information laid by the water-bailiff could not be sustained unless it was proved that he had authority from the Conservators to prosecute. But in that case the Court held that by the Act the duty was imposed on the Conservators of enforcing the law, and by the Act express power was given to the Board of Conservators to take legal proceedings against persons violating the provisions of the Act. This provision, on the authority of Reg. *v.* Cubitt (22 Q.B.D. 622), was construed to mean that no one but the Board of Conservators was entitled to prosecute. Furthermore, section 62 of "The Salmon Fishery Act, 1865," which relates to the recovery of penalties, provides "that all moneys received and penalties recovered under the said Acts or any of them on the complaint of a Board of Conservators, or any officer of or a person authorised by the Board of Conservators, shall be paid to the Board of Conservators." This affords a further indication that prosecutions could only be instituted by the authority of the Board. It is true that the mere fact that the penalty was payable to the Board is relied on in the judgment; but I hardly think the case rests exclusively on that ground. The year after Anderson *v.* Hamlin 25 O.B.D. 221) was decided the Fisheries Act was amended ("Fisheries Act, 1891," section 13). The amending section evidently assumes that what prevented any one but the Board prosecuting was the power given to the Board to prosecute, and not the fact that the penalty was payable to the Board: See Pollock *v.* Moses (70 L.T. 378). The cases of Reg. *v.* Hicks (4 El. & Bl. 633) and Reg. *v.* Corden (4 Burr. 2279) are mentioned in the judgment, and it is said that these cases held that where the penalty was to go to a particular person this was a strong indication that the person to whom the penalty was to go was the only person to sue for it. In each of these cases, however, the penalty was not imposed for the benefit of the public, but for the private benefit of a particular party. In Reg. *v.* Hicks there was a statute prohibiting the sale of fish at Torquay except as therein provided, and any person infringing the statute was made liable to forfeit to the Torquay Market Company a sum not exceeding £2. It was held that the company only could sue, on the ground that the statute was not framed for the benefit of the inhabitants of Torquay, but was framed exclusively for the benefit of the Torquay Market Company. The inference is that if the Court had considered that the statute was framed for the benefit of the whole of the inhabitants of Torquay it would have held that any one could prosecute under it, even though the penalties were payable to the Market Company. Anderson *v.* Hamlin certainly does not decide that the mere fact of a penalty for the breach of a statutory provision being directed to be paid to a public body disentitles any one but the public body to prosecute. If it did, it would be in direct conflict with the case of Cole *v.* Coulton (2 E. and E. 695), which does not appear to have been cited in the argument in Anderson *v.* Hamlin. That case draws the distinction between statutes which impose penalties for the protection of the private rights of individuals, and which impose penalties for the benefit of the public. It held, in effect, that in the former case only the person aggrieved can prosecute, while in the latter any one can do so. This case has never been overruled, and I am of opinion that the principle of it ought for every reason to be followed. That a body which the Legislature has intrusted with the power of making by-laws for the public benefit should have an absolute discretion to say whether when made they should or should not be enforced, and to say that they should be enforced against one person and not against another, would be a state of things which the Legislature could be hardly supposed to have contemplated. The New Zealand case of Waters *v.* Fitzgerald (18 N.Z. L.R. 511) rests solely on the supposed effect of Anderson *v.* Hamlin, and, as it was decided without argument, can hardly be regarded as an authority. I can see no ground whatever for holding that the by-law in question was unreasonable or *ultra vires*. By section 422 the Council has general power to make by-laws for any purpose in relation, amongst other things, to streets, as well as for the particular purposes mentioned in the several subsections of section 422. The verandah stands on the street. The footway is part of the street (see section 231). It is said that the by-law is capricious because it does not extend to advertisements on calico, paper, or other materials placed on hoardings. But hoardings stand on private property, and are not erected on the street. Moreover, hoardings stand back from the carriageway, and advertisements on them are not so likely, if they become loose, to frighten horses. There is no need that the matter prohibited by the by-law should necessarily be a nuisance. It is sufficient if there are reasonable grounds for supposing that in certain circumstances it is likely to become a nuisance. I think the principle of Kruse *v.* Johnson ([1898] 2 Q.B. 91) is applicable. The Corporation know the needs of the city a great deal better than the Court can know them, and their by-laws should receive a benevolent construction, and, unless plainly unreasonable, should be upheld.

