THE

CORONER

AND

HIS DUTIES AT INQUESTS

WITHOUT AND WITH A JURY

A PRACTICAL GUIDE

TO THE

CORONER

AND

HIS DUTIES AT INQUESTS

WITHOUT AND WITH A JURY, IN QUEBEC, AND OTHER PROVINCES OF CANADA

BY

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AND

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PREFACE

Experience has shown that nearly every one amongst those around dead persons, medical men, civic authorities, keepers of cemeteries and even attorneys at law are at a loss to know deaths which should be the subject of investigations from those which should not be.

Experience has shown that there are but few people, concerning themselves with the investigations upon death, who know exactly the reason and the end of such investigations.

Experience has shown that Coroners, in all countries in which new legislation on the duties of Coroners has been introduced, are often at a loss to know how to act in order to come to a decision as to summoning or not summoning jurors; that is, they do not know how to proceed in their preliminary enquiry or inquest without a jury.

Experience has shown, that even in the regular inquest with a jury, some Coroners — too many — are not cognizant of what they should do to meet various incidental occurences.

These difficulties come from the fact that all the authors, who have written up to this date upon the Coroner's duties, (1) have contented themselves with speaking only generally and broadly of the principles, (2) have only spoken of principles directly established by law and jurisprudence, without extending the indirect consequences that these established principles bear on all the necessary doings in the procedure, and (3) they have — some entirely, others nearly altogether — neglected to deal with the result of the new modern legislation changing the old English law, and omitted to treat of preliminary enquiries or inquests without a jury.

The present work aims at fulfilling the defficiency. It pretends to be a guide in procedure, telling all who are concerned with deaths to be investigated what they have to do. It takes the case from the time of the death, and step by step, it proceeds to show what has to be done until the body at the end, is buried; meeting on the road all incidental difficulties which may arise.

This method has forced the author to split in parts subjects which could have been treated all at once under a single heading and may give rise to the appearance of repetition of the same things. An attentive observation though, will permit one to see that the repetition is more apparent than real.

The author of the present work has endeavored, to the best of his ability, to give the reasons commanding each and every proceeding set forth in his book. He does not claim infallibility, but hopes that his work will be a benefit for future legislation.

The author extends his sincere thanks to all those who have helped him in his task and more especially to our eminent criminalist Mr. Crankshaw, who has revised the whole work and suggested very important changes, which have been introduced.

ED. MCMAHON.

Montreal, April 1st, 1907.

E. McMahon, Esq.,

Coroner of the District of Montreal, Westmount, Que.

My Dear Sir,

I have examined, with some care, the manuscript submitted to me of your valuable book on the duties of a coroner at his inquests with and without a jury; and I heartily congratulate you upon the thoroughness of your work, the publication of which will not only place, at the disposal of the public at large, some very useful and definite information and instructions, but cannot fail to be of great utility and benefit to coroners, lawyers, civic and other authorities, priests, ministers, medical practitioners and others directly and indirectly engaged and concerned in investigating the causes of sudden deaths, of deaths due or suspected to be due to negligence, violence or foul play, and of deaths of persons dying while under restraint of their liberty, such as prisoners and inmates of lunatic asylums, etc.

To give a full appreciation of your work would require more space than is contained within the bounds of a mere letter; but I may briefly mention what appear to me to be some of its salient points.

Your treatment of the subject of a Coroner's duties, in general, and of the procedure before and at and after a regular inquest with a jury, is new and most complete.

In my opinion no previous work contains so exhaustive and critical an enquiry into and examination of the sources of a Coroner's powers, duties and responsibilities, nor so clear and minute an explanation of his special powers and duties in the matter of his preliminary inquests or investigations without a jury; and, never before, has any author put forward such useful and comprehensive suggestions for future legislative inprovements on the subject in hand as are contained in the concluding pages of your work.

Trusting that your publication will meet with unbounded success,

I remain, my dear Sir,
Yours very truly,
JAS. CRANKSHAW.

REMARK

As this work is being printed a law has been passed in Quebec reducing to six the number of jurors required at Coroner's inquests.

ERRATA

Page 14.—Line 4 — read "confide" instead of "confine".

Page 58 — line 1 — read "there is ground" instead of "there ground".

Page 160 — line 4 — read "a law ordering" instead of "a law of ordering".

Page 173 — line 4 — read "is an offence" instead of "in an offence".

Page 271 — paragraph 622 — line 4 — read "ways" instead of "days".

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PRELIMINARIES TO AN INQUEST WITH A JURY

Once the Coroner has judged that it is obligatory to assemble a jury, he should:—

1. Make a sworn declaration averring the possibility of suspecting homicide and containing briefly the motives which lead him to this conclusion.
2. Fix the time and place where the inquest is to be held,
3. Secure possession of the corpse and of the spot, as well as of objects tending to throw light upon the cause of death.
4. Order the constable to summon the jurors, — not less than twelve, — to appear at the time and place fixed,
5. Secure, — for the purposes of the inquest, — the presence of all persons whom he believes are in a position to give useful information.

ARTICLE I.

ARTICLE II.

The inquest should be fixed for a time as soon as possible after the death.

Except for good reasons it should be within 24 hours.

ARTICLE III.

The Coroner secures possession of the corpse for the purposes of the inquest. He acts so as to derive from it all facts useful to justice.

ARTICLE IV.

The place where one knows or where one has reason to believe the supposed crime, — the cause of death,— to have been committed should be carefully examined and the Coroner should take and keep possession of it for the purposes of the examination.

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THE CORONER AND HIS DUTIES

INTRODUCTION

REASON AND PLAN OF THIS WORK

1.—IGNORANCE OF THE LAW.

2.—PLAN.

3.—DIVISIONS.

1. Such various and diametrically opposite ideas hold sway, more or less everywhere, and even in the centre of our Parliaments, upon the utility of Coroners' inquests and on the manner in which they should be held; so many contradictory views are expressed — even by judicial authorities — upon the law regulating the procedure of the Coroner's inquests and the circumstances under which they are to be held; so many laws, or projects of opposing laws have been proposed to right and left upon this subject; so great is, in a general sense, the discredit into which Coroners' inquests have fallen, that I have sought honestly to study the question.

It is the result of these studies which I would now publish; happy if the publication should prove of service to society.

2. As I soon saw in the course of my investigations that ignorance of the true principles which should guide in the

discussion of the subject, is generally the cause of all contradictory views which have found expression, I purpose leaving nothing aside in order to demonstrate what the existing law is.

By bringing to light the reason of such law I shall endeavor to ascertain and explain whether it achieves or fails to achieve the end aimed at.

This will lead to find out whether it is not possible to bring about certain practical modifications of a nature to render Coroner's inquests more efficacious, while recognising always, nevertheless, that society demands complete protection, at no more than a reasonable cost.

3. I shall proceed by Articles, each Article standing for a principle or a law, of which I shall seek to demonstrate the necessity or usefulness, with or without modifications being brought to bear thereon.

PART I will treat of the general principles bearing upon the utility of inquests.

PART II will deal with investigations or inquests without a jury.

PART III will bear upon preliminaries to an inquest with a jury;—the procedures immediately preceding an inquest with a jury.

PART IV will indicate the line of procedure to be followed at inquests with a jury.

PART V will concern itself with the procedures immediately following an inquest with a jury.

PART VI will consider the other duties of Coroners, apart from an inquest, with regard to deaths.

A last part will be wholly given to a project of revising the laws regarding the Coroner's duties.

PART I

GENERAL PRINCIPLES.

ARTICLE I.

THE SEARCH FOR HOMICIDE.

4.—OBLIGATION TO PUNISH ALL CRIMES.

THE STATE HAS TO PUNISH CRIMES BUT DOES NOT TAKE INITIATIVE FOR ALL CRIMES.

5.—THE STATE INITIATIVE IN SEEKING HOMICIDE.

6.—DIFFERENCE OF ACTION ON THE PART OF THE STATE IN A CASE OF HOMICIDE.

7.—OBLIGATION ON THE PART OF THE STATE TO SEEK FOR HOMICIDE.

8.—OBLIGATION BY STATUTORY LAW.

9.—THIS OBLIGATION OF THE STATE HAS REMAINED, NOTWITHSTANDING THE HOSTILITY TO CORONER'S INQUESTS.

10.—OBLIGATION BY ENGLISH CONSTITUTION.

11.—IT IS A PRIMORDIAL OBLIGATION IMPOSED IN EVERY ORGANIZED NATION.

12.—IT IS AN OBLIGATION ACKNOWLEDGED BY EVERY CIVILIZED COUNTRY.

13.—SUCH OBLIGATION IS PERFORMED BY JUDICIAL OFFICERS OF THE STATE.

14.—THE STATE HAS NO RIGHT NOT TO SEEK HOMICIDE.

The State is bound to search for homicide.

This obligation incumbent upon the State requires explanation.

4. The State is indeed obliged to punish all crimes brought to its notice, and to afford all the means necessary to

that end. But in a question of theft, of forgery, or of any other crime than that of homicide or of arson adverted to below, it is not bound to take the initiative, and as a rule it waits until the person wronged, or some other person interested, lodges a complaint.

This complaint, in these cases of theft, forgery, etc., must be supported by oath and must include the essential facts lending probability to the crime. It should assert that a crime has been committed, or is believed to have been committed. Without such assertion the State does not intervene.

Thus in all such cases, there is, as a rule, no initiative on the part of the State.

5. In the case of homicide, on the contrary, the State intervenes on a mere doubt. The cause of death is unknown, or it is held to be due to another's deed; or again, it presents, because of special circumstances, the appearances of not being due to natural causes; there is no charge of homicide and, nevertheless, the burial does not take place without the permit of the officer of the State — the Coroner. Investigation must be made as to whether the death is or is not the result of a crime. Here the State takes the initiative.

6. In the case of ordinary crimes, the State seeks to ascertain whether a crime brought to its notice by means of a complaint is indeed the crime it is stated to be. In the case of homicide the State seeks to ascertain whether there is cause to denounce a crime, or whether the death is the result of a natural or of a purely accidental death.

In the first case, it is not the crime which is questioned; it is the validity of the denunciation. To this denunciation is added an accusation, and the accused is called upon to defend himself.

The enquiry thereupon held by the State, through its Justices of the Peace, is but the beginning of the taking of the evidence against an accused.

In the second place, it is not the question of a crime; there

is no accusation, there is no person accused, but merely, on account of the unnatural circumstances of a death, the State seeks for the possibility of a crime to have been committed.

The State, of itself, wishes to know whether there is ground to bring an accusation or to denounce a crime. This is how the State seeks out homicide.

The State takes the initiative, again, in the case of arson. I shall give the reason for this later on.

7. The nature of investigations with regard to homicide being known. We shall now go into the subject and demonstrate that the State is bound to make these investigations, and to take the initiative therein.

8. Nowhere do our Statutes contain the formal and express recognition of this obligation, it is true, but none the less, in certain parts there are to be found statutory clauses which lead us to infer the recognition of this obligation.

For instance, Article 69 of the Civil Code of Lower Canada prohibits the interment of corpses without legal examination, if there may be anything to give rise to suspicion of homicide, and the Revised Statutes of the Province of Quebec contain a whole section under the title "Coroners", relating to inquests in the cause of death, — a Section amended more than once, with the object of altering the details of procedure, but recognising the fact that the State should, in certain cases of death, make investigation.

This same recognition of the duty of the State is found again in the Dominion Statutes, and notably in the Criminal Code, Section 944, requiring an inquest to be held on the body of a convict executed under judgment of death.

It is also found in the Act on Penitentiaries, and again in the Act of Quebec on Private lunatics asylums.

All these laws — examine them as you will — and whether they are stated in prohibitive terms or otherwise, — will remind you, nevertheless, that there are deaths in regard to which the State is bound to establish whether they are due

to natural or unnatural causes, — the result of culpable or non-culpable acts.

In these laws (sometimes stated in prohibitive terms, going beyond the end sought) we always find the recognition of the principle that the State is bound to trace homicide.

9. If we examine attentively all the laws in question; if we go through some of the Acts passed and since abrogated by our Legislatures; if we follow legislation on the same subjects in the Province of Ontario, we see plainly that the one motive has brought them into being, to wit: hostility to Coroners and to Coroners' inquests. From all which one is led to wonder why out of so many with the same aim in view, none has ventured to abolish them with a stroke of the pen. It has not been done because it could not be done. Is not this the most striking proof of the recognition by the Legislatures of the obligation to trace homicide?

10. Whatever may be done or desired, the State must trace homicide, if there is any ground to suspect it.

The means to achieve this object may vary, but the investigation by the State must be made. English constitutional law makes it a duty, and indeed the maintenance of order and peace is a paramount obligation.

This obligation is imposed by Magna Charta: "Nullus liber homo aliquo modo destruatur nisi per legale judicium parium suorum aut per legem terræ." "No freeman shall perish in any way whatsoever but on the judgment of his peers, (condemnation to death) or by the law of nature (by illness or accident").

Such are the terms used in Magna Charta to assure English subjects of the State's protection. The State thereby engaged itself to seek and make sure whether deceased subjects have come to their death "per legale judicium, aut per legem terræ", — through being condemned to death, or by the law of nature.

The English, centuries ago, forced their Sovereign to affix his signature to this written guarantee, this written contract,

the basis of the existence of all society under English rule. Since then they have always been watchful that this guarantee contained in the great Charter should be faithfully maintained.

That is why, English law, Common or Statutory, has always upheld the obligation of holding inquests after deaths when a doubt might exist as to their cause.

That is why, carrying scrupulosity to its extreme, the Legislatures have commanded and still command, in all countries under English rule, that an inquest be held on every person executed by virtue of a judicial condemnation.

English Common Law, as we find it reproduced in Bracton: "De legibus & consuetudenibus angliæ, Lib. III, ch. V-VI-VII-VIII" — in Reeves History of English Law, Vol. 2, p. 466" — in Britton, p. 8 — obliges the State to seek out homicide in all cases of death by submersion, by whatsoever act of violence, or by sudden death.

The English Parliament have confirmed this law, notably in its Statutes "De officio Coronatoris", 4 Edward I. and "The Coroner's Act" of 1887.

11. Even though this guarantee were not written in Magna Charta, it would none the less exist as the basis of the maintenance of established society.

Celebrated thinkers have proclaimed this truth long before to-day. To cite a few, chosen at random:—

Blackstone, in his immortal commentaries on English Law, Vol. I, p. 24, says: — "The principal aim of society is to protect individuals in the enjoyment of those absolute rights which are vested in them by the immutable laws of nature", and at page 129 of the same volume, he points out that of all these immutable rights, needing the protection of society or the State, the first which each individual possesses is the right to live.

Felicé in his work entitled "The Right of Nature", Vol. II, p. 166, says: — "The duty of the sovereign which tends most towards the end of establishing society, and which is its

strongest bond, is the protection which he owes to his subjects. It was in view of this protection against attacks from within and without that men mainly determined to unite in society, and it is this protection which assures us the peaceable enjoyment of our rights; it is this which assures us our lives, our foods, our honor. The protection which the sovereign owes to his subjects is so identified with sovereignty, that without protection sovereignty no longer exists."

The State cannot afford sound protection in the case of homicide, when the victim, by the very fact of the crime, cannot claim justice, save inasmuch as the State itself take the initiative in investigation.

Tisdale, an eminent lawyer of Boston, in a paper given in 1887 before the Medico-Legal Society of the United States, resumes all that was written before on this subject. "To assure", he says, "the enjoyment of life in its plenitude is of major importance" — "To bury a corpse, without being certain that the death is due to a natural or purely accidental cause, would be, on the part of the State, a direct encouragement to conceal crime, and a notice to the evil-doer assuring him of impunity if he kill his fellow-being, and hide all trace of the crime" — "All deaths which may be due to the deed or omission of another, become a matter of public interest"— "No death of which the cause is not clearly known, should pass unnoticed, and the cause should never be inferred from appearances, but with certitude, from the established facts."

It results clearly from these citations that of all rights of man, claiming the protection of the State, there is none more sacred than the right to live. It results further that of all the obligations of the State, there is none more imperative than that of protecting the lives of individuals and, as corollary, that the State cannot protect the lives of individuals save by taking the most efficacious and surest means to prevent homicide, and therefore, the State must always, and in all parts, seek it out.

12. The different States have understood this duty so well that wherever civilized, organized society exists, possible

homicide is and will be sought out in the case of suspicious deaths.

Coroners' inquests in England antedate Magna Charta by many years. They go back to a period so remote that historians are unable to determine their commencement.

In France, Article 44, section II, chapter IV, Book I of the Criminal Code, imposes this duty upon the procureur of the Republic, upon his substitutes, judges of instruction and commissaires of police.

In Germany the law of October 1879, on criminal procedure, names the magistrates who should make these investigations.

In Scotland this obligation is incumbent upon a magistrate called the "Procurator fiscal".

In Turkey this task is entrusted to an officer of the judicial police.

13. The importance of the investigations to be made in the case of homicide is so well understood everywhere that this work is not entrusted to ordinary policemen, with only limited resources at their command, but to magistrates possessing far-extending powers, and able to bring to bear the full force of Justice in order to reach the truth.

To this formal recognition by all countries, of their obligation to seek out homicide, to the authoritative word of a celebrity such as Blackstone, supported by eminent jurists of other countries, and to the formal laws recognising this obligation, let us add the fact that for centuries Coroners in England have been charged to hold inquests to seek out homicide, and it cannot be successfully contended for a moment that the State is not bound and obliged to seek out this crime.

14. We will go a step further and add without fear of contradiction that whenever the State, for reasons of economy or otherwise, sets up, by its laws, any obstacle to such search, in any case of suspicious deaths, it does what it has no right to do; it fails in its duty.

It is with a view of facilitating inquests by all means possible in suspected cases, that legislation should be passed on this subject, even when the desire exists to prevent useless or irksome inquests.

It is chiefly because this principle has been too often forgotten that laws have been passed at certain places and at certain times, rendering the holding of inquests very difficult.

Let us prevent the holding of inquests whenever no suspicion can exist, but, by all means possible, let us promote the holding of inquests whenever a doubt may exist — let the Coroners have all the powers and means to hold thorough serious inquests. This is what the State should do; this is the first guarantee it should give to the individual. The Coroner's inquest should always exist so as to daunt the criminal, as the constable's presence on his beat prevents the thief's depredations there.

ARTICLE II.

THE SEARCH IS MADE ONLY FOR HOMICIDE BY THE CORONER.

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15. The most ancient statutes regulating all that pertains to inquests, declare that the circumstances of the death of every man killed, "de homine occiso" shall be sought out.

Feta, in his Commentary on English Law, p. 38, declares that the inquest shall seek out homicide.

Bracton, in his work "De legibus Angliæ", Vol. II, p. 286, gives the discovery of homicide as the object of the inquest: he employes the word "occisos" ("killed").

Reeves, in his History of English Law, Vol. I, p. 466 (edition of 1869) referring to homicide reminds us that the Coroner is bound to seek for it.

16. Nowhere in the works of these different writers, nowhere in the Statutes, is there one word or sentence leading one to the belief that the object of an inquest can be anything but the search for homicide.

When Statutes and commentators enter into details, they emphasize even more strongly this single aim. For instance, section 2 of the Statute 4 Edw. I., already cited, declares upon what the verdict should rest. "He shall declare", it says, "where the man has been killed; whether in a house, a field, etc.," and the above named authors, commenting thereon, repeat thereafter that the verdict shall contain a declaration affirming or denying homicide, designating the time and place, when and where committed, indicating in what manner it was committed, and denouncing the perpetrator. Nothing further.

17. So true is it that this is the sole aim recognised by English law, that the Coroner's Act, revising the whole law, in 1887, states in sub-section 3 of Article IV, that the verdict shall contain, apart from the designation of the defunct, the place, time and circumstances of his death; whether he has been killed or not, and by whom. Nothing further.

18. Of all our various Statutes which have legislated on this subject in Canada, none have given the Coroner any object other than the search for homicide. It is true that the recognition of this principle has nowhere been formally stated, but it has been implicitly conveyed by each new law.

Is it not plainly indicated by Article 69 of the Civil Code, (prohibiting the interment of corpses bearing marks of violence, or of persons who have died under circumstances of a nature to give rise to suspicions of violence) that the sole object thereof is the search for homicide?

If this does not suffice, let us turn to the Statute of Quebec, regulating actually such cases as call for the summoning of a jury.

This Statute of 1895, Chapter 26, declares that there shall be no inquest save when there is good reason to believe that

death has taken place through the criminal deed or omission of another person.

Is not this formally recognising that the Coroner has but to seek out homicide?

19. But, it may be asked, is it not also the aim of the Coroner's inquest to seek means to prevent a recurrence of the same fatal causes, as is done everywhere more or less, sometimes with appreciable results? If we reply in the negative, we hear it said that, if such is the case, Coroner's inquests are to no purpose.

However, a negative reply is inevitable; the law has nowhere assigned to the Coroner's inquests the duty of seeking means to prevent the recurrence of distressful deaths, whether due to accident or disease.

20. It is true, though, that a verdict sometimes conveys suggestions tending to obviate the recurrence of similar deaths.

Custom, in Canada as in England, allows the Coroner's jury to make such suggestions, and the State has concurred and will concur so long as there is no abuse of its concurrence.

If the inquest, while confining itself to the search for homicide, suggests means for preventing further analogous occurrences, there is no abuse on the part of the jury in suggesting the use of such means. It is in the interests of society.

21. If the Coroner's inquest, having confirmed or denied homicide, is prolonged with the sole aim of seeking means to prevent the recurrence of similar deaths, it exceeds its functions.

No doubt it is of interest to society to know whether there are not means to prevent such and such an accident or occurrence from again taking place; it is of interest to society to find means to prevent certain sudden deaths, or fatal outcomes of operations.

But is it really to a Coroner, and a Coroner's jury, — usually unconversant, one and all, with the works and operations out of which these accidents have arisen, — that the State would confine the task of remedying the existing evil? Evidently not. Industrial and medical science are much better qualified for this undertaking.

22. Then, would not the assigning to the Coroner of a double duty, have, in time, the effect of obscuring the main object? Do we not already see men sustain the idea that inquests are effectual only so far as they lend themselves to researches other than that of homicide itself? Have not physicians, for instance, stigmatized as farces such inquests as do not demonstrate the pathological cause of death? Has not the Press claimed that it were as well to dispense with inquests, unless they found means to obviate certain accidents?

No doubt the general custom actually followed, of permitting the jury, in its verdict, to enter into considerations of public interest, has its good points, and should be allowed, but were the custom sanctioned by law, it would certainly have the effect of causing the main object to be obscured, for experience shows that the jury are always ready to pronounce themselves upon such considerations, whereas, it is always with reluctance or hesitancy that they declare against, and especially for, the homicide. To obtain an answer to the question: "Has there been homicide or not?" the Coroner is generally obliged to insist upon it and exact it.

When the inquest shall have, according to law, two recognised objects, one being attained, will it be easy to force the jury to attain the other?

23. If there is cause to seek beyond the homicide, were it not wiser to relegate this task to accredited persons, possessing the knowledge called for, to pronounce themselves with understanding of the causes, rather than to ask the opinion of unqualified persons, such as are, generally, the juries of our Courts?

If the medical authorities, for scientific and humanitarian

ends, would, after a thorough medical examination and profitable argumentative discussion, assure themselves of the pathological cause of the death, let them investigate by all legal means which the law affords, and if these means are not of sufficient scope, let them claim further means, in the name of humanity. The law will grant them, as it has granted the establishment of offices of hygiene; as it has granted the right to hold autopsies in certain cases; as it has granted them the right to take possession of certain corpses; as it has granted them (in Montreal) the right to hold inquests in the case of death from contagious disease.

But, my medical friends, tell me what weight would be given to the judgment, in a medical matter, of twelve or fifteen persons ignorant of medicine, even though they based such judgment upon the opinion of an accredited physician; if it can be controverted by the reasoned opinion of a body of medical men?

If the Legislatures desired a judgment upon a medical question, it is not to twelve ordinary citizens that they would look.

If certain industries afford dangers which we should strive to obviate, is it reasonable to say that the sure means of attaining this end is to have recourse to the conclusion of twelve or twenty persons possessing, generally, no knowledge of mechanics? No; the State has a sounder sense of its responsibilities, and competent parties were appointed for this purpose several years ago.

24. And, contrary to the opinion of those who believe that without this dual aim the Coroner's inquests become ineffectual, we add: the search for homicide is a sufficient task, and absolutely necessary.

To prove it, it suffices to refer the reader to the matter contained already in this work in support of Article I.

These inquests are necessary, not only because the State is constrained to seek out homicide, as has already been shown, but furthermore, because the ordinary means at the command of the police, to discover crime, are set in motion in search

of homicide at the same time as all extraordinary judicial means possessed by the law; which considerably augments the chances of success.

It is now a question of protecting society against the greatest crime from which society demands protection; and the soundest means of obtaining that protection should be employed.

It is because all peoples have always understood that of all the means at the law's command for the discovery of crime, none is more efficacious than the inquest, (inquisition) that they all employ it to seek out homicide. Hence it does not seem well advised to require that a Coroner or a Coroner's inquest should extend beyond the search for the homicide.

ARTICLE III.

WHEN HOMICIDE SHOULD BE SEARCHED FOR.

25.—DEATHS, THE SUBJECT OF AN INQUEST.
26.—STATUTORY LAW.
27.—THE CORONER IS THE OFFICER TO MAKE THE SEARCHES.
28.—OTHER OFFICERS FORMERLY APPOINTED CONCURRENTLY TO CORONERS HAVE BEEN REVOKED.
29.—THE INSPECTION OF THE BODY IS NOT ALL THE SEARCH TO BE MADE.
30.—THE CIVIL CODE OF LOWER CANADA MEANS SEARCHES WHERE IT SAYS INSPECTION OF THE BODY.
31.—THE CIVIL CODE OF LOWER CANADA IS ONLY ACKNOWLEDGING A DUTY IMPOSED UPON CORONERS BY OTHER LAWS.
32.—WHAT LAWS ?
33.—THE CIVIL CODE FORMALLY RECOGNIZED THE OBLIGATION OF INQUESTS.
34.—THEY ARE STILL OBLIGATORY.
35.—SUBSEQUENT LEGISLATION HAS ACKNOWLEDGED THIS OBLIGATION.
36.—THERE WAS ONCE A LAW WHICH COULD HAVE BEEN TAKEN FOR AN EXCEPTION.
37.—THIS OBLIGATION EXISTS ALL OVER THE WORLD.

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25. There is ground for the Coroner to search for homicide in all cases, (1) of violent death, (2) of death surrounded by circumstances giving reason to suspect violence, and (3) of the death of any person deprived of his liberty, (the deaths of lunatics incarcerated in public asylums excepted).

26. The heading of this Article reproduces almost textually Article 69 of the Civil Code of Lower Canada. The difference between the two is only apparent.

Article 69 of the Civil Code of Lower Canada declares that burial in these cases cannot take place without the permission of the Coroner, or another officer performing the functions and duties of the Coroner, among which duties is that of inspecting the body in such cases.

The heading of this Article requires only the Coroner to seek for homicide.

This form is deliberate. It is explicit; it does not lend itself to ambiguity.

27. The heading of this present Article, as formulated, leaves no doubt upon two facts which in Article 69 of the Civil Code are, possibly, not clear.

This Article of the Code mentions an officer other than the Coroner as having authority to permit burial, and it is, perhaps, because of this that certain Justices of the Peace, certain mayors of municipalities, certain ministers of religion, and even certain physicians, sometimes take upon themselves to permit the burial of persons dying under the circumstances mentioned in this Article.

Now, no one but the Coroner has authority to give such permits in the Province of Quebec.

28. The laws which of old gave this power to Captains of Militia — 34 Geo. III., chapter 6, section 36 —, and later to parish priests, missionaries and Justices of the Peace, have been abrogated. The last, notably, was in force only one year; it was expunged from the Statute for two reasons: the first, because it gave to too many persons, unqualified for the matter, the task of seeking out a crime, often very difficult to discover; the second, because the State not having provided for the remuneration of these new functionaries, no investigations were made. As a fact, the State abstained from fulfilling a primary duty to society.

It is already long since the first was abrogated, and in favor of this abrogation was pleaded the necessity of confiding only to qualified persons the investigation of so serious a crime.

29. Article 69 of the Code of Lower Canada says that the Coroner shall make the inspection of the corpse before permitting burial, and mentions no other procedure.

The heading of this present Article as given above, declares that the Coroner shall seek out homicide. The one and the other, fundamentally, say the same thing, but the first seems to lead to the belief, at first sight, that the inspection of the corpse alone suffices to reveal whether death is due to homicide or not. It is evident, nevertheless, that the Civil Code of Lower Canada never meant to say this. It is not because a corpse is mutilated that we may conclude that homicide has been committed, — an accident may bring about the same result, — and it is not because a corpse on inspection offers no traces of violence that we may conclude that death is not due to homicide. The poisons employed in our day by cunning criminals leave no trace behind them.

30. The Civil Code of Lower Canada speaks of inspection (necessary, no doubt) but does not exclude other means at the disposition of justice to seek out the crime.

It is indeed the seeking out of the crime, by all means humanely possible, that the Civil Code of Lower Canada has in view in its Article. The codifiers have been careful to indicate the sources from which they have taken Article 69. They consist of two edicts of the Kings of France, one of the 5th. of September 1712, and the other of the 9th. of April 1736; Article 81 of the Code Napoleon, and Russell on Criminal Law. Edicts, Code Napoleon, and Russell, all these point out that the aim of this prohibition of immediate burial is to find whether the death is due to a homicide or not. We find these sources quoted at length in the library edition of the Civil Code of Lower Canada under Article 69, but I abstain from reproducing them so as not to unduly extend my work.

31. The Civil Code of Lower Canada saying, in Article 69, to the keepers of cemeteries, "You shall not bury in certain cases without a permit from the Coroner"; in saying to the Coroners, "You shall make investigation after certain deaths", lays down a police regulation which was within its rights. To

tell Coroners how they should make the investigations, by inspection of the corpse, or otherwise, exceeded its powers; that would have been stepping upon foreign ground; it would have been to lay down rules in matters of procedure.

The framers of the Code had only to codify the civil laws of the heretofore Province of Lower Canada. The laws of procedure to be followed by the criminal courts or police courts were not within their scope. Hence the words "The Coroner shall make inspection of the corpse" are only there to replace the words "The Coroner shall proceed as the law exacts, and shall give his burial permit when it is no longer necessary to retain the corpse."

32. Now, in 1860 (the date of the promulgation of the Code) what was the law of procedure governing the Coroner's actions in the case of death?

In the Canadian Statute there was not then to be found any special law regarding the procedure to be followed by Coroners. English law on this subject had been introduced into this country in 1774, by the Statute 14, Geo. III., Sec. XI, ruling that all English criminal laws become law in Canada. With it entered then in Canada all the police regulations as to the prevention, the detection and the punishment of crimes.

In England, at this period, there were only the Common law, the Statute of 4 Edward I., already mentioned, to govern Coroners. Common law and Statute alike ordered investigations in the case of certain crimes. Neither the one nor the other contented itself with the mere inspection of the corpse. For instance, — not to reproduce the whole, — a single clause of the Statute of 4 Edward I., sec. 2, will convince the reader that it was a question of much investigation. "The verdict", says this section, "shall declare where the person was killed, in a house, a field, a bed, an inn; alone or among several people; it shall denounce the guilty one, or ones; it shall give the names of the persons present at the death, men or women." It is not plain that the law in exacting these details exacts investigation? That the inspection of the corpse will never furnish the answer to all these questions?

33. In 1860, at the time of the codification of the laws in Lower Canada, and by virtue of Article 69 of the Code resulting from such codification, investigations in the case of certain deaths were formally recognized as obligatory.

34. These investigations, which were compulsory then, are still compulsory.

In the first place, Article 69 of the Civil Code of Lower Canada has never been formally and expressly abrogated. A single law, the Statute 42-43 Vict., chapter XII, contained a clause withdrawing the obligation of the Coroner's permit, but this law having itself been abrogated by the Statute 43-44 Vict., Article 69 of the Code became law again, by virtue of an elementary principle of law to that effect.

And not only have the other Statutes of Quebec, bearing upon Coroner's inquests, not abrogated this Article, nor exacted anything in any way contradictory to it, but they have formally recognized that there are (apart from the inquests by jury authorized by them) cases of death necessitating investigation, for which the Coroner has a right to compensation. See the Revised Statutes of Quebec, section 2692.

Therefore, these Statutes have recognized that Article 69 of the Civil Code is still in force as law, and that there are grounds for investigation in all the cases of death therein mentioned.

35. Moreover, all these Statutes of Quebec have had for object the prevention of coroner's inquests in cases of death resulting from unavoidable accidents or from natural causes. None have declared that in the cases of unnatural death, or of which the pathological cause remains unknown, the body may be buried without the Coroner's permit. All have admitted the obligation of Article 69 to stand, and, therefore, have recognized that the Coroner must seek, before giving his burial permit, whether or not the circumstances of the death gave cause for the summoning of a jury; whether, in other words, all suspicion of homicide might or might not be excluded.

36. In stating that all these Statutes have recognized the necessity of a permit being obtained from the Coroner in the case of death by accident, or of death of which the cause is doubtful, I have made a slight error. The Statute of Quebec, Vict. 42-43, chapter XII, to which I have already alluded, withdrew (while that Statute was in force) this obligation from the Coroner. But even this Statute recognized the obligation of seeking for homicide in this case; it had investigations made by the mayor, the minister or priest, but investigations there must be; and it was virtually these persons designated in the Statute who assumed the responsibility of declaring, on information taken and searches made, that there were no grounds for suspecting homicide, and that burial might take place without further inquest.

In fact, this Statute, as well as all other Statutes preceding and following it, leave standing the obligation imposed by Article 69, that is, that there should be an investigation in all cases which may give rise to suspicion.

This Statute, like all those which have preceded and followed it, — as all those which may follow it, — have been and will be powerless to do away with the obligation imposed upon the State to seek, in case of doubt, whether the death is the result of homicide.

Certain it is, then, that in each occasion, mentioned in Article 69 of the Civil Code of Lower Canada, there is ground for the Coroner to seek whether homicide has or has not been committed.

37. It is useless to add that this Article 69 of the Civil Code of Lower Canada is only declaring what is common law, not only in the Province of Quebec, but all over the civilized world.

ARTICLE IV.

VIOLENT DEATH.

38. Violent death is death resulting from other than natural or ordinary causes.

39. Neither the Civil Code of Lower Canada nor any Statute before or since has defined violent death, nor have the legal sources which gave rise to Article 69 of the said Code of Lower Canada afforded any definition of violent death.

Nevertheless what the legislators call "violent death" is called "unnatural death" by the declaration of 1712.

Unnatural death is evidently that which is not the result of illness.

Legislators in abstaining from defining violent death have tacitly accepted the usual definition.

Violent death is defined by the Dictionary of the French Academy (edition of 1879) at the word "violent" as "death caused by the force, or by some accident, and not by a natural and ordinary cause.

40. This definition quite meets the general idea thereof. Never, whether among the illiterate or the learned, has death resulting from illness been called violent, however terrible and violent the agony preceding dissolution.

But the ignorant with difficulty realize that a peaceful death, caused by a narcotic, may be, as the learned maintain, a violent death; they grant, however, that it is not a natural death.

If it is not the result of a natural and ordinary cause, it is, as a consequence, a violent death, according to the above definition, understood in the common parlance of all civilized countries.

41. It is thus understood by medical science.

Lacassagne, in his treatise on Medical Jurisprudence, p. 202, gives as violent death "death by external causes".

And all the treatises on Medical Jurisprudence, whether English,—as those of Taylor or Wharton,—or French,—as those of Fodéré, Dévergie, Lutaud,—contain a chapter dealing with attempts upon life by violence, leaving apparent external traces, and by violence leaving no external trace upon the corpse. They treat all of contusions, lesions, wounds, burns, leaving visible exterior traces; of asphyxiation, suffocation, submersion; of death by external heat, by cold, by poisoning, by gas, or by poisons leaving no outward trace. They give all these means as acts capable of causing violent or unnatural death; which is all one to them.

Needless to inquire what is said in the treatises of *savants* of other countries; the same theory will be found in their works.

42. It is thus indeed that the law understands it.

For want of exact statutory text, if recourse is had to Common Law and jurisprudence, as established by precedents in England, the following will be found:—

The Statute of Edward I., to designate persons dying violent deaths, makes use of the Latin word "occisos", "slain"—that is to say, deprived of life otherwise than by illness.

Blackstone in his Commentaries, Vol. I, p. 348, employs the word "slain".

Reeves uses more explicit expressions, "death by a wound, by drowning, by suffocation, by accident": History of English Law, Vol. 2, p. 466.

Britton calls violent death that which is by felony or misadventure, p. 8.

Burns, Justice of the Peace, Vol. 1, p. 432, calls it "unnatural death".

Williams, Justice of the Peace, Vol. 1, p. 609, says indifferently "unnatural or violent death".

Dickinson, Justice of the Peace, Vol. 1, designates violent death by the words "unnatural death".

Jervis — Coroner's Act, Edition 1888, p. 8, citing Judge Stephens, obliges the Coroner to concern himself with deaths which may be due to other causes than an ordinary malady.

Baker — Coroners' Duties, enumerating the cases of death with which the Coroner should concern himself, mentions, among others, all fatal accidents.

It is evident, then, that by violent death our law understands all deaths not resulting from illness, not arising in an ordinary manner, as happens in the natural course of life, but having for cause immediate or remote an extraneous and extraordinary agent.

43. It may seem needless to some to particularize to such an extent on a subject so easily understood.

However, it is useful that all should thoroughly understand that each time the sole cause of death is not due to ordinary illness, arising from an ordinary cause, burial cannot take place without the Coroner's permission. People never forget to notify the Coroner of a death following immediately upon, or some instants after, an accident, but they often forget to inform him of a death caused by an accident dating back several weeks or months. There has been time to follow the course of the accidents' effect; the inception and development of the illness resulting from the accident has been marked; the cause of death is known, which is attributed to illness. It is often added from having heard accounts of the accident from persons present, or from the victim himself, that there has

been no fault on the part of others, and consequently that burial is justifiable without the permit of the Coroner, as exacted by law.

Not only is an error thereby committed, but also a punishable breach of the law. I shall have occasion to speak of this hereafter.

As it exists to-day, the law forbids burial, without permission from the Coroner, of every corpse when death is due, in a sense *immediate or remote*, to any other cause than ordinary illness, the result of an ordinary cause.

44. The principle adopted by our law, that there should be investigation by the State concerning these deaths, is just and should continue to be recognized by the law. There should be investigation in all doubtful cases, we have said in the preceding article. Now, there is doubt in all cases of death admittedly violent.

All civilized countries have recognized that there is doubt in all these cases, since all have ordered investigation. I refer my readers to the laws of the different countries mentioned in a preceding article as giving grounds for an inquest.

45. If the reason of this universal legislation be sought for, it is easily found. A moment's reflection suffices to convince us of the wisdom of the law. As a fact, violence, the cause of death, is manifested either in the presence of witnesses or without them.

In the first case it imports that all the facts should be methodically and judicially gathered from the lips of eye-witnesses, and carefully mastered. In the second case it imports that the place of the accident, the deeds and movements of the victim and of those about him before the accident, should also be carefully studied by a person or persons apt at discovering crime.

46. I know well that, when in the case of death following upon an accident, burial takes place without the Coroner's authorization, those who perform or permit the burial are

satisfied, after informing themselves of the facts, that homicide has not been committed.

I know, besides, that in most of such cases, their judgment is right.

But, upon one hand, they have arrogated to themselves powers which they do not possess, in holding an inquest which they are in no wise qualified to hold; and on the other hand they have often enquired into the facts in an incomplete manner, and always without being thoroughly sure that the truth has been told to them; they have assumed a responsibility which the State does not require of them, and they may be the cause, if mistaken, of a crime going unpunished.

Evidently a judicial officer vested with special power and scope, able to command in time of need all the machinery of the police and of the law, will always have better opportunity to see the entire circumstances in all their details. And, I will not surprise anyone by saying that the magistrate will, sometimes, suspect a crime, where a person outside the profession would only see an accident.

Hence, it imports, and it is a duty of the State to search out all homicides. Consequently it is its duty to enquire in all cases of accidents, whether homicide is a possibility, and permission to bury cannot and should not be given by the officer of the State except when his investigations have shown that homicide has not been committed.

47. All unnatural deaths necessarily give rise to the idea of homicide. It is due to somebody's fault, whether it may be imputed to the victim himself or to another. Of accidents, which it has been agreed to call misadventure or unavoidable, it might almost be affirmed that they would not exist, if people evinced in all their actions the caution to be expected from enlightened beings. A few instances of accidents will make the truth of this assertion better understood.

A person walks on the railway track, and is crushed by a train; the engine driver may be to blame, if he should have understood in time to avert the accident, that the person could not get out of the road.

A workman is killed by falling from a scaffolding erected by another. The scaffolding has given way. The builder may be to blame.

A person dies from the results of a surgical operation; if the operation has not been properly performed, or if it was performed when it should not have been performed, it may be a case of crime.

A person falls from a roof and dies from injuries occasioned by the fall; if another has directly or indirectly contributed to this fall, it may be a case of crime.

A child dies scalded, burned, while he was in the charge, or while he should have been in the charge of another. It may be a case of criminal negligence.

Many analogous occurrences might be cited, but these will suffice to show the usefulness of investigation in all cases of violent death.

48. No doubt investigation in ninety-nine cases out of a hundred prove the absence of homicide.

It is not for that reason, however, that fitting investigation should be dispensed with. If earnest investigation is not made in all cases, how is the crime-stained accident to be known from that which is not so?

Much more so, if death following upon an accident is allowed to pass unnoticed, and plain murder alone is to be investigated, murderers will soon lend their crimes the appearance of accidents.

It would be encouraging crime.

Finally, investigations are made to discover things not apparent at the first glance. They are hardly useful in the case of patent murder. They are so in the case of secret homicide.

All accidents may conceal homicide.

I stop here; this is sufficient to convince all sane beings of the necessity of investigation in all cases of violent death.

ARTICLE V.

SUSPECTED VIOLENCE.

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49. Death surrounded by circumstances giving reason to suspect violence is that which cannot positively be defined either as violent death or natural death.

50. This definition is justified by reason and by law.

Investigations in cases of death of this nature are necessary, and should always take place. These are the two points which the present Article will seek to demonstrate.

51. And first we take "definition being justified by reason".

It must be admitted that any death is either natural or violent, since by violent death is understood every death which is unnatural.

If, in presence of a death it is impossible to be sure that it has been brought about by a natural cause, it remains possible that it may be the result of violence, and if there is a possibility of violence, there is reason to suspect violence.

52. No doubt there are suspicions and suspicions, that is to say, there are suspicions which carry conviction in favor of violence; and there are suspicions based upon such circumstances that the mind can scarcely entertain them.

But, however faint they may be, suspicions are suspicions.

From the moment there is doubt, or lack of certitude, the way is clear for all hypothesis, and suspicion has the right of way as well as any other.

If suspicion has a right to exist by the mere fact of incertitude as to the cause of the death in itself, it is because this very incertitude constitutes a circumstance of a nature to cause suspicion of violence.

What indeed is suspicion? I do not mean unwarrantable suspicion characteristic of weak minds. I speak of the reasonable suspicion which is aroused in all well-balanced minds.

It is doubt, incertitude with regard to a fact; incertitude regarding the actuality or the features of a thing.

When we do not know of a certainty, whether a particular thing is black or white, it is as permissible to suspect it to be black as it is to suppose it to be white, and when we have no certain knowledge of whether a particular death is natural or violent, it is fully as permissible to suspect it to be violent as it is to suppose it to be natural.

An ill-meaning is generally attached to the idea of suspicion; one says, generally, "I suspect a crime", or "I suspect that such a one has committed a theft", while one would say, "I doubt its being a good action"; "I am inclined to believe that my friend has acted wisely".

Nevertheless, in each and all of these phrases a doubt, an incertitude, exists. Suspicion may exist which is ill-meaning in one sense, and well-meaning in the other.

It is perfectly true that we may say in all languages, "I suspect such a one of being the author of my good fortune". Here the suspicion is plainly expressed and it is far from being ill-meaning.

In face of a death which we cannot with certainty classify either among natural or unnatural deaths, we are perfectly justified in suspecting that it is natural rather than violent;

nevertheless, the suspicion, well-meaning though it may be, is a suspicion which awakens, necessarily, in our minds another, — an ill-meaning suspicion, however faint it may be. Our conviction inclines to one side rather than to the other, but it is not fixed.

Hence it is certain that the fact of being unable to say, in a positive manner, whether a death is natural or not, is a circumstance of a nature to arouse suspicion. The suspicion may favor natural death, perhaps, but it will not exclude the opposite suspicion, however faint, of violent death.

53. The definition of our present Article is justified by the laws, for the following reasons:—

Article 69 of the Civil Code of Lower Canada gives, as reasons for suspecting violent death, the signs or indications of violence, and in general terms, — "all other circumstances of a nature to arouse suspicion."

The legislators have admitted the possibility of circumstances other than the signs or indications of violence as reasons for suspicion. They have recognized, by the fact that that which before their time was considered as a reason to arouse suspicion in the matter of a death, should still continue to be considered as sufficient reason for suspicion.

They have, purely and simply, left entirely untouched the law previously existing on this subject. The existing law was the Statute of Edward I., to which we have already several times referred.

This Statute mentioning the cases of inquests says, "all sudden deaths, whatever may be the cause."

54. To take the words of the Statute literally, one might be led to infer that there were grounds for an inquest in the cases of deaths known to be natural, that is to say, in the case of all *sudden* deaths, whatever the cause.

But English jurisprudence long ago decided that when the cause of a death is known to be natural, although it may have been sudden, there are no grounds for an inquest. Plainly if the cause of the death is indubitably natural, it is useless to seek for homicide, which we know does not exist.

But jurisprudence hesitated for a long time before reaching this point, and the English authors who have written on this subject contain, generally, the reproductions of decisions emanating from very learned judges who have expressed fairly divergent views.

And then this Statute of Edward I. is so positive! "A Coroner's inquest in all cases of sudden death", it says.

It is by wresting from the words a meaning which they perhaps did not hold, *but should have held,* that a final understanding was reached to say "if the cause of the death is known to have been natural, no inquest". And the Coroner's Act of 1887, accepting this established jurisprudence, declared an inquest obligatory in all cases of sudden death of which the cause is unknown.

It is evidently reason's ruling, since it is homicide which is to be sought for by an inquest.

55. The Statute of Edward I. is, nevertheless, not so far from the truth, when it says that there are grounds for an inquest in all cases of *sudden* death. It lays down as a principle that in sudden death the cause is unknown, and there always is cause to suspect violence or homicide.

Taylor, "Medical Jurisprudence", Vol. I., p. 162, says that sudden death "simulates the effects of violence".

Wharton, "Medical Jurisprudence", paragraph 513, declares that all cases of sudden death may awaken suspicion of poisoning.

Lacassague, at page 201 of his Treatise on Medical Jurisprudence, writes: — "In the case of sudden death anything may be suspected."

Devergie, at page 323 of Vol. II of his treatise on Legal Medicine, writes as follows: —

"The material cause of a sudden death can but rarely be known by means of information acquired on the circumstances preceding, accompanying, or following the death."

And these are so many medical writers holding authority

on this subject. They all go to show that the Statute of Edward I was right.

Properly speaking there are no sudden deaths of which the cause can be known, except such as happen in the presence of a physician, and which present evident symptoms of disease.

Hence the laws justify the definition given at the beginning of the present Article.

56. The second point to be established is that investigations in these cases of sudden death are necessary, and that they should always take place.

Investigation is really more necessary in these cases than in a good number of deaths through violence.

In the latter, — deaths through violence — it often happens that the murder's act has been perpetrated in the presence of a fair number of witnesses, and it only remains for the Coroner to verify and control the facts known. In truth, there is no investigation or inquest; there is only a report containing written facts of public knowledge.

In the case where the cause of death is unknown, all is mystery, and it is then that it behooves us to rend the veil that prevents our seeing whether crime exists or not.

57. In the case of violent deaths it is generally known before the inquest whether murder has been committed by another, or whether the death is the result of an act of violence which may be imputed to another, or to the victim. It is known that there has been violence; investigation will confine itself to ascertaining whether the violence is homicide or not.

In the first case, by the very fact that it is known that there has been violence, public opinion is aroused, and if the State failed in its duty of seeking for the homicide, citizens would petition it, and homicide would then with difficulty pass unnoticed.

In the second case, by the fact that the death presents as

much, and sometimes more, the aspect of a natural death rather than of a violent death, if the State failed to make investigation at a useful time, so few people would be interested, that homicide, if it existed, would remain unpunished.

58. Mittermaier, a German jurist, charged by his Government, about fifty years ago, to study criminal procedure in the various countries of Europe, speaking of Coroners' inquests in English countries, at page 124 of the French translation of the book on English Criminal Procedure, writes the following lines: —

"The advantages of the institution of the Coroner consist in the fact that, in a series of cases where, in another country, the death does not come to the knowledge of the authorities, a crime which otherwise would have remained unpunished is discovered, thanks to the information by which the Coroner proceeds. We confine ourselves here to recalling the numerous instances when a person succumbs without a physician having been called, after an ostensible attack of indigestion, or a chill.

"No relative thinks of giving notice of this death to the authorities; whereas it would, perhaps, have been easy to establish, by means of sufficient information, that he who was believed to have succumbed to a natural illness, had died by poison. In England the agents of the police and parochial officials are bound to notify the Coroner of all questionable deaths. The latter immediately hastens to summon a jury, and to open an enquiry. Thanks to this measure it often happens that a crime is discovered which would otherwise remain unpunished."

Baker, in his treatise "Office of Coroner", page 2, says: —

"It has been found from long experience that paramount to all other inquisitions, those on sudden death are of the utmost importance to the safety of the subject, and ought in no case to be dispensed with, as there is more suspicion attached to such deaths than to those by accident or any casualities whatever."

59. It is of such moment that there should be investigation in such cases, that if they do not take place in all cases, if they are excluded in cases of deaths having the appearance of natural death, the criminal is thereby invited to perfect his means of action; his impunity is answered for, if he is sufficiently adroit to lend his victim the appearance of having died a natural death.

On the contrary, if each time there is a doubt as to the cause of death, minute investigation is made to discover whether there is a possibility of homicide or not, it means hindering the criminal's freedom of action; it means preventing crimes by the fear of punishment. It is a duty of the State which, thanks be to God, our Governments have recognized in spite of all.

ARTICLE VI.

DEATHS OF PRISONERS

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60. By a person deprived of his liberty is understood any person detained against his will.

61. This definition covers the cases of all deaths in our prisons, in the penitentiaries, in houses of reform or correction, or of industry, in asylums or hospitals for inebriates, in police stations; of all persons incarcerated in asylums as lunatics; of all persons forcibly detained.

