

the issue involved in the trial of Coutts, and whether the conviction should stand or be reversed.

The defendant was admitted to bail with sureties for his appearance at the session next after the judgment of the Court is pronounced upon these points.

*Poland*, for the prisoner, submitted that inasmuch as the identity of the person making the affidavit was established by proof of his handwriting (*R. v. Morris*, 1 Leach, 50, 3 Russ. 92), the evidence of the prisoner given subsequently was collateral and immaterial. [*Waddy*, for the prosecution.—At the trial the identity of Coutts was not made out, and then it was that the prisoner supplemented the proof of it.] [*BRETT, J.*—The jury may have disbelieved the witnesses who gave evidence as to the handwriting.] *LUSH, J.*—The prisoner's counsel must go to the extent of saying that all evidence in corroboration of facts of which other proof has been given is immaterial.]

*Waddy*, for the prosecution, was not called on.

*KELLY, C.B.*—The prisoner's counsel has done his duty, and we must now do ours. This conviction must be affirmed.

*Conviction affirmed.*

#### REG. V. HENRY JENKINS.

##### *Murder—Evidence—Dying declaration.*

Upon a trial for murder, a declaration of the deceased taken by a magistrate's clerk, tendered as evidence for the prosecution, contained the following:—"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." The words "at present" were interlined, and the clerk having been recalled to explain the interlineation, said that after he had taken the deposition he read it over to the declarant and asked her to correct any mistake that he might have made, and that she suggested the words "at present;" that she said "no hope at present of my recovery," and he then made the interlineation.

*Held*, that the words suggested by the declarant qualified the statement as it stood previous to the alteration, and showed that she was not absolutely without hope of recovery, and, therefore, that the declaration was inadmissible.

C. C. R. 17 W. R. 621.

##### Case reserved by Byles, J. :—

The prisoner, Henry Jenkins, was convicted at the last Bristol assizes of the murder of Fanny Reeves, and is now lying under sentence of death, subject to the decision of the Court of Criminal Appeal as to the admissibility of the dying declaration of the deceased woman.

It appeared in evidence that on the night of the 16th October, between eight and nine o'clock, the screams of a woman were heard in the river Avon, at a place where the river is deep. It was about high tide. Assistance was procured, and the deceased was rescued from the water, but in an exhausted condition. She continued very ill, and became, according to the medical evidence, in great danger. On the next day, the 17th, 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. A neighbour of the name of Axell accordingly visited her about eight o'clock p.m., who prayed with her, and, as her mother said, talked seriously to her.

At ten o'clock the same evening the magistrate's clerk came. He found her in bed, breathing with considerable difficulty and moaning oc-

asionally. He administered an oath, and she made her statement, as hereinafter set forth. He asked her if she felt she was in a dangerous state—whether she felt she was likely to die. She said, I think so. He said, why? She replied, from the shortness of my breath. Her breath was extremely short; the answers were disjointed from its shortness; some intervals elapsed between her answers. The magistrate's clerk said, "Is it with the fear of death before you that you make these statements?" and added, "Have you any present hope of your recovery?" She said, none.

The counsel for the defendant pointed out that in the statement the words "at present" are interlined.

The magistrate's clerk was recalled. He 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. She then suggested the words "at present." She said—no hope "at present" of my recovery. He then interlined the words "at present." She died about eleven o'clock the next morning.

Without the declaration of the deceased there was no evidence sufficient to convict or even to leave to the jury, but the evidence for the prosecution was, so far as it went, confirmatory of the deceased woman's statement.

The case therefore rested on what was called the dying declaration of the deceased.

The counsel for the defendant, Mr. Collins, submitted that upon the evidence there was not such an impression of impending death on the mind of deceased as to render the declaration admissible.

I expressed no opinion, but thought it the safest course to reserve this question for the opinion of this Court, and to let the case go to the jury.

The examination of Fanny Reeves, taken on oath the 17th of October, 1868 :—

The deponent saith—I am a single woman and have two children, the one aged four years and the other aged about five months. The father of the first child, which is a boy, is Henry Jenkins. He lives in Ship-lane, Cathay, and is a ship carpenter. He has been paying me, under order of magistrates, 2s. per week for the support of that child, but he has not kept up the payments, and he now owes me £1 7s. Last night, the 16th inst., about half-past six o'clock, I met him by appointment on the New Cut, in the parish of Bedminster, in this city, and I asked him if he was going to give me some money to buy a pair of boots for myself. He said that he hadn't any money. I told him that I must sue him for my money, and then he asked me to walk with him to the Hot Wells, and said that he would get some there. I accompanied him to the Hot Wells, and he went into a house at Cumberland-terrace; I waited for him outside, and he came out in a short time, and said that he could not get any money, and he asked me then to walk with him up Cumberland-road, and we went along that road together, until we got near Bedminster-bridge, and we stood on the New Cut, near his residence, and we had a few angry words together about the money he owed me, and he told me that I could have a warrant for him if I liked. After we had stood there about ten minutes, he said, "here's a rat climbing up the bank," and he advanced to