

The Legal News.

VOL. II. MAY 3, 1879. No. 18.

THE LAW OF EVIDENCE RELATING TO STATEMENTS OF MURDERED PERSONS.

A case of murder tried before the Lord Chief Justice, at Norwich, has created much interest, and been the subject of much discussion, in respect of the ruling of the judge as to the inadmissibility of a statement made by the murdered person just after the act causing death was done, and a short time before death. The Lord Chief Justice has had so much experience in criminal cases, and is so accomplished a master of the varied intricacies of the criminal law and procedure, that the objections taken to this ruling would hardly have given rise to so much comment, but for the fact that those who have questioned its accuracy have adduced strong arguments in support of this objection, and one of them is a gentleman well-known as the author of a standard work on the Law of Evidence. We propose, on account of the interest of the subject, to put, briefly summarized, before our readers the leading cases which have been decided upon the point, so that they may be in a position to estimate at a glance the merits of the discussion. But first of all we shall state briefly the facts of the present case, and the reasons given by the judge for rejecting the evidence proposed to be put in by the prosecution. The prisoner, a stonemason, and a married man, lived in the Woodbridge road, Ipswich, and the deceased, a widow was a laundress, living about half a mile off in the same road. The prisoner had been a friend of the husband, and had, during his illness, looked after his affairs for him, and after his death continued to look after the horse which the deceased used in her business, being allowed in return the use of it, when not required by her, and permission to keep pigs at her place. It appeared that he wished her to let him have her horse and cart, which she, however, declined to do. He used to come twice a day to the house, and they called each other "Harry" and "Eliza." A witness spoke of several quarrels

having taken place between prisoner and the deceased before the fatal day, which they afterwards made up, and stated that on one occasion there was a quarrel on account of the prisoner's wanting the horse and cart, and deceased refusing to let him have it, and that on the day previous to the murder, the 7th July, the deceased had sent away the pigs' food from her house. On the morning of the murder prisoner came in at half-past seven, the deceased being then at work washing, and her assistant, Mrs. Rodwell, being also there. The deceased went into the front room, prisoner followed her, and the door was shut. About ten minutes afterwards he came out of the room into the back room, where he went to the cupboard and took out a small bottle, with which he went out, and, as appeared, got some rum in it. Mrs. Rodwell went into the front room, found deceased in a faint on the floor, with her head on a hassock, as if it had been put by some one under her head. Deceased spoke and said "Oh dear, how bad I feel!" Mrs. Rodwell then went back to her work, and in about three or four minutes she was in the drying ground, where another assistant was, who said something to her, in consequence of which she went back to the house. On her way back she saw deceased coming out of the gate bleeding very much from the throat, and seeming very much frightened. Deceased said something to the witness, which, however, was excluded, and so was not stated, though its effect may be surmised from what the Lord Chief Justice said, that "if admitted, it might have a fatal effect." The prosecution tendered it in evidence, but the Lord Chief Justice in holding it not admissible said, "Anything that was uttered at the time—that is, that the woman uttered an exclamation, or pointed in a certain direction while the act was being done, or that she screamed, would be admissible as part of the *res gestæ*, but this was something said after all was over, and as it was said in the absence of the prisoner, was not admissible." He also observed "that he regretted that by the law of England any statement made should not be admissible." The case accordingly went to the jury with this statement excluded, but nevertheless they found the prisoner guilty.

Now, it has been contended that upon two grounds, the statement which the Lord Chief