62. The authorities, treating of inquests in the matter of persons detained, all give as reason the fact that forcible detention constitutes, at this moment, a presumption of negligence as the cause of death.

Boys, on Coroners, edition of 1893, p. 14 says: —
"safety of all imprisoned, renders it proper and necessary to

hold inquests upon the bodies of such persons, whether they die a natural death or not."

Baker says, at page 8 of his book, "that any death in prison gives rise to suspicion of negligence on the part of the authorities."

"The Institution of the Coroner", asserts Mittermaiers, at page 124 and following of his remarkable work already cited, "presents this further advantage, that in case of a death taking place in a prison or mad-house, the cause of such death should be brought to light by the Coroner's inquest, which results in the discovery, thanks to a careful enquiry, whether the death has been occasioned by the ill-treatment of an attendant of the institution."

63. And we find, at p. 8 of the Coroner's Act, — Jervis on Coroners — an opinion going so far as to hold that it is useful to notify the Coroner of all deaths in a public institution, seeing that it is desirable that the authorities or agents of the institution may be exonerated from all imputation of ill-conduct.

Hence, there are grounds for suspicion.

64. It is certain that inquests, having no other aim than that of seeking out homicide, are held in these cases only because public opinion, or the relatives, may suspect it.

It is also certain that we view without much grief the deaths of members of society whose ill-conduct, or the hopeless loss of whose reason, has shut them off from society.

It is certain, again, that from the death viewed without grief, or, perhaps, prayed for, to the death which may be purposely dealt or inflicted, there is but a short step to be taken.

Neither can it be doubted that ne'er-do-wells and lunatics are a shame or a burthen to their connections, nor can one think but with dread that deadly instruments (all the more dangerous in that they are necessary) are in the hands of physicians who can, if they will, expedite a patient to the next world without fear of any fault being found, and that the

miserable wretches are oftentimes members of wealthy families, and that sometimes they themselves may even be persons of means whose heirs are anxiously awaiting the death which delays too long.

65. In all English countries the law requires that in the case of all deaths of persons deprived of their liberty, investigation be made.

66. In our Province, apart from Article 69 of the Code, we find Articles 2688, 3275, and 3345 of the Revised Statutes of Quebec detailing the different names of a prison, the first of them prescribing an inquest in the case of deaths in prisons, penitentiaries and places of detention; the second obliging the intervention of the Coroner in all cases of death in a private lunatic asylum, and the third bringing under the bearing of Article 2388, all deaths in inebriate asylums, by declaring these to be places of detention.

So particular are our laws that even the death of any person condemned to death and executed gives occasion for an inquest. This is provided for by section 944 of the Criminal Code.

The Revised Statutes of Ontario, (1897) chapters 79 and 223, render the Coroner's inquest obligatory in the case of all deaths of prisoners or detained lunatics, and adds, "in any private lunatic asylum, penitentiary, prison, house of correction, lock-up house, or house of industry."

67. The English Statute of 1887 contents itself with indicating all places of forcible detention, by a unique work which thoroughly covers all, to wit: "prison", and the commentator upon the English Statute brings under the general appellation, hospitals for the insane, for inebriates, and even a nursery authorized and controlled by a special Statute, thus admitting that any person incarcerated by virtue of a law, or order of a Court, is temporarily deprived of his liberty, and therefore, that every place of detention is a prison, whatever may be the name given to the establishment in which he is confined.

68. There are two statutory exceptions to these laws, and one of them flatly denies the validity of the principle of inquests in the case of the death of a person forcibly confined. It is a Federal Statute. The Penitentiary Act (R. S. C., chap. 182, sec. 65).

By this Federal Act the inspector, warden, surgeon, or chaplain of the penitentiary is bound to notify the Coroner only in cases of their having reason to believe that the death has arisen from other than ordinary causes.

The other exception is made by the Statute of Quebec for deaths of lunatics in public asylums, but in this latter instance the superintendent of the asylum is obliged to make the investigations which the Coroner would make.

69. As to the Federal Statute, there is conflict and contradiction between Provincial and Federal legislation. The penitentiaries being under Federal control, one might be led, at first sight, to assume that its law should prevail; nevertheless, the penitentiaries in that they are situated in the Province, and that each Province is charged by the constitution to attend to the enquiry into and repression of crime within its bounds, they being police matters, even when committed in Federal penitentiaries, — it is a warrantable conclusion to come to that when it is a question of seeking out homicide the Provincial law should control.

All hinges upon a single point, on which the two legislations differ.

The Federal Statute assumes that the death of a prisoner in a penitentiary does not of itself constitute a presumption of suspicion of homicide; the Provincial Statute assumes the contrary.

The Federal Statute is a contradiction of all English and all other Canadian laws to date. It reforms.

The Provincial Statute holds and adopts anterior legislation.

70. Is the reform wise? That is a subject for grave doubt.

The warden or other officer mentioned in this Federal Statute is thereby made the sole judge of the advisability of his

notifying the Coroner of having reason to believe that the death has not resulted from other than ordinary causes. He is not even bound to investigate; and even if he were bound to investigate, there would still be the danger, sometimes, that he himself might be the author of, or an accessory to, the death.

Without investigations his subordinates — the physician, among others — have full freedom to give a criminal death, which would be their own work, the appearance of an ordinary death.

These suppositions, howsoever unlikely they may seem, are none the less within the range of possibility, and it is against such possibilities that the investigations of the Coroner — a stranger to the penitentiary — have been ordered by English laws.

They certainly afford greater security, and thereby the Provincial Statute over-rides the Federal Statute and should prevail.

71. In public lunatic asylums in the Province of Quebec, the superintendent, as we have said, replaces the Coroner. He is bound to make investigations.

72. If he is a stranger, all the better; but if he is a doctor treating the patients of the asylum, is it not possible that suspicion may aroused against him? And then, what facility for evading punishment when the crime is subject to no other investigation than that of its author himself!

Yes, wardens of penitentiaries and superintendents of asylums are worthy men, enjoying by good right the consideration and esteem of the public. Why, then, does the law expose them to the loss of this consideration and esteem?

I shall go further; why expose them to the humiliation of criminal offers, to temptation, and, perhaps, to forgetfulness of their duties?

No, the olden legislation was more rational; it put all asylums, all places of detention and all prisons on one footing. It recognized in all places and at all times the one principle, to wit: that the death of one deprived of his liberty gives

rise to suspicion of the possibility of homicide. There is no doubt that the suspicion of this possibility is still greater in the case of the deaths of lunatics, than in the case of the deaths of sane prisoners.

73. The olden legislation entailed expense, it is true. Then, let means be taken to reduce expense so far as may be possible, but, at all events, where it is a question of suspecting homicide, let us not look askance at the outlay of a few dollars. (I shall have occasion, later on, to speak of the expenses of investigations of homicide). Conceive of the scandal if, by chance, (and it would indeed be a chance) a homicide perpetrated by the superintendent of a lunatic asylum were discovered. The law would have made itself an accessory. A seemly situation, in truth, for the State! which would regret too late an Act which it should never have been the means of sanctioning.

ARTICLE VII.

CORONER'S PERMIT TO BURY.

74—ILLEGAL BURIAL.
75.—A STATUTORY CRIME.
76.—IT MUST BE WILFUL.
77.—EXCUSABLE ILLEGAL BURIAL.
78.—A COMMON LAW CRIME.
79.—AN INQUEST IS AN INVESTIGATION WITH OR WITHOUT JURY.
80.—"INQUESTS", "INQUIRY", "INVESTIGATIONS" — ARE ALL WORDS MEANING ONE AND THE SAME THING.
81.—OUR LAW HAS CREATED INQUEST WITHOUT A JURY.
82.—CAUSING AN ILLEGAL BURIAL.
83.—DIVERS FORMS OF OFFENCES.
84.—GIVING ANOTHER THE MEANS TO COMMIT THE OFFENCE.
85.—MEDICAL CERTIFICATES OF DEATH.
86.—AIDING ANOTHER TO COMMIT THE OFFENCE.
87.—MORAL AND LEGAL OBLIGATION TO PREVENT OFFENCES.

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74. To bury or cause a burial to take place without a permit from the Coroner, when it is exacted by law, is a criminal offence.

75. Article 69 of the Civil Code of the Province of Lower Canada in declaring that in certain cases of death burial shall not take place without the Coroner's permit, implicitly prohibits burial wihtout such permit.

To bury without such permit in these cases is to infringe the law prescribed by this Article 69 of the Civil Code, which Code contains the text of the prevailing law in the Province of Quebec. Its Articles, and notably Article 69, are the laws of this Province; they have been sanctioned by our Provincial Legislature.

Now, section 138 of the Criminal Code declares that "Every one is guilty of an indictable offence, and liable to one year's imprisonment, who, without any lawful excuse, disobeys any Act of the Parliament of Canada, or of any Legislature in Canada, by voluntarily, wilfully doing any act which it forbids, or omitting to do any act which it requires to be done".

To bury without the Coroner's permit in cases where this permit is required, being an infraction of a law passed by a Legislature in Canada, is, then, one of the offences punishable by section 138 of the Criminal Code.

76. The act or omission must be wilful, says section 138, and without lawful excuse; otherwise there is no offence.

There is no involuntary crime. One does not commit a criminal offence without the will to do the incriminating act.

77. As a general rule, if one does wrong when reasonably believing to do right, one does not sin; there is no will. But, as another general rule, ignorance of the law is no excuse. We are all presumed to know the law.

Hence, there would be no excuse for one who buries, or causes a burial to take place, without the Coroner's permit, when such permit should first be given, unless he can demonstrate that his act results from ignorance of the facts, but not if it be from ignorance of the law. If he were to demonstrate, for instance, that he had good reason to believe, for one cause or another, that the person buried died from natural known causes, and that the Coroner's permit was not therefore needed, he would not have committed any offence. This is the only case of excuse which seems possible.

78. Besides, even if this section 138 of the Criminal Code did not exist, or was not applicable in the case in point, the offence would exist nevertheless. It would be an offence against Common Law of England as to crimes.

At page 170 of Burbridge's work on Criminal Law in Canada, one reads as follows:—

"Everyone commits a misdemeanor who buries, or otherwise disposes of any dead body on which an inquest ought to be held, without giving notice to a Coroner."

In a case against Clark, cited in I Salk, 377, Chief Justice Holt said:—

"It is an indictable offence to bury a person who has died a violent death, or otherwise to dispose of the corpse, with the aim of preventing an inquest from being held".

And Jervis adds, in a foot-note to page 6 of the treatise already mentioned in this work that the townships may be fined for it. This latter assertion is found in several writers on Criminal Law.

79. By the word "inquest" used in the old Common Law cited by Burbridge, is understood all investigations to be made (all were then made before a jury) in the matter of violent deaths, or deaths suspected to be violent.

Judge Holt, speaking of violent deaths, makes use of a single word, that is, "violent", but it is evident from the whole context that he does not exclude deaths suspected to be violent.

In the course of a judgment pronounced by Judge Grove in a case against Stephenson *et al.*, reported in Vol. XIII of the English Law Reports, Q. B. Division, we find: —

"That a Coroner should be certain of the cause of death before he ventures to hold his inquest — is certainly not the law" — "He inquires in cases of sudden death where such inquiry is desirable."

We have seen in a preceding Article of the present work that the law declares an inquest obligatory in all cases of sudden death whose cause is unknown.

80. In the above case it was pleaded that the Coroner could not open a regular inquest upon mere report or rumor, but only after a preliminary enquiry to assure himself of the facts, and of the necessity of holding a regular inquest.

In England there is a summoning of a Coroner's jury whenever the death is the result of violence, or is surrounded by circumstances of a nature to arouse suspicion of violence.

In Canada there are grounds for investigation, and there is a preliminary inquest by the Coroner to discover, — in the

case of suspected violence — if there is a suspicion of homicide. By this preliminary investigation the Coroner puts himself in a position to know whether he should give his permit immediately, or if he should first summon a jury. This preliminary inquest is a Coroner's inquest without a jury.

In the case referred to it was argued "Before his inquest the Coroner should hold a preliminary inquiry." The Judge replied "The inquest is in itself an inquiry." In other words, it is one and the same thing. In both cases you have an inquest; in the one case it takes one form, in the other another.

81. Article 69 of our Civil Code, by obliging the Coroner to give a burial permit in certain cases of death, thereby compels this officer to hold an inquest in all such cases.

Article 2687 of the Revised Statutes of Quebec, amended by 55 and 56 Vict., chapter 26, orders, on the one hand, that inquests shall not be held save in cases where there are good reasons for suspecting homicide.

On the other hand, it leaves standing the obligation for the Coroner to permit burial in cases of violent death, and in cases of deaths suspected to be violent, but not tinged with the suspicion of crime.

This latter duty imposed upon the Coroner forces him to assure himself whether there may be a reasonable suspicion of crime, or whether he may reasonably exclude the suspicion; that is to say, this law obliged the Coroner to hold an inquest alone, that is, without a jury.

Hence, in all cases where the circumstances show that there must be a Coroner's permit before burial, there are grounds for an inquest, and to bury without this inquest, without the Coroner's permit, is an offence.

82. To cause burial to take place without this permit is also a criminal offence.

83. Article 61 of the Criminal Code decrees guilty of an offence every person (1) who commits it, (2) who does an act or omits to do an act for the purpose of aiding any person

to such offence, (3) who helps to commit it, (4) who advises it or affords another means to commit it, or (5) who agrees with another or others to commit it.

84. To concern ourselves only with the offence which is the subject of the present Article: Suppose that burial of a corpse has taken place without the permit required by law; the grave-digger who buries it is probably unaware that he is committing an unlawful act; the keeper of the cemetery, who has given orders for the burial, has, possibly, a legal certificate indicating natural death. The one buries and the other orders burial, without knowledge of the fact which renders their act illegal, — they commit no offence.

85. To find the guilty one we must go back, under these circumstances, to the beginning.

He is the guilty one who declared, by virtue of the powers given him by the law, — the medical man, — a death to be natural which, in point of fact, he knew not to be such.

He is the guilty one — the medical man —who gives as certain a cause of death which is uncertain, such as sudden deaths of persons not under medical treatment.

He is the guilty one — the medical man — who conceals in his death certificate the primary and remote cause of death when he knows it to be violent.

Medical men should never forget that the law asks them for a death certificate only for the persons who have died after an illness that they were treating themselves.

He is the guilty one: for he causes burial to take place without a permit from the Coroner, when such permit was required.

If the three were aware of the existence of circumstances showing the necessity for procuring a permit, and if they ignored them, the three would be guilty of the offence.

86. Besides such as render themselves guilty of the offence which is the subject of the present Article, by having taken part directly in the perpetration of the act, others may also be guilty as accessories to the offence.

They are guilty when they neglect to notify the Coroner in cases in which they should do so, knowing that means are taken by others to bury without the Coroner's permit, because they omit to perform an act obligatory upon them, which would have prevented an offence.

In order that there be guilt in the present case, the omission must be made with the aim of allowing the offence to be committed. For instance, a person dies an unnatural death *under your roof;* you know that, in order to prevent the Coroner's interference, some one has managed to procure a certificate falsely assigning the death to a natural cause; you can easily give the required notification, and you let things take their course; you allow the corpse to be buried without the Coroner's permission. This omission is an offence because you have omitted to do what you were bound to do, that is, to notify the authorities of an unnatural death under your roof. That obligation will be shown later on.

Another instance. A scaffolding is badly built by a workingman to the point of being dangerous. The employer of that workingman knows it, but risks his employees nevertheless, and obliges them to work upon it; the scaffolding gives way and one of the workers is killed; the employer is guilty of homicide in having neglected to make the necessary repairs. A special clause of the Criminal Code, to wit: section 213, declares him guilty of homicide because of his want of precaution.

In the two instances cited there is no commission of the offence by any of the two offenders personally. In the first instance you did not cause the illegal burial to take place; in the second the employer did not cause the scaffolding to be badly made; but in both cases, you and him have permitted the cause to produce its effect, when bound to prevent it.

By their omission neither the first nor the second of our supposititous criminals had voluntarily formed the design of committing an offence. Both contented themselves with letting things take their course; they risked, if you will, but each could have prevented the offence from taking place, and were in duty bound to prevent the misdeed.

In the second case the presumption of impeding result was much less certain than in the first. The law, nevertheless, declares it to be homicide by omission.

The law in section 213 merely applies the principle already laid down by section 61. The omission therein more explicitly mentioned was comprised in the omission spoken of in a more general way in section 61.

In these cases, then, the intention is judged by the outcome weighed with the obligation and possibility of preventing the crime.

87. It may, I believe, be fearlessly affirmed that each member of society is under obligation to prevent crime when he can do so without inconvenience. This obligation is moral and humane.

To seek to demonstrate its legality by right of Common Law, would, possibly, be a somewhat hazardous thesis in our century; in any case, a thesis which would carry me too far.

If it were true, all persons knowingly allowing a corpse to be buried without the required permission, and who could have prevented it, would be guilty of an offence.

But the law imposes upon certain persons the obligation of preventing such burial, by enjoining them to notify the Coroner. These persons, under obligation by law, render themselves guilty if they allow burial without the required permit. These persons will be designated in the second part of this work.

ARTICLE VIII.

JUDICIAL POWERS.

The Coroner's powers are judicial.

88.—POINTS TO DEMONSTRATE.
89.—JUDICIAL POWERS.
90.—DIFFERENT FORMS OF JUDICIAL POWERS.
91.—THE CORONER HAS JUDICIAL POWERS.
92.—JUDICIAL POWER DOES NOT MEAN TO PRONOUNCE FINAL JUDGMENT ON A CASE.
93.—ERROR COMMITTED ON THAT POINT.
94.—CORONER'S JUDICIAL POWERS CLEARLY STATED BY LAW AUTHORITIES.
95.—THEY ARE OF COMMON NOTORIETY.
96.—ERROR ON THIS POINT, CAUSE OF MISTAKES.
97.—IT IS THE LEGAL CAUSE OF THE DEATH THAT IS SEARCHED FOR IN A JUDICIAL INQUEST.
98.—TO FIND THAT CAUSE OF DEATH, JUDICIAL MEANS ARE USED.
99.—ABANDONING JUDICIAL MEANS WOULD LEAD TO ABSURDITY.
100.—IT WOULD LEAD TO ILLEGALITY.
101.—A JUDICIAL INVESTIGATION IS THE COMMON PRACTICE.

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88. It is sometimes useful to revert to elementary principles, especially in our age and in our land of America, where one is prone to forget them easily if they clash with preconceived ideas or personal interests. I shall, therefore, at the risk of seeming puerile, inquire what judicial powers are, and I shall endeavor to establish that the powers of the Coroner, at the inquest, are all judicial and should continue to be so; and finally I shall take it upon myself to educe from the principles as laid down, some of the consequences resulting from them, and which are of a nature to banish certain false ideas having a tendency to become acknowledged as true.

89. The word "judicial" is derived from the Latin word "Judicere", which means, to judge.

To possess judicial powers is to have the power, that is to say, the authority recognized by law, to judge.

90. Persons constituted in authority to exercise judicial powers belong to three different categories. With some, their powers are confined to judging whether there is reason to institute proceedings — "investigations".

With others, their powers are to decide whether the right assumed in the demand is established by facts proven — "Trials". And in the last is vested the power to pronounce the penalty due for the offence — "Judgments".

91. The Coroner belongs to the first category. The fact that he does not decide upon the validity of the accusations brought against people, or that he does not condemn them after judgment, does not mean that his powers are not judicial. It is none the less true that he judges of the validity of the information given him, that he weighs the facts bearing upon a violent, or supposedly violent death, and judges whether or not there are grounds for suspecting homicide, for summoning a jury, or for giving — without summoning a jury — his burial permit.

The Coroner, then, renders judgment on the facts, and has authority to render such judgment; he thus exercises judicial power.

The Coroner, upon mere information denouncing a death as seemingly suspicious, is bound to enquire into the facts, to take cognizance of all the circumstances of the death, and may proceed to give a burial permit, or to summon a jury;

In the first case, only if the circumstances are of a nature to exclude all suspicion of homicide;

In the second case, if the circumstances allow homicide to be suspected.

He gives judgment upon the facts set before him regularly.

He exercises in each case, after having judged of the circumstances, a power which the law gives him.

92. This power is exercised at the beginning or iniation of proceedings; it is none the less a judicial power, for that matter.

In the Criminal Courts it is not the Judge who declares the accused guilty; it is the Jury.

Judges and Jury, in different degrees, exercise judicial power, and the act of the one is fully as judicial as the act of the other.

Although it stands at the foot of the ladder in the proceedings, the Coroner's act is fully as judicial as the act of the Judge of the King's Bench.

93. If the reader wonders at my insistance in demonstrating a thing so self-evident, I exonerate myself by saying that I have read in a circular of Officers of Law, that the Coroner's functions were *almost* judicial.

94. And yet, Blackstone, in Vol. II, p. 348, of his Commentaries, says: —

"The office and power of a Coroner are also like those of the Sheriff, either judicial or ministerial, but "principally judicial", and at page 349, "The ministerial office of the Coroner is only as the Sheriff's substitute."

And yet, Impey, in his work, "Office of Coroners", p. 473, says: —

"The powers of Coroners are judicial and ministerial. Judicial, as in the case of inquests upon bodies."

"Ministerial", says Jervis, O. C., p. 71, edition of 1870, "As in the execution of process of the Court."

95. And yet, everybody knows that the Coroner has the right to summon juries; to summon witnesses; to punish those among them who disobey orders; to cause the arrest of suspected persons; to condemn for contempt of Court, even the foreman of the jury, if there is reason for it; to enumerate only some of his powers. All this is known, and it is known that all these powers are *exclusively* judicial, and not *almost* judicial. Let us pass on without recrimination; peace be unto the dead.

96. The powers of the Coroner being judicial, it follows that in dealing with the Coroner and his functions, the judicial view-point should be taken, and no other point of view. If this precaution had always been observed, many mistakes

would have been avoided, much ink saved, and much fewer inanities voiced.

For instance, physicians would have dispensed with writing and ingenuously contending, as they did in a certain society of Montreal a few years ago, "that the first question to settle after a suspicious death is what has been the cause of the death; consequently, the first thing to seek for is purely medical." "That in the majority of these deaths there was no necessity for legal investigations."

Evidently by legal investigation they meant to say investigation by a man of law, for medical investigation when authorized by law becomes legal. Let us not argue about a word.

97. The first question to settle after a suspicious death is the cause of the death you say?

It is: but from the legal point of view and not from the medical point of view.

There is all the difference in the world.

The law seeks to ascertain whether the death may or may not have been caused by the criminal act or criminal omission of another.

98. To attain this object it places at the service of the judicial officer all ordinary means to which the tribunals have recourse, and which are, (1) the positive proof, either written or given by eye-witnesses; (2) the proof of circumstances; (3) the scientific proof, even though speculative.

The proof of eye-witnesses is almost always sufficient to permit of a positive conclusion being reached, and to establish the clear and evident impossibility of a crime. It were needless, then, to resort to other proof, which is necessary only in cases where the parol evidence is lacking or insufficient.

99. It might even be said that the Coroner's inquest is an absurdity, as has been stated by certain persons: (Montreal Medical Journal, January 1894) and all this because the investigations are legal, when they should be medical only.

They might cry victory, if they chose, by citing the example of the State of Massachusetts, which has abandoned legal investigation. But nobody would be convinced. The disclosures of a dead body are so enigmatic. The evidence

to be obtained from it, even though interpreted by the most able of medical experts, would never equal, to reasonable beings, the evidence of eye-witnesses relating the facts known, and in regard to which there can be no possibility of error.

100. Besides, in that State — which (in the same report published in that same Journal of Medicine) they have been pleased to designate as the most enlightened State of America — legal investigation has not been wholly abandoned; only it has devolved upon a person having no judicial power — the Medical-examiner; a person who attaches to it an entirely secondary importance, so much so that he leaves it to the wisdom of a plain constable, a person of no education, and, sometimes, of a rather doubtful repute.

Science is preferred to the testimony of eye-witnesses — the opinion on a fact before the fact itself.

It is the reverse of common sense; that is all. This is what it is to be the light of the world. But, nevertheless, reports there are made finally — informal and incomplete as they necessarily are — to a legal authority, the County Attorney.

101. In spite of the luminous torch of Massachusetts shedding afar the light of its dazzling rays, though this law has existed there for twenty years, no country has yet followed its example, and in all other parts of the world investigation is held by a judicial officer, from the legal point of view, which does not exclude medical proof, so far as needed, but confines it to the witness-box, (its proper place) instead of setting it out of place upon the Judge's bench.[1]

I may even go so far as to affirm that Europe, — where medical science is as far advanced as in America, and which possesses at least as many luminaries as America,—has never entertained and never will entertain the illogical and unpractical idea of replacing judicial legal investigation, in cases of suspicious deaths, by purely medical investigation.

NOTE.—Since this was first written, Halifax in Nova Scotia, and New York have passed laws to imitate Massachusetts.

Judicial powers being nevertheless, given to their medical examiners.

ARTICLE IX.

INVESTIGATIONS BEFORE HOLDING AN INQUEST.

102. The Coroner shall investigate the facts concerning all violent deaths, and deaths suspected to be violent, with the sole object of ascertaining whether they afford grounds for suspecting criminal homicide; and if he finds that suspicion exists, he shall hold a regular inquest with the aid of a jury, into the facts, in order to ascertain whether or not the suspicion is well founded.

103. The principles set forth in this heading have been established by the preceding Articles, but always in an incidental isolated fashion.

As they resume *in toto* the whole of our legislation on the subject with which we are concerned, I have thought it useful to combine them in one and the same sentence; a sentence brief and sufficiently clear to do away with all ambiguity.

This present Article will thus serve as a conclusion to the first part of my work.

Above all, it behooves me to leave no doubt, and to thoroughly establish that what is here set down covers our legislation. This being demonstrated, there will remain to be summarized the practical conclusions to be drawn therefrom.

104. By way of undoubtedly establishing that the heading of this Article is an actual synopsis of our legislation, let us begin by citing in full the two known laws which rule on the subject in the Province of Quebec.

Article 69 of the Civil Code is to the following effect: —

"If then there are signs or indications of violent death, or other circumstances which give reason to suspect it, or when death takes place in a prison, asylum or house of forcible detention other than lunatic asylums, burial cannot take place without being authorized by the Coroner, or other officer charged in these cases with the inspection of the corpse."

The Quebec Statute of 1892, 55 and 56 Vict., chap. 26, contains the law which, with Article 69 of the Civil Code, completes the whole of our Provincial legislation upon the Coroner's duties. Here it is: —

"Article 2687 of the Revised Statutes of the Province of Quebec is replaced by the following: —

"2687. No inquest shall be held upon the body of a person deceased unless the Coroner, before the giving of his precept to summon the jury, shall have made a declaration under oath (which oath shall be taken before a Justice of the Peace, a Notary, or a Commissioner authorized to receive declarations in the Superior Court, and which declaration

shall be given in with the report of the inquest) establishing that, upon information received by him — (the declaration to contain an abridgement of this information) he has good reason to believe that the person deceased did not die from natural causes, or by accident, but as the result of violence, or by foul means, or through negligence or guilty conduct on the part of other persons, under such circumstances that a Coroner's inquest is necessary."

105. Reduced to their simplest form: shorn of phraseology unessential to our subject, might not these two pieces of legislation be combined to form but one, which would read after this fashion?

"When there are signs or indications of violent death, or other circumstances which give reason to suspect it, the Coroner shall summon a jury only if, on information taken or received, he has good reason to believe that the deceased did not die from natural causes or by accident, but as the result of violence on the part of others, and under circumstances necessitating a Coroner's inquest."

Does not this form the needed conjunction between the two laws?

106. The first thing for the Coroner to do, says this law, is to see whether he should permit burial without summoning a jury, or after summoning one.

He has received notification of a death supposed to be violent; he must decide that it is not, or, if it is, that it cannot be the deed of another; or even if it is the deed of another that it has not taken place under circumstances necessitating an inquest.

If he cannot settle one or the other of these points, he shall summon a jury; — if he settles them he does not summon a jury.

107. I greatly fear that in spite of all my good will the matter may still be somewhat difficult to understand.

This is because the law is not written in a clear style.

I shall, however, constrain myself to make it speak as comprehensibly as possible.

If it expressed itself in the words next hereinafter given it would say altogether the same thing, and would have the merit of being understood by everybody.

"When the death is suspected to be violent, the Coroner must inform and satisfy himself, and then give his burial permit. — (1) without summoning a jury, — in cases suspicion of criminal homicide was excluded, and — (2) after summoning a jury, — in cases in which suspicion of homicide was not first excluded.

108. This, I believe, is clear, and it is what the law means.

Article 69 of the Civil Code throws upon the Coroner the duty of enquiring, — that is to say, of holding an enquiry or inquest.

In point of fact, by giving his permission to bury without summoning the jury, the Coroner certifies that the death is not the result of criminal homicide; he assumes the responsibility of declaring officially that he is certain there is no ground for suspecting criminal homicide; since if there were grounds to suspect it, he would be bound by Article 2687 of the Revised Statutes (as amended) to summon a jury.

109. Now, to arrive at this certitude, to be able to declare with knowledge and without possibility of error, so far as mankind may escape error, what does the law ask?

Common law and Statutes alike, are absolutely silent upon this subject.

Common law is silent for the good reason that there is no ground for the distinction created by our Statute, to wit: between suspicion of violence and suspicion of criminal homicide.

In England, once there is violence, or suspicion of violence, there is ground for summoning a jury, so that there remains no occasion for the Coroner to make an investigation, except to find whether the cause of the death is known or not. This is investigation so slight, and so easy, that it does not merit the name of inquest.

In Canada there is no summoning of a jury, except when

there ground to suspect criminal homicide; and the Statute might have said how the Coroner should come to this conclusion.

It did not do so, otherwise than in the words contained in Article 2687: "On information received by him" — and "the declaration shall contain an abridgement of this information."

Could our Statute mean by "information received", that a mere notice given to the Coroner, without any detail of the facts, shall be sufficient to enable him to decide if there is ground to suspect criminal homicide or not?

110. The meaning which this word "information" bears in English law is much more extensive; it means purely and simply inquest.

Do you doubt it? Open the first work to hand upon the procedure before the grand jury. You will find that grand juries (in Canada since the Criminal Code) proceed by way of accusation, based (1) upon information supplied by the proof brought before them in support of an indictment legally laid before them, without a previous preliminary enquiry before the magistrate, and (2) based upon information supplied by hearing anew the evidence which has already been adduced in support of a criminal charge at a preliminary enquiry or inquest before a magistrate — in other words, they hold, for the purpose of informing themselves, another inquest.

"Primitively", says Mittermaier, at page 83 of his work already cited, "there was no veritable preparatory information but that received by the Coroner."

111. If our Statute had meant to oblige the Coroner to decide, in a matter so grave as the suspicion of criminal homicide, upon the simple notification of a death, it would have meant what the most elementary common sense condemns.

It would have obliged a judicial officer to give judgment without taking cognizance of the facts.

112. It would have said to the murderer "Notify the Coroner that your victim died a natural or purely accidental death, and there will be no investigation to trouble you."

113. The Statute cannot mean an absurdity.

By saying "upon information received by him", it has given to the word "information" the legal and judicial meaning which it carries in England, to wit: the meaning of a preliminary enquiry or inquest whereby to obtain information.

The Statute means that the Coroner shall summon a jury, if "on the facts about which he has enquired and been fully informed", that is to say, "after proper enquiry or inquest" there is reason to suspect criminal homicide.

114. I have always used the term "criminal homicide", whereas the Statute employs the words "violence, foul means, negligence, or guilty conduct on the part of others, under circumstances which are such that a Coroner's inquest is necessary."

Needless to say that I have purposely done away with this avalanche of words, which link one with the other with the evident object of saying something, and end by leaving the mind in an unsettled state, verging on uncertainty.

Violence, foul means or guilty conduct, when they cause death, are homicide, if they are the work of another; and are criminal homicide if they have been practised under such circumstances that, according to law, they may be declared to be crimes.

115. It is impossible to give any other meaning to the words "under circumstances such that a Coroner's inquest is necessary". Otherwise, it would mean that the Statute had been at pains to have it well understood when inquests by jury will be unnecessary, and would have found nothing better to say at the end of the chapter than that "inquests are not necessary when they are not necessary."

The wording of this law is not clear.

The law itself has no other meaning than that given to it at the beginning of this Article.

116. The practical conclusions to be drawn from the principles herein set forth, may be summarized as follows: —

The inquests which the State is obliged to have in regard to some deaths, and which are solely to discover homicide,

being held from a judicial point of view solely, should be intrusted to men having knowledge of law. This caused Mittermaier to say, at p. 169 of his work already cited "that well to conduct an inquest the Coroner should have sufficient knowledge of law. He must so distinguish the facts as to weigh them in the judicial balance, and know how to estimate them at their exact value; which gives the advantage, above all, to the Lawyer-Coroner, over his *confreres,* who are not lawyers." But he adds that in England, "some physicians have made good coroners."

Let the Coroner belong to whatever profession he may, he should, if he would do his duty, acquire, if he does not already possess it, sufficient knowledge of law to enable him to conduct an enquiry, and to draw the necessary legal conclusions therefrom.

117. It further results that the inquest has for object the discovery of crime and criminals. Therefore the inquest is of the nature of the affairs of *police judiciaire,* judicial police, as they would call it in France.

To make them *simple* and not judicial police matters would mean to deprive the investigator of the extraordinary means at the command of justice.

To make them simple affairs of medical science, would be impossible, and it is impossible in practice. Where the medical-examiner has been substituted for the Coroner, the man of science begins by acting as a police detective to ascertain (if he can, and it is here that it is fine to see him at work) whether he should resort to medical science in declaring that the facts into which he has enquired allow of the suspicion of violent death. As he has no judicial power he is often exposed to error. As he has no legal training he is often puzzled to know when and how to act.

Of this one is easily convinced by reading the work of one of them before the Medico-Legal Society of Boston, in 1895, with the discussion that followed.

118. It further results that it is obligatory to notify the Coroner of all violent deaths, and of deaths supposed to be

violent; and obligatory for the Coroner to investigate whether such deaths are or are not the result of criminal homicide.

119. By supposedly violent death is understood all deaths with signs of violence, or surrounded by circumstances indicating violence, to wit: poisoning, submersion, etc., or circumstances allowing it to be supposed, such as when the cause of death is unknown, when it takes place among persons deprived of their liberty, or among persons of bad reputation, etc.

120. The Coroner proceeds to enquire into the circumstances of the death, first alone, and he summons a jury as soon as there comes to his knowledge a positive and undeniable fact of a nature to cause belief in criminal homicide.

When, after having heard alone all the facts, he acquires the positive evidence that there is no cause for a suspicion of homicide, he ends his investigations. He has held the inquest required by law. Therefore, there are two forms of inquests acknowledged by our Statute.

PART II

INQUESTS WITHOUT A JURY.

ARTICLE I.

NOTICE OF DEATH.

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121. (1) Timely notification of every death where burial cannot take place without the Coroner's permit, should be given to the Coroner, — in the case of persons deprived of their liberty, — by those having charge of them; and in other cases, — by those who, by natural right or by contingency, have charge of the corpse.

(2) In all cases, the civic authorities must notify the Coroner of every such death.

(3) Expenses actually incurred, and losses actually suffered in order to give such notice are repayable.

122. In a preceding Article I have demonstrated that to bury or to cause the burial of a corpse without the Coroner's permission in cases where such permission is required, may be a criminal offence. But it does not necessarily follow that to fail to notify the Coroner is always a criminal offence.

The criminal offence exists only for those upon whom the law has imposed the duty of giving such notice.

Burbridge, in his work "On Criminal Law", at p. 170, gives this formal law in the following terms: —

"Every one commits a misdemeanour... who, being under a legal duty to do so, fails to give notice to a Coroner that a body on which an inquest ought to be held is lying unburied, before such body has putrified".

123. As we see, by the terms of this law, taken from English Common Law, in order that a criminal offence may be committed, three conditions are necessary.

(1) The fact of neglecting to give such notice must be the cause of the corpse not being in a fit state to permit of a serviceable medical examination.

(2) It must be a corpse upon which there are grounds for holding an inquest, that is to say, upon which there are grounds for the Coroner to enquire with or without a jury, — the inquest of English Common Law, as has already been shown, meaning in our Province the investigations with the object of ascertaining whether there are grounds to summon a jury.

(3) The persons knowing of the death must be legally bound to give such notice.

To put it more explicitly, and to repeat the actual words found at the beginning of this Article, it is necessary: (1) that the Coroner's permit be required; (2) that the notice shall not have been given in fitting time; and (3) that it shall have been obligatory to give such notice.

124. The first condition necessary to constitute the criminal offence in question needs no explanation. The reader has but to recall what has been said upon this subject in the preceding Articles, where cases requiring the Coroner's permit are pointed out.

125. The second necessary condition calls for some explanation.

What is understood by giving timely notice of death?

Is there a time after death when information qualified to reveal or exclude homicide is more easily obtainable?

Is it impossible long after death to be able to procure the proof of the existence, or non-existence of homicide?

A reply to the last two questions will serve to establish what is timely notice.

126. It is not impossible to procure the proof of the existence or non-existence of homicide, even when it is sought for long after death. More than one murder has been discovered and punished months and years after the victim's death. More than one innocent person has been freed from a suspicion of homicide long hanging over him, — a suspicion which, thanks to evidence found long after the supposed deed, has been entirely removed.

Who has not read or heard of instances of this kind?

127. But it is none the less in the public interest that murders should be discovered and punished as soon as possible, and above all, that innocent persons should not suffer through ill-founded suspicion.

128. If, on the one hand, proof may sometimes be found, — long after the death, — of the existence or non-existence of homicide, it is certain, on the other hand, that the mystery surrounding certain deaths has much more chance of remaining impenetrable by investigation being begun long after the death, than it would have had were efforts made to solve it at once.

Immediately after death there is the chance of finding eye-witnesses, not to be met with sometime later.

Immediately after death, the fresh corpse, thanks to the science of an able expert, may possibly afford certain useful information that the beginning of putrefaction would do away with.

129. Hence, it is as soon as possible after the death that judicial information may most easily be gathered.

Thus it is immediately after the death that the notice should be given, if it is desired that it should be in serviceable time.

130. The dictates of common sense are the edicts of Common Law.

"In all cases of sudden death, or death under circumstances of suspicion, where the duty of informing the Coroner is not by Statute imposed upon any particular person, it is the duty of those who are about the deceased to give immediate notice to the Coroner."... at p. 6 of "Jervis on Coroners", and the author adds: "If possible, notice should be given while the body is fresh, and while it remains in the same situation as when death occurred."

These principles form part of English Common Law, sanctioned as they have been by the unassailed and unassailable decisions of eminent English Judges. The Judgments are reproduced in I Salk 377: I E. P. C. 378.

Hence it is immediately after the death, or the discovery of the death that the notice should be given.

131. By whom is the notification to be given?

By those upon whom the Statute imposes this duty, says Jervis, in the above citation.

When it is a question of persons deprived of their liberty, the notice should be given by those who were in charge of the person deceased. This duty, stated in these terms at the beginning of this Article, is found in substance in Articles 2688, 3275 of the Revised Statutes of the Province of Quebec.

132. "By those who are about the deceased" adds Jervis in the same citation.

"In other cases, that is to say, when the death is that of a free person, the notice should be given by those who by natural right or by contingency have charge of the corpse", have we stated above. According to Jervis, all persons about the deceased could be prosecuted, but it is certain that the Courts would not condemn those who, by reason of their secondary standing in the family of the deceased, might reasonably depend upon the head of the family to give the required notice. Besides, the declaration of 1712 upon which the Codifiers supported themselves to inscribe Article 69 in the Civil Code of Quebec, imposes this duty upon the head of the house, the master of the place where the death is discovered. By natural right if it is a member of his family, or by contingency if it be a stranger, the master-head of the house or proprietor of the land where the body lies becomes charged with the corpse.

133. The Civic authorities, says the second paragraph of the heading of this present Article, are bound to give such notice.

This duty arises from the fact that these authorities are bound in Common Law to patrol within the bounds of their municipality, to see that peace reign, and that crimes be suppressed.

The Coroner's inquest in the case of death being the means used by the law to discover whether there has been homicide, it follows that, for the civic authorities to neglect to have such inquest held is a criminal offence.

If the body was buried without such inquest and view of the Coroner, the whole township was to be "in misericordia". Reeves, in Vol. I of his work "History of English Law", p. 467 "In misericordia" has been rendered by a good many authors by the English word "amerced". The one and the other mean, to be under the obligation of asking pardon. It has been translated into current speech by "condemned to a fine or forfeiture."

134. To neglect to give this notice would be to allow a corpse to be buried without a Coroner's permit, when such permit is required.

It would be to commit the criminal offence demonstrated in Article VII of Part I. I shall not revert to it.

Or it would be, in some cases, even if the body was not buried, to prevent justice to find the means to discover homicide by depriving it of the proof to be found soon after death; it would therefore be committing the offence stated by Burbridge. And this implies the duty, often legal, always moral, to disclose immediately the discovery made of a lying dead body.

135. Article 2692, in its last paragraph, says that the expenses of these notices will be paid. This is right.

But, practically, it is certain that many people make unjust claims for the expenses of such notification.

I am of opinion that the Coroner has a right to use all legal means at the disposal of judicial officers to make sure of the validity of such claims, and that he has the duty to reject any exorbitant claim, or any claim whose validity is not established by proper proof.

ARTICLE II.

IN WHAT CASES DOES THE INQUEST WITHOUT JURY TAKE PLACE.

136.—FOUR POINTS TO ELUCIDATE.
137.—FIRST POINT. SUCH INQUEST IS MADE TO EXCLUDE SUSPICION OF HOMICIDE.
138.—NO SUCH INQUEST WHEN THE NOTIFICATION DISCLOSES A SERIOUS SUSPICION OF HOMICIDE.
139.—SERIOUS SUSPICION CANNOT REST UPON DUBIOUS FACTS.
140.—MYSTERIOUS CIRCUMSTANCES.
141.—DUBIOUS FACTS IN NOTIFICATION CALL FOR AN INQUEST WITHOUT A JURY.
142.—SECOND POINT.
143.—INQUEST SHOULD BE OPENED IMMEDIATELY AFTER NOTIFICATION.
144.—DELAY IN OPENING INQUEST IS REPREHENSIBLE.
145.—WHY REPREHENSIBLE ?
146.—PRECAUTIONS IN REGARD TO THE CORPSE BEFORE THE COMING OF THE CORONER.
147.—SUGGESTION.
148.—INQUESTS WITHOUT A JURY SHOULD BE MADE WITHIN THE SHORTEST POSSIBLE TIME.
149.—THEY SHOULD NOT LAST MORE THAN 24 HOURS.
150.—ALL THE FACTS MUST BE INVESTIGATED.
151.—THE PROOF MUST BE POSITIVE.
152.—GREAT CAUTION AND ABILITY REQUIRED IN AN INQUEST WITHOUT A JURY.
153.—WHEN POSITIVE PROOF CANNOT BE OBTAINED.

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136. (1) Inquest without a jury is held only when the notice given does not reveal unquestionable facts, of a nature to arouse suspicion of criminal homicide.

(2) It should be made immediately, that is, within as short a time as possible after the death.

(3) It should be complete.

(4) It should result in the ascertainment of positive facts, of a nature to exclude suspicion.

137. In Article III of the First Part of this work, the reader has seen what the law understands by violent death, or death supposed to be such.

In Article IX, the last Article of Part I, it is found that the object of the Coroner's preliminary investigations is none other than that of seeking to exclude the suspicion of criminal homicide. It were useless to revert to these points.

138. But it sometimes happens that the notice given discloses information consisting of unquestionable facts which create a belief in the possibility of criminal homicide: in that case it is evident that the Coroner has no investigation to make: he should summon a jury at once.

139. I say unquestionable facts, for if they are dubious, there are grounds for investigation, in order to conform to Article 2687 of the Revised Statutes of Quebec and its amendments of 1892, which only seeks to prevent the summoning of a jury in all cases where suspicion of criminal homicide is not admissible.

In fact, if the Coroner were to summon a jury on uncertain and indifferent facts, without taking the trouble to investigate them, he would be deciding before ascertaining whether a doubt still exists.

140. If notification goes to say that there is something mysterious about the death "The Coroner should enquire whether any mystery is attached", says Jervis at p. 9 of his treatise on the Coroner's duties. But, in order to say that there is any mystery, he must set himself to work and investigate the facts, and make efforts to solve the mystery which long and minute investigation might have a chance to solve.

141. It results that to decide, (without investigation) upon the summoning of a jury upon information giving rise to a doubt which may easily be set aside by an investigation, is to summon it without reasonable information, without legal and sufficient information, and to thus infringe the law.

142. The investigations should be made immediately, and within short time.

First: immediately.

143. This is a matter of police jurisdiction, and it is not necessary to be an experienced detective; it is not necessary to scan the writers who have treated of the duties of the police; it suffices to appeal to sound common sense to know that the chances of discovering a crime are a hundred-fold greater if active and intelligent investigations are made immediately after the crime, than if they are begun only days or weeks later.

One understands, of course, that all the circumstances surrounding a crime are much easier to master when all the facts are still fresh in the memory; when all persons knowing something of it may easily be found and questioned; when sufficient time has not elapsed to allow of eye-witnesses concerting, knowingly or through ignorance, to misrepresent the facts; when, finally, the scene of the crime preserves the exact aspect it had at the moment the crime was committed.

144. A Coroner was reprimanded by an English Court for not having brought to bear in his inquest, all the assiduity required. In re Hull, cited in Vol. 9 of the English Law Reports, Queen's Bench Division, p. 698.

145. In this case the delay had the effect of bringing the corpse to such a state of decomposition that the evidence of medical experts was rendered valueless, and the Judge insisted upon the necessity of an immediate inspection of the corpse.

Those who have written upon the Coroner's duties, since this judgment, have dealt with immediate inquest only to emphasize the necessity of seeing the corpse as soon as possible, and have remained silent upon the necessity of immediately making sure of all the facts.

Yet, if the inert body, by the position it occupies, by the appearance of the wounds, by everything about it, may often

afford valuable information, it is incontestable that such information, affording certitude only by reasoning and deduction, is not worth that which positive eye-witnesses can give; it is the latter above all, and before all, which it is important to secure.

146. Practically the inspection of the body but rarely gives valuable information; whatever may be said, it can only afford clues useful in the investigation made by an experienced Coroner.

It almost always happens, for one reason or another, (the principal and best one being the distance of the Coroner) that the corpse of a person whose death necessitates investigation, is moved from its position, and, in fact, examined by some doctor before the Coroner arrives. It is opportune here to recommend physicians to carefully note all they see, and to study, in the light of medical jurisprudence, all the circumstances of the place about them. And I would add that they should allow nothing to be disturbed, once they are sure of the death.

147. To obviate the inconvenience of the Coroner's being at a distance, Coroner's officers, intelligent and well-informed as to the duties of their functions, could be charged in each municipality with this first verification of all the facts. The costs of such officers would come to very little, and the services which they would render to justice and to families, would be ample compensation. They would aid justice by seeking at once to assure themselves of eye-witnesses, or persons suspected of homicide, and murderers would not be found to have escaped, so easily as in the past, for want of police organization. In families afflicted by the loss of one of their members, smitten with sudden death, accidently or otherwise, they would tend to alleviate the grief by speedily permitting the last services being rendered to the dead.

148. Investigations should be made within a short time.

It is indeed important that funerals should not be too long delayed; and it is often in the interest of public health — (on account of the advanced or rapid decomposition of corpses) that burial should take place as early as possible.

If, after the Coroner's investigation, there are grounds for summoning a jury, the law obliging the jury to see the corpse, the inquest must be held shortly after death, so as to allow of burial as soon as possible. Hence it is to be understood that the Coroner's investigation should be made within the shortest possible time.

149. The circumstances known tending to exclude the idea of homicide, and leaving slight doubt that the other facts yet to be ascertained will yield the same result, the Coroner seems to me to be justified in postponing his investigations for twenty-four hours, when he has reason to believe that he can complete them within that delay.

If he has not the hope of doing so within that time, or if he has been unable to do so, he should summon the jury and proceed with the regular inquest.

150. The investigations should be complete.

This applies only to cases where a jury is not summoned.

As has been said already, when once positive and unquestionable facts give reason for supposing homicide, there is no longer reason to continue investigating; the jury must be summoned.

If the investigations made by himself alone will end all enquiry in the matter of a death, the Coroner can take upon himself the responsibility of declaring that there are no grounds for supposing homicide, only where he has attained certainty.

He cannot attain such certainty unless he takes cognizance of all the facts, and unless all the facts demonstrate the impossibility of supposing homicide.

He has no right to decide on appearances; once anything remains which allows uncertainty to exist as to the possibility of homicide, he must go further, either completing the investigation or letting a jury pronounce.

151. The investigations should carry positive proof of positive facts, and these facts should be perfectly positive.

Indeed, it has been seen in a preceding Article that when

the Coroner gives a burial permit without summoning a jury, he assumes the responsibility of declaring that the death is not the result of homicide. One understands the risk involved in the Coroner making such a declaration, if he has not taken cognizance of all the facts; if he has not assured himself that they are positive and cannot be contradicted.

The Coroner is the officer charged by the State to seek out homicide, and when he declares that there is no homicide, without having positively ascertained that there is none, he not only fails in his duty; he encourages crime; he becomes guilty himself of a criminal act against society.

152. By this it will be seen how thoroughly upon his guard the Coroner should be in his investigations. He should be a skilful detective, losing no detail of that which he sees and hears; swiftly drawing therefrom a judicial and positive conclusion. He must be, above all, a conscientious and able inquisitor, going to the bottom of things; he must be capable of wringing from recalcitrant witnesses that which is most distasteful to them to declare. And he must be able to conduct and manage the investigation without being guilty of unseemliness; without uselessly aggravating the grief of afflicted families. A difficult mission, which it is not given to the first-comer to fulfil successfully; a mission which he will fulfil felicitously if, on the one hand, he proceeds always as though he were in the presence of homicide, and, on the other hand, if he has the ability, by his engaging manner, by his consummate courtesy and marked kindliness to cause his suspicions to be forgotten or forgiven.

153. If, for one reason or another, the Coroner cannot attain to the certainty of the facts regarding a death, there remains, — (as in cases where he cannot complete his investigations) only one thing for him to do; to summon a jury, for there is a possibility of doubt, and, therefore, a possibility of homicide.

ARTICLE III.

THE GATHERING OF EVIDENCE FROM WITNESSES.

