

Meredith, C.J., Rose, J.]

[July 11.]

DAVIDSON v. GARRETT.

Coroner—Direction to surgeons to hold post-mortem examination—No jury impanelled—County Crown Attorney—Consent in writing—R.S.O., c. 97, s. 12 (2)—Construction—Imperative or directory—Damages.

The wife of the plaintiff had died suddenly, and a question arose as to whether the plaintiff could obtain a certificate of death so as to permit the interment of the body. The defendants—three practising physicians and surgeons—acting under a verbal direction from a coroner for the city where the death occurred and the body lay, entered the house of the plaintiff for the purpose of making, and made there a post-mortem examination of the dead body. The coroner had issued a warrant to impanel a jury for the purpose of holding an inquest on the body, but the warrant was afterwards withdrawn without the knowledge of the defendants. By s. 12 (2) of the Act respecting coroners, R.S.O., c. 97, "in no case shall any Coroner direct a post-mortem examination to be made without the consent in writing of the County Crown Attorney unless an inquest is actually held;" but no consent was given in this case. The action was in trespass quare clausum fregit, and the cutting and mutilating of the body were alleged in aggravation of damages.

Held, that the coroner, having had authority to hold an inquest upon the body, and having determined that it should be held, and having begun his proceedings, had power to summon medical witnesses to attend the inquest and to direct them to hold a post-mortem.

Held, also, that no rule of law exists which forbids the making of the post-mortem before the impanelling of the jury; that is a matter of procedure in the discretion of the coroner.

Held, also, that the meaning of s. 12 (2) is that the coroner should not without the required consent direct a post-mortem examination for the purpose of determining whether an inquest should be held, but only where the coroner was determined to hold an inquest and gives the direction as part of the proceedings incident to it; but if the provision should be read differently, it was at all events merely directory, and did not render an act done by a surgeon in good faith, under the direction of a coroner, unlawful because the coroner had neglected to obtain the prescribed consent, where the Act would be lawful if the consent had been obtained.

Semble, also, that if the verdict for the plaintiff had been allowed to stand, the amount of damages assessed, \$600, was excessive.

Johnston, Q.C., for defendants. *Robinette* and *J. M. Godfrey*, for plaintiff.