

"Q. And he never spoke to any other witness? A. No. When I saw Radzig move the first time, I called for somebody, and nobody answered me, and I came to the conclusion if Radzig should speak I should be there and not waste time for anybody.

"Q. You were expecting him to speak? A. Yes."

Further on he said he did not think the deceased was unconscious when he was there, he was only semi-unconscious.

Shortly afterwards the deceased was removed to the hospital, where he remained apparently unconscious until his death, which occurred between 4 and 5 hours after his removal from his house. He was not seen by a physician before his removal to the hospital, but he had been seen by others before he was seen by William Walsh, and they speak of his condition and describe the wound. One of them (Schwartz) asked him some questions in his native tongue, and received one answer, in the same language, in the prisoner's presence and hearing. The question was, "Who shoot you?" And the answer, "This fellow shot that has got the revolver," or "This fellow that shot me is the fellow that got the revolver," whichever it was, it shews that he realized and understood that he had received a wound from a revolver, and, as the event proved, it was a mortal wound.

Now, it was for the Chief Justice to determine, in view of all the circumstances shewn in evidence, whether the statement as to the prisoner being the person who fired the revolver should be received as a dying declaration. It appears to have been the opinion of Martin, B., that the question was one for the trial Judge exclusively, and not for the Court of Appeal: *Regina v. Reaney, Dears & B. 151, 7 Cox C. C. 209*; but it is now firmly settled that the decision of the trial Judge is subject to review. But in review the question is not whether, if another Judge had been presiding, he would have done the same thing, but whether, the trial Judge having ruled in favour of its admission, that ruling should be set aside. It is true that in this case the Chief Justice inclined at first to admit the statement as one made in the prisoner's hearing, but this ground was displaced when it appeared, upon Walsh's cross-examination, that the deceased spoke in so low a tone that it could not be heard by the prisoner. But that