If this were the foundation of the doctrine, no declaration made in the immediate view of death could be shut out, and a man might be convicted of theft or arson, on evidence that he had been charged with the offence by some one who was about to leave the world. The authorities, however, seem to agree, that such proof can only be adduced in trials for murder, and to show the cause of the death. It is therefore the nature of the offence, and not the situation of the witness, which justifies the relaxation of the rules of evidence. The fear of detection naturally prompts the murderer to choose an occasion when his victim is alone; if the statements of the latter were not admissible the crime might go unpunished for want of proof. This argument was felt with peculiar force in earlier times when violence was more common than it is at present, and a practice to which necessity seems to have introduced, has grown inveterate through the lapse of time.

It is obvious, that a doctrine which is so strictly limited in criminal cases can hardly apply in civil. Conceding that the statements of a dying man carry as much weight with them as if they were under oath, there are other considerations which should not be overlooked. To render testimony safe it must be subject to cross-examination. It is not enough that the witness desires to speak the truth, there should be an opportunity to sift his statements, and elicit facts and circumstances that may have been overlooked from inadvertence. The suppression of a seemingly immaterial incident may lead to error without an intention to deceive. The deceased is said to have declared in the present instance, that his death was caused by the fault of the conductor, and the jury may have thought that his conclusion was one which they were not at liberty to disregard. If he had been required to state the grounds upon which this opinion was based, it might have appeared that the conductor was free from blame, and that the accident was due to his own negligence. There is another danger that the statements of the dying man will not be faithfully repeated by those who hear them Their passions or interests may lead them to suppress certain portions of the story, and give undue prominence to others. The authorities afford but little light on a point which is of so much importance that it should be well settled.

Dying declarations have been treated in some instances as admissable under all circumstances and for every purpose: *Clymer* v. *Setler*, 3 Bur. 1244; *Farrund* v. *Shaw*, 2 N. C. Repository, 402; while they have been viewed in others as an exceptional growth of the criminal law which has no place in civil jurisprudence: *Wilson* v. *Howen*, 15 Johnson, 284. In *Fallom's Adm'r.* v. *Ammon*, 1st Grant's Cases, 125, cited at the argument for the plaintiffs, the declarations were admissable on other grounds, and did not require the aid of the principle under consideration. There is seemingly but one decision bearing on the only question which admits of a reasonable doubt; whether such statements can be received to show the cause of the death when it is material to the issue. I refer to the case of *Daily* v. *The New York and New Haven Railroad*, 32 Conn., which is identical with the present, and where the court excluded the evidence. The silence of the reports is significant of the opinion of the profession. If, in the innumerable cases in which actions have been brought to recover damages for fatal accidents, it had been thought possible to introduce the last words of the deceased as proof of negligence, we should not have been at a loss for a guide in this instance.

It results, from what has been said, that the rule for a new trial must be made absolute. If the point were a doubtful one, we should have preferred to let the record go for review to the court above. When, however, there is a moral certainty that the judgment will be reversed, it is due to the cause of justice, and the best interests of all concerned, that the issue should be tried again while the facts are still fresh in the memory of the witnesses.

Rule absolute.

—*Philadelphia Legal Intelligencer.*

CORRESPONDENCE.

Division Courts.—Statement of Costs.

To The Editors of the Law Journal.

Gentlemen,—Is it the duty of a Division Court Clerk to give a statement in detail of the costs of a suit when requested by the person liable to pay the same, or may he refuse to give the items, merely giving the total, regardless of what makes up the amount. It appears to me every person liable to pay costs is entitled to a bill giving each separate item for which he is to pay.—Yours, &c.,

A Subscriber.

[We think that the Clerk should as a matter of course give every interested enquirer any information that is in the power of the Clerk to give, and in the case put by "Our Correspondent," the Clerk should with alacrity have satisfied the person who had to pay costs, that he was charged no more than was right. We do not say that the Clerk should have taken the trouble of pointing out the tariff and rules relating to costs, although such civility on his part would not be amiss, but he should, at least, have given a memorandum of his charges so that the party against whom they were charged might had the opportunity, if he so pleased, of ascertaining their correctness.

We think, however, that Rule number 88 gives parties power to compel a Clerk to make up his bill, and all that is necessary in such a case as that mentioned by "A Subscriber" is to require the Clerk to tax his costs, when he is bound to deliver his bill in detail, as mentioned in that Rule. In all cases where the Clerk declines to give such information the party interested may always obtain redress