the edge of the bank, and I went too, and looked, but could not see any rat, and directly I got on the edge of the bank, he pushed me with both hands on the back, and at the same time said, "take that you bugger," and he pushed me direct into the river Avon, which runs along there; I screamed out and managed by catching hold of the bank to keep myself up until I was taken out of the water, and I believe it was by a policeman. After being so taken out, I became insensible, and did not recover till I found myself in bed in this house. Since then I have felt great pain in my chest, bosom, and back. From the shortness of my breath I feel that I am likely to die, and I have made the above statement with the fear of death before me, and with no hope *at present* of my recovery. Dr. Smart has been to see me twice to-day. It was about eight o'clock on the said evening when the said Henry Jenkins pushed me into the water. He was under the influence of liquor at the time—but was not tipsy: I had two drops of rum with him during our walk; I know of no motive for his so pushing me into the water, except it was that I had asked him for money.

The mark × of Fanny Reeves.

The jury found the prisoner guilty.

Sentence of death was passed, but execution stayed, that the opinion of this Court might be taken on the admissibility of the declaration.

J. Barnard Byles.

*Collins* (*Norris* with him), for the prisoner.—This declaration was inadmissible. The general principles on which this anomalous species of evidence is admitted are laid down in *R* v. *Woodcock*, 1 Leach, 500, 3 Russ. on Crimes, 4th ed. 250. The preliminary facts to be proved before it can be received are that the deceased at the time of making her declaration was under a sense of impending death and an impression of immediate dissolution; but it is not essential that death should, in fact, take place immediately. There must be no hope of recovery: *R.* v. *Van Butchell*, 8 C. & P. 629, 3 Russ. 253; *R* v. *Crockett*, 4 C. & P. 544, 3 Russ. 252; *R.* v *Dalmas*, 1 Cox C. C. 95; *R.* v *Spilsbury*, 7 C. & P. 187, 3 Russ. 254. "It must be proved that the man was dying, and there must be a settled hopeless expectation of death in the declarant," per Willes, J, in *R.* v. *Peel*, 2 F. & F 22; *R.* v. *Hayward*, 6 C. & P. 160, 3 Russ. 253; *R.* v *Nicolas*, 6 Cox C. C. 120; *R.* v. *Megson*, 9 C. & P. 418, 3 Russ. 255. In this case it appears that on the day following that on which the deceased was rescued from the Avon she said she did not think she should ever get over it, and desired that some one should be sent for to pray with her, and on the same evening the magistrate's clerk took her deposition. It appears that he had asked her if she had any present hope of recovery, to which she replied—None; and, having reduced her statements to writing, he read them over to her, asking her to correct any mistake he might have made, and that she then suggested the words interlined "at present." She said—No hope at present of my recovery. It is submitted, therefore, that she treated what he had at first written as a mistake, and qualified that. Some meaning must be given to the words "at present," and it is submitted that what the deceased intended was that she had no hope then, but thought that a time might come when she might have hope; and, if so, there was not such a settled hopeless expectation of death as is essential to the reception of such evidence.

*Sanders* (*Bailey* with him), for the prosecution, admitted the authority of the cases cited, but contended that this came within them. If there is a belief on the part of the deceased that she will die, though she does not feel it to be impossible that she may recover, it is sufficient. The question is, What is the belief? and not, What the possibility?—for it may almost in every case be said, whilst there is life there is hope. *R.* v. *Brooks*, 3 Russ. 264. [Kelly, C.B.—She treats what the clerk first wrote as a mistake, not as a mere omission.] [Lush, J.—The added words do not strengthen what she had previously said; but do they not weaken it?] [Byles, J. Do they not mean—I have no present hope; but I think I may have hope by and bye?] [Lush, J.—It must be clear that the deceased has no hope, and must not be left doubtful.]

*Collins*.—The law looks with jealousy on this kind of evidence (Greenleaf on Evidence, 233), and any hope, however slight, renders it inadmissible. Here the deceased declined to say all hope was gone.

The learned judges constituting the Court (Kelly, C.B., Byles, Lush, and Brett, JJ., and Cleasby, B.) having retired, on their return

Kelly, C.B., delivered judgment as follows:—We are all of opinion that this conviction must be quashed. The question for us, and the only question, is whether the declaration of the deceased was admissible; and it is clear that if that is excluded, there was no evidence to go to the jury. The question depends entirely upon what passed between the magistrate's clerk and the dying woman. It appears that he found her breathing with difficulty, and moaning, and, having administered an oath, that he asked her if she felt she was in a dangerous state and likely to die. She said, "I think so." So far it shows she was under an impression merely that she was likely to die, and there is nothing in that part of the statement to render it admissible; but he goes on to ask her why? and she replies from the shortness of her breath. Her answers were disjointed from its shortness. He then asks her, "Is it with the fear of death before you that you make these statements: have you any present hope of your recovery?" She said none, and thereupon he reduced to writing what she had said in these terms: "From the shortness of my breath I feel that I am likely to die, and I have made the above statement with the fear of death before me, and with no hope of my recovery." If the dying woman had subscribed that declaration it is sufficient for us to say that the case for our consideration would have been a very different one from the present. But it appears that after the prisoner's counsel had pointed out to the judge at the trial the interlineation of the words "at present" in the statement as it then stood, the magistrate's clerk was recalled, and said that after he had taken the deposition he read it over to her and asked her to correct any mistake that he might have made, and that she then suggested the words "at present," and said, "No hope at present of my recovery," and he interlined the words "at present." The question is, whether this declaration is admissible. I am of opinion that the decisions show that there must be an unqualified belief of impending death,