

*Jenkins*, 38 Law J. Rep. 1882, that "if the declarant thinks that he will die to-morrow that will not do," the evidence was obviously not enough; but most lawyers will agree with Mr. Justice Charles that the view of Mr. Justice Willes in *Regina v. Peel*, that death must be thought impending within a few hours, better expresses the true test. Lawyers will also agree that the evidence in this case clearly did not answer that test. One of the reasons given by Mr. Justice Byles for the scrupulous, almost superstitious, care necessary in accepting dying declarations—namely, that the prisoner was not present—was perhaps a little unfortunate, as likely to suggest that the presence of the prisoner might make them admissible. That is, however, not the test, which is solely and simply whether the state of mind of the declarant was such that he believed he was lying in the presence of imminent death. The other question of evidence raised was the admissibility of the statements of the deceased as to her physical condition, and Mr. Justice Charles carefully excluded anything which did not relate to her then present symptoms; and again it must be pointed out that the result would have been the same if the prisoner had been present, the principle being that statements of this kind stand on the same footing as physical facts like cries of pain. *English Law Journal*.

MORTGAGEES AND INSURANCE POLICIES.—The *Albany Law Journal*, of the 8th ult., has a somewhat full examination of the law regarding the equitable lien of a mortgagee on insurance policies and insurance money. On the principle that equity considers that as done which should have been done, the covenant of a mortgagor to insure the buildings on the mortgaged premises for the security of the mortgagee, though the policy was neither issued nor assigned to him, gives him a lien on the insurance moneys. Among the American decisions on the point, there is but one adverse to this view. With this single exception, the whole weight of authority is in this direction. That the mortgage contains a provision authorizing the mortgagee to insure in case the mortgagor failed to do so, and the intention of the mortgagor in effecting the insurance, are wholly unimportant. It does not impair the lien that he does not intend to insure for the benefit of the mortgagee. In Massachusetts only has the contrary been decided, it having been held there in *Stearns v. Quincy Insurance Company*, 124 Mass. 61, that the intent of the mortgagor to insure for the benefit of the mortgagee is essential. All the other American decisions are adverse to this view. The equitable lien will not prevail as against the claims of another mortgagee who has secured the policy in his own name, and has had it assigned to himself. *Dunlop v. Avery*, 89 N. Y. 592, was a contest between two mortgagees. Each mortgage contained a covenant for insurance. The policy was taken out by the mortgagor, and was made payable to the second mortgagee. The basis of the decision was, that when the equities are equal, the legal title will prevail. It was argued that the first mortgage was notice to the second mortgagee of the first mortgagee's rights, and that he would, therefore, take subject to those rights; but the argu-