claim as would compensate the account sued for.

Judgment for plaintiff with interest and costs.

Merry for plaintiffs.

Brown for defendant.

COURT OF QUEEN'S BENCH.

[Crown side.]

MONTREAL, March 19, 1883.

REGINA v. MILLOY *alias* DOOLEY.

The prisoner was on trial for the murder of Wm. Nesbit.

RAMSAY, J., charged the Jury as follows :—

Gentlemen of the Jury, The length of this trial has subjected you to some inconvenience; but you will agree with me, I think, in saying that the counsel for the defence were fully justified in seeking the adjournment on Saturday evening, for it is now evident that we could not have finished the trial that night.

Except for the formal testimony of the Coroner to establish the death of Wm. Nesbit, the evidence of the Crown begins with the departure of the deceased on the morning of the 19th of January last, from his house to go to the stable, where the fatal blow was given. I shall invert the order of the evidence, as thus laid before you, and begin with the death of Nesbit, in order that we may at once get rid of those questions, which do not appear to be susceptible of difficulty.

First, the cause of death is evident. The deceased, a man in high health, leaves his house in the morning, and returns an hour after with a bullet wound in his throat. The ball passed in under the left ear and lodged in the muscles of the right jaw. The wounded man, with the aid of his wife, managed to harness a horse and attempted to reach the house of his brother-in-law, two or three miles distant, but overcome by weakness, he was obliged to stop at the house of another relative, whence he never could be removed, and where he died at the end of a week.

It requires no great effort of science to arrive at the conclusion that he died of the effects of the wound, and I should not have thought it necessary to do more than allude to the cause of death, had it not been for an attempt which has been made by the defence, to show that Nesbit had not died of the wound, but owing to the mal-practice of the medical men who attended him. It is contended that you have to decide as to the immediate cause of death, and that if you think the deceased would have recovered had he been better or differently treated, the prisoner is not liable. You have been further told that the criminal law on this point is unreasonable and barbarous, and that a doctrine more sensible than that of the common law should now usurp its place. Firstly, the law does not attempt to deal with mediate and immediate causes. No one has yet been able to show what an immediate cause is, more than to determine the size of an atom. What the law considers is the proximate cause. Again, as to the doctrine of the common law, it is necessarily in accordance with common sense, for it is the creature of reason and experience; and if it can be shown that a doctrine is opposed to reason, it cannot be that of the common law. With regard to the question before us the rules of law are perfectly clear and reasonable. If a man strikes another with a deadly weapon, or in such a way as to show that he intended to kill him, and he dies, the man striking the blow is guilty of murder. If the assailant strikes another illegally, and without the intention to kill, and the man struck dies, then the one who struck is guilty of manslaughter. In either case the mal-practice or the negligence which has brought about the fatal catastrophe is at the risk of the wrong-doer, unless it can be clearly shown that the death has an origin perfectly independent of the assault. Roscoe, Cr. Ev. 703.

Having established the cause of death, the next step in our inquiry is as to the instrument used. Have we found the pistol with which the fatal wound was given?

On this point we have a mass of evidence. In the first place the pistol was found on the 19th January close to the scene of the murder. It was found in the snow in the angle of the road leading to Nesbit's house from the high road, and on the left side of the road going from Montreal to Longue Pointe. Secondly, the bullet found in the wound fits the pistol. An effort was made to show that the ball would not fit the pistol, but this objection was disposed of by the testimony of the armourer. He tells us that such a pistol required a tight fiting ball to give it force, and that the ball in the wound evidently received a dent by striking some hard substance, (probably the right jaw bone) and that it was this prevented its entering the muzzle. He remarked also that the pistol could be