154.—GATHERING THE EVIDENCE.
155.—FROM THE PERSONS WHO KNOW THE FACTS.
156.—IN WHAT MANNER.
157.—MUST EACH WITNESS BE HEARD PERSONALY?
158.—HEARSAY EVIDENCE, WHEN RELIABLE, GENERALLY ADMITTED IN PRACTICE.
159.—HEARSAY EVIDENCE AT SUCH INQUEST NOT MENTIONED IN ANY AUTHORITY.
160.—HEARSAY EVIDENCE ADMITTED BY THE CRIMINAL CODE IN A CERTAIN MEASURE.
161.—IF NOT ADMITTED IT WOULD OFTEN REQUIRE MANY PERSONS TO MAKE A COMPLETE COMPLAINT.
162.—IN PRACTICE A COMPLAINT TO ARREST CONTAINS HEARSAY EVIDENCE.
163.—IN INQUESTS WITHOUT A JURY CORONERS ARE JUSTIFIED TO ACCEPT HEARSAY EVIDENCE.
164.—CORONERS ARE OBLIGED TO ADMIT HEARSAY EVIDENCE IN THEIR INQUESTS WITHOUT A JURY.
165.—CORONERS ARE FORCED BY STATUTE TO ACCEPT HEARSAY EVIDENCE IN INQUESTS WITHOUT A JURY.
166.—CAUTION REGARDING HEARSAY EVIDENCE.
167.—EVIDENCE ON OATH.
168.—THE OATH IS NOT OBLIGATORY.
169.—THE OATH IS NOT PROHIBITED.
170.—THE OATH IS PERMITTED.
171.—SILENCE OF LAW AS TO OATH.
172.—PRACTICE HAS ALWAYS BEEN TO USE OATH IN COURTS OF JUSTICE.
173.—COMMON LAW PERMITS THE USE OF THE OATH IN INQUESTS WITHOUT A JURY.
174.—REFUSAL ON THE PART OF A WITNESS TO TAKE THE OATH IS OF A NATURE TO RAISE SUSPICION.

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154. In his investigations the Coroner questions the witnesses, and he may swear them.

155. It has been seen that investigations should be complete and afford certainty, as the Coroner, by permitting burial without summoning a jury, assumes the responsibility of declaring on his oath of office, that there is no ground to suspect homicide.

They will be complete only if all the witnesses are questioned; if the place of the death and the corpse itself are examined.

They will afford certainty only if all information being taken, the Coroner can say, in all conscience, that he has not been deceived.

Upon this subject we have to ask ourselves: —

156. (1) Is it necessary for the Coroner to question personally all eye-witnesses, or may he admit facts of hearsay?

(2) If he may swear witnesses, should he always do so, and when should he do so?

157. The former question first:

The Coroner's investigation is an inquest, and a judicial inquest, since the powers of the Coroner in the case of death are all judicial. These two points have been demonstrated by the authorities cited in the preceding Articles. And one would be led to conclude, since it is a question of judicial inquest, that all evidence cannot and should not be taken, to have weight, unless it is in the form and in the manner prescribed by law, and, therefore, that hearsay evidence is inadmissible, except in certain cases of which we shall have occasion to speak later.

Hence it would be necessary for each witness to relate to the Coroner the facts which he knows personally. The Coroner would not have the right to receive from the lips of a person worthy of credence, facts which the latter has only heard from other parties.

158. However, the practice generally followed by Coroners, as much in our Province as everywhere else, is for a Coroner making an investigation (in order to decide whether

or not a jury should be summoned) to be content with assuring himself of the facts reported by a person, or persons, worthy of credence, who have themselves obtained knowledge of such facts, wholly or in part, from other persons for whose trustworthiness they will answer. And public opinion has always, and in all places, been satisfied with this mode of procedure.

159. There is not a word on the subject in any Statute; there is not an allusion to it in any authority. The reason is that this is a question of a preparatory enquiry, with the object of judging whether there is ground for initiating a procedure; it is not a question of a procedure subject to fixed rules. It is only for the Coroner to decide, — all the facts being reported to him, — whether he should exclude the suspicion of homicide; whether he should or should not proceed to the inquest.

At this stage of the proceedings the Coroner is simply an officer of police. Let us proceed by analogy, for want of other means.

160. The criminal procedure followed by the police magistrate before the arrest of an accused, is contained in the Criminal Code, Part XLIV, and bears upon the course to be followed to obtain a warrant of arrest; in other words, it bears upon the course to be followed to convince the magistrate that there are grounds for believing that a crime has been committed by a person specified.

161. Although Article 558 of the Code mentions complaint and information only in the singular, it does not follow that this complaint or information must necessarily be made by a single person. It is certain that sometimes a complaint cannot be formulated completely in a manner sufficient to judge of its validity, except by several persons.

"A" declares that a theft has been committed upon his premises, but he does not know by whom has been committed the crime; his complaint is incomplete. "B" comes and swears that the theft in question has been committed by "C"; the complaint is made complete, by the co-operation of two persons.

The master of the house swears that persons have broken into his dwelling; the servant swears that certain effects have been taken away, and a stranger adds that the crime has been committed by persons whom he knows. Here is a complaint which is complete only through the evidence of three people.

Cases may present themselves where many more are needed to lay before the magistrate a sufficient complaint.

162. The magistrate, before issuing his warrant to arrest a person accused of a crime, should be satisfied that there are reasonable grounds to believe that the person accused has committed the crime charged. He may, if the complaint lacks justifying features, refuse to issue his warrant. But he may, — and it is the practice generally followed, — issue his warrant upon a complaint made under oath by a responsible and trustworthy person who alleges facts told by others, which, after the arrest, will be regularly proved by those other persons.

He is thus justified in deciding to issue his warrant (and it is a question of so grave a matter as the arrest of a citizen) upon hearsay. And this preliminary proceeding on the part of a magistrate, before issuing a warrant to arrest, is quite as judicial as that to follow.

163. In the case of an inquest without a jury the Coroner decides that there are no grounds for summoning a jury, upon the hearsay evidence which he gathers from responsible and credible persons, and he is certainly justified in doing so.

164. To oblige him personally to hear the facts from the lips of each witness, would be opposed to the Provincial Statute already cited, which forbids the Coroner to summon a jury unless there is suspicion of homicide.

We have, as a fact, seen that the Coroner should, on the one hand, come to a decision without delay, and that in coming to a decision he should, on the other hand, — if he cannot exclude the suspicion of homicide, — summon a jury.

Now, if in his enquiry he should hear each witness personally, and never content himself with credible and reasonable hearsay evidence, he could hardly ever secure this evidence *within a short time,* and would always find himself in the position of saying "I cannot exclude the idea of homicide, for want of witnesses who have not been heard, — for one reason or another", and he would thus have to summon a jury in every case, in opposition to and against this Provincial Statute.

165. Hence, without expressly saying so, this Statute implies that the Coroner should, in his inquest without a jury, content himself with hearsay evidence, provided it be given in a manner to enforce reasonable credence.

166. When once these facts are reported, and there is reason to believe that they are faithfully reported, the Coroner is justified, (if they exclude all suspicion of homicide) in giving his burial permit.

Doubtless, caution, (and great caution) is called for; and it would be better to have the facts from the lips of the eye-witnesses themselves than from others who might sometimes mis-report what they had heard. And we strongly advise having recourse to only such hearsay proof as comes from persons expressly charged by the Coroner with the gathering of this evidence; and to commission to this end only such persons as are well-informed as to the nature of the information to be sought. This is the only means of attaining moral certainty.

167. With regard to the second question:

If he may swear witnesses, should he always do so, and when should he do so?

Boys on Coroners, at pp. 17 and 18 of the edition of 1893, says: —

"In what manner Coroners should require the facts justifying inquests to be evidenced before they proceed to hold them, must generally depend upon the circumstances of each case. By analogy to other legal proceedings, the information should be on oath."

With Boys it is a question of justifying the holding of an inquest with a jury; with us it is something of much greater moment: it is a question of deciding without an inquest of the jury, that there are no grounds to suspect homicide; and if Boys is right in his case, with much sounder reason may we say that testimony in the Coroner's inquest without a jury should be on oath.

168. We have said, however, that the Coroner *may*, but not that he *must* put the witnesses under oath. If it were a duty to do so, it would be found laid down somewhere in the Statutes or in Common Law. Duties do not arise otherwise. The Coroner is not obliged to do what none command him to do.

What he is obliged to do before giving his permit to bury, is to satisfy himself that all facts being by him well considered and weighed, he does not believe, humanly speaking, that he can err in coming to such a decision. If, without swearing any witness, he believes he has attained to this certainty, and that he is justified in giving his permit, he may do so. If the oath of one, or of some of the witnesses is necessary to obtain this certainty, he may make use of it.

169. The law does not prohibit his resorting to this means. Section 153 of the Criminal Code, which declares the magistrate guilty of an offence who administers the oath without jurisdiction, adds: "which does not prevent any oath before a magistrate in matters relating to the maintenance of the peace."

Is there anything more closely related to the preservation of the peace than the investigation of suspected homicide?

170. Burns, speaking of the oath at p. 226, Vol. III, begins by saying: "When the law granted anything, that is also granted without which the thing itself cannot be." And he adds that when it was granted to Justices of the Peace to judge without jury in certain cases, the Statute contented itself with saying that they judged, amongst other modes, "by examination of witnesses," without adding the word "sworn",

and Burns does not hesitate to say "which examination at that time, no doubt was understood to be upon oath, for they knew of no other *judicial* examination."

And finally, the same author in the same place, cites the following thoroughly conclusive lines of Dalton: "In all cases, wheresoever any man is authorized to examine witnesses, such authority shall be taken and construed to be in such manner as the law will, *which is only by oath*."

If this is so, and if, as has already been shown, the Coroner in his investigations should interrogate witnesses, it is then certain that he may swear them, if he believes it necessary in order to form his judgment.

171. The objection brought against this mode of procedure is that neither Common Law nor Statutes mention such power, except at the inquest with a jury. This pretension does not rest upon a solid foundation. Neither Common Law nor any Statute has ever formally declared that the oath should be administered to witnesses at the inquest with a jury.

This is something that may possibly cause surprise; but before the Canada Evidence Act of 1893 no Statute existed in Canada declaring, by clear and express words, that witnesses in the Court of King's Bench should be sworn. Even the Canada Evidence Act, 1893, section 22, does not state that it is obligatory to swear the witness; its only intent is to say who shall swear the witnesses.

So entirely it is admitted that the witness should be sworn, any time that the Statute makes mention of the witness sworn before a Court, it is never to prescribe the obligation of hearing all evidence upon oath.

172. And yet the thing has been practised since time immemorial.

For the purpose of discovering the truth the oath has at all times been employed in England. The form of the evidence has varied with the period. From the parol sworn evidence about the facts, introduced by the Romans, we passed on to the method of "compurgators", antedating the Norman Conquest. These compurgators affirmed the innocence of the accused upon oath.

Then after the Third Crusade, the system was adopted of sworn juries, who were at the same time witnesses of the facts.

Finally, under Henry VI. sworn juries decided the cases submitted, as much by the facts proved by witnesses heard under oath, as by facts known to them personally. See Pike, "History of Crime", Vol. I, pp. 17-124-206-207-208-386-467-468 and 498.

The present form has been come to by degrees.

But always without any law directly prescribing it, the oath has been employed to learn the truth in the Court of King's Bench.

173. It was and is still employed at the inquest of the Coroner's Jury, because it is, in Common Law, the means at the disposition of justice to learn the truth.

In investigation, the Coroner seeks, in the ends of Justice, to know the truth; Common Law gives him the same means, i. e. the oath.

174. But he is bound to resort to this means only in cases where he cannot obtain the truth otherwise. And he should use it to attain certainty that there is no ground to suspect homicide, in all cases where, without the oath being taken, he cannot put faith in the testimony of certain persons. Which amounts to saying that he may ask the witnesses to take the oath.

If it happened that anybody refused to be sworn, the Coroner, being unable to attain the certainty desired, would remain in doubt, — the refusal to be sworn being of a nature to arouse suspicion, — and he would be under the necessity of summoning a jury.

ARTICLE IV.

THE CORONER'S VIEW OF THE SPOT.

175.—THE SPOT MUST BE VIEWED.
176.—AUTHORITIES' SAYINGS.
177.—OBJECT IN THE VIEW OF THE SPOT.
178.—EYE-WITNESSES CREATE THREE ALTERNATIVES.
179.—WHEN THE PAROL EVIDENCE HAS POINTED TO A NATURAL CAUSE.
180.—THE MOST IMPORTANT THINGS TO CAREFULLY EXAMINE.
181.—WHEN THE VIEW IS OF A NATURE TO CREATE DOUBT.
182.—WHEN PAROL EVIDENCE HAS POINTED TO A VIOLENT CAUSE.
183.—LEGITIMATE EXCUSES.
184.—TWO KINDS OF ACCIDENTS.
185.—FORTUITOUS ACCIDENTS WITHOUT HUMAN INTERVENTION.
186.—ACCIDENTS WHEN DANGER COULD OR COULD NOT HAVE BEEN FORESEEN.
187.—UNFORESEEN DANGER ASSIMILATES ACCIDENTS TO FORTUITOUS ACCIDENTS.
188.—VIEW OF THE SPOT IN ACCIDENTS REALLY FORTUITOUS.
189.—ACCIDENTS WITH HUMAN INTERVENTION.
190.—THE VIEW GIVES MEANS TO FORM A BETTER JUDGMENT.
191.—PRECISE RULES TO GUIDE CANNOT BE GIVEN.
192.—INSTANCES TO GUIDE IN VIEWING SPOT, ETC.
193.—ACCIDENTS WHEN DANGER WAS NOT KNOWN TO EXIST.
194.—ACCIDENTS WHERE DANGER WAS KNOWN TO EXIST.
195.—ACCIDENTS ON WORKS.
196.—THE VIEW MUST BE MADE BY SOME ONE WHO KNOWS—EXPERTS.
197.—WHEN PAROL EVIDENCE POINTS TO THE FAULT OF THE VICTIM.
198.—SUICIDE.

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175. The Coroner views the spot where the death has taken place, and the spot where occurred the act which caused the death.

176. The treatises published on the duties of Coroners all contain very interesting and instructive pages upon the usefulness of the viewing of the spot, and to them I refer the reader, notably to Boys' book, above cited, in which, at p. 223 and following, is found an able summary of what was written before him.

177. For the sake of practicability I shall confine myself to saying what should be sought in the inquest, held with the object of excluding the suspicion of homicide.

All the facts reported by the eye-witnesses exclude suspicion. The Coroner seeks to ascertain whether there is to be found in the spot where the death took place, or in the spot where occurred the act which caused the death, any circumstance of a nature to arouse suspicion of homicide.

178. In excluding the suspicion of homicide, the examination of the witnesses has given rise to one of the three alternatives following: —

(1) The death appears to be natural, or,

(2) It appears to be the result of a pure accident, or finally,

(3) It is a violent death, but it appears to be due solely to the act of the victim himself.

The spot must be viewed in order to make sure whether there is anything there to contradict the evidence of the witnesses.

179. In the case of apparently natural death, nothing contradicts the evidence of the witnesses, if everything in the spot where the death has taken place, is found in perfect order; if no trace of violence, — blood-stains, etc., — are discovered; if no poison or indication of poison is to be seen; if no deadly weapon is found.

Again, nothing contradicts the idea of natural death if the disorder remarked, if the blood-stains discovered, if the presence of indications of poison or of deadly weapons are fully and naturally explained, and above all, if none of these facts can bear any relation to the nature of death, the subject of the investigation.

180. The investigations in the first case all bear, (1) upon the state of order or disorder of the spot; (2) upon the external evidence of a nature to suggest a struggle; (3) upon the presence of poisons, and, affirmatively, upon the reason for which they are there, and upon the possibility or impossibility of connection between the poison and the death; (4) upon the indications of poisoning afforded by the vomit; (5) upon the presence of weapons, and upon the possibility or impossibility of their connection with the death.

181. The Coroner should never forget, whenever he discovers indications of poison or of deadly weapons, that to dispense with the summoning of a jury, he should have absolutely conclusive proof that they cannot have contributed to the death; and also that his inquest should take place, if his own investigation, because of its privacy, does not seem qualified to satisfy public opinion.

182. In the case of violent death, shown by the witnesses to be purely accidental, the examination of the scene of the accident and the examination of the object which caused it, must leave no possibility of believing that it can have been due to the act or wilful omission of another.

183. There are unquestionable accidents, — accidents which could not have been foreseen, — excusable accidents, —

of which the Criminal Code speaks when in sections 212 and 213 it mentions that there may be legitimate excuses to do away with criminal responsibility.

184. There are two kinds of accidents. The ones happen without human intervention: — "without the concurrence, default or procurement of any human creature", — (Boys on Coroners, p. 95, edition of 1878) the others happen with human intervention, but under such circumstances that there is no blame.

185. The first are fortuitous cases. They are very limited. Recognized as such are deaths caused by lightning, by sunstroke, by cold.

186. Boys, at the page cited, adds death occasioned "by some beast, or inanimate thing."

Jervis on Coroners, (edition of 1888, p. 191) says, with much greater truth, "if death ensue from the performance of a lawful act, the killing will in general be homicide by misadventure merely. But there are exceptions to this rule, for, if the act be dangerous, in order to render an unintentional homicide from it excusable, it must appear that the parties, whilst doing the act, used such degree of caution as to make it improbable that any danger or injury would arise from it to others; if not, the homicide will be manslaughter at least. Under this rule would fall the cases of persons having charge of dangerous things, such as *vicious animals*, machinery, and the like, and neglecting to take due care of them."

187. These two citations make it plain that death caused by an animal or an inanimate thing, does not come under the category of fortuitous cases, unless the accident could not reasonably have been foreseen, — if, generally speaking, nothing about the animal or the inanimate thing could lead a reasonable person to foresee that they afforded danger. It is necessary, in other words, that the fatal result be a surprise to everybody; an unaccountable fact, judged by precedents in analogous circumstances.

188. In fatalities to which man contributes neither directly nor indirectly, the first cause, — the visitation of God, — is beyond human reason, and viewing the spot where death took place will seldom afford enlightment. However, in the case of the discovery of corpses, supposed to be victims of cold, in spots covered with snow or ice, the examination of the spot may tend to affirm or confute this supposition, according as the snow or ice has or has not been melted by the warmth of the human body.

In the case of death by lightning, there will generally be seen in the place where the corpse is found, objects struck by the same electric current.

189. The accidents which happen with human intervention, in circumstances of a nature to cause them to be excused, are those which it was impossible to foresee; and also those which, though possible to foresee, were yet impossible to prevent.

190. The viewing of the spot where the accident happened, conjoined with the examination of the thing, animate or inanimate, which produced it, will always be an aid towards judging whether indeed there are grounds to foresee a danger, or to prevent a danger foreseen.

191. It is impossible to establish the truth of this affirmation by arguing from general facts; it is absolutely imperative to particularize as to kind.

Indeed the circumstances of place vary with the nature of fatal accidents. To seek to give rules which would guide in the examination of the spot, would mean being carried much too far, and one would still run the risk of making inevitable omissions. It were better, I believe, to take some suppositious cases, and describe the nature of the examination to be made. One would judge better, thus, by analogy, of what is to be done in all other cases.

192. For instance: — A young child is killed by falling from a verandah. The examination of witnesses has tended to excuse the omission of the person who had charge of it; the

examination of the verandah will show whether there was ground for double precaution because of the dangerous condition in which it is found.

If the evidence shows that it was in such a condition that no danger could be apprehended, it is an accident which could not be foreseen.

Again; a laborer working at the construction of a bridge falls in the river below and is drowned. The examination of the witnesses shows that the accident was due only to a false movement on the part of the victim; the examination of the scaffold, of moveable articles upon and about it, — such as working tools and instruments, — will show whether everything had indeed been done to prevent the accident. If so, one is in presence of a danger foreseen, and of a fatality which, humanly speaking, could not be prevented.

Examples could be multiplied indefinitely to show that the examination of the spot and of the objects which have caused the accident, is a very precious help towards forming a judgment. I confine myself to the two examples above given.

193. If one observes attentively the difference which exists between the two supposed cases, one conceives that each time the danger appears unforeseen, it will be much easier for the Coroner to dispose of the case without summoning a jury, than when the danger was known to exist. Which amounts to saying that, in all cases presenting some analogy to the first of these two examples, — unless for extraordinary circumstances, — there would be no ground for suspecting homicide and for summoning a jury. While in cases resembling the second example, there would need to be very conclusive circumstances to prevent suspicion of negligence on the part of another, and therefore, for not summoning a jury.

194. The Coroner may make it a rule, when it is a question of death by accident when danger was known to exist, to summon a jury, save in exceptional circumstances such as when the accident could not possibly have been prevented, and when all necessary precautions are shown to have been taken.

195. As a general rule, an inquest by jury in the case of all accidents occurring during work, will give the public greater satisfaction than an inquest without a jury, and the Coroner should content himself with the last only in cases where those interested, and the public, are already satisfied that there can be no question of wilful negligence, or other blame on the part of another.

196. The examination of the place where the accident happened, as also the examination of the objects, working tools, instruments or machinery which have caused it, should be made with intelligence and knowledge.

Now, there is no man in the world, a Coroner no more than another, who possesses knowledge sufficiently extended and varied to be a competent judge, in the examination of the spot and machinery, in each and every case which may present itself. These cases vary infinitely. One may be apt to judge correctly in some and not in others.

Hence, it will be necessary to have recourse to the evidence of persons who are expert in these matters. Needless to say that the judgment formed will have no value, unless supported by the testimony of experts recognized as thoroughly competent, and, above all, thoroughly disinterested.

197. In cases of violent death which the examination of witnesses has shown to be the deed of the victim alone, the examination of the spot where the death has taken place, — the scene of the accident, — the examination of the things, animate or inanimate, which have caused it, might also show whether there is ground to put complete faith in, or to doubt the evidence given.

These deaths will be given by the witnesses as resulting either from suicide, or from the imprudence of the victim.

198. In the first case, — that of suicide, — the Statute does not exact the summoning of a jury, which the law obliged formerly, when the goods of the suicide were confiscated to the State.

199. Here, however, more than ordinary prudence is needed, and without saying with Boys, in the edition of his work on Coroners of 1893, that the Legislature has forgotten to mention cases of suicide as cases in which a jury has always to be summoned, it must be admitted that it is only in cases of suicide perfectly recognizable as such, and recognized as such by everybody, that the Coroner should be satisfied with an iquest without a jury.

Once it is possible, for the slightest reason, to suspect that the supposed suicide presents features of a nature to give rise to the idea of homicide on the part of another, it would always be the Coroner's duty to summon a jury.

The same duty will exist in every case where the means to commit it may have been furnished knowingly by others.

200. By close examination of the spot where the supposed suicide took place, or the weapon or means stated to have been employed by the supposed suicide, it would be easy to conclude whether there is a possibility of suspecting anything else than suicide.

Unless all the evidence, — that coming from persons who have seen and heard, as that drawn from the examination of the spot, and the weapons or instruments employed, as well as from the examination of the body, — unless, I say, all agree to affirm, without chance of contradiction, that it is indeed a matter of suicide, the Coroner should summon a jury.

As these conditions present themselves very seldom, and there is almost ground to summon a jury in such cases, it is useless to enter here into the details of the investigations to be made upon the spot, in inquests without a jury.

201. In cases of death supposed to be due to the imprudence of the victim, a distinction must be made.

The allegation of imprudence may be made by a stranger or strangers, or it may be made by a near relative or relatives of the victim.

If it is made by a stranger or strangers, the allegation is subject to suspicion which would be greater in proportion to

the interest which the stranger might himself have in throwing the blame upon the victim.

If the allegation is made by near relatives of the victim, it has much more likelihood of being free from suspicion. However, even these may be bribed or otherwise induced to conceal criminal negligence, or they may, because of their ignorance, be duped by clever persons, fearing the eye of justice.

202. The Coroner in both cases, — whether the imprudence on the part of the victim be suggested by a stranger or a relative, — should not shoulder the responsibility of concluding imprudence in the victim, without summoning a jury, except in cases which are perfectly clear, and which can leave no doubt in the mind of anyone whomsoever.

Inquests without a jury in this kind of cases, — as of suicide, — are so rare that it is useless to enter into the details of the viewing of the spot, and of the instruments which have caused the fatal accident.

Once the viewing of the spot allows even the remotest participation of another to be supposed or shows any deficiency or ill-management of the instrument which has caused the death, he must let the case go to a jury.

Which is tantamount to saying that, as a general rule, in the case of accidents imputed to the imprudence of the victim, as in the case of supposed suicide, there is to be a summoning of a jury. The non-summoning of a jury in these cases is the exception, and can only be very rare.

ARTICLE V.

EXAMINATION OF THE BODY.

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203. Investigations are completed by the examination of the corpse.

204. (1) As in the case of the viewing of the spot, and the objects which have caused the death, the examination of the corpse is useless in the preliminary investigation if previous information, arising from the evidence given, or the examination of the spot and the objects, has already given rise to a reasonable suspicion of homicide. In other words, there is no ground for examining the corpse, in furtherance of the preparatory enquiry, when there is already sufficient reason to summon the jury. This examination will then be made in connection with the regular inquest with a jury.

205. (2) The examination of the corpse, when it is necessary in furtherance of the inquest without a jury, should be made with every possible opportunity of bringing to the knowledge of justice all the facts which may, humanly, be drawn from it.

206. It is on the strength of the value of the proper examination of the body that the Governments of our Canadian Provinces have been pleased to name so many medical Coroners.

Already in Articles VIII and IX of Part I of this work, I have touched upon this question of medical coroners, and I add:

207. It is not because one is a physician that one can always more surely discover signs or indications of violence, but I admit that the physician has made studies which allow him to appreciate more justly the fatal bearing which these signs or indications may have.

There are physicians and physicians; and all serious minded members of the medical profession will willingly concede that among them are experts in these matters, in company with a throng of men of their profession, who, while very able in the treatment or diseases, are extremely limited in their knowledge of medico-legal matters. The latter are certainly much more numerous than the former, and an examination of the corpse made by them would not afford every possible opportunity of enlightening justice.

208. Now, if all medical coroners of the country were experts, where, I ask of you (with the small share of experience which our young country affords them) would medical experts be found to come and give testimony before the coroners and other courts? for, after all, the Coroner cannot be judge and witness in the same case.

209. Marks of violence are visible to the naked eye to everybody, and the slightest indication of violence will escape nobody who sees clearly.

If the Coroner is of the opinion that the marks or indications cannot give reason to suspect homicide, it is that they have been perfectly explained by the evidence which he has heard. In this case, there is no possible doubt and it is not necessary to summon a jury.

If the marks of violence found are not explained in a manner to exclude suspicion of homicide, doubt exists, and the Coroner, even though he be a physician, has not the right to take his own testimony in the case; he must call in a medical expert, who will make a report. This report, if it abolishes the suspicion of homicide, ends the matter; if not, the jury must be summoned.

Here again, be it repeated, an inquest of the jury will be necessary each time that the inquest without a jury is not of a nature to satisfy public opinion.

210. It results then, from what is said above, that the Coroner is not himself obliged to make the examination of the corpse, in his investigation, and that he may, and should, if it is necessary, have it made by those better able than himself to do so.

The Article 2692 of the Revised Statutes of Quebec recognizes that in the Coroner's inquest a physician should be called in to make the external examination, since it grants him a fee for such expert work, and the authorities do not require to be taken by the throat to pay such fee, at the inquest without a jury, when such skill is necessary, and when it gives the Coroner the means of dispensing with the summoning of a jury, and thereby of saving the other expenses of the inquest with a jury.

211. There can be no question of autopsy at the inquest without a jury, for the autopsy should not be demanded, as will be seen later on, except in cases of grave suspicion, and then the jury should always be called upon to pronounce themselves.

212. In almost all cases of sudden death, by violence or illness, a physician is generally called by the relatives of the deceased. At the same time as he ascertains the death, he seeks to learn the cause. To that end he examines the corpse and is in a position, without, often, its costing the country anything, to report to the Coroner.

This physician, if he is recognized as trusty, if he has no interest to conceal what he may have seen; if he affords freely and honestly the knowledge of what he has discovered, — why should justice not be satisfied therewith?

This is only a matter of police investigations, which happen to have been made under all conditions desirable to assure moral certitude. What more is wanted?

If the Physician's report is tinged with error, the Coroner will soon see it, by comparing his sayings with the information previously received; for the other witnesses, without being physicians, would not have failed to remark and report the marks or indications of violence, which a faithless or unconscientious physician might not have wished to see.

213. Let it be remarked that the present is only a question of an examination at an enquiry tending to exclude the suspicion of homicide; in no wise of the medical examination exacted at the regular inquest by jury, when there are suspicions. And yet, law and custom rule that this examination be made by a medical expert other than the Coroner.

We know well, it will be said, that the law by Article 69 of the Civil Code declares that the Coroner should inspect the corpse, and it will be added that English Common Law rules that the Coroner's inquest should be *"super visum corporis"*.

I would say that although Article 69 says that the Coroner is charged to make the inspection of the corpse, it does

not say how he is to make this inspection; it does not say whether he himself should make the inspection, or have it made by others. Moreover, when this Article was introduced into the Code, the inspection of the corpse, or the medical examination at the inquest was made, as at the present day, by a medical expert, and not by the Coroner himself.

The Codifiers have then let it be understood that this examination would continue to be made as formerly.

Besides, they had not, as I have already shown, to concern themselves with the procedure to be followed by Coroners. They made use of the term "inspection", as they could have used any other term to express that the Coroner had to intervene in compliance with another law.

Common Law in saying that the Coroner should enquire *"super visum corporis"*, says nothing more than that the Coroner should view the body; it does not say that he should examine it.

214. The Coroner should see the corpse, that is all.

As any other, he may see the marks of violence, and may, if he believes himself to be sufficiently well-informed, render judgment upon all that he has heard and seen; but if he does not believe himself well-informed, he should call outside medical science to his aid, or summon a jury.

215. I have claimed, — bringing forward grave reasons in support of the claim, — that the Coroner was not bound to examine the corpse himself, since his examination was useless, at least as legal evidence before him, and since his personal opinion should give way before that of the expert physician called as a witness.

I showed in Article VII of Part I, incontestably I believe, that the investigations or inquests by the Coroner alone, replacing in Canada inquests made formerly with a jury, are, in the absence of contrary laws, subject to the same rules of procedure as the inquests with a jury which they replace.

As the law of inquests, — Statutory and of Common Law, — exact that inquests be held *super visum corporis*, or after

inspection of the corpse, it would follow that in his investigations the Coroner is bound always to see the corpse. Yet, this necessity seems to me, first, to have no longer any reason to exist, and secondly, to have been withdrawn by the law in a multitude of cases.

216. It has no longer any reason to exist. In fact, when the Common Law and old English Statutes after it, exacted inquests *super visum corporis,* it was in an age when no other means existed to make verifications of the presence or absence of violence, than by ordinary citizens.

It was not only a question of seeing, it was, above all, a question of "examining". For want of expert physicians for such examination, it was made by the Coroner and jury.

Later, Common Law having introduced medical expertness for the examination, the viewing of the corpse by the Coroner remained obligatory for the purpose of identification, and, above all, to make sure, when homicide existed, that there was in fact a dead body before him. It was desired that the *"corpus delicti"* be seen by several, so that the proof should be given in an irreprovable manner before the Court from which the life of a man accused of murder was demanded.

But, in the investigations alone, when there is no suspicion of homicide shown by previous information, when all, on the contrary, so far leads to the conclusion of a natural or purely accidental death, if the Coroner attains, by incontestable evidence, the assurance that there has been a death, is it necessary that he should literally go and see the corpse for himself? Reason answers "No". The law says as much. Let it be seen:

217. In withdrawing the medico-legal examination from the Coroner and jury to put it into the hands of the physician, the law causes the death to be verified by the physician. Then, when there no longer exists suspicion of crime, when the death has been verified by a member of the medical profession, the Coroner has nothing more to do under these circumstances. The law does not exact, — when he has all the proof which excludes suspicion of crime, — that the Coroner should still see the corpse.

The law requires his inspection only to seek for a crime; he has become sure that there is no crime; the inspection has been made by a competent and reliable person; there is no necessity for him to see the corpse.

218. In the two preceding Articles I have maintained, with reason I believe, that the Coroner might, in the investigation, be satisfied with hearsay proof, provided that it afforded sufficient certitude.

I have maintained, with reason I believe, that the viewing of the spot and the examination of the objects could be made for the Coroner by disinterested experts.

In this Article I have said that corpses could be viewed for the Coroner by physicians. It remains to add that all these procedures may be carried out by persons deputed thereto, whom the law of the Province recognizes under the title of *Sub-Coroners*.

219. An ordinance of the 9th of March, 20 George III., of Governor Haldimand, established in Canada the fee to which Coroners and *Sub-Coroners* are entitled.

The law, then, has recognized that part of the Coroner's duties may be performed by deputies. Sub-or Assistant-Coroners have continued to be named to this day, everywhere in this country.

220. No law has ever said what part of the Coroner's duties might thus be delegated. Jervis on Coroners at p. 76, edition of 1888, says: "At Common law, in the absence of prescription, the judicial duties of the Coroners must have been discharged by the Coroner himself."

Boys, edition of 1878, p. 5, says: "The powers of Coroners are judicial and ministerial, *judicial*, as in the case of inquests upon bodies, and *must be executed* in person."

The judicial part in the investigations, as in the inquest, is not, properly speaking, that which consists of collecting the facts, but indeed that which consists of pronouncing upon, of *judging* of the facts collected.

221. The *Sub-Coroners*, recognized by a law, and the usage followed, thus have the right to collect the facts and to submit them to the Coroner's judgment.

A Coroner may have as many assistants as he wishes, and the more well-trained assistants he has, the better will his investigations be made, which, after all, are but police matters, and therefore he will decide with more complete and sure knowledge of the facts.

222. To conclude: —

(1) The examination of the corpse should be made;

(2) The Coroner should be satisfied that the examination of the corpse does not contradict the evidence already afforded by the eye-witnesses, and the viewing of the spot; but that it tends, on the contrary, to corroborate the opinion already formed, that the death is a natural or purely accidental one.

(3) The gathering of the evidence and examination may be made by a deputy.

ARTICLE VI.

BY WHOM AND WHERE INVESTIGATIONS ARE MADE.

223.—RULE.
224.—THE CORONER OF THE DISTRICT HAS JURISDICTION.
225.—EVEN WHEN THE DEATH HAS TAKEN PLACE OUTSIDE.
226.—WHEN THE DEAD BODY LIES WITHIN HIS DISTRICT.
227.—WHEN THERE HAS BEEN AN INQUEST ON THE BODY IN ANOTHER DISTRICT.
228—WHEN THERE HAS BEEN ALREADY AN INQUEST IN HIS DISTRICT.
229.—EVIDENCE CAN BE HAD OUTSIDE OF HIS DISTRICT.
230.—IN AN INQUEST WITHOUT A JURY THE CORONER HAS THE POWER TO GO AND GET EVIDENCE OUTSIDE OF HIS DISTRICT.
231.—OTHERWISE AN INQUEST COULD BE PERMITTED TO BE INCOMPLETE, THAT IS, EQUIVALENT TO NOTHING.
232.—OTHERWISE MEANS TO FIND OUT THE CIRCUMSTANCES OF A DEATH WOULD BE DENIED TO JUSTICE.
233.—BUT THE CORONER CANNOT GO OUTSIDE WHEN THE FACTS ARE ESTABLISHED BY RELIABLE HEARSAY EVIDENCE.
234.—THE CORONER SHOULD GO OUTSIDE TO GET EVIDENCE WHEN NECESSARY.
235.—BUT HE HAS NO POWER TO GO FAR OUT.
236.—TERRITORIAL DIVISIONS.
237.—TO GET EVIDENCE OUTSIDE OF A DISTRICT IS A RECOGNIZED LEGAL NECESSITY.
238.—TO GET EVIDENCE OUTSIDE EVEN OF ONE'S COUNTRY IS OF NECESSITY.
239.—THE CORONER HAS ALWAYS HAD THE POWER TO GET OUTSIDERS BEFORE HIM.
240.—EVIDENCE GIVEN IN THE WRONG PLACE—OUTSIDE OF DISTRICT—IS ACCEPTED WHEN RELIABLE.
241.—THE CORONER HAVING THE RIGHT TO SEND OUTSIDE FOR INFORMATIONS HAS THE POWER TO GO AND GET THEM HIMSELF.

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223. Preliminary investigation, or inquest without a jury, is made by the Coroner of the district where the corpse of the defunct is lying.

The examination of witnesses and of the spot may be made outside of the district.

224. "The general jurisdiction of the Coroner is confined to deaths happening within the limits of his country, city or town." 2 Finch, 388.

"The Coroner only within whose jurisdiction the body of a person, upon whose death an inquest ought to be holden, is lying, shall hold the inquest." Coroner's Act, 1887, sec. 7.

The first citation is a judgment rendered under Common Law; the second is a declaratory Statute of Common Law already existing. The two, in different words, say the same thing, to wit: that it is for the Coroner of the district in which lies the deceased, to summon a jury and hold the inquest.

Our Canadian Statute, which virtually obliges the Coroner to make investigations, without saying upon which bodies, has necessarily left standing the rule concerning jurisdiction. So that it leaves no doubt that, in an inquest without a jury, as in an inquest with a jury, it is for the Coroner of the district where the corpse lies, to act.

225. Boys, at Chapter III of his work on the duties of the Coroner, edition of 1878, gives to Coroners an extraordinary jurisdiction for deaths taking place outside of their districts, or on the boundaries of their districts. He supports himself upon the ancient Statute of offences committed when travelling, with which the courts of any of the places covered during a journey could all concern themselves.

This rule of the Common Law has been replaced by the more extended provisions of section 554 of the Criminal Code, and continues to exist for the Coroner, whose powers are delimited, as will be seen later, by the Provinces alone.

226. However, it cannot give any Coroner the right to hold any inquest in the matter of the death of a person, under the pretext that the death has taken place in his district, if the corpse is not there.

Where the corpse lies only; the Coroner alone who is in possession of the corpse, may and should concern himself with investigation or with the holding of a regular inquest.

Should the death have taken place in a foreign country, at sea, in another Province, or in another district, if the Coroner, — notified of this violent or supposedly violent death, when the corpse lies within his jurisdiction, — has the proof that he is the first notified of this suspicious death, that there has not been a former inquest, he has jurisdiction and he should proceed to enquire.

227. He should even enquire, when, the corpse being in his district, he is notified that, since the holding of an inquest (made in another district) which excluded suspicion of homicide, new facts, qualified to arouse such suspicion have come to the knowledge of those interested. But, in this case, there must be new facts tending to establish a strong presumption of homicide; there must almost be certainty that the new inquest will establish crime.

It is then evident, under such circumstances, that the Coroner is not justified in contenting himself with an inquest without a jury, but that he should summon a jury. And, again, the Coroner called after another Coroner would always be justified in not proceeding to a new inquest until he had communicated the facts reported to the authorities; he should not summon his jury for a new inquest without authorization from the Attorney-General, unless in exceptional cases, as where this authorization could not be obtained until after a delay prejudicial to the interests of justice, and when it is evident that the authorization would necessarily be given.

228. It is well to remark at once, (though the matter appertains to a subsequent part of this work) that the Coroner can never recommence an inquest after a verdict rendered in his district, without being authorized.

229. It often happens that a person dies in one district from the result of violence done him in another district.

As we have just seen, the Coroner of the district in which the body lies is the one who is bound to enquire.

Now, in his district he can do but one thing, to wit: examine the corpse.

We have seen already that this examination alone is generally insufficient to allow of the Coroner's excluding all suspicion of homicide; let it be added that it is also insufficient to allow of concluding in favor of homicide; then, in the one case or the other, (with or without jury) the examination of the corpse cannot enlighten justice, and the end purposed by the investigations or the inquest cannot be attained except by knowledge of the facts; the knowledge of the circumstances of the violence which has caused the death; circumstances, the knowledge of which would be acquired only by hearing persons who know.

To put it more explicitly; this knowledge would be acquired only by the hearing of witnesses, and the examination of the spot where the deed of violence occurred.

230. It is to attain this end that I have said, in the present Article, that the examination of the witnesses and that of the spot may be made outside of the district.

231. If the Coroner has not the right to examine the facts — witnesses and spot — in the matter of a death taking place within his district, for the sole reason that witnesses and spot are without his jurisdiction; when the Coroner of the district in which are the witnesses and the spot, has no jurisdiction because the death has taken place in another district; it would be as well to say that there are violent or supposedly violent deaths which the State allows to pass

unnoticed, or, in other words, there are deaths shadowed by suspicion of homicide in the matter of which the State undertakes no investigation; which is equal to saying that in certain cases of suspicious death the State does not seek for homicide. Article I of Part I, which may be reread, has shown that the State is always bound to seek out homicide.

If the Coroner should dispose of the corpse of a person who has died a violent, or supposedly violent death, upon the mere examination of the corpse, it is giving the Coroner the power to dispose of suspicious cases on appearances, which cannot be allowed, as has been shown in Article I, Part I of this work.

It is giving him the right not to seek out homicide, thanks to an incomplete inquest, a thing as unlawful as it is unjust towards society.

232. It is plain, then, that the Coroner, in these cases of death, as in others, should enquire into all the facts.

In these cases, as in others, he cannot summon a jury unless he has good reason to think that there is ground to suspect homicide. So, it remains certain that he should seek to know all the circumstances of the deed of violence which has caused the death.

If he should take cognizance of these circumstances, he should possess all means necessary to attain this end. "When the law granted anything, that is also granted without which the thing itself cannot be", — citation already made in Article II, Part II.

The law rules that the Coroner must ascertain the circumstances of the death; now, he can only know them outside of his district: therefore he has to go and learn them outside of his district.

233. Here is the best occasion to show the necessity of putting into practice all that which concerns proof by hearsay, mentioned in Article III of Part II. And the Coroner should not go outside of his district to get from the mouth of eye-witnesses evidence which he had already by hearsay from reliable sources.

234. It is well understood, that, in his inquest without jury, the Coroner, in many instances, has not got time to force witnesses to appear before him.

To assign them would be voluntarily to occasion a deplorable delay.

The Coroner should make his investigations immediately and within short time, as already shown in Article II, Part II.

If he cannot know the circumstances which have caused the death sufficiently by the reports which may be made to him within his district, it only remains for him to go to the spots themselves to learn of the circumstances.

235. It results from what is written above that the Coroner cannot go very far, to this end, but only to places whence he can return without causing delay.

If he cannot get the sufficient evidence within a short delay, we have seen already that this is a reason to prevent him to dispose of a case by an inquest without a jury. Therefore, he cannot go far out of his district to get evidence in such an inquest.

236. If it is objected that officers of Justice have never the right to proceed to administer justice outside of the territory assigned to them, and that the Coroner consequently cannot enquire into circumstances or indications out of his district, I reply: —

(1) The delimitation of territories assigned to officers of justice was made with a view to the sound administration of justice; in nowise to hinder it.

Now, in the present case, if the Coroner has not the right to enquire outside of his district, as he is the only one who should enquire in the matter of death taking place within his territorial jurisdiction, the sound administration of justice would be hindered; which cannot be.

237. (2) Even in assigning certain territories to officers of justice, the Statutes have generally foreseen the case where

these officers' orders would be executed, under certain condition, in other territories, as, the arrest of accused persons, the summoning of witnesses, etc. So that as a matter of fact, officers of justice do sometimes administer justice outside of their assigned territory.

The mode of procedure is indicated by the Statute for all magistrates, except the Coroner. The mode indicated for the summoning of witnesses may be applied to Coroners proceeding with a jury, but in practice it is wholly inapplicable in the matter of investigations, or inquest without a jury, because of the delay that this summoning occasions.

To say that the Coroner should always proceed with a jury in these cases would certainly be contrary to the law, which rules that the jury should be summoned only when there is good reason to suspect homicide.

There remains for him, then, no other course than to inform himself of the circumstances of the deed of violence and to go, if necessary, and gather the evidence upon the spot.

238. (3) The Civil and Criminal Courts send commissioners into territories beyond their local jurisdiction, and even to foreign countries, to gather the evidence which they believe serviceable to enlighten justice. The law which gives them this power has recognized the truth of the principle which rules that the information necessary to learn the truth may be gathered outside the Court's jurisdiction. It need not be said that the Court which has a right to send a commissioner would certainly have the right to go itself, by virtue of the axiom that "He who has the right to have a thing done, has the right to do it himself."

The Coroner himself is none other than an enquiring commissioner whose functions are exercised to the right or to the left, north or south; to-day in Montreal, to-morrow at Vaudreuil, according as his presence is required in one place rather than in another. He presides over a Court essentially ambulant. He must go and seek information wherever it is necessary.

239. (4) At all times the Coroner has sought facts, even outside his jurisdiction, when it was necessary.

In the beginning, when the Coroner opened an inquest, an order was given to all residents of the four nearest townships to come and declare what they knew in the matter of the death.

Now, often the nearest townships were outside the Coroner's county. Nevertheless, history does not mention any exception in these cases; which allows of the conclusion that people of the townships of a neighboring county were bound to come and give their information. Later on, this practice of forcing all the residents to come before the Coroner was, no doubt, found to be vexatious, and was abandoned, but the obligation has remained for all those who know the facts to appear at the inquest. "It is the duty of all persons who are acquainted with the circumstances attending the subject of the Coroner's enquiry, to appear before the inquest as witnesses." — Jervis, on Coroners, Edition of 1888, p. 29.

English law makes it an imperative duty for all those who know anything to go and give their information, whether they reside within the limits of the Coroner's territory or not. In our day still, the Coroner has indubitably the power to compel persons to come forward as witnesses, who reside outside his district.

240. It is then evident that testimony may be given by persons who are strangers to the district. There will remain no further objection, except to the fact that this evidence should be given in one place rather than in another.

Now, evidence given under unlawful conditions is not void in itself; the facts so reported are as indisputable, if they are true, as if related under lawful circumstances. Let the circumstances which render them unacceptable be legalized, and they become at once as useful to justice as though given under circumstances legal in the first place.

A Justice of the Peace in a foreign country receives under oath testimony serviceable to the ends of justice in Canada; if it is demonstrated to the Court in this country that this

testimony was given and taken in a manner to assure its unquestionable credibility, it will be accepted in Canada. The thing is constantly practised in cases of extradition.

As to the inquest without a jury, all that the Coroner desires is, to have knowledge of the true facts, small matter whether they come to his knowledge in the north or the south, in Canada or elsewhere, provided that he has them, and that he may conclude from them that there is no ground to suspect homicide, he has attained his object, his duty is performed.

241. Finally, agents of police, commonly known as detectives very often go outside of the territory, and even out of the country in which an offence has been committed, to gather proofs to establish that this offence has really been committed. They make these investigations with the knowledge, and often at the demand of the State or the Courts to meet the ends of justice.

Nobody doubts that all magistrates have the right to send detectives and have investigations made by them; the Coroner, the nature of whose functions is solely to seek out the greatest crime against the safety of citizens, possesses this right, as any other magistrate.

If he may send a person to make his investigations for him, he may, much more, go himself.

242. The facts gathered by himself always offer a stronger guarantee than those obtained through an intermediary. For this reason the Coroner will always do better to go and gather the facts himself when he can, than to send another to do so.

243. It is here that this officer should use his judgment. He should avoid making any distant investigation, if it is not absolutely necessary. When the facts are related to him in good faith by a respectable person who claims to have them from eye-witnesses worthy of belief, and when these facts are qualified to exclude suspicion of homicide, he should not disturb himself. He must not forget that he has not the right to put the Province to useless expense, and that his presence is always required in his district.

244. When it is impossible to otherwise learn anything sufficiently, he should not hesitate to go for information on the spot, if he may do so without causing prejudicial delay.

He may administer the oath there as in his own district, if necessary, but in this case it seems to me more prudent to have the oath taken before a Justice of the Peace of that territorial district.

The Statute should grant him the power of having the oath taken before himself; in such cases he has such power, perhaps, but it is possible to doubt it.

ARTICLE VII.

RECORD OF INQUESTS WITHOUT A JURY.

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245. The Coroner should keep a record of every procedure in matters of inquests without a jury.

(a) The record should mention the names and surnames of the persons who give the information, and, succinctly, the nature of this information. (Formulae Nos. 1, 2 and 3).

(b) It should contain: —

1. **A description of the spot. (Formulae 4 and 5);**
2. **A description of the corpse. (Formulae 6 and 7);**
3. **The Coroner's attestation.**

246. The law, and the justification of the State and of the Coroner, obliges the regular writing and keeping of such a record. These two points are thus demonstrated: —

247. There is nothing in the Statutes *expressly* prescribing it, but section 2687 of the Revised Statutes of Quebec, as amended by 55 and 56 Victoria, chapter 26, imposes an obligation upon the Coroner to keep a record of his investigations.

In this section, as amended, it will be found that the Coroner is bound, before summoning a jury, to make a declaration containing an abridgement of the information received.

In Article IX, Part I, it has already been shown that by information must be understood "gathered facts, on the strength of which the Coroner decides whether there is suspicion of homicide or not, and thereby whether to summon a jury or not."

Plainly, the Legislature desires that the Coroner should be very particular, since it is not a mere declaration under oath of office that is required, but it exacts a declaration specially invested with the authority of an oath renewed at each inquest.

Is not this putting the Coroner well on his guard, and bidding him to keep notes of all the facts which cause him to decide in favor of summoning a jury? Is it not, in other words, obliging him to keep record of all procedure in the nature of investigations before inquests?

248. If this argument does not seem conclusive, let us go further (to revert to it later) and let us say: the Coroner's investigation is a judicial act, which has been demonstrated at Article VIII, Part I; now, no judicial act shall or can be made without record of it being kept.

The judge of a Civil or of a Criminal Court, were he the President of the Supreme Court, or a simple Justice of the Peace, or a Commissioner in petty cases under twenty-five dollars, is obliged to keep note, himself or by his secretary or clerk, of all procedure, of all pleas, of all facts relating to the cases which he hears.

The simple bailiff charged by a Court to execute a seizure, were it but for the payment of a paltry dollar, is obliged to keep a record of the execution.

The constable and the bailiff who serve a summons, enjoining a person to appear as witness, before no matter what tribunal, are obliged to keep record of the execution of their summons.

Hence, the Coroner who performs by his investigations a judicial act should keep record of it.

249. This conclusion seems still more justifiable when we seek for the principal motive for which record should be kept of every judicial act.

The principal motive is, the assurance it gives the State, on the one hand, that justice has been done, or, that an injustice has been done, and that it must be redressed.

In the first place the State, thanks to the record, is satisfied. In the second, thanks to the same precaution of a record of the investigation, it gives to those interested the means of having redressed, by means of appeal or otherwise, the wrong done them.

250. Without a record kept of the judicial facts, the losing party could, at his fancy, allege in his request to appeal, suppositious and erroneous facts; he could accuse the Coroner with impunity, imputing to him unjustly the most sordid motives. The State would have no means of making sure of the truth of these allegations. It would have no means to stop the unjust and vexatious accusations against its judges. It would knowingly participate in the depreciation of justice in the country.

