Justice ruled to be inadmissible in evidence was admissible. The first is that the statement comes within the rule which (an exception to the rule rejecting hearsay evidence), under certain circumstances, allows the admission of dying declarations. The general principle on which this species of evidence is admitted was stated in *Woodcock's case*, by Lord Chief Baron Eyre, to be this: "That such declarations are made in extremity, when the party is at the point of death, and when every hope of this world is gone; when every motive to falsehood is silenced, and the mind is induced by the most powerful considerations to speak the truth; a situation so solemn and so awful is considered by the law as creating an obligation equal to that which is imposed by a positive oath in a court of justice." But in order to make such a declaration admissible it is essential, and is a preliminary fact to be proved by the party offering it in evidence, that it was made under a sense of impending death. Any hope of recovery, however slight, existing in the mind at the time the declaration was made will render it inadmissible; and it is well settled that it ought not to be left to the jury to say whether the deceased thought he was dying or not; but that that must be decided by the judge before he receives the evidence: *John's case*, 1 East, P. C. 357. Consequently, whether a particular dying statement is admissible as being within the above rule, must depend upon the circumstances of each individual case, and upon the judge who has to decide upon its admissibility. When he has exercised his discretion and rejected it, that discretion can hardly be questioned upon a bare report of the trial which may not contain all the facts upon which the exercise of it was governed. The first ground of objection to the Lord Chief Justice's ruling may, therefore, be put aside at once, inasmuch as he in the exercise of his lawful discretion was of opinion that upon the facts the declaration of the deceased was not made under such circumstances as to bring it within the rule as to dying declarations. There remains, then, the second ground of objection to the ruling, and that is, that the statement was part of the *res gestæ*, and so admissible. Now, although the expression *res gestæ* is one that often conveys little meaning, and the argument put forward for the admissibility of a piece of evidence—that it forms part of the *res gestæ*—amounts often to nothing but mere words, it must be confessed that in the present case that argument has a considerable show of strength. The principal cases which have been put forward to show its applicability to the present case are *R.* v. *Foster*, 6 C. & P. 325, and *Thompson et Ux.* v. *Trevanion*, Skin. 402. In the former case, which was tried before three judges in 1834, the prisoner was charged with manslaughter in killing A. by driving a cabriolet over him. B. saw the cabriolet drive by, but did not see the accident, and immediately afterwards, on hearing A. groan, went up to him, when A. made a statement as to how the accident happened. It was held that this statement was receivable in evidence on the trial of the prisoner for the manslaughter of A. In the latter case, which was an action by husband and wife for wounding the wife, Lord Chief Justice Holt allowed what the wife said immediately after the hurt received, and before she had time to devise anything for her own advantage, to be received in evidence as part of the *res gestæ*.

We have not seen any English murder case cited in support where a similar statement has been held admissible, and we are not aware of there being any. An Irish case is that of *Reg.* v. *Hugh Lunny*, 6 Cox C. C. 477, tried in 1852, before Monahan, C.J., on the Irish Home Circuit. The deceased had died from the effects of a wound on his head inflicted by a stick. A girl in the neighborhood had heard a cry, and coming out had found the deceased standing with his cap in his hand and apparently weak and injured. The deceased did not survive more than a few hours. It was objected on prisoner's behalf that it could only be as a dying declaration that what the prisoner said to the witness could be evidence, and they had not shown that at this time the deceased knew he was dying. His Lordship ruled that what the deceased then said was evidence as part of the *res gestæ*, and upon the question being put, the witness said: "I asked him what was the matter with him. He said he was robbed by the man that walked with him from the cross roads." The prisoner was convicted of murder. It would be difficult to find a more parallel case to the one under discussion than that we have just cited, and the conclusion to be derived