COCKBURN, C.J. said that though she might have known it if she had had time for reflection, here that was not so, for at the time she made the statement she had no time to consider and reflect that she was dying; there is no evidence to show that she knew it, and I cannot presume it. (*a*) There is nothing to show that she was under the sense of impending death, so the statement is not admissible as a dying declaration.

The surgeon being called stated that the wound was from three to four inches in length, completely severing the trachea or wind-pipe, severing the jugular vein and the thyroid arteries. It could not be said to have been suicide, for the strength would wholly fail after the trachea was severed, which was about the centre of the wound, and the wound deepened from the trachea towards the right, the deepest part of it being beyond the trachea, so that the woman's throat must have been cut right through.

The statement of the deceased, however, having been twice rejected, though it was offered and rejected before the surgeou was examined, who thus described the nature of the wound, necessarily mortal in a few minutes, and the woman in fact dying in about ten minutes, not speaking again; the statement was not tendered again upon this evidence as a dying declaration, nor was the surgeon asked, as a matter of skill and science, whether from the nature of the wound and the sense of approaching death, the woman must not have felt and known that she was dying. (*b*)

The defence set up by the prisoner being that the woman had first cut his throat and then her own with a razor she had borrowed from him professedly for another purpose, a curious question of circumstantial evidence arose as to whether this was the truth of the case, or the converse view set up by the prosecution that the prisoner had first cut the woman's throat and then his own. The statement made by him would, therefore, have been very material, and its rejection, as it turned out, nearly caused a miscarriage of justice. The doubt of the prisoner's guilt was indeed removed by the fact that the deceased ran out to make complaint or outcry, and the fact that the razor was found under his body, and under his hand,—almost in his hand—for the marks of his fingers were upon it, and it was evident that he had

(*a*) The question whether on such evidence the woman must not have known she was dying was not discussed and considered.

(*b*) In the case of *R.* v. *Cleary* (2 Fos. & Fin. 853) Erle, C.J. asked as to what the deceased said, and finding that what he said showed that he did not think he should die, he then said he could not, in the face of that evidence, presume from the nature of the wound (a shot wound through the chest) that he knew he was dying. But here, there being nothing to the contrary, the sense of impending death might be inferred from the nature of the wound itself as showing that the woman must have felt she was dying; at all events, the surgeon might have been of that opinion, and it is a question of fact, and to some extent one for skill and experience.

held it in his hand, and that his hand had only just relaxed its grasp with the weakness caused by loss of blood.

COCKBURN, C.J., in summing up the case to the jury, pressed both these facts upon their attention, especially the first, pointing out that it was the deceased woman, not the prisoner, who ran out, as though to make outcry or complaint.(*a*)

Verdict, Guilty; Sentence, Death. (*b*)

(*a*) Thus, curiously enough, making indirect use of the very piece of evidence formally rejected, but which could not virtually be excluded; for it was of course necessarily in evidence that the woman ran out and said something, pointing to the house where the prisoner was, and no one could doubt that she came out to make complaint or outcry.

(*b*) There was a strong movement in favour of the prisoner, on the ground that the woman's statement had been rejected, and that it might have been in his favour, or that its falsehood might have been shown; and if the circumstances had been less conclusive it is possible the movement might have been successful. The prisoner, however, was executed; but there was considerable discussion on account of the rejection of the evidence, and it must not be presumed that the question should be discussed upon the supposition that the statement is inimical to the accused, for, supposing it to be in his favour, the objection, if valid, would equally apply. In the present case the words sworn to on the depositions were, "See what Harry has done!" which, as the Lord Chief Justice said, would probably have been fatal to the prisoner; but suppose they had been, "See what he has driven me to!" they would have been sufficient, probably, to secure an acquittal. And it was impossible to say what on cross-examination the words might have appeared to be. Mr. Pitt Taylor, the author of the well known Treatise on the Law of Evidence, publicly impugned this ruling, and published a letter in the *Times*, pointing out that it was contrary to the doctrine laid down in decided cases, and that what was said by a person on the instant, and in consequence of something first done to her might partly be considered as part of the *res gestæ*, as much so as if uttered an instant before, while it was being done. And a barrister present at the trial also wrote, pointing out that according to the doctrine laid down nearly a century ago, and not at all impugned in *Reg.* v. *Cleary*, the statement was clearly admissible as a dying declaration, as the natural and irresistible inference was that the woman must have felt and known she was dying. Cockburn, C.J. published a pamphlet in answer, in which he contended that as to a dying declaration it was for him to decide whether it was made under the sense of impending death, and that as to *res gestæ* the "transaction" was completed. Mr. Pitt Taylor replied in a pamphlet upholding his original opinion. In fairness to the Lord Chief Justice, it should be stated that certainly the ruling of Erle, C.J., in *Reg.* v. *Cleary*, had been understood, or misunderstood, as adverse to the reception of such a statement, and he was, as he said, apprehensive of the risk of a failure of justice if the evidence was admitted, and held admissible. But that was a very different case, and in that case Erle, C.J. *heard the evidence*, and so did Denman, J. in *Reg.* v. *Morgan*, *ante*, p. 337.