In all demands to redress the supposed or actual injustice of a judicial act, the first thing to do is to produce the incriminated judicial act. If there has been no record, the inferior Court is at the mercy of him who complains of it. If there has been a record, the authority to whom appeal is made will find in it either the justification of the Coroner's act or the evidence of his error.

The Coroner may be forced, by *mandamus,* to summon a jury. He may be punished for having refused or neglected to summon it when facts exist which have come to his knowledge, of a nature to cause suspicion of homicide. (9 Q. B. D., 700, in re Hull).

If he does not keep a record of the facts revealed in the course of his investigations, it will be impossible for him to show that his investigations revealed to him only facts going to exclude suspicion of homicide, and that he has had no knowledge of facts of a nature to give rise to this suspicion. The record of the facts alleged would, perhaps, contain the facts which give rise to suspicion, but at the same time the evident contradiction would be found there, and would justify the Coroner's decision.

Hence the record is a justification for the Coroner, and therefore for the State, and, at the same time, a sure means of allowing the higher authorities to verify mistakes and to remedy them at once.

251. The more secret the procedure, the more it requires to be carefully noted. One understands that secrecy in procedure has the effect of giving rise to suspicions of him who has conducted it, and it is then, above all, that it is useful to keep minutes of all proceedings, to do away, as much as possible, with the odium of secrecy. Investigations are of the nature of secret proceedings, and consequently demand more than any others the keeping of a record.

252. If these arguments do not suffice, I would add: The law has decreed that the Coroner, presiding at an inquest, holds a Court of record. (2 Coke, 4 Inst. 271; com. Dig. officer G. 5, Garnett vs Farrand, 6 B. & C. 611) put in doubt by Lord Abinger in Jewison vs Dyson, 9 M. & W., p. 586). By reading these divers precedents we see that it is a question of Common Law. Although contested by a Judge, this opinion seems to be the right one. Let us admit it, for the moment, without dispute. Every Court of record keeps record.

In Article VII, Part I, it has been shown that the law in Canada obliges the Coroner to make alone investigations in cases of violent, or supposedly violent deaths, which are not tinged with suspicion of homicide.

The Coroner then should proceed with such investigations with the same powers and under the same obligations as at

an inquest with a jury. His Court, which he holds alone when making his investigations without a jury, is quite as much a Court of record as that which he holds with a jury, and not to keep record of his proceedings in the one, as well as in the other, is illegal.

253. Finally, to say all there is to say, if the value of all these arguments is contested in favor of the obligation imposing the keeping of a record in investigations, it must be admitted that if the obligation does not exist, according to law, it should exist, and must be put into the Statute.

The legislator has obliged the Coroner to note the facts which make him decide to summon a jury, and if the Statute is read, it will be seen that the aim of this obligation is simply to prevent inquests with a jury being held uselessly. And yet, a summoning of a jury, when there is no suspicion of homicide, affords no danger to public peace and safety, while the non-summoning of a jury in cases where it should have taken place, affords a serious danger. Public interest demands, with much greater reason, that the Coroner show why he does not summon a jury.

254. The record should, even on the face of it, show proof of its veracity. And that is why it should give the names and surnames of persons interrogated, so that they may be found again easily in case of the Coroner's good faith being suspected. All the facts alleged by each of the witnesses, tending to exclude suspicion of homicide, should be registered carefully.

255. It would not be keeping a record to write, in one's report or Coroner's register, such summaries as follow, for instance:

"Persons have declared, all in the same manner, or almost so, facts which tend to exclude suspicion of homicide."

"Persons have declared, all in the same manner, or almost so, that the deceased fell into the water, in their presence,

by pure accident, when he sought to pass from the wharf to his ship ; that nobody, either directly or indirectly, caused him to fall."

In the first case there is not a single word which indicates the facts upon which the Coroner takes his stand to reach the conclusion. This resumé does not summarize the facts of the inquest; it is but a judgment rendered without written motive.

In the second, the facts establishing how the accident happened are alleged. Only one thing is wanting that confidence may be put in such a report, to wit: the names and surnames of the persons from whom the facts are obtained to show that no fear is felt lest they be questioned in the matter.

To be a record of unquestionable value there should, in both cases, be the appearance of veracity, which every judicial record should show, even on the face of it.

256. However, after having related all the facts alleged by one witness, there is nothing against the record contenting itself, — when the same facts are reported by other witnesses, — with giving only the names and surnames of the latter, and with simply adding that these latter witnesses report the same facts already written in the first witness' evidence, without re-stating them in full.

257. In investigations not followed by inquest with a jury, the facts reported tend to establish a natural death, or a purely accidental death, or a death due to the act of the victim himself. — See Part II, Article IV. — There will be found in the appendix of this Part three Formulae to guide in the direction of taking evidence accordingly as they tend to establish any one of these three conclusions:

The spot where the corpse is found; the spot where the death has taken place; and that where the accident causing the death has happened, should be described, if they reveal any facts of a nature to assist the conclusion.

In the case where all suspicion may be excluded, they will generally present no particularity.

In the appendix will be found, under Nos. 4 and 5, two model formulae for the one case and the other.

The corpse itself will not offer any indications, or will offer indications explained, bearing no relation to the cause of the death; hence two model formulae, under Nos. 3 and 7.

258. Finally, the Coroner should attest the whole above his signature. The signature of the judicial officer is the indispensable complement of every record. It is the known means of making every act valid.

ARTICLE VIII.

REPORTS OF INQUESTS WITHOUT A JURY.

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259. The records of the investigations are deposited at the office of the Clerk of the Peace of the district in which they are made.

260. A report to the Attorney-General of the Province is made by the Coroner. This report should mention: —

1. The person who gave notice of the death;
2. The nature of the death as given in the notice;
3. The conclusion to which the information given has led.

261. No statutory law is to be found obliging the Coroner to deposit, with the Clerk of the Peace, his inquests with a jury, any more than his inquests without a jury.

There is not even anything in the Statutes obliging a Justice of the Peace to deposit, in the hands of the Clerk of the Peace of the district, the preliminary enquiries which he makes, on which there is no more legal proceedings, nor even the record of summary proceedings which he has heard.[1]

There exists a general law, — Common Law, — also to be found in Statute books, — requiring that, at the opening of the great Criminal Assizes, all magistrates of lower jurisdiction shall come and lay before the Court the cases that have come to their knowledge, which they believe should be submitted to the Grand Jury. This law applies to Coroners, as to all other magistrates.

For a long time magistrates, coroners, or justices of the Peace, have contented themselves with giving over to the Clerk of the Crown, who, in our Province, is always Clerk of the Peace as well, the record of their inquests; and the officers of the Crown, as well as the Judges, have favored this course of action as being qualified to hasten the ends of justice. With the new Criminal Code the Grand Jury concerns itself only with cases which the Crown should, before the summoning of the jury, take cognizance of the inquests made by the magistrates, and thence it follows that the record of these inquests should be transmitted in due time before the assizes. The guardian of all documents, proceedings and registers at the Criminal Court is the Clerk of the Crown and of the Peace.

It is to him that the substitutes of the Attorney-General address themselves to obtain these documents; hence it is to him that all these documents should be given.

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(1) As to committals for trial after preliminary enquiries by a Justice of the Peace, see sec 600 requiring the transmission, to the Clerk of the Court where the accused is to be tried, of the documents, including the information and complaint, and the dispositions.

And see sections 902 and 903 of the Criminal Code, requiring the making and the publication of returns of convictions in summary cases.

262. The Clerk of the Peace, by a law to be found in the Revised Statutes of Canada of 1859, is declared the Clerk or Secretary to all the magistrates of his district. Which means that to him should be given all documents made in the district, relating to the public peace. All the Coroner's investigations being made in the end of preserving the peace, the record of these investigations should be given to the Clerk of the Peace.

263. Besides, what would be the use of holding records if they were to be stowed away in a Coroner's bed-room or private office? What security of inviolability would such record afford, constantly at the hand of the officer, who, at a given moment could modify them, for some unjustifiable reason; or which might easily fall into the hands of persons interested in their falsification?

In the office of the Clerk of the Peace a safe place is assigned to them, and in the guardian, — the Clerk, — there is found a disinterested person, and one whose principal duty is to keep as he receives them all public documents; in him is found one who will take full account of the importance of preserving the records preciously, and of the responsibility incumbent upon him.

There is to be found, 1. Keb. 280, a case in which Lord Backhurst dismissed a Coroner from his functions, and condemned him to a fine of £100 for having favored a prisoner by keeping to himself an inquest made by him, instead of taking it to the Court of Assizes, (Gaol delivery).

264. If this obligation is not imposed by the law, it should be; and the governing authorities have understood this so well that they exact that each Coroner deposit in the hands of the Clerk of the Peace all his records, even those of his investigations, and that he send a receipt for this deposit to the Attorney-General, at the same time as his report.

265. The Coroner should report to the Attorney-General in the matter of his investigations.

The Revised Statute of Quebec, section 2690, decrees that

the Coroner should make a report to this officer of the State of all inquests held by him.

This report is made with the object of seeing (1) whether the Coroner has done what he should; (2) whether there are grounds for paying him fees, and of reimbursing his expenses.

Although the Statute does not make special mention of fees payable to the Coroner in cases of investigation, or inquest without a jury, and contents itself with saying that he shall have the right to a specified fee in every inquest, the State has always paid a fee in all cases of inquest without a jury; the reverse would have been as unjust as illegal.

Section 2692 of the same Statute mentions investigations as giving the Coroner the right to the reimbursement of his travelling expenses.

If he has the right in inquests without a jury to travelling expenses; if he has the right to fees, it is evident that travelling expenses and fees will be paid to him only inasmuch as he shows that he is entitled to them; that is to say, inasmuch as he establishes this by making his report.

Section 2690, then, decreeing that the Coroner shall report his inquests, applies to every inquest, whether made with or without a jury.

266. This Article demonstrates that the Legislature understood that investigations without a jury were inquests, as well as those made with a jury, and this argument might have been employed in a preceding Article had it seemed necessary.

267. The Coroner's report is made, above all, with the object of making sure whether the Coroner has done his duty.

The Coroner's duty is to seek out homicide.

If he makes no report in the case of inquest without a jury, when he is alone, when nobody controls or observes him, he might much more easily fail in his duty, than in inquests with a jury, when he is under the eyes of twelve citizens who not only observe him, but who have sworn to seek the possible crime.

If he makes no report in the case of inquest without a jury, he may, should he seek to prevaricate, let a crime go unpunished; he cannot do so with jurors.

The report from this point of view, — and it is by far the most serious, — is then still more necessary in these inquests than in inquests with a jury.

268. The report, to attain the end in which it is exacted, should demonstrate: (1) that notice was given to the Coroner; (2) that this notice informed him of a violent or supposedly violent death, which gave him reason to enquire; (3) that the investigation being made, he concluded that there was no possibility of suspecting homicide.

269. This report, by analogy to the reports made in the case of inquests with a jury, should be made under oath.

270. The oath of office, however, should suffice in the one case and the other. This law in our Statute ordering a special oath by the Coroner at each inquest is a blot on the Statute and tends to discredit Coroners, to the point of its being suspected that while filling the post of magistrate they may make false reports.

Indeed, if their honesty is questionable without this measure of humiliating precaution, let them not be named, or let them be put aside; but, by all means, let the law not be the first to tell the public that one may and should doubt the honor of these functionaries.

271. In the appendix will be found, under No. 8, a formula of report in the case of inquest without a jury.

It will there be seen that the form of report given as a model contents itself with saying that, on information taken the Coroner has come to the conclusion that there was no ground to suspect homicide, without giving the resumé of the facts upon which he bases his conclusion. This resumé of the facts is found in the record deposited in the office of the Clerk of the Peace, and it is there that the Attorney-General will find it if he doubts the soundness of the conclusion.

With the Clerk of the Peace are found the officers of a Superior Court, the Court of King's Bench, who may submit to the Court cases which seem not to have been examined with sufficient care, or to end with an unjustified conclusion.

It is for the Superior Courts to watch the Coroners in the performance of their duties, to compel them by an order to proceed otherwise, or to punish them for failing in their duty.

We have had occasion to speak of this power in this present Article, and to cite a judgment punishing the Coroner.

The Attorney-General has not the judicial power to revise a judicial decision. As to him, all that should be reported to him is an affirmation that the Coroner has thought to do right in deciding as he has done. It is only upon ulterior information that the State may order a more complete inquest. It is only upon proof of bad faith or evil conduct that the State should use its power of punishing a Coroner by dismissal.

The justice of this last affirmation could easily be demonstrated, if it was deemed necessary. For the moment, admitted as true, it suffices with what precedes it, to show that the Coroner's report may contain only the judgment upon the investigations.

Finally, Article 2690, Revised Statutes of Quebec, which prescribes the report, says what it should contain, and in nowise mentions the resumé of the facts proved. It speaks only of costs and of the information upon which the Coroner proceeded. The report required is only the Coroner's conclusion or judgment.

It is evident that, the expenses being different in the inquest with a jury, the report should specify whether one has proceeded with or without a jury.

ARTICLE IX.

EXPENSES AND ACCOUNTS.

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272. The Coroner has a right to fees for his inquests without a jury. He also has a right to reimbursement of all necessary expenses, and to 10c per mile which he has had to travel to make his investigations.

To obtain this he should transmit a detailed account of each case, joining to it justifying vouchers, and swearing that his account claims only fees due, expenses actually incurred, and that the means of conveyance were the least expensive under ordinary circumstances.

273. Ideas have become greatly modified with time.

Formerly it would have been considered unworthy and derogatory to his honor for a Coroner to receive emoluments. To-day it appears to be admitted as a principle that nobody is bound to work, even for his country, and perhaps even less

for his country than in any other case, without remuneration. And it is thus that ministers, deputies, judges, sheriffs and coroners, — who formerly worked gratuitously for their country, — now receive compensation for their work. All labor demands remuneration, which is the principle at present over-ruling that of the exaggerated honor of our predecessors.

If anybody undertook to revive the old fashion, it is probable that not one would be found to support it. And if the custom of not paying functionaries recurred, it is certain that nobody would be found to fulfil these functions. Ministers, deputies, judges or coroners could not be found.

It is fully admitted under our present customs that every functionary has a right to remuneration for all work imposed by the law.

274. The Statute of Quebec does not mention any remuneration for investigations or inquests without a jury. In the Province of Quebec it is usual to grant for these cases a fee of three dollars, being half the honorary granted by Statute in the case of an inquest with a jury.

In Ontario, by a recent Statute sanctioned in 1896, the Coroner receives, in payment of his inquests without a jury, the same fee of five dollars which is paid to him for his inquests with a jury.

In the other Provinces of Canada the English law before 1887 applies, from which it results that there is immediately an inquest with a jury, once there is a violent or supposedly violent death, so that there are no inquests without a jury, as in Quebec and Ontario.

Although little is paid, in the Province of Quebec, nevertheless, by the fact that the sum of three dollars is paid, it is recognized that the Coroner has a right to payment in cases of inquest without a jury.

275. In view of the silence of the Statute of Quebec in this matter; knowing, as I have already shown, that the Statute requires the summoning of a jury only when there are grounds to suspect homicide, yet, that the Statute requires

the Coroner to enquire in the matter of every violent, or supposedly violent death, and thereby obliges the Coroner to hold inquests alone in these cases, one would be inclined to conclude that the fee which the Statute grants for every inquest should be paid to the Coroner for inquests without a jury, just as for inquests with a jury. This appears to be a just interpretation, and the recent Statute of Ontario has sanctioned this interpretation.

276. Nevertheless, in Quebec, the Government claims that the established custom of paying only three dollars in these cases is as good as law between the State and the Coroner, who agrees to perform his functions under the conditions established by law and custom. This custom is as good as law between them, just as the clauses of a contract between individuals is law between the interested parties who have consented to it.

277. This may be true, but it is certain that this difference of fifty per cent is of a nature to increase the number of inquests with a jury, and thereby to increase the costs of the State.

It is often with great trouble and much perambulation that one contrives to find facts of a nature to establish that a death cannot be the result of homicide. The Coroner is justified in assembling a jury if he has not the proof that this suspicion is inadmissible, and in view of this loss of fifty per cent, he is certainly justified in not making more proceedings and taking more steps to earn three dollars, than he is bound to do to earn six.

The immediate result is that unless proof needed to do away with all suspicion is brought at once, without its costing any action on his part, the Coroner assembles a jury.

I speak of this with full freedom, being the only Coroner of the Province in the receipt of a fixed salary. And I affirm that if the same fee were granted in both cases, inquests with a jury would become much less numerous; the State would save; the public would less often be called upon to fill the unpleasant task of serving gratuitously as jurors; and justice would be served quite as well if not better.

278. No Government will ever refuse to reimburse a functionary the legitimate expense incurred in the performance of his duty.

It was decided in England that every expense judged to be necessary by a Coroner in the course of an inquest, should be reimbursed. Reg. vs. Justices of Carmarthenshire, 10 Q. B., 796. Which implies that even in the case where the Coroner has incurred expenses, — though they be useless, — he has a right to reimbursement, when once he can show that he had good reason to believe them necessary.

That judgment referred to expenses at inquests with a jury, but English legislation has long recognized that expenses incurred in good faith by a Coroner, even when there is no inquest with a jury, should be reimbursed, since by 7 and 8 Vict., c. 92, s. 21, it gives him a right to his travelling expenses, and our Revised Statute of Quebec, sec. 2692, grants him the same reimbursement.

His expenses would surely be paid even were he to find, at the end of his journey, that the report of the death was false.

279. It is fully admitted that except for travelling, his expenses are generally nil. However, it is evident that, in certain cases, it is absolutely necessary to pay certain expenses, such as:

(1) The expenses and costs incurred in good faith by the person who gives the notice, — this case is very unusual.

(2) The transfer and keeping of the corpse, at the request of the Coroner, when it is necessary.

(3) The medical examination, when it has the result of obviating the summoning of a jury.

280. The Revised Statute of Quebec, sec. 2692, which has just been mentioned, grants the Coroner 10c. per mile travelled by him. The oath exacted by the Statute of Quebec, 58 Vict., ch. 31, establishes that the Coroner has no right to these expenses except for the *route* necessarily travelled in the ends of his investigations. He could not charge for miles which lengthened the journey uselessly.

It is needless to say that this cannot be applied to cases where, on account of the impossibility of following a straight line it becomes necessary to take a by-route. Nor would the Government refuse to pay for miles covered by a round-about way when it is much the quickest.

281. It has long been established by our Civil and Criminal Courts that every mile begun and not quite covered should count as a mile. The Coroner may reckon thus.

282. This allocation of 10c. per mile is in payment of the travelling expenses and covers the hotel expenses. It is, nevertheless, admitted at Quebec that in cases where these travelling and hotel expenses exceed the sum allowed for the journey, at the rate of 10c. per mile, the Coroner has a right to reimbursement for the surplus.

283. As to the form of the Coroner's account in these cases of investigation, we find there is nothing better to be done than to give one here, which may serve as a model in all cases:

Montreal, Sept. 7th, 1899.

In re J. Bte. Luzon, Investigation.

V.

Coroner's fee		$3.00
A. B.		
Notice paid for..	(1)	1.00
C. D.		
Transfer of corpse.. ...	(2)	2.00
F. G.		
Keeping same..	(3)	1.00
H. J.		
Medical examination. ..	(4)	5.00
20 miles travelling.. ...		2.00
		$14.00

Usually, however, this account will contain but two items, to wit: the first and the last.

APPENDIX TO PART II.

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284. In Article VII of this second part, I promised Formulæ relating to:

(1) the testimony; (2) the description of the spot; (3) the description of the corpse; hence this Appendix.

285. Formulae of evidence to be collected.

Formula No. 1.

If the death has the appearance of a natural one, all witnesses will be called upon to reply to questions about as follows: —

1. Was the deceased seen to die, or was he found dead?
2. Was anything whatever to be seen of a nature to arouse or exclude suspicion of homicide?
3. Was the deceased known to suffer from any organic disease?
4. Was there any known reasons (and what are they) to

lead to the belief that anybody might have desired his death? if so, could this death have been caused by the person or persons interested in the death of the deceased?

5. What did the deceased do in the last hours of his life? Did he eat or drink? Could anybody have given him food or drink? If so, what was this food or drink?

286. And the replies to these questions, or to all others tending to establish natural death, shall be taken down in Minutes draughted about as follows: —

CANADA
Province of Quebec
District of .....

Inquest in the matter of the death of (name and surname) which took place on (the date) at (the place).

1. (Names and surname of the first witness) declares: —

"I found the deceased dead in his bed.

He seemed asleep; all appeared to me the result of a death that was quite natural; I know that he suffered from disease of the heart; he had difficulty in breathing when he walked somewhat fast.

Nobody had any interest in his death.

What he leaves to his heirs is of small moment.

The deceased went to bed last night at about ten o'clock; he had neither eaten nor drunk since six o'clock in the evening; nobody could have given him anything to eat or drink during the night. I have no doubt that the deceased died a quite natural death."

2. (The names and surname of the second witness, with his address) declares: —

"I corroborate the above testimony on all points, (or else the textual replies are written wholly, or the replies are added which correct the preceding testimony by adding to or subtracting from it."

And so forth with the others.

FORMULA No. 2.

287. If the death has the appearance of a purely accidental death, we will find ourselves in the case of investigations of which the facts will be related by witnesses who have seen the accident, or who have witnessed sufficient facts prior to the accident to establish that there can be no question of homicide.

Unless such testimony be found a doubt exists, and therefore the summoning of a jury is called for.

Each witness, then, shall relate the facts which he knows tending to exclude homicide.

One understands that the facts will vary as infinitely as the accidents themselves. However, in each case each witness should, by the facts related, show that the accident is not due to the fault of another, and in all cases he shall terminate his narration of the facts by declaring that the accident has not been caused by the deed, — act or omission, — of another. That nothing, in the circumstances, could cause a reasonable man to foresee that such an accident might happen.

288. The Formula which follows will serve as a model, it being well understood that the supposed facts should change according to the case.

CANADA
Province of Quebec
District of .....

Inquest in the matter of the death of (name and surname) which took place on (the date) at (the place).

1. (Names, surname and address of the first witness) declares: —

"I witnessed the accident which caused the death of the deceased, subject of this inquest.

The deceased was bathing in company with (here come the names of the companions) and myself, at two o'clock in the afternoon, in the St. Lawrence River, in front of Montreal.

He knew how to swim and had gone a distance from us, when all at once, when he was entirely alone at that spot, he sank. He must have taken cramps. Before anybody could come to his assistance he disappeared. Nobody contributed to his death in any way; it was an uncontrolable accident."

2. (Names, surname and address of the second witness) declares: —

"I saw the accident which caused the death of the deceased, subject of this inquest; everything happened as the first witness has just related, (or he relates any of the facts which show that he does not corroborate the first witness). Nobody caused him to drown."

Thus with the other witnesses.

Formula No. 3.

289. If the proof tends to establish that the accident is due solely to the victim, we will have only eye-witnesses attesting the very facts which have been the cause of the death, and showing that no other than the victim himself was to blame.

As in the case of uncontrolable accident, and, if possible, more minutely should the witnesses report the facts in all their details, and show the impossibility of others having contributed.

290. For example: — After having written, as in the other Formulae, the ordinary heading, the names, surnames and addresses of each witness, he will declare: —

"I saw the accident which caused the death of the deceased.

"He had ascended a scaffolding and wished to draw to him a board which was a few feet lower. Nobody had asked him to do so; there was no necessity to take this board up, which did no harm where it was. To go about it as he did was certainly dangerous, and he should have understood it. Before anybody had time to warn him of the risk he ran, or to forbid him to act so, he was precipitated from the scaffolding by the mere weight of the board which he had lifted beneath, and he fell from a height of 24 feet. Picked up unconscious, he was taken to the hospital, where he died.

Certainly nobody but himself was responsible for the accident."

The other evidence will be taken as this is, by inscribing the facts as related, or by being content, as in the other Formulae, with mentioning that they corroborate the first witness, if such is the case.

Description of the spot.

291. If the spot affords no particularity, that is to say, if the room, the house in which the deceased has been found is in an ordinary condition of order; if nothing is found there which, directly or indirectly, may be supposed to have possibly contributed to the death, it will be sufficient to inscribe in the record, after the testimonies, that the visit to the spot shows nothing particular.

In the opposite case, the spot specially shall be described, emphasizing things observed which may bear some relation to the death, in tending to exclude suspicion of homicide.

Hence, two different Formulae, under Nos. 4 and 5.

No. 4. The spot where the death took place offers no particularity worthy of mention.

292. No. 5. Remark: In investigations it is only a question of cases in which there is no suspicion of homicide; we are in presence only of natural deaths, of accidental deaths, or deaths due solely to the victims. In the case of natural deaths Formula 4 is that which will generally apply, seeing that the place of the death hardly ever affords anything worthy of mention. The present Formula may serve as model in the other cases.

"The spot where the death took place, (or the spot where the accident occurred which appears to have caused the death) shows indications of a nature to lead to the belief of a purely accidental death, (or due to the victim's deed alone) to wit: (there will be related the facts which lead to this conclusion.)

FORMULA No. 6.

293. The description of the corpse in the case of investigations, is, — if it is a question of natural death, — very short, finding nothing else to relate than that: "The corpse bears no mark or sign of violence. (Nothing indicated any organic affection).

FORMULA No. 7.

If it is a question of accidental death, or of death by the victim's own act, a short description of the corpse will suffice; but care must be taken to lay stress upon the lesions which may tend to show that the death is indeed the result of an accident, such as is alleged, or of the victim's own act. For instance:

"The fractured skull indicates a considerable fall, or crushing under a heavy weight. A blow of a stick or of any deadly weapon could undoubtedly have caused a fracture of the skull, but could never have caused such a crumbling."

Or: "The victim bears a lesion upon the forehead, of the nature of those caused by the bullet of a revolver of large calibre. The skin at the orifice of this lesion is covered with powder; the shot must have been fired at a very short distance."

Or again: "The deceased was taken out of the water, and has foam at the mouth and nostrils."

Or else: "All the lower part of the body of the deceased is scalded with boiling water", etc.

294. The attestation by the Coroner consists purely in affirming by the apposition of his signature and the seal of his Court, that this inquest without a jury has been made by him at a certain locality, or at certain localities, and on dates mentioned. Thus:

"Investigations made by me at..... this..... day of..... .... 19....

(Seal) (Signature)

295. To be complete it imports to give a formula of the report to the Attorney-General in the case of investigations, such as required. (See Part II, Article VIII).

Here it is:

CANADA
Province of Quebec
District of .....

In re (name of deceased) who died at..... the..... day of..... 19.... reported as a (violent or supposedly violent) death, by (the name of the informant).

"I, the undersigned Coroner of the district of..... being duly sworn, declare: —

That after investigations made it is evident that this death is due to a cause (purely accidental, or to the deed of the victim himself, or to a natural cause) and in nowise to the act or omission of another, in circumstances necessitating a regular inquest; consequently I could not summon a jury.

And I have signed.

Sworn before me
at..... this..... day
of..... 19....

Coroner.

PART III

PRELIMINARIES TO AN INQUEST WITH A JURY.

296.—PROCEDURE PRIOR TO SUMMONING A JURY.

296. Once the Coroner has judged that it is obligatory to assemble a jury, he should: —

1. Make a sworn declaration averring the possibility of suspecting homicide, and containing briefly the motives which lead him to this conclusion;

2. Fix the time and place where the inquest is to be held;

3. Secure possession of the corpse, and of the spot, as well as of objects tending to throw light upon the cause of the death;

4. Order the constable to summon the jurors, — not less than twelve, — to appear at the time and place fixed, and

5. Secure for the purposes of the inquest, the presence of all persons whom he has good reason to believe are in a position to give useful information.

It is only a question here of preliminary measures, prior to the inquest; all are essential. Some of them are obligatory in all cases, others only under certain circumstances. They will be the subject of our attention according to the classification just given.

ARTICLE I.

THE SWORN DECLARATION.

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297. Such a declaration does not seem ever to have been exacted in England. The Coroner's Act of 1887 contains nothing about it.

This obligation of a declaration by the Coroner before summoning witnesses, exists in Canada only for the Provinces of Quebec and Ontario. It was made obligatory by an Act of Parliament when these two Provinces were united.

This declaration should verify the possibility of suspicion of homicide.

The last Statute in Quebec on this point only repeats the text of former Statutes, and adds the obligation of the oath. It is the Statute of 1892, 55-56 Vict., Ch. 26. It has already been textually reproduced in this work, in Article IX, Part I.

298. According to this last Statute of Quebec of 1892, this declaration should, before the summoning of a jury, be sworn by the Coroner before a Justice of the Peace, or a Commissioner of the Superior Court, or a Notary.

299. It is only in Quebec and Ontario (and again in the latter Province custom and not the Statute exacts it) that such oath can be exacted.

It is a blemish to the Statutes of our Province. An opinion on such legislation has already been given in Part II, Art. VIII.

Evidently the legislator who had such an oath inscribed in the Statute book must have had proof that some Coroners allowed themselves to forget their duty on this point, and wished to remind them of it each time. But then, this Coroner, or these Coroners, have become unworthy to hold the post entrusted to them. Why not have him or them dismissed? Has it really been thought that the magistrate who made a mockery of his oath of office, who made use of his position to secure ill-gotten gains, would shrink from one perjury the more?

If he acted thus knowingly, nothing would stop him. He is a wretch who dishonors the magistracy. Let him be dismissed.

If there is only error of judgment on his part, he will be quite as subject to error before as after the oath.

This law has not prevented useless inquests any more than have its forerunners.

300. To say all that I think of it: This sworn declaration, as well as the declaration without oath, which the former law exacted, have only been put into the Statute book with the object of reducing expenses, by preventing Coroners from holding useless inquests, whether through error of judgment or love of gain. And neither one nor the other of these laws has attained, or could attain its object, for the reasons already given in Article IX, Part II.

This Article, Article IX, Part II, suggests a means of preventing any useless assembling of a jury; a means which would notably diminish expenses in practice, though the fact is not apparent at first sight. The following would be the outcome: —

The Coroner, sure of being paid for his trouble, would exhaust all means qualified to set aside suspicion before summoning a jury, and would do his utmost to avoid other expenses. He would have the corpse transferred, kept and examined, only when it was absolutely impossible for him to

act otherwise, and nine times out of ten the State would have no other sums to pay in these cases than the Coroner's fee and travelling expenses.

301. These laws have been made to put as many obstacles as possible to the holding of inquests with jurors.

They have a tendency to prevent the searches concerning homicides. In fact, they are of a nature to abate the zeal of Coroners.

In the fear of putting themselves out for an absurd fee, they might believe themselves justified in not concerning themselves with deaths due to acts of violence when falsely represented as accidental. They might, for the same motive, not concern themselves with a death due to a criminal cause, when ably concealed under the appearance of one quite natural.

302. To the praise of Coroners be it said that, so far, they have not hesitated to do their duty. In all cases where suspicion of homicide was possible, they have courageously held inquests; even should their action be misinterpreted; even should their fee be unjustly withheld.

From this point of view also the law has not attained its implicit aim.

Seeing that investigation must always be made in all deaths by violence or supposed violence; seeing that there must be a summoning of a jury only when there are grounds, for good and valid reasons, to suspect homicide; seeing that there is ground to fear that certain Coroners, for one motive or another, may sometimes assemble a jury without reasonable motives; and seeing that the declaration, — especially under oath, — wrongs a magistrate who is the more in need of being raised in public estimation, in that he stands on the lowest steps of the magisterial ladder: we permit ourselves to express the opinion that it should disappear from the Statute, and in its stead and place we would suggest obliging the Coroner to mention in his report the facts upon which he bases his conclusion that there is a possibility of suspicion of homicide.

The usefulness or uselessness of the inquest will be as easy to discover, and the magistrate's honor will remain intact.

303. As the law reads at present, the declaration may be made in about the following terms: —

"I, the undersigned Coroner of the district of..... in the Province of Quebec, declare by these presents, in accordance with (Article 2687 of the Revised Statutes of Quebec, as amended by the Art. 55-56 Vict., chap. 26) or (with the law of this Province).

That upon information from (the name of the person who has given the notice, or better still, if it is so, the authorities of the police of a locality named) that (the name of the deceased) died at (the name of the locality) a violent (or supposedly violent) death, under such circumstances that a Coroner's inquest is necessary.

And I have signed."
Sworn before me
at..... this..... day
of..... 19....

(Coroner's signature).

304. If the suggestion of the detailed report is ever adopted instead of this declaration, the Coroner could make it by means of a Formula such as this: —

"Being notified by..... of the death of..... given as a violent or supposed violent death, I have made investigations which have led me to conclude that an inquest is necessary, whereas (*the name or names of the persons questioned*) have declared that the death was due to the probable fault of (the name or names of the persons said to be blameworthy) and therefore there was a possibility that this death was the result of criminal homicide, — or (when the searches fail to show any facts from which to form a judgment) seeing that nobody has been able to reveal facts of a nature to exclude the possibility of homicide ;

"Consequently I summoned a jury and proceeded with a regular inquest on the (date) at (place)"; then follow the details of the report, which will be dealt with later.

ARTICLE II.

THE TIME OF HOLDING THE INQUEST.

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305. The inquest should be fixed for a time as soon after the death as possible. Except for good reasons, it should be within twenty-four hours.

306. "If then it appears to be necessary to hold an inquest, the Coroner should proceed *forthwith* to issue his warrant to summon a jury. Delay on his part is punishable. For instance, it has been held to be inconsistent with a Coroner's duty to delay holding an inquest upon a body in a state of decomposition, during so long a period as five days without special reasons": — in re Hull, 9 Q. B. D., p. 692.

307. "It must in all cases be held within a reasonable "time after the death, but no precise time can be specified "within which the inquest can be held; the body is part of "the evidence, and it is essential that that should be in such "a state that information may be derived from the inspection "of it; and by the state of the body alone can the period "within which the inquisition may be held be determined."

This rather lengthy citation is to be read at p. 9 of Jervis on Coroners, edition of 1888. In no other work have I been able to find anything more precise on this point.

308. What shows forth most plainly in this citation is the contradiction which it contains.

"The Coroner should proceed forthwith..... Delay on his part is punishable", which means that he must proceed with the inquest without delay.

On the other hand, the author adds "by the state of the body alone, can the period be determined within which the inquisition may be held". That is to say, so long as decomposition of the corpse does not set in, the Coroner may wait.

Now, in our days, decomposition can be delayed sufficiently long, and the inquest could be begun several days after death.

309. This contradiction results from the author having understood that the inquest should take place as soon as possible, as good sense dictates, and he was right; and on the other hand it results from his finding a judgment condemning the delay long enough to permit decomposition to set in. He has taken the latter for a rule, while it was only a question of an exception.

Indeed, public health demands that putrefying corpses be buried as soon as possible.

Justice is interested in having the examination of the corpse made before decomposition is complete, and the Coroner is never justified in delaying the opening of his inquest upon a corpse found in a state of decomposition. But these corpses are the exception; three-fourths of the cases of death are reported to the Coroner when the corpse is still fresh.

Is he to wait until decomposition is about to set in before opening his inquest? Evidently not.

Jervis felt this well, and he concluded that the inquest must commence without delay.

310. One may be Lord Chief Justice of England, as Jervis was, and ignore in practice a Coroner's business. Had he been simply a Coroner, Jervis would have said, "as a general rule the inquest should be opened within the twenty-four hours following the notice, and there is exception to this rule only for cases where the corpse is not identified, and when identification seems an essential element for the discovery of the cause of the death. And yet, in these cases the limits of a reasonable delay cannot be over-stepped with impunity, and

above all, there must be no risk of injuring the public health by infection."

Embarrassed in presence of this judgment which contradicted his first contention, he contented himself with letting the reader disentangle himself.

This is what I have just done in drawing from his statements the sole conclusion which it is possible to draw from them, to wit: that the inquest should be opened without delay, unless there are reasons for postponement; and that even in this last case the delay must not be injurious to justice or to public health.

311. I have said that the inquest should be held within the twenty-four hours following the notice.

This is but an approximation; but it is sufficiently explicit though and is justified by the fact that the Coroner has not the right to delay with impunity the burial, which the relatives have a right to, within a short time after the death.

ARTICLE III.

TAKING POSSESSION OF THE CORPSE.

312.—THE TAKING POSSESSION OF THE CORPSE IS OF NECESSITY.
313.—THE CORPSE IS PART OF THE EVIDENCE.
314.—THE TAKING POSSESSION OF THE CORPSE INVOLVES THE KEEPING IT FOR EXAMINATION.
315.—THE CORPSE BECOMES THE TEMPORARY PROPERTY OF THE CORONER.
316.—THE COMMON PRACTICE HAS RECOGNIZED THAT TEMPORARY PROPERTY.
317.—THE LAW MAKES THE CORONER TEMPORARY MASTER OF THE CORPSE.
318.—THE CORPSE IS REMOVED ONLY WHEN JUSTICE DEMANDS IT.
319.—SEARCH MAY BE ORDERED AND MADE FOR A CORPSE.
320.—THE RIGHT OF THE CORONER TO KEEP TEMPORARY THE CORPSE.
321.—THE RIGHT OF THE CORONER TO KEEP PARTS OF THE CORPSE.
322.—THE PLACE WHERE TO KEEP CORPSE OR PARTS OF IT.
323.—EXAMINATION OF THE CORPSE.
324.—THE EXAMINATION OF THE CORPSE HAS TO BE MADE BEFORE THE SUMMONING OF THE JURY.
325.—THIS EXAMINATION HAS TO BE MADE BY A MEDICAL EXPERT.
326.—OUR STATUTES SEEM TO SAY THAT THE EXAMINATION OF THE CORPSE HAS TO BE MADE AFTER THE JURY IS SUMMONED.
327.—OUR LAW DOES NOT MEAN THAT.
328.—OUR LAW SEEMS TO PROHIBIT MEDICAL EXAMINATION.
329.—JURISPRUDENCE SEEMS IN CONTRADICTION TO OUR LAW.
330.—THE CONTRADICTION IS ONLY APPARENT.
331.—POST-MORTEM EXAMINATION IN OUR LAW MEANS AUTOPSY.

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312. The Coroner secures possession of the corpse for the purposes of the inquest. He acts so as to derive from it all facts useful to justice.

313. This measure has but one object, to wit: that of procuring evidence of a nature to prove or disprove criminal homicide.

We have seen in the preceding Article, in the citation from Jervis, that the corpse is part of the evidence; that the corpse is the first proof to be offered to the jury. We have seen, besides, that the inquest cannot be opened unless the corpse can be shown to the jury.

Since the corpse is evidence of itself, it necessarily follows that it is the duty of justice to draw from it all information possible.

314. These facts lead to dealing with the taking possession of, with the keeping, and with the examination of the corpse. The two first points belong exclusively to this part of the Coroner's duties before inquest. The last might be treated of as well, when it is a question of the Coroner's duties at the inquest; however, it is more in place here. The reason why will soon be seen.

315. It stands to reason that since the Coroner should show the corpse to the jury at the beginning of his inquest, it is his duty to make sure, by all necessary means, that the corpse will be there, at the time and place set, to be shown to them. It stands to reason that the Coroner becomes master of the corpse from the moment the latter is the subject of a judicial inquest; that he remains the master of it till the moment when justice has no further need of it.

316. The custom prevailing so far wills, — when a person is found dead under circumstances giving rise to judicial

investigations, — that the corpse be not disturbed, so that the Coroner will find it in the same state in which it was first found. The usefulness of this precaution will be seen further on.

I mention this custom, religiously observed everywhere, for the purpose of showing that custom has sanctioned reason; that custom and reason, one and the other, declare that these corpses become, in the ends of justice, the temporary property of the Coroner.

317. The law gives the Coroner the right to exhume corpses, for the purposes of the inquest. Burns, on Justices, section 6; Hale, p. 170; 2 Hawke, p. 48; Jervis, edition of 1888, p. 27. Section 2689 of the Revised Statutes of Quebec, declares that, in the interest of justice, the Coroner is master of the corpse.

318. It is evident that the Coroner has such right only in the interest of justice.

It results therefrom that the Coroner has the right to have the corpse removed to another place, if the interest of justice requires this change.

For instance, if it is impossible to hold an inquest in the place where the corpse is found, or if decency and public health oppose it, or if it be impossible there to make a fitting examination of it; in all these cases the Coroner would be justified in having it removed elsewhere. But he would never be justified in exercising this power without some such good reasons.

319. It results, moreover, that the Coroner has the right to have a corpse exhumed for the purposes of his inquest. Jervis, p. 242.

This implies that he possesses the authority to have corpses sought for, which are supposed to be the subjects of criminal homicide.

Article 569 of the Criminal Code gives to Justices of the Peace the power to search for and find anything upon or in respect of which an offence has been committed; to have it brought before them for the purposes of enquiry and trial.

It is evident that a search warrant should be equally forthcoming to find a corpse which is the subject of homicide.

It is true that the Article in question mentions only a Justice of the Peace; but it is only a question of powers granted to them, and which formerly belonged, by Common Law, to magistrates, who preceded them in the preparation of criminal cases, to wit: to Coroners and Sheriffs. The latter no longer hold such proceedings, but the Coroner has not ceased to have the same powers.

320. It follows, furthermore, that the Coroner has the right to keep the corpse, or have it kept in order to be sure of having it at his inquest.

He may leave it where he finds it, but he should be certain that it will still be there at the time of the inquest. He may trust to the relatives or friends of the deceased; he may leave it in their charge, if he sees no objection, if he has good reason to believe it morally certain that he will find the corpse there at the time of his inquest. But, if he is unable to reach this certainty, it is his duty to trust to the guardianship of a reliable person or persons.

321. It follows, too, that the Coroner has the right to preserve, or to have preserved, such parts of the corpse as seem to be necessary later for the purposes of analysis, or of a more thorough medico-legal examination.

322. If he may have the corpse kept in the place where it was found, it is certain that the Coroner may equally have it kept in the place to which he has had it removed.

The parts of the corpse which have been preserved may be left in the keeping of medical experts, and this is better than keeping them himself; but it is incumbent upon the Coroner to see that the expert keeps them in a safe place, to which he alone has access, and in glass jugs scrupulously closed and sealed.

323. Boys details the examination of the corpse under the following heads: —

1. The place where the corpse is found.
2. The position of the corpse.
3. The marks and stains on the corpse and the clothing; their position.
4. The conduct and bearing of the persons about it.

This author informs the reader that he has gathered his information from the Upper Canada Law Journal of February 1856.

The examination of the corpse, properly speaking, comes under the present Article. The others are part of the examination of the spot where the corpse is, and of the persons and things about it.

We shall first concern ourselves with the examination of the corpse itself; later, with the examination of the spot, the persons and the objects.

324. Treating specially of the examination of the corpse, the same author says: "These, (the marks and stains on the corpse) may be examined by the Coroner and jury, but a medical witness will be more competent to draw conclusions from them."

Jervis, at p. 30 of the work already several times cited, says: —

"In all cases of sudden or violent death, and especially when it is likely that a criminal charge will be made against any person, it is desirable that a surgeon should be called as a witness, and that a post-mortem examination should be made." And he adds, at the end of the same paragraph: "If this is done before the sitting of the Court", (the Coroner's Court) "time may be saved, and the trouble and inconvenience of an adjournment avoided."

These two authors lead us necessarily to conclude that they have understood two things; first, that this examination is made for the purpose of deriving from it all possible facts qualified to enlighten justice; and then, that it is made to be of use at the Coroner's inquest, that is, before summoning the jury.

325. In fact, it is because a physician is in a better position to judge of the wounds and other marks, — the results of violence, — that these two authorities advise calling in a medical man.

In this, they follow progress. They admit, as is recognized by the Courts, that, although the Coroner's law, before and in the time of Edward I., wills that the examination should be made only by the Coroner and the jury, this same law willed that the best means to reach a conclusion should be taken. They recognize that this ancient law would have accepted the services of experts, if there had been any at the time. They concede that custom has since accepted them, and that the Courts have interpreted the law in this sense.

326. And, recognizing that the law of that time, as the law of to-day, willed and sought all means qualified to enlighten the jury called upon to declare whether or not it is in the presence of homicide, Jervis says that this examination should be made before the end of the inquest, before the verdict, to save the trouble of an adjournment.

And, yet, our law, in the Revised Statutes, section 2689, says that: "No Coroner ought to order a post-mortem examination of a corpse upon which an inquest *has been held,* save at the request of the majority of the jury."

Another law in prohibitive form.

Evidently, in other times, there were abuses on the part of certain Coroners, who had examinations made when there were no grounds to suspect homicide; and the legislator, who had not time to study the question enough to frame intelligent and clear legislation upon the whole, saw only the abuse to be made away with and forbade the Coroner to have the autopsy of the corpse made upon his own authority. From this moment it became the legislator's desire that the Coroner should not, without the consent of the majority of the jury, decide that there was occasion to make this examination.

327. But the amusing part of this proposition is, that this examination should be only after the inquest is held; so

that the jury may give a verdict of homicide, and the subsequent examination may declare that the verdict is erroneous, that the death is clearly a natural one.

Fortunately the legislators have seen the anomaly of such procedure, and have immediately, in the same section, added a corrective in the following terms: "unless the Coroner has made a declaration in writing, which should be reported and produced with the report of the inquest, stating that, in his opinion, it is necessary to hold a post-mortem examination to make sure whether the deceased died by violence, or by foul means."

Such as it is, with its corrective at the end, *contradicting* the statement at the beginning, this law means that the Coroner has the post-mortem examination made each time that he believes that such examination will have the result of helping to say whether there has been homicide or not, and therefore, before the verdict.

328. This law is inscribed in the Statutes under the prohibition to the Coroner to open an inquest if there are no grounds to suspect criminal homicide. So that the legislator has said: "Even when there are grounds to suspect criminal homicide, there are not always grounds for a medical examination." He has added, — by saying: "unless it is to make sure whether the deceased died by violence or foul means", — that there are cases where this examination can in no wise contribute to the certainty which justice seeks to reach.

In this the law seems to speak the truth. As a fact, there are crimes committed in public, there are accidental deaths, when the mortal lesions show themselves to everybody, such as they are expected to be after the narration of the facts seen; and then the parol evidence, with the lesions seen by ordinary men, will afford an element sufficient to convince.

329. However, the jurisprudence universally and justly adopted by the Courts for many years, is that the examination should, in all cases of crime, be made by a medical man. This jurisprudence is evidently based upon the fact that an ordinary man may easily make a mistake in these cases; that

the defence profits by this absence of medical experts to throw the jury into doubt, and finally, that the accused has the right to have the best proof brought against him before hearing himself condemned.

330. Established jurisprudence wills that to affirm or deny homicide, there should always be a medical examination. The Statute wills that to deny or affirm criminal homicide, there should not always be a medical examination. It is a plain contradiction.

One has a right to ask how the Courts have contrived to surmount a statutory law so cavalierly.

331. The thing is easy. The Statute in question applies only to the Coroner's inquests, and to no other Court; and this Statute does not make use of the words "medical examination", but of the words "post-mortem examination".

Now, physicians commonly designate under the name of *post-mortem,* the autopsy or opening of the corpse.

The legislator made use of an unfitting term, in this section, to designate that which French authors in medical jurisprudence call the "opening of the corpse", or simply the "autopsy", as farther on the legislator calls "external examination" that which in good French is called the *levée du cadavre.*

And then the Statute declares that there are inquests in which it is not necessary to make the autopsy, because of the almost certain chances of reaching certainty without it.

332. If no criminal case is probable there is no need to command the autopsy. If a criminal case is probable the autopsy must be held.

Thus interpreted, jurisprudence and the Statute no longer contradict each other. And this interpretation of the Statute lends sense to the first part of the section, speaking of post-mortem examination, which may be made after the holding of the inquest upon the order of the majority of the jury.

The Coroner believed that the facts revealed would not be of a nature to require any arrest. Consequently he did not

order the autopsy. The jury demands arrest; he orders the autopsy after verdict, if he does not wish for adjournment.

333. I see an objection arise. "What?" it is said, "the law wills an inquest only when there are good reasons to suspect criminal homicide; then there are always grounds for making the autopsy."

There is good reason to suspect criminal homicide, to open an inquest each time that there are good reasons to believe in the possibility of the jury's attributing the death to another's crime. It results that the Coroner may be of the opinion that the inquest will probably end with a verdict of natural or accidental death, or of excusable or justifiable homicide, and yet he may believe that the opinion of the jury may differ; in this case there is possibility of suspecting homicide, but there are not grounds for him to order the autopsy.

334. According to jurisprudence, as Jervis expresses it in the above citation, the autopsy should be ordered before the inquest, when, seemingly, a criminal accusation should be brought against somebody, that is to say, each time that the information denounces a positive crime on the part of another, and each time that it reveals facts which establish homicide caused by conduct so reprehensible that the Coroner believes that the verdict will decree an arrest.

According to the Statute, the autopsy should be ordered each time that it will have the result of making known whether the death is due to violence or to foul means, that is to say, each time that, without it, it would be impossible to pronounce, — which happens in all cases where the death is unexplained, nobody knowing how it could have happened.

And according to the same Statute, when there is a verdict ordering arrest, if there has been no autopsy, it should be made after inquest.

In this way, jurisprudence and the Statute agree.

335. The facts upon which this examination of the corpse must bear will be treated of farther on, when the evidence at the inquest is dealt with.

ARTICLE IV.

EXAMINATION OF THE SPOT.

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336. The place where one knows, or where one has reason to believe the supposed crime,—the cause of the death,—to have been committed, should be carefully examined, and the Coroner should take and keep possession of it for the purposes of this examination.

337. There will be found, at Article IV, Part II, which treats of inquests without a jury, things very useful to reread before undertaking to read the considerations to follow. It will be seen there that in cases of investigation without a jury, as in cases of inquest, the Coroner makes this examination.

338. But, in inquests without a jury all, so far, has tended to exclude suspicion of criminal homicide; in the inquests with a jury all, on the contrary, tends to cause belief in the possibility of criminal homicide.

Needless, then, to say that if this examination in one and the other case should be made with care, in the case of inquest with a jury it demands much more formalities.

In fact, this examination will bring up details and particulars which may have great weight in the evidence at the Court in the judicial proceedings which will follow.

In the inquest without a jury all has shown, so far, that there was no homicide.

A scrutinizing look at the corpse's surroundings will suffice to show that nothing is to be met with there which tends to contradict former investigations.

In the inquest with a jury there exists a known crime, or the death is surrounded by circumstances which, in all probability, will cause homicide to be concluded, or else the mystery hanging over the subject of the death leaves the door open to the possibility of a homicide.

In the inquest without a jury all ends with the Coroner's proceedings.

In the inquest with a jury these proceedings may be only the starting point of a whole long judicial proceeding.