Rule discharged, with costs.

Central Criminal Court (Bruce, J.) — 1901. May 17.

THE KING *v.* SMITH.

["Times Law Reports," Vol. xvii., pages 522-3."]

Criminal Law—Evidence—Dying Declaration—Murder—Immediate Impending Death—Statement made in Answer to Questions.

A dying declaration made in answer to questions put to the declarant, the answers only being taken down in writing, is not admissible in evidence.

Reg. *v.* Mitchell (17 Cox, 503) followed.

Sydney Smith, 34, surgeon, on bail, was indicted for and charged on the Coroner's inquisition with the wilful murder of Mrs. Florence Madeline Bromley Smith, and he was also indicted for using an instrument or means unknown with intent to procure her miscarriage.

The defendant pleaded "Not guilty."

Mr. Charles Mathews and Mr. Bodkin appeared for the prosecution on the part of the Director of Public Prosecutions; Mr. Horace Avory, K.C., and Mr. Biron defended.

The hearing of the indictment and Coroner's inquisition charging the defendant with the wilful murder of Mrs. Bromley Smith was proceeded with.

In opening the case Mr. Mathews said it was alleged that the defendant performed an illegal operation upon Mrs. Bromley Smith with intent to procure her miscarriage, and that blood-poisoning was set up from which she died. Mrs. Bromley Smith was thirty-one years of age, and she had been living apart from her husband for five years. She had resided in Chelsea. The defendant was called in to attend her in February. On the morning of the 8th of March she miscarried. After the 8th of March the defendant attended her again; and on the 18th of March he, having regard to her grave condition of health, called in for the purpose of consultation Dr. Boxall, a gentleman who stood very high indeed in the medical world, a specialist in obstetrical medicine. On the 20th of March the defendant ceased to attend her, an intimation having reached him that another medical man had been called in by her relatives to attend her. The reason for that was that her relatives considered her condition was so critical that she required constant medical attendance and they did not always know where to find Dr. Smith. On the 20th of March Dr. Bonney was called in to attend her, and found that she was very ill. On the 21st of March Dr. Bonney called in Dr. Duncan, another specialist of high eminence. Mrs. Bromley Smith got no better, and on the 22nd of March her condition became critical. On the night of the 22nd of March Dr. Bonney, being of opinion that there was no hope of her recovery, called in Mr. Cust, a Magistrate, in order that she might make a statement in his presence if she desired to do so. A statement was made by her in the presence of Mr. Cust and Dr. Bonney. In order to make a statement admissible as a dying declaration the person making it must be in a "settled hopeless expectation of impending death." [See Reg. *v* Jenkins (L.R. 1 C.C. 187).] It had been decided that the words "impending death" meant "immediate or almost immediate death." [See Reg. *v.* Hubbard (14 Cox, 84)]; Reg. *v.* Osman (15 Cox, 1).] In order to make the statement made by Mrs. Bromley Smith in the presence of Mr. Cust and Dr. Bonney admissible it must be made clear to the Court that her condition was one of settled hopeless expectation of immediate or almost immediate death. He (Mr. Mathews) had intended to lay the statement before the jury in opening the case, but as counsel for the defence had intimated that they would object to the reception of the statement in evidence he would not tell the jury what were its contents. Beyond that statement there was nothing tending to show or to prove that the defendant performed an illegal operation upon her.

Dr. Bonney and Mr. R. N. Cust, a Justice of the Peace for London and Middlesex, were then called, and gave evidence as to the statement made by Mrs. Bromley Smith on the night of the 22nd of March. Before making the statement she said, in reply to a question, "I am aware that I am seriously ill." She then proceeded to make the statement, Mr. Cust putting questions to her and Dr. Bonney taking down her answers in writing.

Mr. Avory contended that the statement was not admissible in evidence as a dying declaration, because it came within Mr. Justice Cave's ruling in the case of Reg. *v.* Mitchell (17 Cox, 503), it having been made in answer to questions. He also contended that the statement was not admissible because it had not been shown that when Mrs. Bromley Smith made it she was in the expectation of immediately impending death. In order to make the statement admissible it must be established that at the time she made it she was not merely in the expectation that she was going to die but that she was in the expectation of immediately impending death; but it had not been shown that she was in that expectation when she made the statement. Her answer, "I am aware that I am seriously ill," was evidence that she was not in expectation of immediately impending death.