

could be no reason for excluding it from admission on the other ground, if the circumstances justified its admission.

Nor, as the decisions shew, does the circumstance that the incriminating statement was made before the deceased had expressed any opinion or made any statement with regard to his condition evidencing his belief in impending death from the injury he had received, prevent its admission. His mental condition is a matter of inference from the attendant circumstances, including in this case, of course, his statements.

The Chief Justice had to satisfy himself that the deceased spoke under a belief, without hope, that he was about to die from the wound that had been inflicted upon him.

Various forms of expression have been used by Judges by way of defining the necessary mental condition. "If," says Kelly, C.B., in *The Queen v. Jenkins*, L. R. 1 C. C. R. at p. 192, "we look at the reported cases and at the language of the learned Judges, we find that one has used the expression 'every hope of this world gone,' another 'settled hopeless expectation of death,' another 'any hope of recovery, however slight, renders the evidence of such declarations inadmissible.'"

Taking any one or all of these as the criterion in this case, there is no difficulty in concluding that the Chief Justice could not but be convinced that the statement was admissible. The words spoken, in the existing circumstances, in answer to a statement of intention to procure medical assistance, shew very strongly that he had abandoned all hope of benefiting by human aid, and was fallen into a settled hopeless expectation of death. Whether Walsh said, "Andy, now lie down and we send for a doctor," as he stated in his examination in chief, or "Well, Andy, better lie down, I will send for a doctor for you," as he stated in cross-examination, and whether the reply was, "No doctor, Billy, me die," as stated in chief, or, "No good doctor, Billy, me die," as stated in cross-examination, they lead to the same conclusion—a declaration of belief that every hope of this world is gone. He was aware, as his previous statement to Schwartz shews, that he had been shot; he was in fact in a dying state; and he was evidently conscious of that fact. In the circumstances,