In the first case the things seen have no great future importance; in the second they may have enough weight to turn the balance of justice towards an acquittal or a condemnation. In a criminal trial the life of one guilty, or the safety of one innocent may depend upon a simple detail of a fact well and scrupulously observed and noted.

339. One understands then with what precaution the examination of the spot, and all which it contains, should be made at the Coroner's inquest. One understands that, before having the corpse removed, before disturbing anything in the place where it is found, this examination should be made.

The Coroner, then, should scrupulously note all that tends to help to a conclusion upon the following facts, before touching anything.

1. Did the death happen in the place where the corpse is found?

2. Does the place where the death happened afford any evidence for or against homicide?

3. Does the position of the corpse suggest the idea of homicide?

4. In the surroundings of the place where the corpse is, are there any things which can help to pronounce for or against homicide?

5. Among the persons about the corpse are there any whose acts and manner seem worth attention?

340. All these indications may be precious.

Boys, in his work already cited, at p. 121 and those following, gives the reasons for which it is important to take these precautions. For instance, — to summarize briefly, — on the subject of the place where the death has happened, he shows that it must not always be believed that it happened where the corpse is found, and that a mistake on this point may lead to conclusions which are altogether erroneous. Speaking of the position of the corpse, he causes it to be remarked that it will often bring evidence corroborating or disproving the cause at first supposed.

In the surroundings of the corpse, the nature, the direction, the quantity and the quality of the blood, may help to a conclusion in favor of a homicide or a suicide. The instruments which may have caused the death afford other evidence. The acts, manner and speech of the persons about the corpse show whether they should be called as witnesses at the inquest, and put the Coroner in a position to judge of the style of witness he will have to question.

341. Evidently these are so many facts important to note. Neither Boys nor any author who wrote before him, has attempted to indicate how the Coroner should proceed to draw from all these facts the best evidence possible. This is what I am going to try to do.

342. Before all, it is important to insist upon two facts:

1. One must seek for the best evidence possible.

2. It is the duty of the Coroner (a judicial officer) to derive this best evidence from the facts. He acts as judge of the facts.

These two truths have already been shown before. It has already been seen that it is his duty to make witnesses and things say, what, and only what, witnesses and things may say. It has already been seen that the Coroner, acting as judge at the inquest, cannot be witness and judge at the same time.

These unquestionable truths being admitted, it results that:

1. The examination of the spot, that is to say, of the things, should be made by the persons best qualified to make them tell all, and only that which they may tell; that is to say, by experts.

2. It results also that the examination of the spot, as of the corpse, is made by the Coroner, only to put himself in a position to judge, if possible, how far the expert witnesses are justified in drawing their conclusions.

In other words, the experts bring forward the evidence of facts, and draw a judgment from them; and the Coroner accepts both the facts and judgments of experts, if he finds nothing to gainsay.

Hence, it is the Coroner's duty, every time he can, in all cases where every probability is in favor of arresting the criminal, to have the spot examined by experts.

343. Among the facts to note on the spot where the death has taken place, some exclusively pertain to the medical expert, such as, the position of the corpse; the blood-stains on or near the corpse. Others are of the exclusive competence of other specialists.

344. Detectives will judge better than anybody else whether the death happened at the place where the corpse is found; they will investigate the deadly weapons with greater ability; their eye accustomed to the acts and manner of criminals, will appreciate more exactly the acts and manner of the persons about the corpse.

345. An architect, or at least a person used to measuring dimensions and distances fittingly; a person apt at making an exact survey and at transferring it to paper in a design at a graduated scale, is better fitted than any other to give an exact description of the spot.

346. A mechanic will understand and explain better than any other how and why a machine can have caused death; he could, also better than any other, discover whether the defectiveness causing the accident existed long before, and was such that it should suggest, to a man of experience, a certain imminent danger.

347. A workman accustomed to make use, in his ordinary work, of the tool which is believed to have caused the death, would often afford important help to judge whether, in the present case, this tool could have caused the lesion which has brought about death.

Here, then, are so many persons who, being in their special sphere, better able to judge than others, will afford justice greater surety if they are consulted. Hence, it is for the Coroner to make sure of their testimony on the examination of the spot and the objects, every time that he can.

348. Some of the facts to be examined on the spot may be complex. One part may come within the scope of the detective, of the architect, of the mechanic or of the workman. The other within the scope of the medical expert who judges of the lesions. The circumstances disentangled by the experience of the first may modify the opinion of the second. It is important that the latter should be put in touch with all the opinions of the first. It is still better for all to work together in their examination, if this can be done.

349. It cannot be denied that it is not always easy to find everywhere the right persons to whom to entrust the charge of making this examination of the spot.

There are even places where it is materially impossible to find any one of them; then it remains for the Coroner to have this examination made by the most intelligent and best informed person at hand, and to direct his work from close quarters.

In these difficult cases, it seems that the person who acts ably as the Coroner's secretary, may, if well directed, soon become apt at making a faithful survey of the spot and of the objects found there.

350. Accidents by machines or electric wires; railway accidents; those of scaffolding or construction, will always be better explained by a man experienced in these different trades.

The Coroner, without being able to pay them a fee, can generally make sure of the services of experts in these divers branches, by inciting them to act as such for the sake of the interests of the close relatives of the deceased; for the protection of their fellow-workers, etc. He cannot promise them payment for their work and their report at the inquest, but he may use persuasion.

351. It is *a propos* to say that no expert can be forced to act as such. If it were otherwise, it would be to check the liberty of the subject, and each one is a better judge than any other of his capacity as an expert.

352. The Coroner acts as judge only, and in nowise as expert. He is there neither as architect, nor electrician, nor mechanic, nor detective, nor physician, whatever may be the extent of his knowledge in any of the lines which these names imply. He is simply the man of law, who presides at judicial investigations. He occupies, in a lower degree, the same position as the judge sitting in the Criminal Court, and like the latter, all his knowledge should consist (aided by his acquired experience) in directing the investigations made by

others in the aim of making the facts observed tell all and only that which they may say judicially.

353. The law of Coroners speaks only of Medical experts. To them alone a fee is granted by the Coroner.

However, it is certain that the Coroner may always make sure of the services of an architect or engineer, seeing that these persons are generally desirous of being heard as witnesses in sensational cases; that the law grants them a suitable fee in these cases, when they come, later on, before the Criminal or Civil Courts.

354. Factory Inspectors of the Province are anxious to assist at inquest on deaths occurring in factories, public houses and houses of education.

With that view they have had a clause inscribed in the Statutes of Quebec which gives them the right to be present at them.

Their evidence is always very useful. They have always examined the machines which have caused the death; they know where the defect is to be found, which is the cause of the accident; they know whether the prescriptions of the law have been obeyed; they help to find whether there has been wilful negligence or not.

Accidents at work, which almost always require the assembling of a jury, because of the suspicion of carelessness or imprudence to which they generally give rise, very often cannot be understood without the assistance of a specialist.

355. The Coroner is the magistrate who seeks proofs; his role is absolutely and solely legal or judicial.

Like the pleading barrister, or like the barrister who has ascended the Bench as a Judge, he should in each particular case seek to familiarize himself, as much as can be, with the special sciences which bring their help to the legal evidence; he should see clearly into the facts detailed, by grasping the whole bearing and drawing exact conclusions from them. Above all, he should be on his guard against the exaggerated bearing which specialists are inclined to attach to facts appreciated by them, and he should limit them to reaching only indisputable conclusions.

A man of law, his role is not the easiest, for, while the ordinary judge has only to apply the facts brought forward in evidence to the law, of which he is the authorized interpreter, the Coroner, with law in hand, is bound to discover whether facts exist which allow of concluding the existence of crime.

The Judge seeks the guilt or innocence of an accused, and has Advocates of the Crown, and of the defence, to assist him.

The Coroner seeks if there be a crime? who the criminal is? by what evidence of facts, still totally unknown, he may find whether there is a crime and fix the crime upon the supposed criminal? And generally he has not the assistance of any man of law. He is not the expert, but he directs him. He points out to him the facts which he should investigate.

His role is wholly one of responsibility and difficulty.

356. To have the spot examined, it is evident that the Coroner has the right to take possession of it, and to keep it in the state in which it was when the death took place. However, it is also evident that he must here practise great discretion.

357. He should never keep possession of the spot beyond a reasonable time, and should hasten to return it to the owner.

There are special grounds for haste when the spot is a place of business, and when the Coroner's taking possession stops or interferes with continuing the work.

This power of possession is granted to the Coroner by English Common Law; to prove it, it is sufficient to remember that the custom is universal and unquestioned. Everybody, I am sure, can remember a case where it has happened.

358. How the Coroner exercises this power is what remains to be said.

Ordinarily the proprietor or guardian of the spot willingly agrees to this taking possession, and the Coroner, without any order, becomes the temporary possessor. If there were objection, it would be prudent to send a guardian, bearer of a written order enjoining the proprietor to leave the spot in its

present condition, for the purposes of the examination, until a time mentioned. In this case the guardian should be a sworn constable, so that if he were interfered with in the discharge of his duties as guardian, criminal proceedings could more easily be instituted against any one obstructing him.

Such an order might be formulated as follows: —

To.. .. ..

Proprietor of the spot in which (name of the deceased) met his death.

Kindly allow the bearer to take possession and guard the spot in question, from now until.. .. ... o'clock.. .. ... to permit of an examination being made.

Given at.. .. .. under my hand and the seal of our Coroner's Court, this.. .. ..

(Signature).

ARTICLE V.

ORDER FOR SUMMONING A JURY.

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359. The order for summoning a jury is written or verbal. It is given to a constable.

360. With the exception of a Statute of Nova Scotia, no English and no Canadian law exists enjoining the Coroner to give the order to summon a jury in writing.

361. However, all authors who have treated of the Coroner's duties have inscribed in their treatises written formulae to that effect.

The first is a formula of the Coroner's order to all constables in the localities in which he desires that the choice of jurors should be made.

The second is the order to a constable of each of the localities given by the first constable, and the third is the order of the constable of the locality to the jurors chosen.

All these formulae will be found repeated in the same manner in the treatises of Jervis, Sewell, Baker and Boys, to name only the principal ones.

362. In spite of this, neither Jervis, nor Sewell, nor Baker, in the course of their treatises, has proved that this order should be given in writing, and in the form suggested.

Why so? Because no law, and no judicial precedent has ever regulated that this order should be so given.

Yet, Boys, in his edition of 1878, at p. 116 of his work, says: "The jury are summoned by the Coroner *issuing his precept or warrant* to the constables of the county to summon at least twelve able or sufficient men to appear before him at an hour and place named. This warrant, with a summons for each juryman, is given to a constable, who should serve the jurors personally, or at least leave the summons at their dwelling house, with some grown-up member of the family, and return the warrant to the Coroner, with the names of the persons summoned."

If one is to believe Boys, the Coroner's order and the summoning of the jury should be *in writing*. He has forgotten only one thing, to wit: to *prove* that it should be so, or rather, he was careful to show that he had no authority to support his assertion, since in two foot-notes to these sentences he has clearly established that his sole authority was the formulae found at the end of the treatises of his predecessors, and the sayings of his forerunners.

363. They all copied each other; the last inscribing textually the words of those coming before them.

The oldest author consulted, prescribing the written order, is Hale, and one finds upon what he has based his assertion. He gives it as taken from Statute 4, Edward I.

Now this is a mistake; the Statute says: "The Coroner orders the constable to summon a jury." The Statute is in Latin, and makes use of the noun "Mandatus", — order; and the old English translation says: "The Coroner shall command." There is no question whatever here of a *written* order, and Hale was not justified in saying that the Coroner "had to issue his precept", that is to say, that he should issue a written order.

As to the order which the constable himself transmits, there is no question whatever of it in the law, which contents itself with saying that the constable shall obey it. Needless to say that the formulae given by law writers (however great their authority) can never make law; when one knows that the formulae inserted in the Statutes themselves have not force of law, and that they are only put there to direct the application of law in procedure.

Hence, there is nothing in the Statutory law, nor in Common Law which obliges the writing of these summonses or orders.

364. Moreover, one knows that Common Law is founded exclusively on precedents.

Now, I affirm that the Coroner's jurors are summoned generally, since time immemorial, only by a verbal order.

The constable has the order to bring twelve jurors at once; he goes into the street, or into the neighboring dwellings or places of business, addresses himself to any citizen he meets, and enjoins him to come immediately to the place of the inquest.

In England this order is printed and bears the signature of the constable and of the Coroner, it is true, but it is not addressed to any person named; it is not a more regular order than a purely verbal one.

This assertion cannot be contradicted; anybody who has served as a juror knows that it always happens in this way.

From Common Law, the order or the orders to summon a jury would then be given verbally rather than by writing.

365. There is more still than this. The right to give a written order unquestionably implies the right to give it by word of mouth.

The writing is there only to prove that the order has been well and duly given. It does not constitute the order itself, it is but its undeniable proof, just the same as the notarial act is but the written statement of the clauses of an agreement or contract between the parties; it is the proof of the contract, it is not the contract itself.

366. It is unnecessary to have read a single line of any author knowing the history of law, to understand that the orders of officers of justice have not always been given in writing.

In remote times writing was an accomplishment with which even the high courts were obliged to dispense. In the course of time, instruction having become more general, justice began to keep record and minutes, and to give its orders in writing.

No doubt, it must be admitted that it was soon seen that writing was useful to establish the proof of the orders of officers of justice, and Statutes came, establishing procedure, obliging writing in a multitude of cases.

367. How is it then that they have remained silent on others, — for instance on that which is the subject of this Articles? Is not this a proof that legislators have not so far considered the thing opportune, — they have wished to leave it discretionary, or they have seen no inconvenience in such order being merely verbal?

368. The order given in writing no more constitutes the order, as I have said, than the notary's act constitutes the contract; it is but the proof of the order.

Now, what reason is there to have this proof in the case of summoning a Coroner's jury, when the inquest which follows is itself the best proof that such order has been given?

369. There are other Courts which still, at the present day, give some orders verbally.

For instance, the Court of King's Bench, sitting in criminal matters, orders verbally that a murderer be hanged at a given date. It is true that custom ordains that the clerk give the Sheriff a writing attesting that this is the ruling of the Court, but the clerk's written document to the Sheriff is not the order itself, and even were such attestation on the part of the Clerk of the Court not made, the Sheriff who received this order verbally from the Judge, would still be bound to execute it.

It is verbally that this Court gives all its orders.

Judge Ramsay, who was not the first-comer, sitting one day as a Commissioner in Extradition, contented himself with a verbal order enjoining the gaoler to take the accused to prison, and to keep him there during the adjournment, declaring that, as no Statute obliged him to give such order in writing, his verbal order sufficed.

In the case with which we are concerned, there is no legislation ruling that such order be given in writing; hence there is no obligation that it be written.

We find in Article 586 of the Criminal Code the recognition of the verbal order. This right is given even to the simple Justice of the Peace, disposing of the liberty of an accused.

370. If we were to go a step further in our investigation, we should find that English Law, in principle, was opposed to the summoning of a jury by notice beforehand.

Forsyth, "On trial by Jury", p. 209, edition of 1852, speaking of the jury in Jersey, declares that the Normans of Jersey borrowed English procedure on this point, and adds: "They (the jurors) were to be brought into Court suddenly and *without notice,* so that they might not be bribed, intimidated, or corrupted."

The summoning by a written order (I speak of the regular summons) bears the order to a person named to come, later on, to a stated place. The jurors, after regular summons received, are not brought suddenly and without notice. There

still remains time for them to form an opinion, for one motive or another, and this is contrary to the end which the law proposes.

371. In our day still, Common Law wills that the Court give verbally to the Sheriff, in the Criminal Court, the order to summon a second or third panel of jurors.

In our day, again, the law, — Criminal Code, sec. 672, — wills that there be summoned by verbal order persons to act as jurors, when it has been impossible to form a jury from the regular panel of jurors summoned.

Evidently in this last case such order is given legally, on account of it being a question of urgency. But all Coroner's inquests are urgent, so, for that reason, the choice of the jury may be made in the same manner.

372. Hence, it results, in view of the absence of any law to the contrary; from the custom generally followed and never impeached; from the object aimed at by English law; from the fact that in cases of urgency the summoning is always done before the Criminal Court without a written order, that the least that can be said is that there is no necessity to give a written order to the Coroner's jurors, and therefore, that the persons verbally summoned are quite as much obliged to obey as if they were summoned in writing, which means that every disobedience to a verbal order summoning a person as a Coroner's juror, may be punished just as would be a disobedience to a written summons.

If any doubts remain, there is nothing left for me to say, except to beg of the Legislature to do away with them by a clear and explicit law.

373. If the Coroner wishes to proceed by writing, in virtue of Common Law, he may order the Sheriff of the district to summon the jury. See Jervis, p. 10, edition of 1888. A Sheriff was condemned in England (Dalton, c. 100) for disobeying such an order.

In practice, adds the same author, this order is given to the special officer in the employ of the Coroner, or to any other constable.

374. This order may be worded about as follows: —

"To.. .. .. special officer of the Coroner, or to all and each of the constables of the district.

"Whereas M. M. died this day.. .. .. at.. .. .. in the district of .. .. a violent or supposedly violent death, under circumstances necessitating an inquest;

"These presents order you to summon a sufficient number of jurors to proceed with the inquest, which will be held the..... day of..... nineteen hundred and..... at..... o'clock in the....., in the house of..... situated in the village or road known as..... of the parish of.....

"And herein fail not.

"Given at..... this..... day of..... nineteen hundred and..... under my hand and the seal of our Court."

375. Instead of this order which would oblige the constable himself to write an order to each of the jurors whom he would summon, — which would often embarrass the constable, and would, perhaps, be a cause of delay, — I would be of the opinion that the Coroner should, in this case, himself word and sign the order to each of the jurors chosen, as there can be no doubt that he may himself summon the jurors quite as well as he may have them summoned by another. And then the constable would only have to serve the order.

This order may be in the following form.

CANADA
Province of Quebec
District of .....

To M. M. of the City, Town or Parish of.....

Whereas there are grounds to hold an inquest in the matter of the death of..... whose remains are at present in the City, Town or Parish of..... .. ..

Whereas the said inquest is to be opened by me, Coroner of the said district, on the..... day of..... nineteen hundred and....., at..... o'clock in the..... noon,..... in the house of..... in the Town, City or Parish of.....

These presents enjoin you to appear at the time and place above stated, then to act as a member of the jury at the said inquest.

And herein fail not.

Given at..... this..... day of..... nineteen hundred and..... under my hand and the seal of our Court."

It will only remain for the constable to make his report, under oath of office, in the matter of this service.

ARTICLE VI.

SUMMONING THE JURY.

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376. Twelve persons at least should be summoned as jurors. They should be British subjects of good repute, and should reside in the district. The summoning is done by writing or verbally.

377. Common Law is well established as to the number of twelve jurors. There must be twelve jurors to render a verdict, that is to say, twelve sworn jurors must agree and be of the same opinion. Needless to demonstrate a point which admits of no contradiction.

Nothing prevents the Coroner from having more than this number summoned, but he must not swear more than twenty-three, say the authors who have written on this subject. And

the Coroners' Act of 1887, which only recognizes existing Common Law without innovation, after having said: Sec. 5, that the Coroner shall have jurors summoned for the inquest, adds: "not less than twelve, not more than twenty-three."

378. This seems to have long been the custom.

The inconvenience of swearing more than twenty-three jurors is understood if it is conceded that twelve jurors of the same opinion suffice to render a verdict, for then one may have as many different verdicts as there are dozens of jurors who would agree among themselves and against the others.

It was habitual also formerly in the Criminal Court to assign twenty-four Grand Jurors, and to dispense with the services of the twenty-fourth when all appeared.

379. In the Province of Quebec the number of jurors has recently been reduced to seven for the Grand Jury, and it would, perhaps, be useful to do as much for the Coroner's jury. It is often difficult, especially in places where habitations are few and far between, to find twelve jurors.

380. It is always prudent to have more than the number required to render a verdict, to avoid finding oneself in presence of a disagreement which prevents any verdict; or, again, to prevent the impossibility of continuing the inquest after an adjournment, because of the disappearence of a sworn juror.

One understands, then, that the Coroner would proceed more easily if, instead of twelve jurors, seven could legally render a verdict.

That which seemed to the Legislature to be sufficient at the very instant that the fate of an accused is to be decided as to his trial should be much more so when it is only a question of finding whether there has been a crime, and whether there are grounds for causing an arrest, which the magistrates and the Grand Jurors after them, may subsequently confirm or reverse.

381. Common Law, which section 5 of the English Coroner's Act reproduces, says that the jury should be chosen from among "good and lawful men", nothing more.

We find in Lord Raymond 1305, "No qualification by estate is necessary for jurors on inquests, but they should be *lawful and honest men.*"

It has been judged (see 2 Hawkes p. c. pages 50 and 155;—Lamb Just. 391) that aliens, convicts and outlaws cannot be Coroner's jurors. These two last categories are manifestly persons whom the law declares neither good nor honest.

Are there any others? It would be risky to affirm it, but to deny it would, perhaps, be as hazardous.

It may be said that the Coroner should refuse to swear as a juror every person whose reputation is notoriously bad.

382. It is evident that the Coroner is not bound to swear everyone who wishes to be a juror, and that he has the right, without giving a reason, to refuse to accept as jurors even persons duly summoned, if he believes that the ends of justice will not be fittingly attained by admitting them.

383. What is the meaning of the expression "lawful men"? Jervis, in the Coroners' Act, p. 14, says: "No particular qualification by estate is necessary." Boys repeats the same thing.

384. The Revised Statute of the Province of Ontario, ch. 48, treating of jurors in that Province formally declares that the juror at the Coroner's inquest may be chosen outside of the official list of jurors. Now, on this list there are only those who enjoy a certain competence. It confirms the fact that pecuniary qualification is not necessary to the Coroner's juror.

The Revised Statute of Quebec, clause 2617, treating of jurors before the Courts, says that this law applies only to Criminal Courts and other Courts designated in the course of the law. In no part is the Coroner's Court designated.

385. These Revised Statutes give a nomenclature of the different Civil and Criminal Courts in the Province of Quebec, and they do not include therein the Coroner's Court.

To the legislator of Quebec the Coroner's Court is neither a Civil nor a Criminal Court. In the heading which follows

in the same Revised Statutes, the Coroner appears for the first time in this Statute, and that under the general designation of "Officers of Justice." Hence, for Quebec, he is an officer of justice with the power and duty of holding inquests in matters of death by following an admitted and recognized procedure, and possessing to this end powers elsewhere defined, but in Quebec the Coroner's Court is neither a Civil nor a Criminal Court.

But then, what kind of a Court is it, I may be asked. I shall have occasion, later on, to reply to this legitimate query.

386. For the moment, it suffices to know that, in Quebec as in Ontario, the Coroner's jurors may be chosen outside of the list of jurors of the Province; a list in which the names appear of all persons having sufficient real estate or pecuniary qualification; and then we reach the conclusion that here again Common Law applies, and that all persons of good reputation may be jurors at a Coroner's inquest.

387. Should they reside in the district where the inquest is held?

"Though, by the repealed Statute *De Officio Coronatoris,* the Coroner was directed to summon his jury out of the four, five, or six adjacent townships, and, by the ancient practice, it was usually so expressed in the inquisition, yet, that Statute being merely directory, an inquisition was considered good if purporting upon the face of it to have been made by jurors from the county at large. It still seems necessary, however, that the jurors should be good and lawful men, from within the jurisdiction of the Coroner." Jervis, on Coroners, edition of 1888, p. 15.

"Jurors ought to be residents of the township near the place where the body is found, although jurors taken from the body of the county cannot be objected to," says Boys, at p. 112 of his work so often cited.

The Coroner's jurisdiction extends over a district, or over one or several counties in our Province. The jurors may be any residents of this district, or of these counties.

388. The jurors should not be prejudiced before the inquest.

In the last citation from Boys I omitted what I add here. "The jurors ought to be persons indifferent to the subject matter of the inquiry."

Jervis, at p. 14 of his work, edition of 1888, uses the same terms, which Boys has evidently borrowed from him. He supports himself in this by an authority. (Fortesque de laudibus Angliæ Legum).

Good sense allows of our saying that this is a very wise precaution, and that consequently, persons should never be sworn as jurors who are related in a sufficiently close degree to the dead person, or to the person suspected, when a possible arrest can be foreseen.

Which goes to show that it is the Coroner's duty to make sure of the thing, before swearing his juror. It would be a wise custom too, especially in large centres, where the facts are often narrated in a manner more or less chimerical before the inquest, to see that he does not swear persons whose opinions are already formed before they hear the evidence. It must be admitted that it is at least prudent to forewarn the jury against what they may have read or heard.

389. As to the manner in which the constable should summon the jury, and notably as regards the order, written or verbal, what has been written in the preceding Article on the subject of the Coroner's order, applies here, and has only to be referred to. In Nova Scotia the summoning should be by writing.

390. The Constable's duty in giving his order is to inform the person whom he summons, that he is bound to obey, and to make a note of the persons thus summoned, so as to be able to make a reliable report to the Coroner.

ARTICLE VII.

DISOBEDIENCE TO SUMMONS BY JURORS.

391.—CONTEMPT OF COURT BY JURORS.
392.—DISOBEDIENCE TO AN ORDER OF A COURT IN AN OFFENCE.
393.—OBLIGATION TO OBEY AN ORDER IMPLIES RIGHT TO PUNISH DISOBEDIENCE.
394.—OF THE PUNISHMENT TO SUCH DISOBEDIENCE TO AN ORDER OF A COURT.
395.—BY WHOM IS SUCH DISOBEDIENCE PUNISHED.
396.—SUCH DISOBEDIENCE IS A CONTEMPT OF COURT.
397.—SUCH DISOBEDIENCE IS AN INDIRECT CONTEMPT OF COURT.
398.—CAN THE CORONER CONDEMN FOR SUCH CONTEMPT.
399—SUCH POWER RECOGNIZED TO CORONERS BY A PROVINCIAL STATUTE.
400.—ALSO RECOGNIZED BY THE ENGLISH LAW.
401.—OPINIONS OF JURISTS.
402.—SUCH CONTEMPT IS FLAGRANT CONTEMPT AND ASSIMILATED TO CONTEMPT IN PRESENCE OF THE COURT.
403.—SUCH CONTEMPT IS ALWAYS PUNISHABLE ALSO BY CRIMINAL COURTS.
404.—THE LAW GRANTING CORONERS SUCH POWERS IN INQUESTS OF LESS IMPORTANCE, MUST GRANT IT IN MATTERS OF GREATER IMPORTANCE.
405.—HOW IS PUNISHED SUCH CONTEMPT.
406.—SUCH CONTEMPT IS PUNISHED BY A FINE OF FOUR DOLLARS BY STATUTES.
407.—SUCH CONTEMPT IS PUNISHED BY A HEAVIER FINE BY COMMON LAW.
408.—A SUGGESTION AS TO SUCH PUNISHMENT.
409.—HOW TO PROCEED TO PUNISH SUCH CONTEMPT.
410.—FORM OF A WARRANT TO ARREST A JUROR WHO HAS FAILED TO APPEAR.
411.—PROCEDINGS AFTER ARREST OF A PERSON WHO FAILED TO APPEAR AS A JUROR.
412.—LEGITIMATE EXCUSES ON THE PART OF THE DISOBEYING PERSON TO BE ACCEPTED.

413.—EXEMPTION TO SERVE AS A JUROR IS NOT A LEGITIMATE EXCUSE.
414.—ALL SUCH UNJUSTIFIABLE DISOBEDIENCE SHOULD BE PUNISHED.
415.—THE COSTS RESULTING FROM SUCH DISOBEDIENCE SHOULD BE CHARGED TO THE DISOBEYING PARTY.
416.—PERSONS EXEMPTED TO SERVE AS JURORS AT CORONER'S INQUESTS, BY OUR STATUTES.
417.—INTERPRETATION GIVEN IN ENGLAND OF THE LIST OF JURORS.
418.—SUCH INTERPRETATION CANNOT APPLY TO OUR PROVINCIAL LAW OF JURORS.
419.—PERSONS EXEMPTED TO ACT AS JURORS AT CORONERS INQUESTS.
420.—PERSONS EXEMPTED TO SERVE AS JURORS IN THE COURTS.

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391. Any person without exception summoned as a Coroner's juror may be condemned to pay a fine of four dollars, if he does not appear.

The Coroner should not swear persons who can show that they have a right to exemption for good cause or according to law.

392. Disobedience to an order to act as a juror renders the person who disobeys liable to be fined.

We have already read in the course of this work, in Article III, Part II, a citation from Burns, saying that if the law grants a thing, it necessarily follows that it grants, at the same time, all that constitutes the thing granted.

If one will apply this general principle to the power given by the law to the Coroner to order a person to come to an inquest, and there to serve as a juror, it necessarily follows that disobedience to such an order can be punished. In fact, if such disobedience cannot be punished; if the person who receives it is free to obey or not, it is no longer an order, it is a request; it is no longer the thing granted, that is to say, the right to order.

393. Every order carries with it, — if it is really an order, — the obligation for him who receives it to obey, under

pain of being punished. This obligation to obey is of the very essence of the order, which cannot exist without it.

This is so elementary that it has never met with contradiction, and it is useless to dwell longer on this point.

394. It is more profitable to turn our attention to the following questions, which offer more difficulties, to wit: Who punishes such disobedience? How is it punished? And finally, may each of the persons summoned be punished, or are some of them exempted?

395. Hale, at p. 59 of his work "Pleas of the Crown" will have it that the desobedience of a person summoned as juror at a Coroner's inquest, should be punished by the Judges at the Criminal Assizes. What astonishes me is that modern authors should not have followed in his footsteps. It is true that he bases his assertion upon no authority, no law, no reported precedent.

It has been impossible for me, however, to find any precedent sanctioned by a Superior Court, going to say that the Coroner himself had the right to punish this disobedience. Nor does there exist any statutory law which expressly grants this power to the Coroner at inquests on deaths.

396. We know that disobedience to an order of a Court, is a contempt of Court. The definition of contempt of Court, which is found in several authors, and notably in "Deacon's Criminal Law" at the word "contempt", leaves no doubt upon the subject.

397. But default to appear in obedience to an order is indirect contempt, which Deacon calls "consequential".

This indirect contempt, according to Deacon, and according to Harris, p. 335, "Criminal Law", would be punished only by Superior Courts.

398. Now, it is evident that the Coroner's Court, (although a Court of Record, as Lord Tenterden proclaims it in a judgment reproduced in full in Vol. 6 of Reports B. & C., p. 611) is not a Superior Court.

In spite of all this, Boys, at p. 117 of his work, (edition of 1878) says: "If a person duly summoned as a juror does not, after being openly called three times, appear and serve as such juror, the Coroner may fine the delinquent person."

He supports himself by two Statutes of Ontario, and a clause of one of the Revised Statutes of the old united Provinces of Upper and Lower Canada.

Unfortunately, however, one of these two Statutes of Ontario, the "Act of Jurors", refers to jurors in general, that is, jurors serving in regular civil and criminal courts, and does not seem applicable to *Coroner's jurors;* and the other two Statutes referred to by Boys, legislate upon Coroner's inquests in arson cases only.

399. In the Province of Quebec we have in arson cases the same law on this subject, namely, in Article 2994 of our Revised Statutes. And in the following Article, — 2995, — the Legislature recognizes that the Coroner, instead of using the power conferred by Article 2994, may, if he wishes, make use of the power which he possesses, apart from it, to punish a contempt of Court.

400. In England, in the Coroner's Act, sec. 19, it is impliedly recognized that the Coroner himself punishes a juror who disobeys; and this law says, formally, that the powers therein mentioned do not in any wise detract from the power which the Coroner formerly possessed to punish as contempt of Court any failure to appear on the part of a person summoned as juror.

401. Boys, and Canadian and English Statutes, all *recognize* this power, which, however, no Statute has specifically and expressly enacted, and it is nowhere found sanctioned by a judgment.

Hence, there remains only the studies of this subject made by authorities.

402. Deacon, at the place already indicated, speaking of "consequential" contempt of Court, — (that is to say, at a distance from the Court, which can only be punished after

hearing the person implicated upon proof of contempt) adds, resting upon the authority of Hawkes, Vol. 2, ch. 22, sec. 2, that such contempt, if it is flagrant, may however be punished at once by the immediate arrest of the delinquent; and among these cases of flagrant contempt, he mentions, a little further on, failure to appear on the part of a person summoned as a juror.

This flagrant contempt would be similar to a contempt in presence of the Court, and could be punished by an inferior Court quite as well as by a Superior Court.

Inferior Courts (as will be found further on) have all the powers to condemn for contempt committed in Court.

Blackstone, Vol. IV, ch. 19, classes this disobedience with direct contempt.

This seems to be the Common Law upon which the authorities appear to have taken their stand to recognize, by way of implication though not expressly, the Coroner's power to punish in such a case for contempt.

403. Needless to say the Superior Courts of Criminal jurisdiction conserve the right, nevertheless, to punish as an indictable offence this disobedience. See section 139 of the Criminal Code.

404. It might be added that it would indeed be extraordinary that the law should give this power to the Coroner sitting at inquests in the case of a fire, — as it does, — and should deny it to him in much more serious inquests; inquests in which it is a question of personal safety; in the investigation of the gravest of crimes.

405. How is such disobedience punished by the Coroner? Such is the second question to be settled.

406. At the beginning of Article 2994 of the Revised Statutes of Quebec, it is seen that a fine of four dollars may be imposed, in the case of arson inquests. This is the maximum figure.

Article 875 of the Revised Statutes of Ontario, on inquests in case of arson, gives the same figure as the maximum to be

imposed in cases where a summoned juror makes default. These two Statutes only reproduce textually section 6 of the former Revised Statutes of Canada, ch. 88, treating of the same inquests.

And Boys, at p. 117 already cited in this Article, says, at the foot of the page in a note, that this sum should be adopted by Coroners rather than any other.

407. He does not venture to assert that the Coroner has not the right to impose a heavier fine, and it would, perhaps, be risky to assert it, in presence of the fact that our law of Quebec, at Article 2674 of the Revised Statutes, only gives to the Superior Courts the right to punish by a fine of five dollars the failure of any juror to appear.

However, as has been seen above, when it is a question of inquests on corpses, the Statutes being silent, it is Common Law which applies.

Now, we find at Vol. II, Hawke, ch. 22, sec. 2, that every contempt of Court perpetrated in the presence of the Court (and we have seen above that the failure of a juror to obey the summons is considered a contempt in presence of the Court) may be punished by a fine or by imprisonment, at the discretion of the Court.

It would perhaps be correct to say that it is legal to impose a heavier fine than four dollars.

408. It is distasteful to our modern ideas to grant Courts these extraordinary powers, relics of ancient tyranny, and Boys' suggestion is none the less wise for not being directed by a text of the law, and should be followed.

409. The ancients often condemned without a hearing. And jurors and witnesses in default were condemned by the Courts in their absence, "without any further proof or examination," says Hawke at the same page.

In our own day there are still sometimes condemnations of this nature, but the Courts make it a custom to reverse their judgment when the delinquent can come forward and exonerate himself.

To avoid these irregularities they almost always proceed in another manner. A warrant to arrest is issued against the defaulter. He is brought before the Court, and there permitted to show cause why he should not be condemned. It happens often enough that he gives valid cause.

410. This manner of proceeding has now prevailed; custom has made law. The Coroner should act thus:

In this case he should issue a warrant in about the following terms:

CANADA
Province of Quebec
District of .....

To all and each of the constables of the district of.....

Whereas on the..... day of..... nineteen hundred and..... order was given to..... a constable of the said district, to summon a sufficient number of respectable persons of the said district as jurors at an inquest to be held before the undersigned Coroner, the..... day of..... nineteen hundred and..... in the house of..... in the parish, (village, town or city) of..... at..... o'clock in the.....noon on the corpse of.....

Whereas it has been reported under oath, by the said constable, to the said Coroner, that..... residing at..... the said district, was then duly summoned personally (or by leaving a written order to his address with a reasonable person of his family, at his residence) to serve as such juror at the said inquest, at the time and place above stated;

Whereas the said..... did not appear at the time and the place above stated, and has made default without giving any reason to excuse himself;

These presents order you to arrest and bring before me the said..... to show cause why he should not be punished for his default, and to be otherwise dealt with according to law.

Given at..... this..... day of..... nineteen hundred and ..... under my hand and the seal of our Court.

(Coroner's signature).

411. Defaulting jurors thus brought before the Coroner may then show cause and have the reasons considered which they believe to be of a nature to excuse their failure to appear.

412. There can be no valid reasons except those which tend to establish a real impossibility of coming to the place, and at the time stated.

413. The fact that a person is exempted by the Statute from serving as a juror, cannot be accepted as an excuse for having failed to appear at a Coroner's inquest when summoned as a juror. In fact, according to the law of the Act of Jury, a multitude of persons whose names are on the list of jurors, to serve in the Superior Civil and Criminal Courts, are subject to exemption, and therefore, if they are summoned they should have their right judged of by the Sheriff, or later, by the Cuort in certain cases; and if they do not do so, their failure to appear on the day and at the Court indicated, is treated as contempt of Court, Article 2674, Revised Statutes of Quebec.

This law only sanctions Common Law, which declares contempt of Court (as has been seen in the definition given above) all disobedience to an order of the Court. There is disobedience in the fact of not coming before the Coroner, as there would be disobedience if, once there, the person summoned refused to serve as a juror without valid cause.

414. And all disobedience to an order of a Court, — in the interest of the sound administration of justice, — should be punished.

It is incorrect to say as Boys says at the page last quoted, (p. 117) "If sufficient jurors attend the inquest, it is unusual to fine those who do not obey the summons"; whereby it would seem as if Coroners were advised not to punish

in these cases. It would be more exact to say that Coroners are obliged to make justice respected, and are bound, therefore, to punish each time that the law demands punishment, as in the present case.

415. The costs occasioned by the delinquent, and resulting directly from his disobedience, should without any doubt be reimbursed by him, in virtue of Common Law, which charges against every person who causes them, the costs and damages caused.

416. If, when it is a question of answering the summons, there is no exception, there are, however, persons who, even at the Coroner's inquests, may be exempted to serve as jurors.

Who are these persons? Boys has said, at p. 113 of his work, (same edition) "No person appears to be exempted from serving on Coroner's juries".

The reason (which, however, he does not give us) for this opinion is, evidently, that the Statute of Ontario, dealing with exemptions, does not apply to Coroners' jurors.

The same reason might apply to our Province, since our law on the same subject does not apply to the Coroner's jury.

417. In 1825, and later, in 1870, a new law of exemption for jurors was passed in England. This law formally declared itself not to apply to the Coroner's inquests, and yet, law officers when consulted on the subject, have decided that the members of the Bar, exempt by the general law relating to jurors, are also exempt as Coroner's jurors, thus claiming that the general law as to jurors does not apply to Coroners, in this sense, that they are not obliged to choose such jurors from the official list of jurors made by the Sheriff, but that all the rest of the general law applies.

Boys, in presence of that difficulty, added that it was better for the Coroner not to force persons exempted by the general law from serving as jurors.

418. The opinion of the law officers in England might have profited Boys, because in the law of Ontario, as in the English law, the exception as to the Coroner's inquests comes in the general law immediately after the section which treats

of the list of jurors. The Coroner's Court is not put aside of that law only for what follows in the law, but in our Province the first clause of this law puts the Coroner's Court completely and wholly aside.

419. However, I have said that the Coroner should not swear persons who have the right to be exempted.

It is that there existed, at the time of the introduction of English laws in Canada, laws of exemption applying to jurors in all cases.

Burns, at the word "jurors" of his work on Justices of the peace; Blackstone, in the third volume of his Commentaries, p. 364; Coke, in the first volume of his Institutes, p. 156; West, Vol. 2; 13 Edward I., ch. 38; 7 and 8 William IV., ch. 32; here are so many places, among others, where it will be found that the law as introduced into Canada in 1791 exempted from serving as jurors, nobles, members of the Government, members of Parliament, ministers of religion, physicians, advocates, and practising notaries, officers of justice, sick persons, or persons too old, persons under age, every person who for some reason which he can make known, might be considered as prejudiced.

Also exempt, when it is a question of a jury brought on a sudden and without previous notification, every person who can show, by good reasons, that the service which justice asks of him is of a nature to work an irreparable injury to himself, his family, or his master; if it were not thus it would be tyranny.

420. All these exemptions were created in the public interest.

All persons have been exempted from this public service from whom the State or the public good expect services at every moment elsewhere. It is with the same principle in view that the new exemptions have been added since. And it is in this sense that Boys is justified in advising the Coroner to exempt, if they desire it, persons whom the Provincial laws exempt. This recommendation seems wise, and (while waiting for a law declaring it) may be followed. To learn these exemptions I refer the reader to the Revised Statute of Quebec, Articles 2617 and following.

ARTICLE VIII.

THE SUMMONING OF WITNESSES.

421.—WITNESSES.
422.—WITNESSES SUMMONED BY WRITTEN ORDER.
423.—FORM OF SUMMONS TO A WITNESS.
424.—WITNESSES VERBALLY ORDERED TO APPEAR AT INQUEST.
425.—THIS MODE OF SUMMONING WITNESSES ADMITTED BY JURISTS.
426.—THIS MODE OF SUMMONING WITNESSES AT CORONER'S INQUEST IS ACCORDING TO LAW.
427.—DEFAULT TO APPEAR ON THE PART OF WITNESS IS A CONTEMPT OF COURT.
428.—WITNESSES FAILING TO OBEY MAY BE FORCIBLY BROUGHT TO COURT.
429.—THE CORONER'S COURT IS A COURT OF COMMON LAW.
430.—THE CORONER'S COURT PROCEEDINGS ARE RULED BY COMMON LAW.
431.—COMMON LAW DECLARES CONTEMPT OF COURT THE DISOBEDIENCE OF A WITNESS.
432.—THAT CONTEMPT OF WITNESSES IS PUNISHABLE.
433.—THAT CONTEMPT OF WITNESSES IS PUNISHABLE BY A FINE.
434.—PROCEDURE TO PUNISH THE CONTEMPT OF WITNESSES.
435.—HOW THE PUNISHMENT IS TO BE EXECUTED.
436.—FORM OF CONDEMNATION FOR CONTEMPT ON THE PART OF WITNESS.
437.—ORDER OF IMPRISONMENT.
438.—WITNESS OUTSIDE OF THE CORONERS' JURISDICTION.
439.—WITNESSES OUTSIDE OF THE DISTRICT CANNOT BE FORCED TO COME BY THE CORONER.
440.—WITNESSES OUTSIDE THE DISTRICT MAY BE FORCED TO APPEAR AT CORONERS' INQUESTS BY AN ORDER FROM A SUPERIOR COURT.
441.—A NEW LAW NECESSARY IN OUR STATUTES.
442.—UNWILLING WITNESSES MAY BE BROUGHT INSTEAD OF ORDERED INTO COURT.

443.—THE COMPELLING OF WITNESSES TO APPEAR WAS THE PROCEDURE FOLLOWED BY COMMON LAW.

444.—TO BRING WITNESSES BY WARRANT AT INQUEST IS THE STATUE STILL IN FORCE IN CANADA.

445.—THE WARRANT TO ARREST SHOULD BE USED AT LEAST IN THE CASE OF KNOWN UNWILLING WITNESSES.

446.—FORM OF WARRANT IN THE FIRST INSTANCE AGAINST A WITNESS.

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421. The witnesses are summoned by a constable, verbally or by writing.

The witnesses summoned are bound to obey under pain of a fine of four dollars.

Unwilling witnesses may be arrested by warrant instead of being summoned.

422. Nobody calls into question the fact that witnesses may be summoned by written order or *subpoena*.

One knows that there can be no inquest if there are no witnesses. One knows, besides, that the course usually followed by the Courts of Justice is to summon the witnesses to appear.

Nothing is found in the Statute of Quebec concerning the summoning of witnesses at the inquest in the matter of deaths. However, the Revised Statutes of Quebec, Article 2991, declares that the Coroner can summon witnesses when he holds an inquest in the matter of arson.

Jervis, at p. 29 of his work, edition of 1888, still seems to rely upon the Common Law to say that the Coroner "has authority to issue a summons to compel their (witnesses) appearance when he has been credibly informed that they are able to give evidence."

Boys repeats the same thing in the same terms, for this part of his sentence. He adds, p. 118 (edition of 1878) "The witnesses are summoned by giving the constable subpoenas for them".

One finds the same thing if one consults Hale, Burns, Deacon, or any other authority.

This point being as unquestionable as unquestioned, it is useless to dwell longer upon it.

423. The subpoena may be as follows:—

CANADA
Province of Quebec
District of .....

THE CORONER'S COURT.

To..... of..... district of.....

Whereas an inquest on the corpse of..... is to be held by me, the undersigned Coroner, at..... on the..... day of..... at..... o'clock of the..... noon;

Whereas I am credibly informed that you are in a position to give evidence concerning the death of this person;

These presents enjoin you to come to the said inquest at the above stated place and time, there and then to give evidence.

And herein fail not.

Given at..... this..... nineteen hundred and..... under my hand and the seal of our Court.

(Coroner's signature).

424. As to the verbal order to the witnesses, the reader may re-read all that has been already written on the subject of the verbal order for the summoning of jurors at Article V. General reasons will there be found which apply equally well here.

In Nova Scotia the Statute prescribes a summoning in writing.

425. But we find this point clearly established in Jervis, at p. 29 of his work, already cited.

We read there: "It is the duty of all persons who are acquainted with the circumstances attending the subject of the Coroner's enquiry, to appear before the inquest as witnesses." You see, the persons who know the facts are bound to appear at the inquest, even without being summoned. Farther on,

at the same page, we read: "The Coroner being guided by the information he has received, usually sends a *message* to those witnesses whom he thinks material."

Boys, in the same treatise already cited, at p. 118, says: "All persons competent to give evidence, who are acquainted with the circumstances connected with the subject matter of enquiry, should offer their evidence to the Coroner".

Neither Jervis nor Boys show whence they have taken this principle. They could, to prove the exactness of that pretention, have given the long list of all their predecessors.

426. To know if they speak truthfully one must go back as far as the origin of the institution of the Coroner.

If it be remembered that the Coroner in opening his inquest enjoing in a general manner, by proclamation, on all persons of the four or six adjacent localities to appear at his inquest, there is found the origin of this obligation imposed upon witnesses, and at the same time, the origin of the summoning of the witnesses without a written order addressed to a person designed by name.

It is thence, again, that custom, which is to say, Common Law, permitted and still permits the witnesses required at the inquest, to be informed by a messenger.

This notification by a messenger becomes an order, if the bearer is a constable duly authorized to act for the Coroner, and, above all, duly known as such.

427. The witnesses are bound to obey the order, just as much as the jurors are.

Needless to repeat here the reasons already given in the preceding article. What appears there as to jurors may be applied to witnesses. Let us content ourselves with inscribing here the rules to apply in case of disobedience on the part of witnesses.

428. Jervis says, — still at p. 29 of the same work, — speaking of the Coroner's witnesses: "Should they neglect or refuse to attend, the Coroner may, if necessary, issue a summons to the constable to *bring* them into Court."

429. The Coroner's Court is a Court of Common Law, — see Blackstone, Vol. III, ch. 4, 5 and 6, and Vol. IV, ch. 19.

430. As such it is ruled by Common Law, and by the few clauses of written law which are found here and there in some Statutes.

It is known that statutory law, the greater part of the time, only declares the existing law in precise terms; it rarely modifies it. As to that which bears upon the Coroner's inquests, the English Statutes introduced in Canada, have all repeatedly been considered as only declaratory.

As to the Canadian Statutes for the Province of Quebec, they hardly cover more than two pages of our Revised Statutes. They modify English law on the reasons for which the jury may be assembled, on the tariff of fees, and on one or two other points. One single clause touches on the procedure to be followed; it is on a question of the medical evidence. All the rest is ruled by Common Law.

431. It is contempt of Court in Common Law to neglect or to refuse to go to give evidence before any Court, when one is bound to do so. Needless to cite the authorities in this matter.

"The Coroner has power to compel the witness by summons, and, in case of disobedience, to issue a warrant to cause him to be *apprehended and brought* into Court"; as we read at p. 87 of Jervis' work, "should they (witnesses) neglect or refuse to attend, the Coroner, as incident to his office as Judge of a Court of Record, has authority to issue a summons to compel their appearance, where he had been credibly informed that they are able to give evidence, and he may, if necessary, issue a summons to the constable to *bring them* into Court," p. 29 of the same treatise.

Boys, at p. 118 of his treatise, (edition of 1878) speaking of witnesses says: "If they (witnesses) do not (offer their evidence) he (the Coroner) has authority to issue a summons to compel their attendance."

Let us stop here; the duty of witnesses cannot be contested since it is the sole guarantee of the holding of inquests, which cannot take place if they are not bound to attend them.

432. We have just seen that the refusal to appear on the part of a witness is contempt of Court. We have seen in a preceding Article that contempt of Court could be punished by the Coroner when it was committed by a juror. The same reasons apply to the present case. We shall not repeat them.

433. I have said that the default of a witness may be punished by a fine of at least four dollars For that, I have as my authority Articles 2994 and 2995 of the Revised Statutes of Quebec, already mentioned in the preceding Article, and also the authorities cited in the same Article.

All relate as much to witnesses as to jurors.

434. The mode of procedure is also the same, and the formula found in the preceding Article for the warrant of arrest may serve as a model, by changing what refers expressly to the juror.

435. That of which it has been no question hitherto, is the manner of having this condemnation of the juror and of the witness executed.

In Article 2995 Revised Statutes of Quebec, it is found that the execution is made by Justices at the General Sessions of the Peace, which proceed by seizure.

It is further seen that the Coroner may proceed as Common Law permits him.

It has not been forgotten that this clause of our Statute does not apply directly to inquests in the case of death, but only to inquests in the case of arson.

Common Law, — See Coke, 4 Inst. 271; Com. Dig. Officer G. 5; Jervis p. 87, — gives to the Coroner's Court the right to condemn for contempt of Court perpetrated in Court. It has been seen in the precedent Article that the authors assimilated the non-appearance of the jurors to contempt

perpetrated in Court. They say as much of the non-appearance of a witness, and they add that the fine, as well as the imprisonment in such cases is left to the discretion of the Court.

This discretionary power is exercised by the Courts in our days, only with great reluctance, and habitually they guide themselves in these cases, if they can, as to the fine and imprisonment to be imposed, by seeking the fine or imprisonment imposed by the Statutes in circumstances of about the same nature. It is to follow this good rule that Boys and myself have thought advisable to apply, in the inquest on deaths, the fine of four dollars, of Article 2995.

We find in the Revised Statutes of Quebec, Art. 3005, that the witness who cannot pay his fine can be condemned in default to fifteen days imprisonment by the Fire Commissioners, to whom the law entrusts the duty of holding inquests, at Montreal and Quebec, in the place of and to the exclusion of the Coroner.

It seems wise to the Coroner not to exceed this limit.

I would add here that a statutory law to this effect would be of a nature to do away with all doubt, and would efficaciously aid the sound administration of justice.

436. A condemnation in these cases might be formulated as follows:

CANADA
Province of Quebec
District of .....

THE CORONER'S COURT

Present:

Coroner.

Whereas the..... day of..... nineteen hundred and..... an inquest was to be held on the corpse of..... ..... in..... at.....

Whereas order was regularly given to..... residing in ..... of..... to come to the said inquest, at the time and place above stated, there to give evidence.

Whereas the said..... refused to come as he wes requested to do so by the said order.

Whereas because of the said refusal I have had the said..... arrested by warrant, and that in fact the said..... was brought before me at..... the..... day of..... nineteen hundred and.....

Whereas the said..... could give no good reason to justify his refusal.

I therefore condemn the said..... to pay (immediately or from now until the..... day of..... nineteen hundred and.....) the sum of four dollars fine, besides the sum of..... costs occasioned by his said refusal, and in default of said above sums being paid within the prescribed delay, to be imprisoned in the Common Goal of the district of..... for the space of fifteen days.

Given at..... this..... day of..... nineteen hundred and..... under my hand and the seal of our Court.

(Coroner's signature).

437. The order of imprisonment, if there are grounds for it, would be addressed to the Goaler of the district, and worded in the form of the condemnation, there being added at the end:

And whereas the said..... has failed to pay the fine imposed within the time therewith mentioned, for these causes I enjoin you to keep the said..... in the said Goal for the space of fifteen days, dating from the day of his entry, and not to liberate him before the expiration of that said term of fifteen days, unless before the expiration of that time he pays the above mentioned sums as fine and costs, together with the sum of..... dollars for costs of conveyance to your Goal on the present order.

Here follow the ordinary *Fiat* and the signature of the Coroner.

438. A very important question naturally arises here.

We have just seen that the Coroner has the power to compel witnesses to appear under pain of fine and imprisonment.

However, the Coroner's jurisdiction does not extend beyond

his district. So that he cannot compel witnesses of the neighboring district to appear, were they at only a few feet distance from the place where the inquest is held.

It may happen that there can be no evidence possible from any person in the district. It may also happen that persons desirous of not giving evidence at the inquest protect themselves from being compelled to appear by taking leave of the Coroner's jurisdiction at the moment the inquest is to be opened.

439. Jervis, p. 87 of the same treatise says: "It does not appear that there is any means provided for executing such a warrant (to apprehend an unwilling witness) outside the Coroner's jurisdiction." The provision of Jervis' Acts as to the backing of warrants, apply only to warrants for the arrest of persons charged with offences, and in the absence of statutory provisions it would seem that the Coroner's warrant is, like any other warrant, available only within the jurisdiction of the person who issues it."

Evidently it is time for a law to be introduced into the Statute permitting of the arrest of unwilling witnesses outside of the district. The warrant in this case should be executed outside the Coroner's district, as the warrant of the Justice of the Peace at his preliminary enquiry. A Provincial law would suffice for this purpose for the Province where passed.

440. Jervis, after this citation, adds : "The attendance of a witness who is without the jurisdiction may be secured by a Crown office subpoena." This manner of proceeding presupposes a rather long space of time, which does not often accord with the urgency of Coroners' inquests.

441. It happens, again, that the witnesses of the first cause of the death are all at too great a distance from the spot where the death finally took place, to allow of their being summoned. They are sometimes in another Province, or even in another country. It is impossible, then, to force them to come, and, yet, their evidence may be absolutely necessary so that the jury may declare whether the death has been the result of a crime or not.

As the law stands at present, the Coroner is bound, in these cases, to open an inquest, and yet the inquest has no practical result.

To obviate this inconvenience the law should permit the Coroner, on the demand of the majority of the jury, to go and get the missing information. This information could be taken as depositions at a trial are taken by a Commissioner, and it could weigh with the jury as evidence given before them.

I have said "on the demand of the majority of the jury", to prevent useless journeys.

I have said "by the Coroner", because he knows better than any other what investigations are fitting.

Coroners, I am sure, in cases of this nature, would content themselves with reimbursement of their travelling expenses.

442. Witnesses known to be unwilling to come forward, may be arrested instead of being summoned.

This exceptional power, we know, is granted even to Justices of the Peace sitting at a preliminary enquiry in cases of minor importance; in cases of theft of a dollar, for instance, or even less. The law to this end will be found at section 583 of the Criminal Code.

The Statute has conferred upon Justices of the Peace at the preliminary enquiry, a power which Common Law could not give them, because preliminary enquiries by Justices of the Peace exist only by Statutory Law and not by Common Law.

The Statute has granted them the right which Common Law has formerly given to those who held the investigations, that is to say, to the Grand Jury and to the Coroner.

This is what *allowed of* Jervis saying at p. 2 of his work: "*The Coroners* are empowered to *cause to be apprehended* those present at the death and not guilty", and at p. 29, although it is not very clearly put: "The Coroner may, if necessary, issue a summons to the constable to *bring* them into Court."

That is why Boys, after having said that persons who

know the facts are bound to come, without any order received to that effect but of themselves, to the inquest, adds that the Coroner may, if they do not come, *compel* them to come. This certainly means arrest.

It is the same word which section 2995 of the Revised Statutes of Quebec uses when it speaks of the powers of the Coroner to make witnesses come to inquests on arson.

443. It is the idea implied by the word "compel" which is found in all Statutes which all tend, to this day, to temper this power which savours of tyranny, but which Common Law gave to all Courts to exercise to the letter.

It is so clear that Common Law confers the right to bring witnesses by force that an author so recent as Harris, at p. 340 of his treatise on Criminal Law, has said: "In order to secure the attendance of witnesses to the fact, they may be served with a summons or *warrant* in a manner similar to that in which the presence of the *accused* is secured." And at p. 330, he tells us that the presence of the accused is obtained by means of a warrant of arrest.

It was so customary to proceed against witnesses by warrant of arrest that Williams, in his work on Justices of the Peace, contents himself with giving a formal order enjoining the constable to *bring* the witness designated; and he published his book in 1793.

It is since then that summonses or subpoenas have been introduced in the Statutes, and yet, summonses and subpoenas were long employed only in cases of petty offences.

444. An English Statute, 2 and 3 Ph. and M., having force of law at the time of the introduction of Criminal Laws into Canada, contains a clause which gives the Coroner the right to *bring* witnesses to his inquests by warrant.

No Canadian Statute has ever expressly taken this power away from him.

However, all the other Courts, and even the Courts of supreme jurisdiction, have since been deprived of this power. Subpoenas have to be served at first.

445. The Statutes, at any rate, grant to all, even to Justices of the Peace at the preliminary enquiry, the right to resort to the warrant of arrest when it is a question of a witness who, there is reason to believe, is unwilling to come. The least that can be said is, that when it is a question of investigating homicide, the Coroner possesses this power, and he may compel by warrant any witness to come who is represented to him, under oath, as likely to refuse to come on a subpoena.

446. For formula in this case, it suffices to open the Criminal Code at Article 583, and to be guided by the procedure therein indicated.

ARTICLE IX.

SUSPECTED PERSONS.

447.—ARREST OF SUSPECTED PERSONS.
448.—SUSPECTED PERSONS MAY BE ARRESTED BY THE CORONER'S ORDER ANY TIME BEFORE THE VERDICT.
449.—SUSPECTED PERSONS HAVE OFTEN BEEN ARRESTED BY CORONER'S ORDER BEFORE VERDICT RENDERED.
450.—CORONERS HAVE THE POWER TO CAUSE THE ARREST OF SUSPECTED PERSONS BEFORE THE VERDICT RENDERED.
451.—POWERS OF CORONERS TO ARREST FELONS SHOULD BE EXERCISED ONLY IN CASES OF HOMICIDE.
452.—CORONERS HAVE NEVER BEEN DEPRIVED BY A STATUTE OF THEIR POWERS TO ARREST FELONS.
453.—THE CRIMINAL CODE DOES NOT DEPRIVE CORONERS OF THEIR POWER TO ARREST FELONS.
454.—THE PROCEDURE TOUCHING CORONERS' INQUESTS ARE OF THE PROVINCIAL SCOPE.
455.—THE POWERS OF CONSERVATORS OF THE PEACE DIFFER FROM THOSE OF JUSTICES OF THE PEACE.
456.—THE ARREST OF SUSPECTED PERSONS IS MADE BEFORE VERDICT RENDERED ONLY WHEN JUSTICE REQUIRES IT.
457.—SUSPECTED PERSONS' DETAINMENT.
458.—SUSPECTED PERSONS MAY BE BAILED OUT.

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447. If necessary, the Coroner may cause the arrest (before or during the inquest) of any person suspected of having criminally caused the death of the person who is the subject of his inquest.

448. Jervis, at p. 2 of the work so often cited (1888) says: "County Coroners are conservators of the Peace and become magistrates by virtue of their election and appointment." He bases this affirmation upon a judgment reported at p. 515 of Vol. 7 of the Judicial Reports Queen's Bench

division; judgment pronounced in 1881, in the course of which one of the Judges, Judge Lindsay, says: "By Common Law a man might be a conservator of the peace by his office, as (amongst others) a Sheriff or a Coroner." And Judge Grose added: "The Coroner is a conservator of the King's peace and becomes a magistrate by virtue of his appointment, having power to *cause* felons to be apprehended, *whether an inquisition had been found against him or not.*"

Jervis continues: "This privilege", (that is to say to act as conservators of the peace) "independently of their mere official duties, they (Coroners) are entitled at this day to exercise, and are empowered to cause felons to be apprehended, as well as those that have been found guilty after inquisitions, as those suspected of guilt, or present at the death and not guilty; as also burglars and robbers, in respect of whom no inquisition can be taken. And this, says Lord Hale, appears evidently by the Statutes 3 Edw. I., c. 9, and 4 Edw. I., Officium Coronotoris: and with this agrees the common usage at this day; for many times the inquests are long in their enquiry, and the offender may escape, if the Coroner stay until the inquisition is delivered up."

The author of the citation gives, at the foot of the page, the authorities upon whom he bases his assertion of this fact. There are three, besides Hale, to wit: Mir. c. 1, s. 13; 1 Brit. 8; Lamb Eiren 378.

It has been impossible for me to verify the two last, who are not to be found in the library of the Bar at Montreal, but all other citations of the same author which I have been able to verify, allow of my believing that these authorities indeed say what Jervis makes them say.

449. Boys, at p. 5 of his treatise (edition of 1878) grants the same power to Coroners, but adds, that in the absence of precedents in this country, they would do better to leave it to magistrates named to that end, to order arrest.

However, I know that precedents are not wanting in this country; at least within the last thirty years alone such arrests by the Coroner have often been made at Montreal.

450. Besides, it would not be because Coroners have not exercised a power for a long time that it could be claimed that they no longer have such power. And it may, in the absence of any other magistrate, be of great importance that the Coroner should know and exercise the power which the law gives him.

Now, this power cannot be contested when, apart from what we have just read in Jervis, we find other authorities asserting the same thing, and they are so numerous that I find it necessary to content myself with some of them only.

Harris, in his very recent treatise on Criminal Law, repeats verbatim at p. 335, what we have read at p. 292 of Vol. IV of Blackstone's Commentaries, to wit: that the Coroner may arrest every felon in his jurisdiction.

And the latter, at p. 290 tells us (evidently from Lord Hale) what felons may be arrested, to wit: not only those persons against whom an inquest has been held, but any person whom there is good reason to suspect of felony.

In the first volume of these same Commentaries, p. 346, Blackstone says: "This officer" (speaking of the Coroner) "is of equal antiquity with the Sheriff, and was ordained together with him to keep the peace, when the Earls gave up the wardship of the county."

At p. 343 of the same volume, defining the powers and duties of the Sheriff as conservator of the peace, he has said: "He may apprehend and commit to prison all persons who break the peace or who attempt to break it. He may, and is bound, ex-officio, to pursue and take all traitors, murderers, and other misdoers, and commit them for safe custody." He does not repeat later, in treating of the Coroner, the duties of the latter as a conservator of the peace, as it is plain if he, the Coroner, has the same duty, he possesses the same powers.

Williams, Justices of the Peace, at the word "arrest" says: "As to arrests by Coroners, by the above Statute of Westminster (3 Edw. I. c. 9) a Coroner is a conservator of the peace in relation to all felony, and may apprehend any

felon within the county without warrant." And this authority adds: "Accordingly, when a Sheriff (and he might have said "or a Coroner") arrested any one *suspected* of a felony, the lawfulness thereof was not questioned."

Chitty, in his treatise on Criminal Law of 1816, at p. 13, says: "It is now fully established that in every case of treason, felony, or actual breach of the peace, the party may be arrested on suspicion before any indictment is preferred against him. The law impliedly affords power to issue a warrant when it gives jurisdiction over the offence."

The author then wrote when there was as yet no Statute that had regulated when and how suspects could be arrested, when Justices of the Peace, (newcomers as conservators of the peace) had begun to hold preliminary enquiries, had permitted themselves to have suspected persons arrested, and that their power to do so was contested.

At p. 26 of the same author, we find what follows:

"Though a Coroner has no power of taking inquisition of felony, *except in case of death,* yet he is a conservator of the peace in relation to all felonies, and may arrest or cause another to arrest any felon."

This last citation is taken from Vol. II of Hale, p. 87. But in support of the whole citation the author gives no less than eleven different authorities.

Dickson, in his work on Justices of the Peace, at the word "Coroner", is the only one of all the authors consulted who denies the Coroner the power of conservator of the peace, and of arresting all felons; however, he concedes him these powers in anything bearing upon homicide.

So that, everything considered, even according to Dickson, there can be no doubt that the Coroner has all the powers of a magistrate in his inquests, and may have arrested any person suspected of homicide, and that, before or during his inquest.

It results unquestionably from these authorities cited, and from the Statutes of Edw. I., that the Coroner is a conservator of the peace, and that, as such, he possesses the power to put under arrest persons suspected of having committed some grave crime against the peace.

451. I have said that Boys, without denying this power to Coroners, advised them not to avail themselves of it, under the *pretext* that they had neglected to exercise them in Canada; and I have asserted that, to my personal knowledge, the Coroners of Quebec had often exercised this power. I may add that during the twenty years I was Clerk of the Police Court at Montreal, every time a prisoner suspected of homicide was brought before the magistrates, orders were always given to take him before the Coroner, and that the latter was the magistrate who disposed of him, while waiting for the end of the inquest.

This practice was always followed, and I believe it to be universal in the country.

It is probable, then, that Boys only meant to say that Coroners should leave to the other magistrates the charge of having arrests made in cases other than those of homicide; as to these arrests, it is certain that Coroners have long left this matter to the magistrates specially charged to hold inquests in these cases.

452. But this power, nevertheless, has never been taken from them.

In order that they should have it no longer, there would be needed a positive law declaring it.

There exists no law taking this general power from Coroners. The Statute 57 Victoria, c. 26, of Quebec, forbids the Coroner to hold the preliminary enquiry exacted by the present Canadian Criminal Code in the matter of persons accused of homicide, after inquest held by him. It forbids him in this case, but in this case only, to act as Justice of the Peace. To this end, and this end only, he finds himself withheld from exercising the powers of a Justice of the Peace.

And this does not concern the arrest of the suspected person.

A recent Judgment of the Court of Queen's Bench at Montreal, cited in Lanctot's work, declared that the Coroner cannot, at his inquest, compel a person, arrested by him before verdict on suspicion, to give evidence. This Judgment

thus recognizes the Coroner's power to have arrested suspected persons before the end of the inquest; according to that Judgment they could not be witnesses, but they could be prisoners at a Coroner's inquest. A Statute since has declared that a person suspected and put upon his guard can be a witness.

I had reason to believe, having been credibly informed, that the same Judge, later on, decided in another case, upon a Writ of *Habeas Corpus,* that the Coroner did not possess this power.

As the latter Judgment does not seem to have been reported anywhere, I went to the Judge himself, who then told me that this latter Judgment of his did not touch upon this point, and that, moreover, he recognized that the Coroner does possess the power to arrest, before verdict, persons suspected of homicide.

It is expressly enacted, by the 57 Vic. (Quebec) chap. 26, sec. 1, that in the Province of Quebec no Coroner can act as a Justice of the Peace in any case arising out of facts which have been the subject of any inquest held by him. That is, he cannot hold, as Justice of the Peace, the preliminary investigation in cases in which he has already acted as a Coroner. That Statute does not deprive him of the power to arrest before the verdict rendered.

Section 568 of the Criminal Code provides that, if, upon any inquisition taken before a Coroner, a person is charged with the homicide, the Coroner shall, if the person be not already charged before a magistrate, issue his warrant to arrest and convey the person affected by the verdict before a magistrate for preliminary examination. This law obliges him to make the arrest then, if not already made. It does not deprive the Coroner of any of his powers to arrest before or during his inquest.

453. It has been claimed that this power is denied to Coroners because none of the sections of the Criminal Code make mention of it. And yet the sections 22 and 25 of the Criminal Code mention the persons who have the right to

arrest, or to cause arrest. It has not been noticed that sections 22 and 552 (paragraph 3) makes use of the expression "Peace officer".

It has not been remarked that, by "Peace Officer", section 3 (par. 5) of the Criminal Code declares that every person employed in maintaining the public peace is meant. Consequently, every conservator of the peace is included, and, therefore, the Coroner.

They have not wished to understand, either, that section 30 of the Criminal Code says expressly that nothing in the Code shall lessen the powers of arrest conferred by any Article in force for the time being.

454. And it has been forgotten that the Criminal Code has guarded itself carefully from touching upon the powers conceded to the Provinces.

It has (in ignoring the Coroner as far as possible) recognized that to the Provinces belongs the right to legislate on the procedure before Coroners.

The little statutory law on procedure before these judicial officers is to be read in the Provincial Statutes only.

If the Criminal Code had declared the withdrawal of the Coroner's power to arrest, it would have exceeded its powers, as much as if it had declared that persons could not longer be arrested by virtue of some Provincial Laws; for instance by virtue of the License Law. Such a provision in the Code would have been against the rule generally followed by the Federal Parliament, that is, to leave police matters to the Provincial Parliament exclusively.

Hence, the Provinces alone have the right to prescribe the duties and powers of the Coroner at the inquest. They alone could have recognized or denied to the Coroner the power to arrest at inquest on corpses, as they did grant it to the Fire Commissioners at inquests on arson.

455. It has been sought to deduce an argument from the fact that at Article 2560 of the Revised Statutes of Quebec it is stated that the Coroners of Quebec and Montreal cannot act as members of the general commission of Justices of the Peace.

This law prohibits Coroners in these districts form acting as Justices of the Peace in the holding of preliminary en quiries into criminal charges, and from presiding at summary proceedings as a single Justice of the Peace; but does not take away their other powers as conservators of the peace.

Indeed, the general powers of conserving the peace, and the special powers of hearing and judging criminal offences, are two distinct things.

These two powers belong to Justices of the Peace. The first belongs to them conjointly with those who possessed it before them. See Blackstone, Vol. I, pp. 350 and 353.

The reason of Article 2560 is perceived with difficulty, and it has been repealed since, and the Coroners of these two districts can now act as Justices of the Peace.

456. But this power of arresting before or during inquests should be exercised only for reasonable motives, and where there is necessity for it. That is to say, when the information goes to show that, in all probability, the person suspected seems to be the author of the homicide, and that without such precautionary measures the ends of justice can not be attained.

457. The power to arrest includes that of detaining, or having detained.

Blackstone, in the fourth volume of his Commentaries, page 296, says what is to be done of the person arrested. He says that he has to be carried before a Justice of the Peace. It is clear that he refers to prisoners arrested by others than Justices of the Peace. He goes farther and gives the reason why he has to be carried before a Justice of the Peace. The reason given is that the said person arrested has to be examined in writing before the Justice of the Peace concerning the suspected offence. The Justice of the Peace must, at the same time, take cognizance of the facts of the alleged offence, that is, must make the preliminary enquiry.

Well, in a case of suspicion of homicide the law wills that the first primary enquiry has to be made by the Coroner, who

has all the powers of a justice of the Peace, for the ends of his inquest. The Coroner is the one who must enquire into the facts, therefore, he is the one who is to examine at first, at his inquest, the suspected person. Consequently, it is for him that the person is arrested, and for his inquest that the person is kept for examination.

The Statute cited by Blackstone as stating before whom the person arrested is to be brought, is chapter 10, 2 and 3 Philip and Mary. If we read the Statute we find that it did not deprive Coroners of concerning themselves, as formerly, with enquiring on suspected homicides. And it was then only one year before that Parliament had sanctioned another law regulating the way the evidence was to be taken by Coroners in their inquests on deaths, 1 and 2 Ph. and M. chapter 13; law by which Coroners were recognized to be the magistrates to enquire first in cases of homicide.

It follows, evidently, that it is before the Coroner that a person arrested at that stage of the proceedings has to be brought, and that it is for him and for the ends of his inquest that such person is kept; even should that person have been brought before a Justice of the Peace, this Justice of the Peace would order him to be sent before the Coroner for his inquest, as it is always done in practice.

The same author, in the same volume, page 292, speaking of the officers who are authorized to arrest without warrant, mentions Coroners, amongst others, and does expressly declare that the constable is the only one of those officers who are bound to bring their prisoner before a Justice of the Peace; which shows that the other ones,—the Justices of the Peace, the Sheriff and the Coroner,—were the proper magistrates to examine themselves the person arrested. This power has been withdrawn from the Sheriff; it has never been withdrawn from the Coroner bound to enquire in cases of homicide.

458. The Coroner may have the right to admit to bail a suspected person, pending his inquest. He is given this power after verdict, by virtue of Article 568 of the Criminal Code.

Article 603 of the Canadian Criminal Code wills that bail in the case of homicide, punishable by death, should be taken only before the Superior Courts. So that Coroners can judge that it would be unwise to admit to bail, pending his inquest, a person almost surely to be declared a murderer. The rules to guide Coroners in such cases are the same which apply to bail after verdict, as granted Coroners by Article 568, and the reader will find them later on at Part V, Article II of this work.

PART IV

INQUESTS WITH A JURY.

ARTICLE I.

PLACE AND TIME OF INQUEST.

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459. The Coroner's inquest with a jury may be held in any suitable place in or near which lies the corpse, provided that, if it be held before seven o'clock in the morning or after nine o'clock at night, the persons called as jurors or as witnesses be not punishable in case they refuse to appear.

460. In times remote the inquest was held in the street, as some old writers inform us. "In olden days the impannelling of the Coroner's inquest was commonly in the street, or an open place, and in *corona populi*." Boys, p. 111; with authorities supporting it. Jervis p. 19.

461. But this method has long been abandoned. The inconveniences indeed, on account of the rain, snow cold, or excessive heat, which made it difficult to proceed, to write, and to sit at ease, soon caused this primitive method to be changed. People now shelter themselves under a suitable roof.

462. "After the jury are satisfied with the view," (of the body) says Jervis at p. 28 of his treatise, "they usually adjourn to another room in the same house, or to another place, where the inquest is held."

Boys, at p. 127 of his work, citing Jervis as authority, says: "They need not sit in the same room with the body, nor at the place where it was found."

Custom became law, and this custom has existed everywhere to this day, and will continue to exist, because it is absolutely essential to the sound working of, as also to the respect due to the administration of justice.

463. Usually it is in an adjoining room of the house where the corpse lies, that the inquest is held.

It may happen, however, for one reason or another, that the inquest must be held elsewhere.

464. In the one case, as in the other, the Coroner should not to be obliged to remunerate the owner of the room. When the inquest is held where near relatives of the deceased live, no payment can nor should be claimed. When it takes place outside of such dwelling, the municipality should be obliged to furnish the room at its own expense; a public hall, for instance, or any other acceptable place which can be pointed out by the municipal authorities.

In the case of the municipality's refusal or neglect to provide a place, the Coroner should have the privilege of renting a suitable place at a reasonable figure, which the municipality should be bound to pay on the order of the Coroner.

It would be a means, at least in the Province of Quebec, of settling this difficulty which never fails to arise each time that it is a question of constructing a morgue.

As the law of our Province is at present, the Coroner pays for the room, when he cannot do otherwise, and is refunded by the Government.

465. I have designedly used the word "acceptable" to prevent the holding of inquests in *stables, sheds,* or *shops;* I might even add in rooms where intoxicating liquors are dealt out.

It will be agreed that these are not suitable places wherein to hold a regular Court, even though it be but the petty Court of the Coroner. The dignity of justice calls for higher consideration.

I venture to say it should be added to the law that "municipalities will be bound to furnish gratuitously a suitable room for the inquest, and that it must be neither a stable, a shed, a shop, nor a tavern."

466. At p. 10 of the same work of Jervis we read: "The proceeding by inquisition is a judicial act, and should not therefore be held on a *Sunday,* which is *dies non juridicus,* in which no judicial act ought to be done."

And in Boys, p. 110: "The proceedings by inquisition being judicial, must not be conducted on a Sunday."

467. Article 729 of the Criminal Code and its amendment of 1900, allowing a verdict to be received on Sundays or holidays, does not apply to Coroner's inquests, but only to criminal trials in the Court of King's Bench, for which the Federal Parliament then legislated. It would not apply, even though the Statute has made use of the words "every court", because the Federal Parliament has no jurisdiction to legislate, in the present case, without the consent of the Provinces. Besides, since the passing of this Federal law, a Court of Ontario has decided in this sense. See Lanctot's.

468. If this law does not apply, it is none the less true that a law should permit the holding of inquests on Sundays and holidays, during the hours which suit the people.

To proceed at once is sometimes right, and the public generally would not complain. Indeed, I might add, they would often be well pleased by it.

469. The Statute of Nova Scotia permits it.

470. It is seen at the heading of this Article that the inquest may be held at any hour.

There is nothing on this subject in any Statute, or in any authority. Our reason for these words is that experience has shown us that it is sometimes easier to hold these inquests in the evening, or even at night, than in the day. When there is no objection to an inquest being held at night, when it can be held as well, or even better at night than by day, why should it not be done?

471. There is, however, a *proviso* which I have considered useful to add, which is, that neither jurors nor unwilling witnesses can be punished when they refuse to attend on the Coroner's request, for the reason that they cannot be deprived of legitimate repose, to which they are entitled; and for this reason it is considered illegal, because of the tyranny pertaining to such a proceeding, as to force anybody to attend an inquest opening before seven in the morning, or after nine o'clock at night.

It should be clearly stated by the law, that each juror or witness who consents to attend at these unusual hours, is bound to remain to the end, because their consent being given in the first place would be the cause of opening the inquest then.

The Coroner should never open an inquest at unreasonable hours when it is likely to be long. He should also adjourn an inquest proceeding at such hours, as soon as he finds it likely to last longer than he first thought.

ARTICLE II.

PUBLICITY OF THE INQUEST.

472. The inquest is public.

It may be held secretly when publicity would hinder justice in the later investigations, or when decency demands it.

In either case, those interested have a right to be present, or to be represented by a lawyer, but all other persons may be excluded, if necessary.

473. As has been seen at the beginning of the preceding Article, the inquest in early times was held in the street or public place. This shows that the inquest is to be held publicly.

The whole of Jervis' p. 19 is to be cited here:

"In support of the publicity of the proceedings, it is urged, first, that the duties of the Coroner, and the obligations of the public towards him, show that the enquiry is public; secondly, that individuals have interests with reference to the inquest which can only be exercised by a right of access; and lastly, the dicta of learned judges are adduced to show that the proceedings should be open and public."

"In support of the first proposition it is contended that the enquiry of the Coroner does not necessarily lead to accusation; and that the possibility of its terminating so is not a ground sufficient for saying that it should be secret."

474. "The Statute of Marlbridge is also cited as a legislative declaration that all persons of the age of twelve years were bound to be present at an inquest for the death of man.".....

475. Sir T. Smith, in his History of the Commonwealth, observes that "the impanelling of the Coroner's inquest and the view of the body is commonly in the street", etc. And that author adds that Lord Hale, in the course of a Judgment, declared that "all the parties present at the death of the party are bound to attend the Coroner's inquest, and their not appearing is a flying in law, and cannot be contradicted."

476. Boys, at p. 111 of his work, immediately after having

said that the inquest was formerly held in the street, says: "It seems from the best authorities that they (the public) have not (the right to attend inquests)" and, what is more extraordinary, he gives in support of his opinion the same citation of Sir T. Smith which Jervis uses in order to prove the contrary. And Boys seems so uncertain of his statement that he ends by saying: "Yet it should not be used in an arbitrary manner, nor for the mere sake of showing a little authority. A Coroner has better err a little on the side of publicity, than in conducting his proceedings too secretly."

So, it results from these two citations that the inquest should be public.

477. It might be added that, if the inquest is no longer held as formerly in public places, it has, none the less, continued to be the inquest of the public. It is to public opinion, represented by the jury, that the State refers to know whether there is crime or not.

478. Experience shows that publicity almost invariably results (thanks to the conversations between persons distant from the place of the inquest) in making known witnesses who might otherwise remain unknown and ignored.

The publicity of the inquest, I affirm from often having seen it, aids investigations more often than it hinders them.

Jervis, at p. 26 of his work, admits that publicity "aids in the detection of guilt."

479. But if the inquest should, as a general rule, be public, it is none the less true that there may be cases in which the inquest should be secret.

"Such an enquiry", says Jervis, at p. 24, "ought, for the purposes of justice *in some cases,* to be conducted in secrecy."

He gives a reason: "It may be requisite that the party suspected should not, at so early a stage, be informed of the suspicion that may be entertained against him, and of the evidence upon which that suspicion is founded, lest he should

evade justice by flight; by tampering with the witnesses, or by any other means. Cases may also occur in which privacy may be requisite for the sake of decency."

480. The last reason is a foregone conclusion and can in no wise be a matter of doubt. Justice would be unworthy of the name if it tended to the moral ruin of society. And the Courts have always taken means not to injure the public by a publicity detrimental to morality.

481. The other reason given cannot give rise to objections either; it is not, however, so easily found, or so forcible. Cases may even present themselves where it may serve the purposes of justice that a suspected person should know from the beginning that suspicions are being weighed against him. His bearing, after this knowledge; his attempts at evasion or tampering with witnesses, might, under certain circumstances, afford a new element useful to the judicial proof.

482. The Coroner should use his judgment with great discernment before holding his inquest privately. He should never forget that to act thus is, on his part, to exercise a right of exception, and that he cannot do so unless it is unquestionable that the purposes of justice exact it.

483. At page 24 of Jervis' work, we find another occasion when the inquest may be held secretly. It is, to use Jervis' own words, in "cases in which it may be due to the family of the deceased." The author gives the reason for this opinion: "Many things", says he, "may be disclosed to those who are to decide, the publication of which, to the world at large, would be productive of mischief, without any possibility of good."

484. The whole of this page from Jervis is taken textually from a judgment in England, in a case of Garnett vs Ferrand, cited at length in the reports known under the abbreviation B. & C., at p. 611 of Vol. 6.

485. This last opinion appears in the judgment in an incidental manner. The Court had to pronounce upon the right of the Coroner to exclude from the inquest chamber a person, or persons not concerned, and had not to pronounce upon the case where there is ground to proceed privately.

If one judges by the reason given in support of the pretention that to spare the family of the defunct, the inquest may sometimes be private, it results that it is only in the cases where the proof to be adduced may be of a prejudicial nature, that is to say, an injustice to third parties. It can only be to avoid an injustice that this right may be exercised, and not to spare the feelings of relations or connections. If one were to go by family wishes, the exception would become the rule.

486. In the course of this same judgment the Court thoroughly defined what should be understood by public inquest.

It is not, says the judgment, because the inquest is public, that every one has the right to attend the inquest. No; the smallness of the place, the impossibility of proceeding in a suitable manner if there are too many present, are so many circumstances giving the Coroner the right to exclude certain persons from public inquests.

In that very judgment the Court decided that Garnett, whose conduct at the inquest had been judged improper by the Coroner, had been legally put out of the room.

487. The text of the present Article says that in all cases those interested have the right to be present, or represented by a lawyer.

In making such a statement I use in support thereof the broad ideas held at present in matters of justice; the fact that it is generally regarded as unjust to hold inquests which are kept secret from those interested, and that justice runs the risk of being justice no longer, by seeing only one side of the question; as well as the fact that for a considerable time in the generality of cases this custom has been followed, and that thereby it has become custom, which means law.

488. And that, notwithstanding an old judgment in the case of Barclee, cited at p. 25 of Jervis; which declares:

"What interests may be represented by Counsel or Solicitor upon the inquest, is a matter entirely within the discretion of the Coroner."

This judgment itself recognizes that to exclude those interested, or their accredited legal representatives, the Coroner should be guided by the interests of justice, and by no other consideration. "If it seems", continues this judgment, "that the jury are likely to be benefitted by assistance (of the "Counsel) he (the Coroner) ought to allow them to be heard. "It is usual to allow the family of the deceased and any per- "son who is likely to be accused by the verdict, to be repre- "sented by Counsel if they desire it."

489. Coupled with this question of publicity, another question, well within the same sphere, presents itself, which it is well to touch upon here. It is the publication of testimony by the Press.

At the same p. 25 of Jervis we find, upon this subject, the following: "It is most mischievous to the temperate administration of justice that either during or before a judicial examination, a statement should be published of facts which are to be made the subject of a subsequent trial; and it is still more mischievous when that statement is accompanied by comments. For these reasons it has been held to be *illegal to publish* in a newspaper a statement of the evidence given before a Coroner's jury, even though the statement was correct, and it was not imputed that the party publishing was actuated by malicious motives in the publication."

This opinion is drawn from four judgments, to wit: against Fleet, against Fisher, against Lee and against Thwaites. This opinion is still held, from time to time, by some persons, and even by magistrates.

But if it is Common Law, the least to be said is, that it has so long been a dead letter that it runs the risk of not being revived.

Jervis himself, at the same page, seems to doubt whether this jurisprudence would be adopted in our times, and believes that the contrary would be law if the occasion were afforded the Courts of our times to decide in a similar case; an occasion difficult to suppose, seeing that nobody, or nearly so, ventures nowadays to dispute the right of such publications when they are neither malicious nor injurious to society.

Here is what he adds: "It must, however, be observed that publications of this sort, although they may in strictness be illegal, have a tendency to protect innocent persons by communicating to their friends a knowledge of the accusation; they are calculated also, by exposure, to *prevent the repetition of crime,* and, above all, to aid in the detection of guilt. And different notions now prevail upon this subject from those expressed by the Judges in the cases referred to, the publication even of *ex parte* proceeding, if made honestly and fairly, being no longer the subject of prosecution."

It is expressly enacted by Sec. 290 of the Criminal Code that no one commits an offence by publishing in good faith, for the information of the public, a fair report of the public proceedings, preliminary or final, heard before any Court exercising judicial authority, nor by publishing in good faith any fair comment upon any such procedings; and it has been held in England that the rule embodied in this section of our Criminal Code applies to all Courts of justice, superior or inferior, of record or not of record, and that it is immaterial whether the proceeding be *ex parte* or not. (See Odgers, on Lib. & Slander, 3rd. Ed., 278, and Usills v. Hales, 47 L. J., C. P., 323).

490. Hence, it is not exceeding the truth to say that, as a general rule, all inquests should be public, and cannot be held secretly, and that nobody can be excluded unless for good and valid reasons; in other words, when it is in the interests of justice in the broadest and best understood sense. As Boys says, at p. 12 of his work: "When anyone is excluded it should be for a just cause and after due consideration."

In practice, it is always better to allow journalists to attend inquests, and to request them to omit from their report such parts of the evidence, as being published might, in the Coroner's opinion, be detrimental to the ends of justice.

This method, followed at Montreal for several years, has had none but excellent results. It would, perhaps, be useful to prohibit, by a law, disobedience of the Coroner in cases of this nature, and to make it a contempt of Court.

491. The law of Quebec gives to Factory Inspectors the right to be present at inquests when the death is the result of an accident in some buildings, that is, buildings on which the law gives them a control.

ARTICLE III.

SWEARING THE JURORS.

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492. When not less than twelve acceptable jurors are assembled, they shall be sworn by or before the Coroner diligently to enquire touching the death of the person on whose body the inquest is to be held, and a true verdict to give according to the evidence, to the best of their skill and knowledge, without fear or favor, affection or ill-will.

The oath may be replaced by a solemn affirmation or declaration from jurors who refuse to be sworn from conscientious motives.

After the oath or affirmation has been taken, the Coroner details briefly to the jury the object of the enquiry.

And then, if it is not in the same room, the jury go to view the body.

493. The first paragraph at the head of the present Article repeats, word for word, sub-section III of Article III

of the English law, to which have been added at the beginning, — before the word "jurors", — the word "acceptable", and at the end, the phrase "to the best of their skill and knowledge, without fear or favor, affection or ill-will."

494. It is a recognized rule that every jury, before hearing a case upon which they would have to pronounce a judgment, should be bound by a solemn promise, that binds their conscience, and by which they promise to do justice.

The Courts have long since, in English countries, adopted the oath as an expression of this promise, and Statutes have often legislated in this sense.

The oath is taken upon the Gospels by Christians, on the Old Testament by Jews, and by infidels, according to the manner recognized by their religious beliefs.

495. The reasons for the addition of the last part of the first paragraph, are, first, that the English Law of 1887 cannot be law here, and that it was formerly the recognized formula followed at Coroners' inquests. At p. 17 of Jervis' work we find the words: "and to the best of your skill and knowledge" added (in the form given of said oath). This is the old form of oath, and survives, no doubt, from the time when the jury were selected with special reference to their personal knowledge of the matters to be enquired into."

The words "without fear", etc., are added only because they are found in the formula followed since time immemorial, and that by adding them here, the section itself is found to serve as a formula; and it has, besides, the advantage of reproducing wholly the old formula that has always been used in Canada.

496. The word "acceptable" has been added because the Coroner is in duty bound to make sure that the persons who shall be called upon to render a verdict, be capable of doing so suitably. "The jurors", says Umphrey, p. 185, "are not challengeable, but an objection may be admitted."

497. Custom, which introduced the oath into procedure, was not long in admitting the solemn affirmation in its stead

and place, for persons, who, because of their religious beliefs, refused to take the oath. On their part the affirmation is considered as a moral bond which obliges them to act according to their conscience; and for them to render a verdict contrary to their convictions or judgment, would be as wrong as it would be for a person who has taken his oath.

Statutes came later to recognize the legality of this mode of procedure. Statutes have even declared to be a perjurer him who, in his evidence upon such affirmation, tells a falsehood. Section 24 of the Canada Evidence Act 1893 says so.

Of the one and the other, that is to say, of the validity of the solemn affirmation, as of the offence of perjury, the Statutes have only declared what was already Common Law.

In all Courts or tribunals everywhere, whenever the oath was and is required, the solemn affirmation could and can replace it for reasons of conscience.

498. It is at p. 28 of Jervis, and at p. 121 of Boys that we find that the Coroner should instruct the jury as to what is to be the subject of the inquest.

Both Jervis and Boys say that these instructions of the Coroner come after the jury have seen the corpse. It seems more fitting that these instructions should come before it. Both declare that the corpse is part of the evidence, (and there is no doubt on this point) it is always before proceeding to hear evidence that the jury have a right to know why they sit; of what is in question; what there is to do and investigate.

This instruction, then, is more in place before than after viewing the corpse.

499. Neither Jervis nor Boys, nor any other author, has attempted to say upon what the Coroner's instructions should bear; we shall supply the deficiency.

The facts which the Coroner knows and has reason to believe should be proved, ought to be succinctly stated; and the jury should be forewarned, in each case, that they have to say where, when and how the death took place, and above

all, if it is due to homicide or not, and whether the homicide is criminal or not.

This is the aim of the inquest. It is most important that the jury and all persons present, interested or not, should understand that it is a question of seeking but one thing, "criminal homicide."

If one would avoid the annoyance of profitless questions, an endless inquest, and the wearisome trouble of continually suppressing irrelevant evidence, it is needful that all should thoroughly understand that it is not a question of finding matter for an action of damages. It is needful that the jury thoroughly understand that they have not the right to blame persons who are not, in their opinion, guilty of homicide.

500. At last comes the opening of the inquest itself by the view of the corpse.

Anciently this first act was one of the main elements of the proof. In early times, as a fact, as there were no recognized specialists in this matter, justice had recourse to the good sense of average men to judge of the marks of violence upon bodies, and to seek their origin or cause. It was an act of wisdom to resort to the judgment of twelve persons rather than to that of a single one; and old-time authors have all written pages full of details on this subject, recommending every precaution which seemed to them necessary and useful in this case.

The writers who followed blindly copied their predecessors; some of them having even added their own ideas. My two authorities, who have helped me so much hitherto, have followed the same path.

For my own part, I do not hesitate to say that this procedure, to-day, is no longer of the same importance, and that all the precautionary measures recommended by old-time authors have no longer reason to exist.

Now that there are physicians; that they are better qualified than an ordinary person to judge of the extent or gravity of lesions, as of the instruments that have caused them, the jury decides, and should decide upon the lesions, according

to the *dicta* of the physicians, rather than according to what their ignorance may cause them to think. In other words, since the advent of medical science, and commensurately with its progress, it affords justice more certainty upon the subject of lesions than does ignorance, — even that of twelve men, strangers to medical science; and the Criminal Courts and others long since adopted this view.

501. The view of the corpse has now no longer any but two aims; the first to verify that it is indeed a dead person of whom it is a question, and the second, to make sure whether the physician has noted well, at the examination of the corpse, all the lesions seen on it; in other words, whether it has been examined so as to help or hinder justice.

While not so useful, the examination of the corpse by the jury remains none the less necessary, because it is still the law. That part of the procedure could be dispensed with without exposing justice to err.

502. Boys, at p. 122 of his work, declares that the jury and the Coroner should examine the corpse together and not separately.

He does not say where he finds his authority to maintain this assertion; there is no doubt, however, that he found it in some old writer.

The thing was necessary when, in olden times, the Coroner and the jury made together the *medical* examination of the corpse.

It is so no longer, and the obligation long since passed away.

The corpse may be seen by the jurors apart from one another, and apart from the Coroner, without justice suffering from it in any way.

The thing was long practised thus in England when a Statute, 6 and 7 Vict., ch. 83, s. 2, came to declare what the law was, and changed that mode of procedure.

This old mode of procedure must have been introduced with the British domination, into Canada. But it is not followed invariably, at present, and Coroners and jury in

practice view the corpse together or separately, according to convenience.

The important thing is that each juror see the corpse, and that the Coroner be in a position to attest that each and all have seen it. The Coroner, if not present at the viewing of the corpse by the jury, and if he has doubts, may question on this point each sworn juror.

503. If one looks through the treatises on the duties of Coroners, — the most recent as the most ancient, — one finds a multitude of formula to be followed at the opening of an inquest.

They are: a proclamation cried pompously by the constable, — a proclamation in sacramental terms; the nominal call of the jurors, with checking of names; the nomination or choice of a foreman of the jury; the swearing of the latter apart, and that of the other jurors, by groups of three or four, without forgetting to attract the attention, by consecrated words, of the other jurors, before the swearing of the foreman chosen; a new calling of the sworn jurors, with new checking of names, etc.

These, it should be fearlessly admitted, are so many proceedings of a nature to delay the inquest, rather than to further the purposes of justice.

This pomp and these antiquated formulae, qualified to throw dust in peoples' eyes rather than anything else, might have been good in the time of peasants and villains; in the time when aristocratic notions flourished unrestrained. They are no longer fashionable in our day, now that democratic ideas prevail. They tend rather to bring ridicule upon inquests, than to raise them in public estimation. They have been generally abandoned in Canada, the United States, and even in England.

Nothing in all these inflated procedures is absolutely necessary; so that they are omitted without the investigations at the inquest suffering in any way. The important thing is that the Court sit with dignity, devoid of ostentation.

504. The choice of a foreman can be of use only when the

jury will have to deliberate later, alone. It is of none at this stage of the proceedings, seeing that at the inquest itself the president can alone be the president of the Court, that is, the Coroner.

Hence, I have left aside all this useless procedure, cumbersome and over-pretentious.

In that I have followed the example of the English Codifiers of the Law of Coroners of 1887, who have omitted all that. As I write with a view of being useful to a Codifier in our country and elsewhere, as I believe that custom has generally abandoned these proceedings, I have omitted them.

I shall speak later of the choice of a foreman of the jury.

ARTICLE IV.

THE QUESTIONING OF WITNESSES.

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505. The Coroner then proceeds to question all persons in a position to enlighten justice.

These persons, either by oath or affirmation, according to their religious beliefs, pledge themselves to tell the truth and the whole truth.

The jurors, those interested, and all persons present may suggest questions which the Coroner should put to witnesses, if they are not foreign to the object of the inquest.

The material facts related by the witnesses are carefully noted by the Coroner or his clerk.

506. The English Statutes of 1887, section IV, says: "The Coroner shall examine on oath touching the death, all persons who tender their evidence respecting the facts, and all persons having knowledge of the facts whom he thinks it is expedient to examine."

According to this Statute, plainly declaratory, it is the Coroner who questions the witnesses. It is his inquest; it is the Coroner's inquest. It is he who is charged by law to seek whether there is homicide or not.

As in every preliminary inquest, it is he that holds the inquest, who conducts it, and no other; hence it is he who should question.

It is certain the Coroner may, if he wishes, allow the questions to be put by another under his *surveillance*. But it is also certain that if he does it himself it will be easier for him to understand the bearing of the evidence, and he will the sooner attain his aim.

It is thus that one proceeds generally in Canada; always thus at Montreal.

507. This English Statute mentions as witnesses to be questioned, persons who tender their evidence, and those who have knowledge of the facts, and whom the Coroner *believes it expedient* to examine. The present Article specifies somewhat more by saying: "All persons in a position to enlighten justice."

Here, the Coroner cannot refuse to question a person who claims to be able to enlighten justice. There, he is free to refuse.

Furthermore, the witness of whom it is a question in the English Statute, is but the witness of the facts; an expert cannot tender his evidence. In the present Article he may, and has the right to be questioned.

Unquestionably an expert can sometimes show facts in an aspect entirely different from that in which they appeared at first sight, and therefore justice is often interested in knowing his views.

One notices, also, that the English Statute mentions only the oath as guarantee of the truth of the testimony; it ignores

the affirmation; a lack which the present Article supplies, and in so doing it but recognizes existing law. The English Statute, — Coroner's Act of 1887, — also leaves aside the evidence of children and free thinkers.

The Imperial "Oaths Act 1888" (51-52 Vict., c. 47) enacts, by sec. 1, that in all places and for all purposes where an oath is required by law, every person objecting to be sworn and stating as the ground of such objection, either that he has no religious belief, or that swearing is contrary to his religious belief, shall be permitted to affirm, and that his affirmation shall be of the same effect as if he had taken the oath.

Now, here, their evidence can be taken, 53-57 Vic., c. 31, and Boys, Ed. of 1893, p. 190. All depends upon the extent of their obligation to tell the truth.

508. If the Coroner himself conducts the inquest and, for that purpose, questions the witnesses, it is none the less true that the jury, who are to bring in the verdict, are in duty bound to know all, and have, for this object, the right to suggest questions tending to make the facts better understood, or to bridge any unintentional gaps. Nor is it the less true, — as it is a question of investigating the whole truth, — that those interested, as well as all persons present, have the same right.

509. That which is essential is that the Coroner prevent the conscious or unconscious abuse that might, — by seeking out facts alien to the subject matter of the inquest, — be made of the privilege; that is to say, facts tending to prove quite another thing than criminal homicide.

510. The questions that actually present themselves are: Who cannot be a witness? How and upon what subject may one question a witness?

To these two questions it would be briefer to reply: All persons may be witnesses at the Coroner's inquest, who may be witnesses in other Courts of Criminal jurisdiction and they should be questioned in the same manner, and upon the same subjects as they might be before the other Courts. And this answer would be right.

The reader may, perhaps, complain that it does not give entire satisfaction, and for this reason (without pretending to enter into all points of subtile rights to which these questions may give rise) we shall touch upon the cases which present themselves most frequently before a Coroner.

511. Any reasonable person, knowing the value of judicial evidence, and the promise whereby he binds himself to tell the truth, may be heard.

This excludes persons devoid of reason; children who have not reached the age of reason; and persons who do not believe in the obligation of telling the truth after the oath or solemn affirmation.

512. The accused, if under arrest, cannot be forced to give his evidence. He is free to do so. Prudence even counsels not forcing a person suspected but not arrested, but rather to leave him free to testify or not.

It is better that the Coroner should put the suspected person on his guard, and tell him that his evidence may be used against him, and that if any threat or promise has been made to induce him to testify, he should look upon it as null and void.

The Statute 56 Victoria gives the accused, and the wife of the accused, the right to be heard as witnesses. And the Statute 61 Vict. gives, however, to such witnesses, the right to refuse, in the course of their evidence, to reply to all that may tend to incriminate the accused, and on their so refusing, although they are still bound to answer, their answers cannot afterwards be used against them. This law should be interpreted as protecting as well suspected persons still not arrested.

513. Experts may be heard, but no person can be forced to come and testify, if he shows that he has not the qualifications required of an expert.

514. In the choice of experts the Coroner should show great discernment. Many belong to professions or callings qualified to lead to the belief that they can aid justice, who

do not possess the knowledge required. At p. 38, Jervis says, speaking of medical experts: "There is no doubt that testimony is constantly received as scientific evidence, to which it is almost profanation to apply the term."

515. Our Statute contains a clause, Sec. 2692, Revised Statutes of Quebec, which we have from England, declaring that preference should be given, when it is a question of medical experts, to the physician of the locality, rather than to a stranger. A wise dictum. On the one hand justice gains dispatch, and on the other, the Coroner may choose a more experienced physician, if he believes it useful.

516. The witnesses who are examined give their names and surnames, as well as their addresses; whereupon they are requested to relate, of themselves, what they know in the matter of the death.

This manner is better qualified to make known the exact truth, than proceeding at once to put questions, which often will have the effect of suggesting to the witness an opinion he would not yet have formed in his appreciation of the facts; and might affect the true narration which he desires to give of them.

If, thereafter, the account seems incomplete, or if certain details call for explanation, the Coroner then puts the questions that tend to complete and enlighten.

517. The questioning of all the witnesses, as we know, but tends to elucidate one fact: whether or not the deceased died a victim of criminal homicide. Hence the questioning should turn only upon facts tending to allow of the jury's deciding this point.

518. Usually the object of the first testimony is thoroughly to determine the identity of the deceased.

Then comes the ocular evidence of the facts which have caused, or appear to have caused the death, if there are such witnesses, or witnesses who know any facts or circumstances of a nature to explain how the death took place.

It is then that the expert witness, after having examined

that which partains to him, and after having heard the facts from the lips of the other witnesses, can be in a position to be of service to justice.

519. The evidence of the expert includes the relating of the facts he has examined, and an appreciation or judgment of the whole.

"Scientific witnesses are allowed to state their opinions upon a matter with which they are conversant, and thus the opinions of medical men may be admitted as to the cause of disease or death, or the consequence of wounds, etc.," says Jervis, p. 38.

520. It is needless to say that a person suspected of the crime of homicide cannot be called in as an expert. It is, indeed, extraordinary to find that it should have been necessary to legislate to that effect. See Revised Statutes, p. 876.

The English Statute of 1887, section 21, rules that the physician who treated the deceased during his last illness should be called to the inquest as an expert.

This law does not exist in Canada.

Here the physician may be called in as an ordinary witness, or as an expert, and this method seems much the wiser.

The attending physician, in England, if the case lends itself to it, may conceal his criminal act, if he is the expert called in.

On the other hand, most often, the attending physician can assist justice more, because of facts observed before the death, than can an expert called only after the death, especially if the latter has not made the autopsy.

521. The reader must not expect to find in a work such as the present, the rules that should guide the physician or any other expert in the method to be followed by them. All that it is necessary to state here is, that all the facts should be carefully verified, and that nothing should be left aside.

The expert mechanic should expect to be obliged to explain the working of machines such as that which caused the death; the cause of the accident; if it is due to the bad condition of the machine. If it was in bad condition before the accident;

to say whether this circumstance could be verified before the accident; and if it could be verified before the accident, to say what degree of imprudence there would be in using it in such a condition.

The physician should put himself in a position to establish all the medical facts that he states; he should note the unquestionable facts, and mention those subject to contestation. His examination should be so complete as to leave no point open to criticism. The conclusions should never go beyond bounds, or be subject to any contradiction. The physician should understand that the Coroner's questions will bear upon the clothing of the corpse; upon the objects surrounding it; upon the signs of violence that may be furnished by the place wherein the corpse lies; upon the instrument or poison supposed to be the cause of the death; upon the outer marks of violence; upon all marks, in certain cases, of a nature to reveal the identity; upon the pathological condition of the vital organs; and especially upon the possible connection between, or positive exclusion of such a pathological condition and criminal homicide by some extraneous agency. In other words, the physician should not forget that it is not so much the pathological or medical cause of the death that justice seeks, as the outward and primary cause that produced it; that is to say, in fact, homicide or the exclusion of homicide that it seeks.

It is in special scientific treatises that any expert will find the rules to be followed in his work. All that justice asks of him is that he do his work well, do it thoroughly, and safeguard it so that it is all but impossible to leave matter for cavil or disagreement.

522. The Criminal Code has abrogated the Statute C. 174 of the Revised Statutes of Canada, whereby the Coroner was bound to take verbatim the testimony of all the witnesses, when a person was accused in the course of the inquest.

Now this Statute had merely reproduced an ancient Statute which is abrogated by the fact that it is the same Statute.

Before this Statute there was no law passed in Canada obliging the Coroner to take testimony verbatim, so that the

English law, as introduced into Canada after the cession, was that which ruled before this Statute, and that which rules since the abrogation of the law on the manner of taking evidence. It is a Statute of Phillip & Mary, 1 and 2, c. 13, that declares that the Coroner "shall put in writing the effect of the evidence given to the jury before him, being material."

It is law. Nothing, however, prevents the taking of the depositions at length, as in the past, but by so doing an inquest is uselessly lengthened, which is no longer, since the Code, of the nature of a preliminary enquiry into a criminal charge; and these depositions, taken at length, recognized and signed by the witnesses and the Coroner, cannot be read in Criminal Courts in the absence of the summoned witness; seeing that Section 687 of the Criminal Code, and its Amendment of 1900, only allow as proof in these circumstances the depositions taken at the regular preliminary enquiry, that is, at the enquiry into a criminal charge held by a Justice of the Peace in presence of an accused person, or at another trial.

There is no ground to change this law, since the preliminary enquiry always takes place immediately after the Coroner's inquest.

But the deposition or declaration under oath or affirmation of the accused should be taken verbatim, and should be signed by him. Such deposition taken after due caution given, may be evidence later on at the accused's trial, in some circumstances.

ARTICLE V.

OF EVIDENCE.

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523. The general rules of evidence apply to Coroner's inquests.

524. This quite covers the whole duty of the Coroner on the questioning of witnesses; and it were better, perhaps, not to enter upon commentaries which would, by force, be too short; but content oneself with simply referring to the Statute, "The Canada Evidence Act of 1893" and its few Amendments, and to the authorities who are law on this subject; — among others: Roscoe's Criminal Evidence, Powell's Evidence, Tidy, Taylor, Reese.

525. I am not unaware that, unfortunately, a great number of Coroners have not facilities to procure these works, and that a great number, also, not being of the legal profession, have not had, nor desire to have works such as these to guide them.

I shall therefore endeavour to meet the need, it being quite understood that I shall deal broadly. To enter into details would carry me much too far.

526. Evidence is divided into primary and secondary.

Primary evidence is that which is the source or origin of the fact which it tends to establish. For instance: the eye-witness of a fact, when he relates it, brings primary proof. This fact which he reports he holds from himself. Again: the original of a contract contains primary proof thereof.

527. Secondary evidence is that which is only as if it were a copy of the record of a fact whose primary proof is to be found in the original.

Of the two evidences, it is obvious that the first is the best, because it affords much greater certainty. However, secondary evidence, though generally inadmissible, is admissible in certain cases. That it be admissible, the following conditions must exist: First, the impossibility of procuring primary evidence must be established; secondly, it must be shown that the secondary evidence tendered, is indeed exactly what the primary evidence would afford us, if it existed.

It follows that secondary evidence can be admitted only when it is a question of written evidence, and never when it is a question of parol evidence; for the reason that a person's words may not always be truthful, and may vary, even in the case where they have been repeated under oath and by judicial officers.

528. We have just spoken of written and parol evidence; this is a division of the evidence that does not call for further comment.

529. There is also what is called presumptive, or circumstantial evidence.

It is not that which comes from the knowledge itself of the fact to be established, but it is that which necessarily leads by inference to the fact itself to be established.

Smoke necessarily presupposes a fire, from which smoke comes.

The absence of any proof of violence, even when the pathological cause of the death cannot be found, justifies the presumption of a natural death.

The above are two examples of circumstantial evidence.

In the first case it is as strong as a positive proof, without calling for unusual precautionary measures. In the second, it is not equal to such proof and cannot lead to a positive conclusion, except where the circumstantial fact cannot itself leave any doubt, and that its existence affords, humanly speaking, the necessary and unquestionable conclusion of the principal fact sought.

530. This suffices to show with what extreme care evidence of this kind should be dealt with. It will also be understood that the more circumstances of this nature are met with, the more reason there will be to conclude the fact sought for.

531. There are certain legal presumptions which are conclusive and cannot be rebuttal. Thus, there are cases where the law presumes innocence, and makes the presumption absolute, conclusive and *irrefragable,* (not subject to contradiction or contradictory proof). "For example:" (Harris Cr. Law, p. 457) "an infant under the age of seven years is incapable of committing a felony" — and "Every person knows the law."

There are also legal presumptions which are subject to contradiction, or contradictory proof. "For example," continues Harris in the same citation, "a child between the age of seven and fourteen is presumed to be incapable of committing a felony; but only till it is proved that he had a mischievous discretion." — "A person is presumed to be innocent till he is shown to be guilty." — "Malice is presumed from the act of killing, unless its absence be shown."

Also "Everyone is presumed to be sane at the time of doing, or omitting to do any act, until the contrary is proved." 55 & 56 Vict., c. 29, section 11. "The law presumes that a person acting in a public capacity is duly authorized to do so." Boys, p. 195, (ed. of 1893).

Presumption is against every suspected person who prevents the evidence of the facts being given. Powell's Evidence, p. 56.

532. Hearsay, or second-hand evidence, is that which the witness has from another person, or from another source, and which is not of his personal knowledge.

This evidence is admissible only in certain cases.

For instance: to prove the death of a person in parts remote; to prove a prescription; a custom; filiation; the general reputation; to prove what a witness has declared in another circumstance.

533. Or again, this evidence is permitted when it is what has been said by a person dying from the results of an assault, if the statement has been made by such dying person aware of the fact that he is about to die. A declaration before death, although the person did not then believe himself in danger, can also be evidence, if this declaration is unfavorable to that person himself.

534. The evidence of confessions is admissible if they have been made in the following conditions:

If they have been made before a person in authority with duly legal precautions, which are the following.

The person who makes them should first have been put on his guard; should be warned that his admission is not the result of any threat or promise, and that it may be used against him.

If they are made to a person not in authority, — that fact being known to him who admits his guilt, — they form evidence, even though obtained by stratagem, provided they are made voluntarily.

Such is the opinion of the best authorities, among others, Tidy, Vol. I, p. 12: Taylor, xxx, p. 481: Reese, p. 25. Such

was the judgment of the Supreme Court of Canada in the case of Viau.

But this evidence is valid only against him who has made the statements.

And the confession must be wilful.

535. Written evidence "may be divided into three classes." Harris, p. 457.

" I. Records."

" II. Matters quasi of records."

"III. Written documents of a private nature."

536. In the two first categories are classed all Acts of Parliament; By-laws of municipalities or of corporations, approved and sanctioned by the law; rules authorized by the law and becoming law by an order in Council; Judgments and rulings of the Courts; as also the testimony of sick persons taken in virtue of Section 681 of our Canadian Criminal Code, copied from the English Statute 30 and 31 Vict., c. 35, S. C.

This evidence is admissible once there is certainty that these documents are indeed what they purport to be.

537. One sees how important it is for Coroners to possess the Statutes of parliaments, and all the regulations of public corporations. It is to be regretted that our Governments who distribute the Statutes so liberally, do not see fit to extend this favor to Coroners. The By-laws and regulations, again, are often more difficult to obtain, but in these cases Coroners can always call as witnesses the keepers of such By-laws and regulations, and by this means can take cognizance of them. Some of these are most important, as: the regulations of railway companies, of factory inspectors, of municipal police.

Cases may present themselves where wilful infraction of regulations of this nature may determine a verdict of homicide, as will be seen further on.

538. The evidence of written documents of a private nature may be given by any person who has seen the document written, or who knows the writing of him who has written it, or again, by comparison. This evidence is often brought before the Coroner; it often happens before the perpetration of a homicide, and especially of a suicide, that the person

premeditating the crime, is at pains to write, setting forth his intention. It is obvious that the latter means, — that is, proof by comparison of writings, — is of less value than the proof of the knowledge of the document or of hand-writing itself.

539. However, the second, as the last of these means, is based only upon an opinion or judgment on the part of the witness, and affords some certainty, only, provided that the witness give the facts upon which he takes his stand to reach his conclusion, and provided that he declare how he comes to conclude what he does. His evidence is scientific evidence and subject to the same precautionary measures as all expert evidence, and as such, it cannot convince unless the conclusions, seemingly result from the facts.

540. There remains very little to add. It is important to remember that the best evidence should always be sought, and that, in general, the positive proof of the witness who has seen the facts, and seen them clearly, is worth more than circumstantial evidence, even were the latter supported by the dicta of science.

It has often been sought to contradict positive proof by scientific proof; the jury, with its sound common sense, has never allowed itself to be inveigled thereby, and that with reason.

541. It is important also to add that the Coroner's inquest, especially since our Criminal Code, is more than ever a Court proceeding with great speed, and that it is often better, — when there is reason to believe that it contains positive elements of veracity, and that the ends of justice will be surely attained, — to content oneself with secondary evidence rather than to delay justice by prolonged adjournments, with the view of seeking the best evidence.

Finally, it is allowable to have recourse to witnesses at the inquest to discover what other persons may know in the matter of the death. In this case hearsay is not evidence, but helps to find the means to complete the legal evidence; the Coroner's inquest is an inquest of investigation, an inquisition seeking for evidence, rather than anything else.

ARTICLE VI.

CONTEMPT OF COURT.

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542. **The unjustifiable refusal of a witness to reply to the Coroner's questions;**

Disobedience, during the inquest, of the Coroner's orders, on the part of anybody whomsoever, or any reprehensible or wrongful act committed with the object of casting contempt upon the judicial proceedings of the inquest;

Constitute a contempt of Court, which the Coroner, if he sees fit, may punish forthwith by a fine of four dollars, or in default of immediate payment of such fine, by an imprisonment of fifteen days.

543. At p. 99 of Harris' "Criminal Law" a contempt of Court "is a disobedience to the rules, orders or process, or a disregard of the dignity of a Court which has power to punish such offences. It is only Courts of Record that have power to fine and imprison for contempt of their authority."

And in a footnote to p. 100 of the same work: "Courts of Record are those whose judicial acts and proceedings are enrolled for a perpetual memorial and testimony; which rolls are called the records of the Court, and their truth cannot be questioned. This power to fine and imprisonment is one of their chief distinguishing marks; and the very erection of new jurisdiction with power of fine and imprisonment makes it instantly a Court of record. V. 3, St. Bl. 289, 290.

The reader may here re-read Articles VII and VIII of Part III; he will find there many aids to appreciate what is to follow, things which I do not wish to repeat.

544. To conform to Harris' definition, the following conditions are required: —

First: The Court must be a Court of record.

Secondly: The act must be a disobedience of a nature to detract from the dignity of the Court.

Now, with regard to the first condition, I cite Jervis, p. 87, where one reads:

" The Coroner has, in common with every person who administers any public duty, a common law right to preserve general order in the place where it is administered, and to eject any person who is in that place for improper purposes. But, further, the Coroner's Court is a Court of *Record,* and as such, has attached to its jurisdiction and inherent in it, a power to punish for contempt committed in Court. This power is necessary to the due administration of justice, and to prevent the business of the Court from being interrupted. The Coroner may therefore commit any person who obstructs or impedes him in the performance of his duty, or he may cause him to be fined or forcibly removed."

Jervis says positively that the Coroner's Court is a Court of record and he bases his affirmation upon the following authorities, given at the foot of the page, to wit: Coke, 4 Inst. 271: Com. Dig. Officer G. 5: the judgment in the case of Garnett vs. Ferrand already mentioned in Article II of this Part IV.

545. He adds, however, in a note, that Judge Abinger, in a case of Jervison vs. Dyson, has expressed doubts on this point.

As one sees, it is again a question merely of doubts. If one re-reads the citation from Harris, given above, one finds that Courts of *Record* "are those whose judicial acts are enrolled for a perpetual memorial and testimony."

Now, the verdicts of the Coroner's inquests are all "enrolled for a perpetual memorial", since they must all be deposited in the vaults where the Clerk of the Peace of the district keeps the records of the Courts. These verdicts are also "enrolled for a perpetual testimony", since they are the legal proof of the death as of the cause that produced it; since, finally, the Courts, Civil as well as Criminal, never hesitate to receive them as proof of record.

Continuing to read this definition of a Court of Record, one finds besides:

"This power, to fine and imprison, is one of their (Courts of Record's) chief distinguishing marks; and the very erection of new jurisdiction, with power of fine and imprisonment, makes it instantly a *Court of Record.*"

Now, if there exists no Statute that has ever created a Coroner's Court in inquests on death, with powers to condemn to fine and imprisonment, there does exist a Statute which relating to inquests on arson has given Coroners such powers; and what is more, this same Statute has recognized that the Coroner possesses this power in his inquests on death. These are the Articles already cited, 2993 and 2995 of the Revised Statutes of Quebec.

It follows that the Coroner's Court, having the power to condemn, is a Court of Record.

I willingly admit that this last argument may be termed vicious, but I add that this power granted to all Courts, even the least important, can, with difficulty, be refused to the Coroner, whose mission is to seek homicide, the crime most feared by society.

Another new law to be added in our Statute book to do away with all doubt, if by any chance doubt is possible.

On two occasions recently, Superior Courts in Canada have formally declared that the Coroner's Court is a Court of *Record.* See *Lanctot, Criminal Law,* p. 653.

546. The second condition required is, that the disobedience should be of a nature to detract from the dignity of the Court.

547. The dignity of the Coroner's Court! I here behold many of those who do me the honor to read this, pause an instant to inquire with a sarcastic smile, whether it is still possible to detract from the dignity of that Court. Has it not fallen into such discredit that it is no longer possible further to impair its dignity or standing?

It is certain that from many causes, of which the principal are, on the one hand, the often injudicious choice of coroners, and on the other hand, the ignorance or lack of personal dignity on the part of some coroners, as also the want of firmness of several of these magistrates, this Court is lowered in public estimation as far as a Court can sink.

It is also certain, however, that if better choice is made in nominations to these functions, and if coroners in the future are more solicitous of the dignity of the functions they have to fulfil, this Court will regain its lost standing, all the sooner in that its usefulness is unquestionable. This work has been undertaken especially to this end.

548. Be this as it may, this Court is still, in our days, a Court of Justice, and as such, its proceedings should be held with dignity devoid of ostentation or misplaced pomp. Therefore, it is incumbent upon the president of the Court to see that such dignity is maintained, by preventing anything that may tend to detract from it. The Coroner who cannot or will not suppress a contempt of Court at his inquests is unworthy to hold office.

I may be allowed here to enter somewhat into details. The Coroner himself, first and foremost, should never forget that, being the representative of justice, he owes it to the latter to do nothing that may bring ridicule upon it. Why, for instance, hold inquests in sheds or barns? Why have verdicts signed after simulated inquests, or without inquests? Why register and sign verdicts which are absurd on the face of them, or verdicts that bear upon quite another matter than the object sought, i. e. homicide?

Why, finally, does the Coroner not put himself in a position to know the law that governs inquests, as well as the law on homicide? For, after all, if it is true that the law does not exact that the Coroner be a jurisconsult, it exacts that *he know* his duties; therefore, as his duties are exclusively judicial, it exacts, if he does not know the law on his nomination, that he learn of it at least what concerns his functions.

The law does not demand that the Judges of the Sessions of the Peace be learned in the law of barristers; but it is because they have always known their duties that their Court has been able to preserve and improve their standing. The same thing can be done for the Coroner's Court. The Coroner, without being a lawyer, may become an excellent Coroner, if he will take the trouble to post himself on the law concerning his duties. Experience has shown this more than once.

549. The Coroner's Court being a Court of *Record,* and a disobedience to the Coroner's orders at the inquest being qualified to derogate from the dignity of the Court, it is the Coroner's right and duty to punish such disobedience.

The witness to whom a question is put, refusing to reply when the Court has ordered him to reply, commits an act of disobedience, and is subject to punishment.

It is a principle of Common Law that all such disobedience may be punished by the Court before which it has taken place. The proof of this is to be found in paragraph 400, Article VII, Part III, of the present work, in which one will read that a flagrant contempt committed in presence of a Court can always be punished by the Court sitting, even if it is not of superior jurisdiction. It is a principle that the Statutes have recognized. It suffices to glance through our Criminal Code to be convinced of it; notably at Articles 585-780-908. The same thing is found in the Revised Statutes of Quebec, Articles 2993 and 3005.

In the English Statute, codifying the law of Coroners in 1887, we find section 19, under section 2, which reads as follows: "Where a person duly summoned to give evidence at an inquest does not appear — or appearing, refuses without

lawful excuse to answer a question put to him, the Coroner may impose on such person a fine not exceeding forty shillings."

550. The words "without lawful excuse" correspond to the words inscribed at the head of this Article: "Unjustifiable refusal". For, as a fact, there are cases where a witness may be justified in refusing to reply to a question. It is when the answer may tend to incriminate him in the trial that may arise in the matter of the death, the subject of the inquest. When it may tend to incriminate the person to whom he is bound by marriage.

A lawyer cannot be forced to divulge a confidential communication made by his client.

A priest cannot be forced to divulge a secret of the Confessional, and jurisprudence tends to extend the same privilege in favor of any confidential communication made to a minister of religion, especially when everything leads to the belief that such communication was made only under the conviction, for some good moral reason, that it could not be divulged.

Section 1 of chapter 33 of Statute 61 Victoria, declares that nobody is justified in refusing to reply on the pretext that it may incriminate him.

However, section 4 of the Canada Evidence Act, declares that a person accused or the husband or wife of one accused, cannot be forced to give their evidence.

To take these two clauses of the law literally, it would seem that once they have been put on their guard and told that they are not bound to give their evidence, they can no longer refuse to answer if they have consented to give their evidence.

The Courts in Ontario and in Quebec have judged that it was not so, and have therefore established the jurisprudence, that at all times, in the course of their evidence, these persons could withdraw their primary consent and refuse to answer further. Obviously this clause of the Statute 61 Victoria cannot apply to persons suspected or accused of the crime that is being sought, because their evidence, freely

given, after they have been warned, becomes part of the proving admissions. That Statute 61 Victoria, which declares that incriminating testimony cannot be evidence against the witness only applies to other witnesses, not to persons suspected guilty of the homicide the inquest is seeking for.

551. All persons may be punished for disobedience to the Coroner's orders at the inquest.

One remarks in the above citation from Jervis the words: "The Coroner may therefore commit any person who obstructs or impedes him in the performance of his duty." These words he himself has borrowed from the Judgment in the affair of Garnett vs. Ferrand, so that any juror, witness, person interested, or others, who persists in refusing to obey may be punished.

552. As to the mode of punishment, it is fixed here in the same way, and for the same reasons that have already been given in treating of the punishment to be imposed upon jurors and witnesses who refuse to appear. One has but to refer to these subjects.

553. The formulae found there will serve as models in the cases of contempt of which the present Article treats. The changes to be made are few and obvious.

ARTICLE VII.

EXPERTS AND OFFICERS TO THE COURT.

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554. The Coroner may call as witnesses, if necessary, experts residing in the neighborhood.

The expert analyst may be called if the jury, as well as the Coroner, believe it necessary.

The Coroner may employ the services of a clerk or secretary, and of an interpreter.

555. One finds no law in the Statute formulated in the above terms; nothing that tends to state anything of the kind. But one knows that the Coroner is bound to seek homicide by all judicial means known and generally employed by the Courts. One knows also that it is the Coroner's duty to find the best evidence possible.

In many cases the evidence of experts alone can throw light upon mysterious deaths. In many cases the expert alone can make the jury and the Coroner understand the reason of the fact that has caused the death. And in these cases, if the Coroner should dispense with their services, it would no longer be administering justice; it would no longer be seeking a fact; it would be, on the contrary, unwillingness to discover such fact, and, in other words, not to hold a serious inquest. And one knows that it is better to do nothing than to do things of no account.

The law that demands inquests, wills serious and thorough inquests. It cannot will anything other than the exhausting of all known human means before declaring itself powerless to pronounce. Above all, it cannot permit society to be misled by a fallacious judgment, which is not based upon sure facts.

556. Custom, followed by all Courts, and sanctioned by reason, concurs in the conclusion that the Coroner may call experts to his inquests, if it be necessary.

The Coroner's Statute, in Quebec, though it, in nowise, speaks of this power, mentions in a general way, in Articles 2689 and 2692, two experts who, it supposes, may be called. These are the physician and chemical analyst. This Statute does not specify when and why these two experts should be called. It leaves that to the judgment and discretion of the Coroner. It contents itself with speaking with regard to autopsies and the fees to be paid the experts, and also with saying how they are to be chosen in case of their services being required.

557. So that it may be said that apart from these questions of the choice of one expert in preference to another ; of fees ; and of procedure before ordering an autopsy, the legislature has left entirely untouched the established and recognized jurisprudence in the matter of scientific evidence; in other words, the Common Law rules.

We have asserted that the Courts never dispense with the services of an expert whenever it is deemed necessary in the ends of justice. This mode of procedure of the Courts, Criminal as well as Civil, is so well known and unquestioned that argument to show it is needless.

Article 2692 Revised Statutes of Quebec exacts the agreement of a majority of the jury to call in the expert analyst.

558. I have said that experts may be called in evidence if it be necessary.

As a fact, in the face of a complete proof, positive and clear, the evidence of an expert becomes altogether useless. To justify the Coroner in calling in an expert, the proof must be either incomplete or incertain.

559. Apart from the physician or the analyst, the Coroner appears free to call in whom he pleases. However, it seems plain that he would not be justified in going to seek an expert at a distance, when some are at his own doors.

As to the physician, Article 2692 of the Revised Statutes of Quebec rules that he be a physician of the locality where the inquest is held, or of the locality nearest to it. The same Article leaves the choice of the chemical analyst to the Attorney-General.

It is customary for the Government to specify, for Montreal, the medical experts to be employed. This custom is most advantageous; it affords greater surety; the physicians chosen acquire experience that soon makes them authorities in the matter. Justice gains by it in every sense.

560. No Statute says that a person can be forced to come and testify as an expert. Nor does any Statute say the reverse. The custom of the Courts is to request such persons to act as experts. It is usual to excuse them if they refuse. To act otherwise would seem tyrannical.

However, one may be allowed to enquire what the Court in need of experts would do, if all persons qualified refused. In face of such a situation, could not the expert be brought forcibly into the witness-box and be bound to answer the questions put to him? I believe so. For indeed, although he only comes to testify supported by the dicta or facts of science, he is as much bound to lend protection to society by the knowledge he possesses, as is the witness of facts, who may be forced to appear.

In New Brunswick and British Columbia the Statute condemns the physician who refuses, without legal excuse, to act as expert.

C. S. N. B. 1877, c. 33, s. 5—R. S. B. C. 1888, c. 24, s. 12.

The only thing that seems impossible is to force an expert to do preparatory work before giving his evidence, or to punish him if he refuses to do such work.

It is unlikely, however, that this difficulty will ever arise.

561. The services of a clerk or secretary may be required in certain cases; in extraordinary cases says Article 2692, Revised Statutes of Quebec, which is a sufficiently vague manner of indicating the occasions when the Coroner would be justified in employing a secretary.

As a fact, the word extraordinary may apply to cases of murder perpetrated under circumstances, or by means seldom met with. It may apply to inquests longer than usual; to inquests offering greater difficulties; to inquests held in certain places which make the writing of the evidence by the Coroner himself too difficult. Again, it may extend to the rapidity with which one must proceed, for one cause or another, of which the best would be the multiplicity of affairs in certain districts or at certain times. Finally, it may mean whatever the Coroner may wish it to mean. Briefly it is a term so vague as to be meaningless, and should be expunged from the Statute.

I do not know, but I should not be surprised, if this law had been entered in the Statute under circumstances such as these. It was when the Coroner's inquest, as is known, proceeded and replaced the preliminary inquest of the Justice of the Peace, and when the law exacted depositions subject to formalities, which our Criminal Code has since abolished, by creating a subsequent preliminary procedure before a magistrate or justice of the peace. The Legislature sought to recognize the Coroner's right in inquests when an accused was already arrested, and in the course of the discussion or otherwise, it was understood that it would be, sometimes, (in certain inquests without an accused arrested, for one reason or another), imposing too heavy a task upon the Coroner to oblige him to write himself all the evidence. Perplexed and unable to determine, the Legislature evaded the difficulty by using the vague terms we have just read.

One knows that testimony at the inquest should be noted; one knows that informations in the course of the investigations should also be noted. Then why not specify and say that in all cases of inquest with a jury the Coroner may employ the services of a clerk. The law saying so would not be

innovating, for all Coroners employ a clerk in these cases. Justice thereby gains in dignity and certainty.

562. We have said that the Coroner may make use of the services of an interpreter.

The law does not say so in our Canadian Statutes; but it is Common Law that the Courts may employ an interpreter in all cases when it is necessary. Otherwise, of what use would it be to call a witness speaking a foreign tongue? Justice could not be administered in certain cases if this power did not exist.

Jervis, at p. 35 of his work, says: "It sometimes happens that witnesses acquainted with the circumstances relative to the enquiry, are foreigners, and are unacquainted with the English language; such much be examined through the medium of an interpreter."

In the Province of Quebec, where the English and French languages are official, Coroners should speak the two languages and not be obliged to resort to the services of an interpreter for either of the two official languages.

563. The interpreter "must be sworn well and truly to interpret as well the oath as the questions which shall be put to the witnesses by the Court and jury, and the answers which the witnesses shall give", says Jervis, after the preceding citation.

Jervis might have contented himself with saying "Questions put by the Court".

By adding "and jury" he seems to allow it to be thought that on the one hand, they are the only ones who may suggest questions; and on the other hand, that the jury have the right to put any questions, even questions judged *irrelevant* by the Court. Which is inexact, as one may be convinced by the preceding Articles.

ARTICLE VIII.

OF THE ADJOURNMENT AND OF THE VISIT TO THE SPOT.

564.—ADJOURNMENTS AND VISITS TO THE SPOT.
565.—REASONS TO ADJOURN INQUEST.
566.—THE INQUEST SHOULD BE OPENED ONLY WHEN POSSIBLE TO OBTAIN EVIDENCE.
567.—THE CORONER DECIDES ON ADJOURNMENT.
568.—ADJOURNMENT IS MADE FOR A NEAR DAY.
569.—ADJOURNMENTS TO BE AS FEW AS POSSIBLE.
570.—ADJOURNMENT TO A NAMED PLACE.
571.—JURORS AND WITNESSES BOUND TO APPEAR.
572.—WHEN THE JURY SHOULD VIEW THE SPOT.
573.—WHO IS TO ACCOMPANY THE JURY IN SUCH VISIT.
574.—VISIT TO THE SPOT BY THE JURY NOT GENERALLY NECESSARY.

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564. The inquest may be adjourned, if justice requires it, to another day and place.

The jurors and necessary witnesses then receive orders to attend on the day and at the place stated.

If it is necessary, the Coroner may send or take the jurors to the spots where the events took place which caused, or are supposed to have caused, the death.

565. At p. 30 of Jervis' work we read: "If during the enquiry it appears that there are persons whose testimony is material, and who are not in attendance, the Coroner may, in the same way, issue his summons to compel their appearance. For this purpose, or where the jury suspect that undue influence has been used, the Coroner may adjourn the inquest to a future day, to the same or another place."

At p. 244 of Boys, edition of 1893, we find: "If, from all the witnesses not attending or from a post-mortem examination being necessary, or from other cause, it be thought advisable to adjourn, the Coroner may, in the exercise of a

sound discretion, adjourn to a future day, to the same or other place."

The first author cited gives authorities in support. The second does not do so; he considered, I suppose, that this right is a foregone conclusion. Evidently he is not wrong. If justice cannot be satisfied without additional proof, which it is impossible, in all probability, to obtain immediately, it becomes the Coroner's duty to adjourn, to strive to obtain it later on.

566. The adjournment can take place for this reason only, and for no other. Which is tantamount to saying that the Coroner would be to blame for beginning an inquest without having taken means to assure himself beforehand of all the evidence that it is possible to obtain forthwith.

567. Jervis seems to imply that the jury may adjourn without the Coroner's consent. Such a pretention would be legal heresy. He means to say that the jury may request adjournment, and that it is the Coroner's duty to acquiesce when the request appears to be made in good faith, through conscientious scrupules on the part of the jury, and when the evidence is not sufficiently complete to allow of the jury's declaring whether there has been homicide or not.

568. The adjournment should then be made to a date as near as possible, while taking into account the probable time required to obtain the proof that is sought.

569. The practice of repeated adjournments is prejudicial to the interests of the jury and of the public; it contributes to throw discredit upon the Coroner's functions. Experience shows that, apart from a few cases of very complex and lengthy evidence, two sittings of a few hours suffice to hear from fifteen to twenty witnesses, if one knows how to confine the evidence to the subject sought, to wit: homicide.

As it often happens that adjournment becomes necessary because the detectives have not had time to make all the investigations desired, and because they hope within a few days to have discovered the missing evidence; as, on the other

hand, evidence shows that these detectives are more active and zealous when they know that they must appear and, account publicly for their work, it is important to give them all the time they believe necessary to complete their investigations, and adjourn to a date set by themselves provided that the delay is not too long.

570. The place where the inquest is continued may be another than that where it was begun. Needless to say this new spot should be so chosen as not to be detrimental to the jurors, to the witnesses, to those interested; in a word, to justice. The choice, therefore, should be judicious and actuated by sound reasons.

571. At the moment of adjournment the jurors and witnesses required receive orders to return on the date, and on the place fixed, there to continue the inquest.

Jervis and Boys, following upon the last citations herein given, say that the jurors and witnesses present should give bail to appear. They even give, in appendix, a formula of recognizance which is summed up in an order, recorded in the proceedings, enjoining these persons to appear as requested, under penalty of Ten pounds, in Jervis, and of Forty dollars, in Boys.

It is, after all, but an ordinary order which should be on record as any other procedure; an order carrying obligation to obey under pain of contempt of Court.

572. It often happens that the death takes place in another place than that where the events occurred which caused it.

It also happens most often in these cases, that the testimony, especially when it is given by persons who are expert and well-informed, is sufficient to make it thoroughly understood how the occurrences came about, and then it becomes altogether useless to view the spot where the death took place. However, because of imperfect explanations, or because of the difficulty of bringing home technical explanations, which sometimes demand a certain degree of foreknowledge, completely lacking to the jury, it may be obligatory to show

them the spot, and to point out the working of the machinery or other objects mentioned in the evidence.

It is easily understood that such travelling can never be undertaken at pleasure or fancy, but only when having in view the interests of justice alone.

573. The Coroner may himself accompany the jurors in these cases, or he may have them accompanied by an expert who could better inform them. This person, if he is not already a witness, becomes so by the fact.

574. If I do not insist further on the importance of visiting the spot, it is because this visit by the jury is in reality no longer of the importance it was formerly, and on this subject I would refer the reader to what has been said in Article IV, Part III, and Article VI, Part II.

ARTICLE IX.

EXPOSITION OF THE FACTS.

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575. The Coroner sums up the evidence and explains to the jury the law applicable to the case.

This article is taken verbatim from Jervis' work, at the foot of p. 39.

This duty of the Coroner necessarily arises from the obligation incumbent upon him of directing the jury, and of helping them to pronounce themselves judiciously on the question, to wit: the presence or absence of homicide.

576. The Coroner's address to the jury has but one object, that of helping the latter to render a verdict or judgment in accordance with justice.

To the jury will belong the duty of weighing the facts in the balance of justice.

It is for the Coroner to place the scales of justice in their hands; that is to say, it is for him to lay in one scale of the balance the proven facts, and in the other the law which applies.

577. One understands that the exposition of the facts of a case may be made in various ways, all making for the same end. The circumstances of each case vary immeasurably, calling for different methods in form and details.

If one cannot, because of this boundless variety, give complete rules to direct the magistrate in his exposition of each case, one can, at least, recall briefly the general rules that should guide in all cases.

578. In order to classify the facts methodically, various means may be adopted.

Circumstances sometimes favor following the testimonies in the order in which they have been given; but this system generally entails prolixity, and is not so helpful towards grasping the whole of a proof.

The best method is to group all that relates, in the evidence, to a fact proven, and to show the legal bearing thereof, before passing on to another fact.

579. Here it is that the Coroner is called upon to use all his legal knowledge, and the soundness of his judgment, remembering only one thing, which is, that he seeks what is just, what is true, be the consequences what they may. He should show both sides of the question impartially, without fear or favor. All that may lead to a conclusion of homicide

should be laid before the jury with the law applying. All that may go to prove that there has not been homicide should also be shown, while giving the legal reasons thereof.

580. The Coroner should not aim at eloquence or effect, but should strive for such crystal clearness that the jury may clearly apprehend the whole and speedily reach a conclusion.

That which is clearly conceived is clearly stated, and the words to express it come readily. The Coroner who is well versed in the law relating to homicide, and who is gifted with a well-balanced mind, will enlighten and convince.

581. We believe it well here to summarize the law on homicide.

Our Criminal Code, at section 218, defines homicide as "the killing, directly, or indirectly, of another human being."

Section 219 explains that a child, from the moment that it comes living from its mother's womb, and draws breath, becomes a human being, even when its individual existence is not yet complete and distinct, that is to say, separate from that of its mother.

582. The words "directly or indirectly" put into section 218 of the Criminal Code with the evident object of throwing light on the subject, certainly miss their aim, and it would perhaps have been better to have omitted them.

What is "killing directly or indirectly"? Come now, all you learned makers or interpreters of the law, who, at first sight, consider such a question puerile; speak then, speak! give us an exact and absolutely true definition of the word "direct" in relation to homicide. — A direct homicide ! — An indirect homicide !—

Direct means "straight, not circuitous", and in a figurative sense, it means, "immediate, without intermediary."

A homicide that is straight, not circuitous? I cannot understand that.

An immediate homicide? That tells nothing.

Without intermediary. Here at least is a signification that tells something.

Then the direct homicide would be he who kills by his own hand; the indirect homicide would be he who makes use of another to cause death. Yes; this is the etymological sense of the words "directly and indirectly."

583. Since the words were inserted it must have been with a motive. The legislator felt the need of making it understood that there is homicide and homicide; that in certain cases it is discovered or apprehended at once, and that in other cases it must be reached by an indirect process.

584. The Statute has been at pains to indicate examples of what it calls indirect homicide.

By section 222 it declares that the first cause to which a death may be attributed, may not go back further than a year and a day, if one would make it a homicide. Which is to admit that homicide should be sought each time that a death occurs, that may be the result of an act of violence not dating back farther than a year and a day. The remoteness or distance between the cause and the effect, in the opinion of the legislator, made the homicide improperly called "indirect."

585. The sections 224, 225, 226 and 239, mention cases where the relation between the death and the killing is not always clear. Here are again so many cases of indirect homicide.

In the first of these sections is supposed the case of death from illness, but accelerated by a violent act.

In the other three the death is supposed to be due to an act which, with the necessary and fitting care, would not have brought about death.

Finally, section 61 of the Criminal Code does away with what the authors call accessory before the fact, and classes these accomplices in the category of principals or criminals in the first degree. They have, however, committed, crime through the intermedium of another.

586. It is homicide each time that from far or near, by means tending directly towards the end, or by indirect means, the death of another is caused.

587. But homicide is not always criminal.

Section 220 of the Criminal Code reads as follows: "Homicide is culpable when it consists in the killing of any person, either by an unlawful act, or by an omission, without lawful excuse, to perform or observe any legal duty, or by both combined, or by causing a person by threat or fear of violence, or by deception, to do an act which causes that person's death; or by wilfully frightening a child or sick person."

If one weighs well every word of this definition, one comes to the conclusion that it is homicide once the death is the result of an unlawful act, or of an unexcusable omission of an obligatory act; or when death takes place in consequence of this act, even in the least degree.

588. The unlawful act, cause of the death, may vary infinitely. It may be an illegal act in Common Law, that is to say, one of those acts which common sense naturally causes to be held as reprehensible; in other words, an act *wrong in itself.*

589. It may be an act against a statutory law only; that is to say, an act which becomes wrong because of circumstances of time and place.

To make the difference between the two better understood, an example is here in place.

To kill a fellow-being deliberately, is an illegal act of Common Law, as is stealing the property of another.

To throw a stone in a street is not wrong, in itself, but it is declared illegal, in certain places because of the danger it entails.

If the stone thrown, against the municipal regulations, kills, by mischance, and without there having been any wrongful intention, and when there was not even reason to believe that the act at the moment caused any danger, it is homicide.

One sees herefrom the vast field open for the Coroner to study.

He must put himself in touch with all the Statutes and

regulations in order to know which are lawful and which are unlawful acts.

590. Homicide by the omission of obligatory act is, perhaps, the source of more difficulties still.

In fact, our Criminal Code contains a series of sections which mention duties obligatory under pain of punishment.

They are sections 209 to 217 inclusive, and section 239.

In the first are found the obligations,

1. Of persons bound to provide the necessaries of life for others.

2. To surround with fitting precautions every necessary act that affords any danger.

3. To keep, and to take care of young children.

4. Not to cause harm to apprentices or servants.

Section 239 prescribes the obligation of a woman giving birth to a child, to resort to a reasonable assistance.

So that if the death of any persons happens through any of these causes, that is to say,

1. Through not having been provided the necessaries of life, which another person was obliged to provide him with;

2. For want of precautions with which another should have surrounded the necessary dangerous act;

3. For desertion or want of care of a young child on the part of whoever is bound to care for it;

4. By ill-treatment on the part of a master of an apprentice or a servant, and

5. On the part of a woman through not having called in adequate assistance in her confinement;

There would be in each of these cases criminal homicide.

591. The persons to whom others are bound to provide the necessaries of life are, young children, sick persons, prisoners and lunatics.

592. The fitting precautions to be taken in dangerous undertakings can be defined only in a general manner.

First, says our Criminal Code, section 212, "nobody should undertake such an act unless he has the capacity to carry it well." And, as the Statute does not say, but what summarizes all jurisprudence on this subject, "one should guard against danger by employing with that object all the means hitherto recognized as sufficient." The want of requisite knowledge, and lack of ordinary precautions constitute the crime.

The three other kinds are not in need of explanation.

593. There is criminal homicide again, according to the definition of our Code, when the death is the result of an act done under the influence of threats or through fear of violence, or through deception.

Thus a person who, by threats considered sufficiently grave, should force another to perform a dangerous act, would be guilty of homicide, if there actually existed serious and evident danger, and if, without threats, the person meeting death thereby, would not have performed such act. The fatal act must have been done under the influence of fear, and with the idea,—even at the risk of great danger,—of escaping probable violence.

594. He would also be guilty of homicide who should cause another to perform a dangerous act by deceiving him regarding the existence of the precautionary measures taken; if the act seemingly would not have been performed had the person who died through it known that these precautionary measures were wanting.

595. Finally, there may be homicide again, according to the same definition, through moral influence on the mind of a child, or sicq person. These are the two sole cases wherein fear may become an homicidal agent.

596. The definition, however, speaks of lawful excuses. It is homicide each time that a person causes the death of another in what manner soever; but the homicide is not criminal if the person who caused it has a lawful excuse to exonerate him.

597. Lawful excuses are declared such, some by Common Law,—Criminal Code, section 7; the others are enumerated in the Statute; Criminal Code section 8 and following.

These excuses mentioned by our Code are all of Common Law.

The Statute brings together under the term "excusable" that which authors generally divide under two names: "excusable and justifiable."

I shall mention briefly the principal excuses or justifiynig causes.

He commits an excusable homicide who performs a legal act and takes all reasonable precautions in performing it.

He is an excusable homicide who kills in the course of ordinary work without apparent negligence or imprudence.

He is an excusable homicide who kills in the course of games or sports which are permitted and harmless, and who does so without malice.

He is an excusable homicide who kills in defence of his own life, or in defence of the lives of his near relatives or under provocation deemed sufficient to put him in the situation of fearing for his life.

He is an excusable homicide who kills in defence of his property, in the case of burglary at night.

He is a justifiable homicide who kills in execution of a legal sentence of death.

He is a justifiable homicide who kills while executing a legal duty, when it is necessary to do so; for instance, to kill a prisoner who is about to escape for good, provided the officer of the law establish that the force used by him was only such as was necessary to prevent the escape, and that such was neither intended nor likely to cause death or grevious bodily harm. (See sections 36 and 37 Criminal Code).

He is a justifiable homicide who kills in the course of suppressing a riot, provided that it was evident that there no longer existed, in reason, other means of pacification. (See sections 40 and 41 Criminal Code).,

598. As we see, all the causes of excuse rest upon the principle that there is no homicide if it is clear that there was no wilful intent. To be excused from killing one, must show: 1o that there was no other way left him, in order to protect the rights of society (when a felon would otherwise escape; when peace could not be restored otherwise,) to protect his own life or the life of others than to use extreme violence; and 2o that this extreme violence was used in no way with the intent or wish to kill but only with the wish or intent to secure that needed protection.

The intention is proved by the facts.

That is why the want of ordinary precautions proves that there has been ill intention. So that when justification is alleged the Coroner must see, 1st if there was any way left other than the recourse to violence, in order to protect life without allowing society to loose its rights. Could the slayer have escaped? Could he have submitted himself to the unlawful demand of the assailants and have prevented by that way blood shed and retained facility to have the assailant punished by the Courts? If so the killing is manslaughter. Then supposing there was justification to use extreme violence the coroner has to see secondly, whether the circumstances show that the killing was only by mere chance or absolutely deliberate. In the first case, it would be excusable homicide, in the second it will be manslaughter.

599. It is ncessary to add that this too brief synopsis can but feebly guide the Coroner, and that it will often perplex him to solve the legal difficulties that may be met with, if he has but the foregoing notions for legal equipment.

It is perhaps more timely than ever to advise Coroners, if they are not already men of law, initiated in the principles of justice, to become so by study.

600. The Coroner shall remember that, — the immediate authors of the crime apart, — there still remains the duty of seeking the accomplices before the fact.

To summarize the law on this subject would be too lengthy an undertaking. It will be found in the Statutes and legal authorities.

ARTICLE X.

THE VERDICT.

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601. The verdict should declare: —

1. The names and surname of the person deceased; if unknown, it should give a description;

2. The time and place of the death, if they have been established;

3. Whether there has been homicide or not, and why such conclusion has been reached; setting forth the facts establishing how the death took place.

In the case of criminal homicide, it should, if the thing is established, declare the names and surnames and the occupation of the person or persons suspected of the crime.

The verdict should be signed by each of the jurors in the ordinary manner.

602. The name and surname of the person deceased should be mentioned, if they are known.

In fact, from the point of view of justice, — the only one with which we are concerned, — it is important to society and to the family of the deceased that it should be thoroughly known, later as well as to-day, how this death, which was a subject of doubt, really happened. It could never be shown by a verdict that did not indicate, or did not indicate clearly, the person upon whom the inquest was held.

603. All the names known should then be found in the verdict. It is not necessary to mention his occupation, says Hale, P. C. p. 182. It is not necessary to distinguish him from every other person bearing the same name; 3 B. & A. 579. However, it is clear that if these things were added to the names, justice would loose nothing by it. It was even decided, (2 C. & P. 230) that any correct but unnecessary addendum cannot invalidate a verdict.

If the names are unknown, a description of the deceased must be given. Boys, at p. 276 of his work of 1893, says that it suffices to indicate him as a person unknown. Jervis, in the same formula of the verdict at the end of his book, content himself with the words "a person to the jurors unknown."

It must be admitted that the thing seems strange. It is sufficiently unlikely that the Criminal Courts would condemn for murder on an accusation which contended itself with saying, "You killed, at such a place, on such a day, a person unknown."

Though to my knowledge the case has not presented itself, it is not for that reason impossible.

One altogether unknown might, to the knowledge of all, be the victim of an assassination.

It seems to me that the sex should be mentioned first.

Then should follow all descriptive details qualified to help identification later on; such as, the approximate age, height, weight, the color of the hair, of the eyes, of the beard, the particular shape of the nose, and any unusual marks that may have been discovered.

604. The verdict should mention the time and place of the death.

The English Statute, sub-section 3 of section 4, says that the verdict "must set forth when and where the deceased came to his death, so far as such particulars have been proved to them" (the jurors). It merely repeats the Statute of Edward I., which enacted that the jury declare when and where the death took place.

It is obvious, besides, that this is an essential element, requisite in every judicial proof.

If there has been a death, it should be demonstrated to the Court, by the indications of all circumstances which are of a nature to carry conviction.

If the proof does not allow of concluding positively as to time and place, it will as least permit of specifying circumstances going to cause strong presumption that the death took place about a particular date, and in or near a stated spot.

605. The declaration in the verdict that there has, or has not been homicide, is the principal, since it is with this object that justice has been called upon to pronounce itself.

The English Statute also says so in the same sub-section: "if he (the deceased) came by his death by murder or manslaughter."

606. But it does not seem useful to justice that the jury qualify the homicide as murder or manslaughter, especially as the law, by our Criminal Code, wills that a new inquest be held, by a Justice of the Peace, after verdict of the Coroner's jury, and that the Grand jury hold a third inquest before the trial of the accused before a Petit jury. Homicide will always be qualified soon enough for the interests of justice.

It suffices, then, to say, that the deceased has been killed, and that the act is criminal.

607. The manner of saying it matters little, provided it be clear and leaves no doubt that in the opinion of the jury

the death investigated is matter of criminal homicide. However, the use of the words "criminal homicide" in the verdict will always be preferable.

If the verdict concludes that it is excusable homicide, it should state it with quite as much clearness. The verdict declaring that the deceased was killed, without adding that the author of the homicide is excusable, will always be interpreted as a verdict of criminal homicide.

608. When the verdict concludes an accidental or natural death, the mere fact of declaring it excludes homicide. It is unnecessary to insert that there was no homicide.

If the death was accidental, the verdict should succinctly relate the facts which constitute the accident.

609. If the death is natural and the pathological cause known, it suffices to indicate it.

The old formula of death by the visitation of God is nothing other than natural death, of which the cause cannot be specified. It is antiquated and more *susceptive* of ridicule than the formal avowal of the verdict that says: "there has been no crime, though it is impossible for us to say what malady caused death."

No false shame. Physicians themselves unreservedly acknowledge that there are many deaths whose pathological cause remains unknown, even after the most minute investigations of science.

610. If the verdict finds a criminal homicide, the jury should, if they know it, say by whom the crime was committed, and to this end, indicate the person by his names and surname, his occupation and his residence; finally, they should indicate all the means to cause the person suspected to be well recognized, especially when not as yet under arrest.

The English Statute last cited declares that the verdict should name "the persons, if any, whom the jury find to have been guilty of such murder or manslaughter, or of being accessories before the fact to such murder."

The thing seems quite evident and to follow of itself. If there is ever an occasion when a person should be surely designated, it is indeed when it is a question of demanding arrest to answer the accusation of a crime carrying the penalty of death.

One easily sees all the harm a mistake as to names might cause, both to justice and to the person accused in the place of another.

611. Hence, too much care cannot be given to the designation of the person accused. When he is already arrested, it is customary, after having named him, to add that he is already under arrest.

612. The verdict should be signed by each of the jurors.

The Law department, in the Province of Quebec, sends to Coroners a blank formula for the inquest, at the foot of which only the signature of the foreman of the jury is requested.

Evidently this comes from the custom that, for the Grand jury, the foreman alone signs the bills.

For the Grand Jury this custom is general in England as in Canada.

For the Coroner's jury it has not been adopted anywhere except in our Province of Quebec, and even here it is not general.

The thing seems sufficient, and could be sanctioned by a law. Until so sanctioned it appears contrary to law.

613. Common Law has never made mention of the obligation of naming a foreman of the jury.

During the inquest it is the Coroner who presides. The utility of a foreman of the jury only appears at the time of the deliberations before the verdict; and as the thing is practiced for the petty jury in Criminal Courts, the jurors choose whom they wish; their choice is indifferent to the Court, this formean being only the spokesman for all; it even often happens that each and all of the jurors render their verdict collectively.

614. In England there is even a Statute, 25 Geo. II., c. 29, which prescribes that all the jurors of the Coroner should sign the verdict.

That is what caused Jervis to say, at p. 14 of the work so often cited: "The jurors should be able to write their names legibly upon the inquisition:"

Boys, at p. 284 of his work, last edition (1893) says: "A person who cannot write his name should not be sworn as a juror if it can be avoided."

The last part of the citation from Boys is sufficient to explain that this exaction of Jervis has never been law in Canada, since in the early days of English domination it would often have been impossible in certain rural districts to find twelve jurors capable of signing.

But these two citations at least prove clearly that the verdict should be attested by each of the jurors, and not by a *foreman.*

The ordinary manner of attesting one's agreement to an act is to affix one's signature or *mark.*

615. In the case where twelve juros cannot agree, in England the matter is referred to the Criminal Assizes; in Nova Scotia, the Coroner recommences the inquest. Usually it should suffice to make a report to the Attorney-General, who has the right, if he sees fit, to submit the matter to a Justice of the Peace, on a complaint made by some person, or to the Grand jury by an indictment.

ARTICLE XI.

THE RECORD OF THE INQUEST.

616. The record of the inquest should tell:—

1. Where the inquest is held;
2. When it is held;
3. Before whom;
4. The names and surnames of the jurors;
5. That the jurors have taken their oath or affirmed;
6. That the jurors have seen the corpse;
7. The names of the witnesses, with an exact resumé of their testimony;
8. The verdict;
9. The attestation;
10. All procedure tending to prove the facts; such, for instance, as the visit to the spot, the declaration of a suspected person, etc.

617. The designation of the spot where the inquest is held is essential to show the jurisdiction.

The Coroner cannot hold an inquest save in the territorial division or the district for which he is named.

This designation of the spot of the holding of the inquest says that this place is indeed within the judicial district of the Coroner. Usually this territorial jurisdiction called "venue" is indicated on the margin and at the heading in the following manner:

CANADA
Province of Quebec
District of

It might, however, be indicated in quite another manner and the procedure would still be unassailable.

The date of the holding of the inquest is also essential. Boys, (edition of 1893, p. 275) says that the thing is necessary "in order to show that the enquiry was recent, and was not held upon a Sunday, in which case it would be void."

The first reason does not seem as clear as crystal.

The second seems better.

It is obvious that it is of the essence of all judicial acts to be performed on a stated date, and that the lack of a date would be of a nature to give rise to doubts as to the holding of the inquest itself; doubts *of* its authenticity. And, as a fact, the absence of a date at first sight might lead to the belief (until proof to the contrary) either that there had been no such inquest, or that it was held on a non-juridical day, which makes it void.

The name of the Coroner, before whom the inquest is held, should also be stated, to allow of its being verified that the person had indeed the power to hold such inquest.

618. To be content with saying "before the undersigned Coroner", without giving the name appears sufficient; however, this manner is not used by the Courts. It is better to state at the head the names of the Coroner present: "Present: E. M., Coroner."

619. The jurors should be designated by their names and surnames, written correctly and in full, with their places of residence. As to the latter, however, it suffices to state that they are British subjects, and that they are residents of the district, which establishes their qualifications, or shorter, that they are qualified.

The custom is to write: "sworn as jurors, the persons whose names follow, all duly qualified."

620. It suffices to state that they have duly taken their oath or have affirmed.

621. The record must state before the hearing of the witnesses that the jury have seen the corpse. So that the inquest may show on the face of the record, that it has been duly held *super visum corporis*. Without that it would be void.

622. The method of taking depositions has already been treated of in Article IV., Part IV.

It is necessary to state here that the depositions of witnesses may be taken in two days.

They may be incorporated in the body of the record itself, or written on separate sheets which are attached to it later on.

The first means seem the better, being more in accordance with truth, since thereby the evidence is found in the order in which it has been given. This mode of procedure at the preliminary inquest is the one to be found in the formula of Oakes. It is not, however, that which is most generally followed.

623. The verdict and that which it should contain has formed the subject of the preceding Article.

624. The attestation consists, for the jurors, in the affixing of their signatures at the foot of the verdict, of which it was a question in the preceding Article; for the witnesses, in the signing of their depositions; and for the Coroner, in his signature and the seal of his Coroner's Court at the foot of a declaration to the effect that all has been taken regularly before him.

625. The Criminal Statute, before the Code, had never said that the witness should affix his signature at the foot of his evidence. The thing has been practised, however, since times remote.

The Statute of Phillip & Mary, which rules us now on this point, does not exact the signature of the witness. The résumé of the evidence, that is to say, the material parts alone, constitute the notes of a Court, rather than depositions properly speaking. The notes of a Court to be recognized as such need only the signature of the Coroner.

To-day, when the Code has done away with the part of the inquest before the Coroner, which was formerly the preliminary enquiry, and allowed the reading at the trial of the deposition of a witness who had disappeared,—to-day when it has been decided, more than once, that the depositions at the Coroner's inquest, even though taken and recognized as they would be at the preliminary enquiry before a Justice of the Peace, cannot be read during the trial, (R. vs Winegarner, 170. R. 208) the utility of the witness' signature is not apparent.

Nothing prevents its being affixed.

The only deposition to which it should be affixed is that of every suspected person, who gives it under the required conditions, as explained in a preceding Article.

626. The Coroner should attest the whole. He may do so after each deposition, in the usual manner of Justices of the Peace, or may content himself with attesting the whole, once only, at the foot of the inquest, after the signatures of the jurors, by declaring that the whole inquest, with everything of it on record, has been taken before him; the one word "witness" before his signature, may, strictly speaking, suffice; it attests that the Coroner has been witness of all that has been done at the inquest, from beginning to end.

627. The affixing of the jurors seal and that of the Coroner is not necessary; so it was judged in the same case of the Queen vs Winegarner. General usage, however, requires that the Coroner affix the seal of his Court, which seems more fitting when one knows that this Court is "a Court of Record."

ARTICLE XII.

COSTS.

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628. The costs of procedure at the Coroner's inquest are:

1. The fees and travelling expenses of the Coroner and of Medical Experts;

2. The fees of the Clerk, and of the expert Analyst, and of the Constable;

3. The costs of renting a place to hold the inquest in, for the keeping of the corpse, and for its transportation; for the notification of the Coroner, and, generally, all absolutely necessary and indispensable expenses, at a reasonable figure.

629. The Coroner's fees may be refused him in every case of an obviously useless inquest. Revised Statutes of Quebec, section 2692. Revised Statutes of Ontario, c. 84, S. C. C.

630. In this matter of fees, each country, each province of Canada, has made a special tariff, to which Coroners should refer. I shall content myself with pointing out here that these tariffs are found, for Canada, in the following Statutes:—

For Quebec, in the Revised Statutes, Articles 2691, 2692 and 2693.

For Ontario in the Revised Statutes of Ontario, chapter 83.

For Nova Scotia, in the Revised Statutes of Nova Scotia, 5th series 1884, c. 17, s. 4, and chapter 128 Schedule.

For New Brunswick in the Consolidated Statutes N. B. 1877, c. 119.

For Prince Edward's Island in the Statute 39 Vict., c. 17, s. 5.

For British Columbia, R. S. B. C., 1888, c. 24.

For Manitoba, R. S. M., c. 32, s. 6.

For Newfoundland, 52 Vict., c. 25.

631. Coroners pay immediately, or give an acknowledgement, or secure a receipt for the amount due. The receipt is the voucher that is to be sent later to the authorities obliged to pay the costs.

632. The authorities who pay are, in the Province of Quebec and Prince Edward's Island, the Provincial Government; in the other Provinces, the civic authorities of the cities, counties or municipalities in which the inquest is held. It is thus in England and in the United States.

633. In certain Provinces, as Ontario, Nova Scotia, New Brunswick, Prince Edward's Island, a fee or tax is paid to the sworn jurors. They are paid in England. In other countries they are not paid anything.

634. Nowhere is a tax paid to witnesses except in Ontario, Prince Edward's Island and Newfoundland.

635. The experts above mentioned are paid for their work and their written report, and not as witnesses. Physicians may be called, without remuneration, as ordinary witnesses, and may be questioned upon facts within their knowledge.

636. Travelling expenses are almost everywhere computed to Coroners by the number of miles covered; and generally they are paid ten cents a mile.

In Quebec the Government claims that these travelling expenses cover and include all costs on the way, as those of board or hostelry; however, it is usual to allow more than the mileage if the Coroner shows that his travelling expenses exceed that to which the tariff entitles him.

637. In the Province of Ontario it is exacted that each item charged be presented with a sworn account that the Coroner approves, since the whole is submitted to the Crown Attorney of the district, before exacting payment of the municipality.

638. The accounts in Ontario are generally payable every three months. In Quebec the rule is to pay every six months. The Coroner alone is bound, in Quebec, to swear to his whole account, which he sends direct to the Attorney-General for approval. There is nothing to prevent the accounts of others being sworn to, I believe, if the Coroner sees fit.

639. The accounts should be made for each inquest separately, and should contain all the vouchers or receipts of payments made, or due. The accounts are everywhere made and sent in duplicate.

Each inquest should be designated by a number, and by the date on which it was held.

With the account should be sent a list of all inquests contained in the account, with number, date, name of the deceased, the place where the inquest was held, the verdict, abridged; whether "murder", "unintentional or excusable homicide", "accidental death", "natural death", etc., and a receipt from the Clerk of the Peace of the district, showing that he has taken possession of the record of the said inquests.

640. The vouchers may be made out as follows:—

Dates Nos. Voucher No. 1.
2 2 The Coroner's Court. Dr.
To. Dr.....
January 19.....
In re M. V. Examination $5.00
Received payment.
January 2, 19..... (Signature).

or

Voucher No. 2
Dates Nos. The Coroner's Court. Dr.
2 2 To J. B.
January 19.....
In re M. V.
Removal of corpse..... $2.00
Keeping of corpse..... 1.00
Inquest room..... ..... 1.00 $4.00

Received payment.
(Signature).

or

Voucher No. 3.
Dates Nos. The Coroner's Court. Dr.
2 2 To A. B., Constable.
January 19.....
In re M. V.
Jury 1.00, 5 witnesses 1.50, assistance, 1.00 .... $3.50
Received payment.
(Signature).

The number of each voucher should be different from the other vouchers, and should be indicated after each item in the general account.

641. The general account may be made out in the following manner:—

Dates	Nos.	The Government of the Province of Quebec. Dr.		
January		To costs of the Coroner's inquest for the Dis-		
2	2	trict of.....		
		Re J. W.	Vouchers	
		Dr. D. G.....	1	$5.00
		A. B.	2	3.50
		N. O. Clerk	3	2.00
		J. B.	4	4.00
		Coroner Fees		6.00
		10 miles from (such place to such another)		1.00
3	3	Re V. M.		
		Dr. D. G.		

And so forth for the other inquests.

642. The costs for the other expenses specially stated by the Statute of Quebec, are the expenses most usually incurred.

Of course these expenses should not be incurred when they are not necessary.

643. There are ordinary enough expenses, — for the removal of the corpse, for instance, — of which there is no mention in the Statute. These expenses, as all others which are absolutely necessary, when urgent, will always be paid, even though unusual, if the Coroner can show, first, that they were absolutely necessary for the purposes of justice, and secondly, that it was impossible for him to obtain the authorization of the proper authority in good time. Which implies the opposite rule, that each time there is a question of unusual expense, when delay will not be detrimental to

the purposes of justice, it is always better for the Coroner to obtain the authorization of the Attorney-General, or of his accredited representative.

In the Province of Quebec the Crown Attorneys do not hold authority on this point, which appears to be conceded to their colleagues in the other Provinces.

644. Boys, at p. 289 of his work, edition of 1893, says: "The Court in England (in a case of R. vs Gloucestershire Justices) refused to compel the allowance of an item in a Coroner's account, because the Justices were of opinion that there were no grounds for holding the inquisition. But it is submitted that if the account is presented under the law in Ontario, with the necessary declaration of the Coroner, and the certificate of the Crown Attorney, the auditors would not be justified in refusing to audit and pass the regular charges, nor could the City or County treasurer refuse to pay the account so audited."

Since the Judgment in question, English legislators have recognized, — section 27 of Coroner's Act, — that the expenses which the Coroner swears he has incurred should be paid, even though the inquest has been held without cause. Page 98 of Jervis' work: "Actual disbursements which have been made by the Coroner after the termination of the inquest (such as the fees of the medical experts, the payment of the jurors, for the hire of rooms, and such like) stand on a different footing, and it has been held that they must be repaid to him, whether it was proper that such an inquest should be held or not, and that the local authority has no power to disallow them."

This has been decided since in England in a case against the Justices of Carmarthenshire. This Judgment is found in the Queen's Bench Reports, V. 10, p. 786.

645. And Jervis' annotation adds: "The principle of this decision applies also to the fee .... to which borough coroners are entitled."

Section 2693 of the Revised Statutes of Quebec, however, gives the Attorney-General the right to refuse payment of

the Coroner's fees, in all inquests adjudged useless. The expenses will always be paid.

646. This is an occasion to direct attention to the fact that, in general, people who render some service at the Coroner's inquest, often believe themselves justified in demanding exorbitant sums. They have even gone so far as to demand of me sixty dollars for having transported a corpse of a drowned person three miles, and for having housed it half a day. The terms should never exceed what would be paid for the same length of time employed in ordinary work, with a moderate addition in cases of exceptional difficulty.

647. It often happens that people find corpses and believe because of that they have a right to a reward. Such is not the case.

Justice should not pay except in cases where it is really interested, that is to say: in cases of strong suspicion of crime, or, better still, when it has itself ordered the undertakings of tasks. In Montreal there is never payment in the case of the discovery of corpses, unless there has been an order from the Coroner to transport it, or to take charge of it somewhere. Everything goes smoothly. The persons who find the corpse are, besides, generally rewarded by the relatives or friends of the deceased.

ARTICLE XIII.

OF INQUESTS ORDERED BY SUPERIOR AUTHORITY.

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648. The Superior Court, or the Court of King's Bench may compel a Coroner to enquire into a death.

The Coroner cannot proceed to hold a new inquest except on the order of a Court; and his inquest should be super visum corporis, unless the Court order otherwise.

The holding of inquests on persons put to death in execution of a sentence is made according to rules stated in section 944 of the Criminal Code.

649. Section 6 of the English Coroner's Act declares that the Hight Court may order an inquest to be held by a Coroner

who neglects or refuses to hold it, and adds that it may even condemn him to pay the costs which the procedure to obtain such order has occasioned.

The Judge, in a case against Hull, Coroner, reported in 9 Q. B. D., p. 689, declared that the Coroner had not a right to refuse to enquire in the matter of a death whose cause is unknown.

In the Code of Civil Procedure of Quebec *we find that a* Writ of *Mandamus* may be issued by the Superior Court, or by a Judge of such Court, when a public functionary or a Court of inferior jurisdiction omits, neglects or refuses to perform a prescribed duty.

"This Writ of Mandamus" ,says Doutre, at p. 411 of his second volume of the Code of Procedure, "is employed only when there is no other remedy to put an end to an abuse. It has the result of obliging the public officer to give reasons why he does not do what seems to be his duty."

So that, in England, if a Coroner does not hold an inquest on a death whose cause is violence, or is unknown, he may be compelled to do so by the "High Court".

In Quebec, if the Coroner omits to enquire into such a death, he may be compelled by the Superior Court, and in the other Provinces by a Court of superior jurisdiction.

650. But, as has been seen from the citation from Doutre, this Writ is only with the object of requesting the Coroner to come and give the reasons why he has not enquired into a death. Such a Writ could not be followed by an order of the Court enjoining the Coroner to proceed with the inquest when he has shown the Court that he enquired as to the facts, and that after investigation, he exercised the discretionary power given him by the Statute of Quebec and Ontario, of not assembling a jury. So it was judged in a case ex parte Lawlor, cited at p. 274, Vol. 2, Decisions of Courts.

As a fact, the Superior Court cannot condemn the Coroner for an omission of duty when he has performed his duty. Neither can it force him to summon a jury when the law obliges him to swear that he has good reason to believe that there has been homicide, when in conscience he can swear nothing of the kind.

651. If, however, it is plain an injustice has been or will be done, what is to be done in such a case?

There remains the *certiorari,* which is the sole means of repairing an injustice in this case, as in certain cases of inquests.

652. I say "certain cases".

Though there be directly no means to appeal from a verdict of the Coroner's jury, the new procedure of the Criminal Code of 1892 introduced, in practice, a new Court, that of the Justice of the Peace, upon which it is incumbent to sanction or annul the judgment of the jury, finding grounds for arrest.

But there is the possibility, in practice, of verdicts of which one might complain, and of which one might demand the annulment, such as those who pronounce in favor of a suicide, or who declare non-homicidal a death which is really homicide.

It is useless here to cite old decisions to establish that the verdicts of Coroners may be annuled or amended as formerly, when the trial was made upon the Coroner's verdict, since, at present, — as we have formerly shown, — nobody can have his trial on such a verdict any longer.

It was decided, R. vs Wakefield, 1 Str. 69, that a verdict of suicide might be annuled for good cause. For instance, if it is established that the Coroner obtained this verdict by giving illegal appreciation of a nature to mislead the jury; if it is plain that the verdict, for one cause or another, is unjust; or if the procedure has not been legally conducted.

653. In a case in the matter of the death of Mr. Bravo, the jury found "suicide". A *certiorari* brought the affair back before the Court of Queen's Bench, and an order was given to the Coroner to open a fresh inquest, Judge Cockburn declaring: "It is only when the Court sees that there is a miscarriage, by evidence, which might have thrown light upon the subject, having been excluded, that they (the Court) will interfere." New facts had arisen since the first inquest leading to belief in homicide.

654. It happens often enough that the jurors seek to enter in their verdict considerations of no public interest, and which are, however, of a nature to do useless injury to other persons. The jury finds that there has been no crime, but that there are grounds for blaming certain stated persons. The Coroner should be at pains to make the jury understand that in so acting they exceed their duties; they are in nowise called upon to give rise to actions of damages, but simply to declare, without comment, how the death took place, if the act that caused it does not constitute a crime.

However, it was decided in a case against Farley, cited in Vol. 24, Q. B., p. 384, that such a verdict could not be annuled.

655. There is no ground for giving here the procedure to be followed to obtain the *warrant of mandamus* and of *certiorari*. Lawyers know it, and it is to be found in legal works treating on certiorari.

As to the Coroner, he is bound to appear in obedience to the order of the Court, and to produce his record and means qualified to show why order should not be given to hold an inquest, or to annul a verdict rendered.

656. If the order is given to hold an inquest in the case where the Coroner does not, in conscience, believe himself able to make the sworn declaration required by the law, I believe that he might content himself with declaring that he holds such inquest by the order of the Superior Court.

If a new inquest is ordered, he should mention the fact in a declaration made especially to that end.

657. The whole procedure to be followed is the same as in ordinary inquests. He may proceed without letting the jury view the corpse, only if the Superior Court so orders.

658. Section 944 of the Criminal Code reads as follows: "A coroner of a district, county, or place to which the prison belongs, wherein judgment of death is executed on any offender, shall within twenty-four hours after the execution, hold an inquest on the body of the offender; and the jury at the

inquest shall enquire into and ascertain the identity of the body, and whetherjudgment of death was duly executed on the offender; and the inquisition shall be in duplicate, and one of the originals shall be delivered to the Sheriff.

"No officer of the prison, and no prisoner confined therein shall, in any case, be a juror at the inquest."

By this special Statute it is evident that the sworn declaration required by the Statute of Quebec before ordering inquests has no *raison d'être,* seeing that the Coroner cannot swear that he has reason to believe in a homicide. There should be substituted a special declaration to the effect that the inquest is held because of information that the deceased was put to death in execution of a judgment of a Court.

659. The Coroner's jurisdiction is as in ordinary cases. The inquest is held as in ordinary cases. The Statute is at pains to say what should be proved; which is, that the person who has been put to death is indeed the same person designated in the judgment, and that the sentence was executed at the time and place, and in the manner prescribed by the law. It would be a crime to behead a person condemned to be hanged. It would be a crime to execute a person an hour before the prescribed time; in fact, until the last moment fixed for the execution there is still hope and possibility of pardon or commutation of sentence.

660. The Statute interdicts the possibility of certain persons serving as jurors. Which does not mean that persons excluded in ordinary cases, such as relatives, persons interested or prejudiced, should not be set aside.

661. The Statute exacts that the inquest be written in duplicate. Plainly the verdict should be signed twice. The depositions should also be in duplicate. I consider that the Federal Government should pay for the extra work which this law entails.

PART V

AFTER INQUEST.

ARTICLE I.

FINAL DISPOSAL OF CORPSES AFTER INQUEST.

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662. The inspector of anatomy has a right to the corpse of all persons found dead, publicly exposed. Corpses not publicly exposed are handed over by the Coroner to persons desiring to bury them, or are buried at the cost of the municipalities in which they were found.

Corpses exhumed are buried at the expense of the administrations which pay the costs of criminal justice.

The Coroner prepares and delivers to the relatives, to the inspector of anatomy, or to other authorities created by Statute for that purpose, a burial permit, or death certificate made out, so far as possible, according to the laws of the statistics of the place.

The money and effects found upon the corpse are handed over to the known heirs; or if none present themselves the

whole or part may be used to defray all or a part of the expenses incurred on account of the deceased, such as paying his actual debts.

The State falls heir to what is neither claimed nor used as above.

663. Article 3960 of the Revised Statutes of Quebec says: "Unless it be claimed for burial within twenty-four hours after the death, by persons solemnly affirming before the Inspector of Anatomy, or before the sub-Inspector, at the discretion of these officers, that they are related to the deceased within the degree of second cousin inclusively, the corpse of any person found dead and publicly exposed should be delivered by agents of the Inspector or sub-Inspector of Anatomy to the universities or schools of Medicine of this Province."

At Article 3691 we read: "Every Coroner, whether he holds an inquest or not on a corpse found publicly exposed, should immediately notify the Inspector or sub-Inspector."

Article 3962 declares that "the notice shall give the name and surname, if known; the sex, age, civil status, religion, nationality, occupation; the date of the death, and the disease or cause of the death of the deceased."

These Articles are quite clear. It suffices to remark that all corpses found publicly exposed should be reported to the Inspector of Anatomy, or to the sub-Inspector, and that it is the latter who disposes thereof by handing them over to relatives or schools of medicine.

664. The requisite notification should contain, as is seen by this law, all indications necessary to permit of making an entry in the public registers of death.

The law has omitted to mention the place of death; it is well to supply it.

Of course all these legal requirements are to be met only so far as it is possible to do so. It often happens that it is impossible to give the names, the age, the standing, the religion, the occupation and the date of the death.

Cases will even arise where it would be impossible to give even the probable cause of the death.

It would suffice, then, to give it in a general manner, such as: "Natural death, or death by a criminal act."

Even the sex, sometimes, can no longer be ascertained. It then becomes the Coroner's duty to substitute all these lacking details by all others which he considers to be of a nature to aid identification later. These last mentioned details should in all cases be carefully preserved in the record of the case, or in the register of the Coroner's Court.

665. Corpses not found publicly exposed, and which are in the Coroner's possession, even though unclaimed by relatives, cannot be handed over to the Inspector of Anatomy. The law will not justify the handing over for dissection of such corpses, and the Coroner delivering them for dissection would expose himself, in the case of their being claimed later by relatives, to an action of damages.

666. Such corpses should be buried, and it is the Coroner's duty to see that they are.

If he hands them over to friends, he should make sure that the latter bury them.

667. Article 2691 of the Revised Statutes of Quebec declares that "Every corpse found within the limits of each city, town, village, constituting a corporation, parish or township (unless given over for dissection as provided in Articles 3960 and 3961) should be buried at the cost of the corporation of such cities, towns, villages, parishes and townships."

The law makes an exception of corpses found on the beach of the St. Lawrence, (or found floating in the St. Lawrence) opposite the parish of Beaumont and of St. Joseph de Levis, which are buried by the Coroner at the expense of the Province. At all other parts of the river the municipality containing the beach where the corpse drifts ashore shall pay the costs of burial.

668. When corpses already buried are exhumed for the purpose of an inquest being held, when the burial has taken

place without the holding of an inquest which should have been held, the re-burial is made at the expense of the Government.

Here, it is plain that the State alone should incur these costs, since those interested have already incurred expense of the first burial, and it would be unfair to make them pay twice when they have acted in good faith.

669. Boys, at p. 287 of the 1893 edition of his work, says: "When a body has been exhumed under a Coroner's warrant, there is a sum of $2.00 allowed for re-burying the body, and it may be assumed that a like sum will be allowed for all interments ordered by the Coroner."

This sum of two dollars of which Boys speaks, seems absurd. It is impossible, at least in Montreal, to have a corpse buried for less than four dollars. The Coroner, like anybody else, should pay the usual costs, and it cannot be supposed that he is obliged to pay out of his own pocket, for what he is obliged, by law, to do.

670. The death certificates exacted by the different Provinces and municipalities vary infinitely as to details. But it is everywhere exacted that they contain, so far as possible, the names and surname of the deceased, the date and place of the death, the age, standing, sex, religion, nationality and the cause of the death. In Montreal there is exacted, moreover, the last place of residence, the birth-place, the names of the parents, as also the birthplace of the latter.

671. If there are known unquestionable heirs, the money and effects found upon corpses may be handed over to such heirs, or to some one of them duly authorized to receive for all. The Coroner will protect himself against all subsequent recourse in law by taking care to secure a receipt in sound and valid form.

In case of no recognized heir presenting himself to claim such money and effects, the lawful expenses, such as transfer, keeping, and burial of the body, may be taken out of deceased's monies, and the remainder should be given over to the State.

In the Province of Quebec, if the sum exceeds one hundred dollars, it should be deposited in a bank in the name of the treasurer of the Province, by virtue of Articles of the Revised Statutes, sections 1192 and 1193, as a judicial deposit ; or, again, (and in the case of the amount being under one hundred dollars) in the name of the Minister of Crown Lands, as escheat, by virtue of section 1369 of the same Statutes.

The laws does not provide for the case of there being a large quantity of moveable effects, of evident value; it is obvious that the State (the Minister of the Crown in Quebec) should be informed of the fact immediately. Nothing, however, obliges the Coroner to take possession of these effects.

As to wearing apparel found upon corpses, the best course is to see that they are used for purposes of burial; if not, to make a gift of them to charitable institutions, or to the poor; always providing that their value be nominal; as the Coroner would never be justified in giving away objects of value. Needless to say, the Coroner has never the right to appropriate that which belongs to a person deceased.

ARTICLE II.

OF PERSONS ACCUSED.

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672. In case of the verdict declaring that there has been homicide, and that some stated person or persons is or are accused, the Coroner issues a warrant of arrest and has the accused person or persons arrested and brought before a Justice of the Peace of the locality, to whom he forwards, at the same time, the record of his inquest.

In cases in which the Criminal Law permits Justices of the Peace to admit to bail persons accused of homicide, the Coroner may admit them to bail to appear before a Justice of the Peace.

In other cases, when it is impossible to send them immediately before a Justice of the Peace, the Coroner may send them to prison, with orders to the jailor to take them before a Justice of the Peace as soon as possible.

673. It is Article 568 of the Criminal Code which prescribes this duty to the Coroner. That article points out to him what he should do. This would appear to nullify the claim upheld in a previous Article, wherein it is stated that the Federal Parliament does not legislate upon the Coroner's duties. Such is in nowise the case however.

This Article of the Code happens to be one of the Articles of that part of the Code which treats of means of compelling the presence of the accused before Justices of the Peace.

674. The ordinary means of contriving it are given in Article 558, it is the information under oath of someone complaining of a crime. The Code willed, and with reason, that all accused persons should have the privilege, immediately, at the preliminary enquiry, of setting aside a prima facie case and of thus showing their innocence, by the cross-examination of the Crown witnesses, by the hearing of witnesses favorable to them.

And this privilege the Code has extended, with greater reason, to persons accused of homicide. With that end in view it modified existing Criminal Law by prescribing a preliminary enquiry before a Justice of the Peace, after the Coroner's inquest; at the latter of which, very often, the accused has not assisted, and has had, in any case, very few facilities to employ his means of defence. This was entirely within the Federal jurisdiction.

Then the legislator asked himself how one was to compel the presence of the person inculpated, denounced by a verdict of the jury. It might happen that nobody would be willing to take upon themselves the individual responsibility, even after verdict, to make the complaint required by section 558 ; and yet there was a far more impressive denunciation, that is, the collective denunciation of twelve sworn jurors. This denunciation was an official judicial act; a verdict — proof in itself — on the very face of it.

Hence nothing is more rational than for the legislator to say: the accused shall be brought before the Justice of the Peace, in virtue of the denunciation contained in the verdict; and it was then necessary to give the means of

bringing the accused before the Justice of the Peace. Which is what the law did.

675. Indeed, it is true that it *obliges* the Coroner to transmit to the Justice of the Peace the record of his inquest..

It had to be so. How could the arrest and the preliminary enquiry proceed, if the verdict containing the denunciation were kept by the Coroner?

It is the verdict which justifies the arrest and the preliminary enquiry; it is the verdict which causes the initiation of criminal proceedings; hence it is, in every sense, necessary that it should head the preliminary enquiry, as the complaint is the first page of it. And there was no other means than to order the deposit of this judicial denunciation.

In doing so the Criminal Code has prescribed nothing in the matter of procedure at the Coroner's inquest; it has commanded a recognized officer of justice, and whose powers it has admitted, as Coroner and Conservator of the Peace, to take the steps in the interests of justice.

676. Section 568 reads as follows: "Every Coroner, upon any inquisition taken before him whereby any person is charged with manslaughter or murder, shall (if the person or persons, or either of them affected by such a verdict or finding be not already charged with the said offence before a magistrate or justice) by warrant under his hand, direct that such person be taken into custody and be conveyed with all convenient speed before a magistrate or justice; or such Coroner may direct such person to enter into a recognizance before him, with or without a surety or sureties, to appear before a magistrate or justice. In either case it shall be the duty of the Coroner to transmit to such magistrate or justice the depositions taken before him in the matter. Upon any such person being brought or appearing before any such magistrate or justice, he shall proceed in all respects as though such person had been brought or had appeared before him upon a warrant or summons."

The Section orders the Coroner to perform an act, and

omission on his part would be disobedience, punishable, by virtue of Common Law, by the Criminal Courts, as any other legal omission on his part would be; which will be shown later.

677. The Federal Parliament abstained from legislating upon the procedure at Coroner's inquests, because the whole procedure thereat is but of judicial police, and ninety-nine times out of a hundred, criminal justice is in nowise concerned in it; but once a crime is denounced, it comes within the scope of its duty to prescribe who shall take the first steps, and how they should be taken, in order to set in motion the machinery of criminal procedure.

It has adjudged that the Coroner in the present instance should take these first steps, and has ordered and prescribed his doing so, as elsewhere it orders and prespribes that citizens, officers of justice, Courts and others fulfil certain duties. It is its right.

678. The warrant should be addressed to a constable named, or to each and every constable of the district. It should state that, after inquest held before him in the matter of the death of a person named, a verdict has been rendered by the sworn jurors, accusing of homicide or of murder, the person or persons whose names, surnames, abode, and occupation, given in the verdict, should be textually repeated.

An order is then given to the said constable to apprehend the said person or persons thus accused, and to bring them before a magistrate or Justice of the Peace, designated by name, or in a general way, by the name of the locality where he resides.

Or, again, when impossible, to take the accused party immediately before a Justice of the Jeace, the order may bid the constable take him to a common jail. But in this case, there must be added an order to the jailor to receive the accused, and to take him, as soon as possible, before a Justice of the Peace.

The order may read as follows:—

CANADA
Province of Quebec
District of

THE CORONER'S COURT.

To each and every constable of the District of.....

Whereas on the..... day of..... nineteen hundred and..... an inquest was held before me, the undersigned Coroner for the said District of..... on the body of.....

And whereas the sworn jury, after having heard the evidence, have found that the death of the said..... was due to the criminal act of..... of the ..... of ....., Laborer,

These are therefore to enjoin you to apprehend the said ..... and to take him to the common jail of the said district of..... that he be dealt with later according to law.

And you, the guardian of the said common jail of the said district of..... I enjoin to receive and keep the said..... and to take him as soon as possible before the magistrate or magistrates, or Justice of the Peace of the ..... of..... that he be dealt with according to law.

Given at..... under my hand and the Seal of our Court this..... day of ..... nineteen hundred and.....

(Signature).

The Criminal Code does not exact that the Seal of the Court be affixed to the warrant. Its presence can do no harm, though it is not obligatory.

679. The record of the inquest should be transmitted to the magistrate before whom the accused is brought.

The Code says: "It shall be the duty of the Coroner to transmit to such magistrate or justice the depositions taken before him in the matter."

The Coroner may wait till he is officially informed of the name of the magistrate before whom the accused is brought, and then transmit such depositions. Or, what is much more expeditious, as well as surer, he may put the whole, under seal, into the hands of the constable charged with the warrant of arrest, with instructions to deliver them, directly, or through the jailor, to the magistrate who is to hold the preliminary enquiry. He should be careful in this matter. It is a question of Court documents, and he is obliged to produce them at the preliminary enquiry. Any carelessness on his part would constitute a disobedience to law.

680. We read in the same section of the Criminal Code: "Or such Coroner may direct such person to enter into a recognizance before him, with or without a surety or sureties, to appear before a magistrate or justice."

We read at the end of Article IX of the Third Part of this work: "The Coroner has not the right to admit to bail a suspected person. He has this power only after verdict, in virtue of section 568 of the Criminal Code."

"Section 603 of the Criminal Code enacts that bail in the case of homicides punishable by death, be taken only by the Superior Courts."

To read Section 568 alone, one would be inclined to believe that the law gives the Coroner the power to admit to bail, after verdict of the Coroner's jury, any person who is accused of murder or of homicide. However, we have said: " in cases where the law permits it."

Section 231 of the Criminal Code punishes murder with the penalty of death.

Section 236 punishes manslaughter with imprisonment for life.

Section 953 of the Criminal Code gives the Court the power to condemn a person convicted of manslaughter to an imprisonment for a shorter period.

There are, then, various degrees of guilt recognized by law. These various degrees of guilt, which are manifest after the

preliminary enquiry, may be equally so after the Coroner's inquest.

It is a discretionary power which the law grants to the Coroner.

It is also a discretionary power which the Code grants to the Justice of the Peace to admit an accused to bail while the inquest is proceeding. But this power should only be exercised while bearing in mind rules established further on by Sections 601, 602 and 603 of the Criminal Code.

Section 603 withdraws from the Justice of the Peace, and from the Coroner, the right to admit to bail any person who must necessarily stand his trial for murder.

Section 601 permits the Justice of the Peace, and therefore the Coroner, to admit to bail in cases where the presumption of guilt is not strong.

Hence, the rules would be that, in all cases where there is presumption of final conviction against the accused, the Coroner should not have the right to admit him to bail; a power which he possesses in the opposite case.

This power should be used with extreme caution, and I would go so far as to say that it should never be exercised save when there is conviction that the matter will end in an acquittal; that it is impossible for the accused to run away, or that he shows an unmistakable desire to see the case through.

The same power is granted to the Coroner in England by section 5, sub-section 2 of the Coroner's Act, in a case only in which the verdict of the Coroner's jury is manslaughter, and never in a case in which the verdict of the Coroner's jury is "murder".

681. Bail, in the cases where it is taken, may be in the following form:—

CANADA
Province of Quebec
District of

THE CORONER'S COURT.

Be it remembered that on the..... day of..... one thousand nine hundred and....., N. M. of the..... of....., a laborer, charged by the verdict of duly sworn jurors rendered after inquest held before me, ..., Coroner for the said district, on the body of....., deceased, with the crime of manslaughter for killing the said..... deceased, and C. O. of the..... of..... a grocer, and D. F. of the..... of..... a merchant, personally came before me, and severally acknowledged themselves to owe to Our Sovereign Lord the King, his heirs and successors, the several sums following, that is to say: the said N. M. (accused) the sum of....., and the said C. O. and D. F. the sum of..... each, of good and lawful current money of Canada, to be made and levied of their several goods and chattels, lands and tenements respectively, to the use of Our Lord the King, his heirs and successors, if he, the said N. M. (accused) fails in the condition hereinunder written.

Taken and acknowledged the day and year first above mentioned, at..... before me.

"J. S."

"Coroner for the District of.....

"CONDITION."

The condition of the above written recognizance is such that, whereas the within bounden accused was this day (or on the.....) charged by the finding of sworn jurors at an inquest held before me with unlawfully killing ..... on whose body the said inquest was then held;

And whereas the said N. M. (accused) for the reason of said verdict is bound to appear on the..... day of..... at..... of the clock in the..... noon, before..... a Justice of the Peace, at the..... of..... to be dealt with by the said Justice of the Peace according to law.

If, therefore, the saidN. M. (accused) appears before the said Justice of the Peace, or any other Justice of the Peace for the said District of..... at the place and at the time mentioned above, to answer further to the said charge, and to be further dealt with according to law, the said recognizance to be void, otherwise to stand in full force and virtue.

(Signed),"J. S."

"Coroner for the District of.....

ARTICLE III.

THE REGISTER.

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682. **The Coroner should keep a register in which is entered, as soon as they come and in the order in which they present themselves, the cases into which he has enquired.**

Each entry should bear the number of the case, the names, or a description of the person deceased, the date on which the inquest or investigation was held, and the verdict in brief.

683. At Article VII of Part II, we read: "The law has decreed that the Coroner presiding at an inquest holds a Court of Record."

All Courts of Record hold Minutes of their proceedings.

The name "Court of Record" alone suffices to prove that to keep records means to keep minutes of proceedings.

684. Minutes in writing of the proceedings are as much as possible the recording of everything that has been done in a case.

Each case is indicated in the minutes by a title. Generally this is composed, as essential elements, of a number

belonging to the case, of the names of the parties in the case; that is to say: in the Coroner's inquests; the names of the deceased and the date on which the case was finished.

This is what is found on the back of the record of the case.

Needless to say, the record contains in detail the minutes of the whole procedure.

We have seen that these minutes or records are, at set times, deposited in the vaults of the Court House, under the guardianship of the Clerk of the Peace.

These records are generally kept by the latter, apart, and on file, beginning with number 1, to be followed by the numbers 2, 3, etc., consecutively. So that it is easy to find in the file of records that which one may need to consult, at a given moment.

685. But here a difficulty arises. How is one to find the number of a record when one knows only the names of the deceased, and is unaware of the exact date of the death, or of the inquest, and sometimes even of the year in which it was held?

There is a very simple way, which is very practical as well; a way adopted by all the Courts, by all public officers: The register. This means has become the necessary concomitant of every record on file.

It is not obligatory for the Coroner by any law hitherto promulgated; it should be so, however. No Coroner who is desirous of the sound administration of justice ever neglects to keep a register.

686. Such a register to be effective, — to fulfil its purpose, — should contain the names of each case, to wit: the names or the description of the deceased, the date of the inquest and of the death, the place where the deceased resided, the manner in which the corpse was disposed of and his belongings that the Coroner had in his possession, and the verdict; the whole under the same number as is found on the back of its record.

687. To complete the whole and render searches shorter and easier, there should be affixed to each register an index, kept with care; containing:

1. The family name of the defunct;
2. The Christian name;
3. An indication of the page of the register on which the case is mentioned.

688. One register, or rather, one volume may serve for one or for several years. It is much more convenient, however, to recommence the series of numbers of cases on the back of records and in the register, with the 1st of January of each year.

689. In this case the back of record could be made out as follows:

"1901.
No. 1.

In re M. S.
Inquest: the..... day of.....

690. The entry in the register corresponding with this case would be in a form about as follows:—

"1901."

In re M. S.
No, Street,
Montreal.

"Deceased the..... day of.....1900, struck by a locomotive of the Grand Trunk, at Lachine."

"Inquest at Montreal, the..... day of..... 1901.
"Verdict: "Excusable homicide."
Remarks: All the effects found upon him were transmitted to his father, see receipt herewith."

691. The vouchers taken by the Coroner for the goods and effects of a deceased person are all permanently affixed to the page of the register, or are deposited in a safe place.

In the latter case, each piece should be folded and indorsed in the same way as the record itself, and mention of that disposal should be made in the register.

Subsequent entries in the register would be made in the same way, by changing the numbers and all the other details belonging to each case.

692. It is important that the entries in the register be made as soon as possible after each case. Otherwise mistakes may easily slip in and make searches more difficult. It is, above all, important that each entry be made in the register when one holds the record in one's hand and refers to it.

ARTICLE IV.

REPORT OF THE INQUEST.

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693. Report should be made from time to time to the State of the cases dealt with by the Coroner. The time is fixed by the State.

694. Section 28 of the Coroner's Act, English Law, reads as follows:

"Every Coroner of a borough shall on or before the first day of February of every year, make and transmit to a Secretary of State, a return in writing, in such form, and containing such particulars as the Secretary of State from time to time directs, of all cases in which an inquest has been held by him, or by some person in lieu of him during the year ending on the thirty-first day of December immediately preceding."

And the annotator of the English Code adds:

"It appears to be also the practice for county Coroners to make a similar return, but this is not done in pursuance of any Statutory obligation."

The motive of this obligation is easily understood. The State in England seeks to keep posted as to whether the Coroners investigate cases of homicide in a fitting manner. The State in England remembers that it is its duty to see to the safety of the subject.

This section of the Act declares that this report shall be

made in the form prescribed by the Secretary of State, and that it shall cover the subjects designated by the same officer of State. What is this form at present, and what particular points should the report embrace? It is of small moment to know these details, which, besides, vary according to the Secretary's caprice. The principal point upon which he lays stress, is, that the report show whether any case of wilful homicide has gone unpunished.

695. Article 2690 of the Revised Statutes of Quebec reads as follows:—

"Within the fifteen days following the holding of an inquest, the Coroner should transmit a *bill of particulars* of the costs with regard to it, to the Attorney General, with a certified copy of the declaration or of the demand that he has made or received, according to the case."

Article 2693 of the same Statute says:—

"If the Attorney General is convinced that a useless inquest has been held, he may order that no fee be paid to the Coroner for this inquest."

Therein lies the whole report exacted by the law of Quebec.

The same law is written in about the same terms in the Statutes of Ontario. The only difference is, that there, the bill is not sent to the Attorney General, but to the Crown Attorney of the county, whose duty it is to approve or reject the bill.

696. As is seen, the whole report in these two Provinces bears only upon the costs, and not at all on the sound administration of justice. The Coroner indeed is punished, by the refusal to pay his fee, if he has held a useless inquest, but there is no means of verifying by this report, as in England, whether a homicide has gone unpunished. Yet, it would seem that this is what the vigilant eye of the State should watch. The inquest has no other end than to discover homicide, and if it is incumbent upon the Coroner to seek it out, it is for the State, which names the Coroner, to make sure that he does his duty, and whether he does it well.

697. To this end the report should contain the indications of a nature to make it understood upon what the evidence bore, and show whether the verdict is conformable to this evidence.

For that the report should tell in brief the main fact upon which each testimony bore; should contain the affirmation or negation of the fact by each testimony, and finally, the *résumé* of the verdict on this evidence.

The report, thus understood, could be inscribed on the back of the declaration which it is obligatory to transmit, in Quebec, to the Attorney General, and in Ontario, to the Crown Attorney; and it might read as follows:—

"Inquest held at..... the ..... day or days of..... 1901.

It was a question of ascertaining whether the act or omission of N. M. which was the cause of the death, was or was not criminal negligence.

The following witnesses gave rather negative testimony.

1.	(	)
	(	)
2.	(Names of witnesses	)
	(	)
3.	(	)
	(	)

"The following witnesses gave rather an affirmative testimony. (The names follow).

(Here in a few words a personal appreciation of the two contrary opinions).

"Verdict: "Accidental death."

698. For the cost of each inquest it suffices to make a copy of the account as made out and as indicated in a former Article.

PART VI

THE CORONER'S DUTIES OUTSIDE OF INQUESTS ON DEATHS.

ARTICLE I.

OF ARSON INQUESTS.

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699. The Coroner seeks, within the limits of his jurisdiction, the origin of any fire brought to his notice under oath as the result of a crime, or, at least, as having taken place under circumstances qualified to give rise to a suspicion of crime.

The Coroner does not make such investigations in the Cities of Montreal and Quebec, nor in the suburbs of Quebec, nor in the Town of Levis.

700. Article 2989 of the Revised Statutes of Quebec reads as follows:—

"With the exception of the cities of Quebec and Montreal, when fire breaks out, and destroys wholly or in part, a house or other building within or without the limits of a city, town, or village, constituting a corporation, the Coroner, in whose jurisdiction such city, town or village is situated, shall institute an enquiry into the cause or origin of the fire, to ascertain whether it was caused with premeditation, or whether it is but the result of carelessness, or of an accident; and he proceeds according to the result of this inquest."

701. Article 2990 is replaced by the Statute 58 Vict., ch. 34, and reads as follows:—

"The Coroner shall not, however, institute such enquiry unless it has previously been made to appear to him by affidavit that there is reason to believe that the fire was the result of culpable or negligent conduct or design, or occurred under such circumstances as, in the interest of justice, and for the due protection of property, require an investigation."

702. This Article 2990 declares that the Coroner in any case is not bound to institute such an enquiry before it is demonstrated to him that there are grounds to suspect a crime.

The contradictions contained in these clauses, that is: Revised Statutes of Quebec Article 2989 and the 58 Victoria, chapter 34, are easily seen.

The first obliges the Coroner to institute such an inquest in every case; the second forbids him to begin the enquiry before he knows whether there are grounds to suspect a crime; and in the amendment it is left to the first-comer to decide, by his affidavit, whether there should be such an inquest.

Such as it is, the law in Quebec means to say that once any person swears that he believes a crime has been committed, or even that the fire has taken place, in his opinion, under circumstances of a nature to cause suspicion, the

Coroner is bound to open an inquiry, even though he knows that no crime has been committed.

Without this affidavit, which the Coroner plainly should not, in reason, solicit, even though he knows that a fire is criminal, he can not enquire.

703. Here, as in many other places, as has already been seen, the legislators have sought to do too well; and have done very badly.

These two addenda to Article 2989 were introduced into the Statute to prevent inquests in the matter of fires whose origin was evidently not criminal. If the Statute had contended itself with ruling that the Coroner is bound to investigate the origin of fires whose cause appears to be criminal, or is so mysterious or unusual as to give grounds for suspecting a crime, the usefulness of inquests would have been preserved, and the magistrate would have remained judge of the bearing of the first information. As the law stands in the Statute at present, it is more certain than ever that crimes of this nature are committed of which justice is completely unaware.

704. The two Articles 2989 and 2990, unamended, are found in the laws of Ontario; but there, an inquest cannot be opened except upon the request of the mayor, or of some other superior officer of the municipality, and of at least two municipal aldermen. Revised Statutes Ontario, ch. 217.

705. In this latter Province the Justices of the Peace also have the power to hold such inquests. Revised Statutes Ontario, ch. 167.

In the other Provinces the Statute does not give them this power; and it has been judged that the Coroner has not this power *ex officio*: Reg. vs Hereford, 3 EC. & ...C., 115.

Article 44 of the Coroner's Act in England says positively that the Coroner shall hold no inquest in any matter except that of death.

706. It is evident that the introduction in Canada of this new duty imposed upon the Coroner seeks to approximate

the reasons for holding the inquest to those which should actuate the Coroner's intervention in cases of death.

Now, it has been seen that this intervention should take place each time that there is reason to believe there has been a crime (homicide), either because there are signs of violence, or because, the cause of death being unknown, the case is open to suspicion.

It follows that the Coroner's intervention was desired in cases of fire, each time that signs of crime were met with, and also each time that the origin of the fire was, apparently mysterious.

707. The last amendment, in the Quebec Statutes, changed everything.

An enterprising Coroner, should he so desire, could now procure an affidavit in all cases of fire and make money by this means.

My colleagues of the Province, worthier men than they were held to be, in certain places, have contented themselves with letting the matter alone, thankful to be relieved of a task more onerous than profitable.

If it is desired to check this crime literally and effectually, this defective law must be altered.

708. The first law imposing this new duty upon the Coroner touched only on Quebec and Montreal; 18 Vict. ch. 157.

The Statute 23 Vict., ch. 35, extended this duty to the whole district.

The Statute 31 Vict. ch. 32, has, for the cities of Montreal and Quebec, for the suburbs of Quebec, and for the Town of Levis substituted special Fire Commissioners.

709. These Commissioners are ordered by law, even today, to investigate the origin of fires in every case where their cause is not known, or where, when known, it appears to be the outcome of a crime.

710. So that one is confronted, on the one side, with a law that prescribes the investigation of this crime in the

latter places, each time that the Commissioner judges that there are grounds to suspect crime; and on the other side, with a law which forbids investigation if it is impossible to a magistrate to find somebody, whoever it is, who shall judge and decide, in his wisdom of first comer, that there are grounds for suspecting a crime.

711. On the one hand, the law is inexorable to the criminal of the cities of Quebec and Montreal; on the other, it is leniency itself to the criminal of the rural counties.

And do you know the reason of this difference?

It is because those who pay the costs of these inquests were, in the first case, sufficiently good citizens not to hesitate to pay when it was a question of so serious a thing as investigating the crime of arson; whereas, in the other places, niggardly municipalities feared to pay out a few dollars, scouting the investigation of a crime. "If we burn down", say they, "there are the Insurance companies to pay us; of what use to tax ourselves to punish the criminal?" And legislators have been found, sufficiently accommodating, — I was about to say, sufficiently forgetful of their duty, — to agree with them.

For my own part, I could not add this business to my already arduous tasks ; but I have no hesitation in affirming that this law has fostered the crime of arson in the Province. Refer to the Insurance companies.

ARTICLE II.

PLACE OF INQUEST IN CASES OF FIRE.

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712. The inquest is held in the place nearest to the burned building, or in any place of the district where the interests of justice are best served.

713. The Statute does not state in what place the inquest shall be held; unless in that it declares that the inquest shall be held by the Coroner within whose jurisdiction is situated the city, town, or village wherein the fire has taken place.

This clearly implies that the inquest shall be held in the district over which the Coroner has jurisdiction, since the Coroner has no power outside of his district.

714. In which precise spot of the district shall this inquest be held? The law, in not specifying, leaves that to the Coroner's discretion.

There is no doubt, however, that in the municipality where the fire took place, there will most probably be found witnesses qualified to enlighten justice. It is also certain that the visit of the spot will often allow of the discovery of indications tending to show the cause of the fire. The police

and civic authorities of the locality will often have made investigations and will have found proofs that will be more surely obtained by working in the midst of them, than in a distant spot.

Again, it is unreasonable to bring persons to a distance, who could be questioned in their own locality, especially when it is a matter of seeking for a crime, and when one is therefore often exposed to bring to such inquest persons who know nothing, though there are reasons to believe that they did know something.

And for all these reasons it is plain that the inquest should be held on the spot, or close to the spot, where the fire occurred.

715. It may happen, nevertheless, that the witnesses, or some of them, reside in a distant locality, and it seems as unfair and inconvenient to bring them to the municipality of the fire, as to bring the witnesses of such municipality a distance.

The inquest then might as well be held in another spot than the municipality of the fire. