

sarily confined to the time covered by the actual doing of the act. Cases allowing a wider range of testimony are numerous, and many of them are referred to in Whart. Crim. Ev. (8th ed.), § 263, notes 1 and 4; also in articles by Prof. James B. Thayer, one entitled *Bedingfield's Case*, 14 Am. Law Rev. 817, and 15 id. 1, 71; also one entitled *Declarations as Res Gestæ in Criminal Cases*, 21 Alb. L. J. 484, 504; 22 id. 4. See also *Dismukes v. State*, 83 Ala. 287; *State v. Driscoll*, 72 Iowa, 583; *State v. Schmidt*, 73 id. 469; *Kirby v. Commonwealth*, 77 Va. 681; S. C., 46 Am. Rep. 747; *Louisville Co. v. Buck*, Ind., 19 N. E. Rep. 453.

The rule deducible from these cases is well expressed by Bigelow, C. J., in *Commonwealth v. Hackett*, 2 Allen, 136, 139: "The true test of the competency of the evidence is not, as was urged by the counsel for the defendant, that it was made after the act was done, and in the absence of the defendant. These are important circumstances, entitled to great weight, and, if they stood alone, quite decisive. But they are out-weighed by the other facts in proof, from which it appears that they were uttered after the lapse of so brief an interval, and in such connection with the principal transaction, as to form a legitimate part of it, and to receive credit and support as one of the circumstances which accompanied and illustrated the main fact, which was the subject of inquiry before the jury."

Applying this rule to the case before us, we think the testimony of the first conversation was properly admitted. The deceased went to the door of his shop and called for assistance, immediately after the assault. There was apparently no time to concoct a story against the defendant; indeed he did not know who had assaulted him. From natural impulse he immediately appeals for assistance and describes his condition, thus revealing the character of the act done. It was not an accident; not a self-inflicted injury, but an assault. Unlike a wound from stab or shot, his condition did not reveal its cause, but gave credit to his immediate and natural and unpremeditated statement, and threw light upon the character of the act done. The statement has all the recog-

nized characteristic marks of 'admissibility, and we think it is within the authority of conservative cases upon this point.

The admissibility of the second statement is not so clear, but yet we think it is so connected with the first that it should be governed by the same rule. It was later in time by several minutes, but we do not think this is decisive, since the controlling element of admissibility is not the interval of time, but the real and illustrative connection with the thing done, in which the interval of time is a factor. In the first conversation he asked for Osgood, who was his neighbour and the one upon whom he relied for assistance. As soon as Osgood could be brought, he was by the side of the deceased. He found him bent over and complaining; but the nature, cause and extent of his injuries were not apparent. The deceased then stated to Osgood what had taken place, whereupon the latter ran out to notify the police. In view of the condition of the deceased, of the fact that Osgood was the one in his mind from whom he expected help, of the call for Osgood, as soon as he could make it, to the first witness, and of his explanation of his condition to his friend and neighbour upon his arrival, we see no radical difference between the statement so made, and the first one. Indeed, except in point of time, it is the same as though it had been made to him at the time of the first call. The common marks of impulsiveness, of connection with and illustration of the main transaction, entitle both statements to similar credit and support. If, as established by principle and authority, the first statement is admissible, the second is not essentially different. If the deceased would naturally and almost necessarily declare his condition and its cause to a stranger, hailed in the emergency, with equal, if not greater reason, would he declare it to the friend he calls for, who so soon after finds him in the place where he was assaulted, weak, bleeding and helpless. The deceased was an old man, terribly injured internally; several ribs were broken; the intestines were ruptured, and he was so bruised in the chest and abdomen as to cause extravasation of blood. Under the shock of such injuries,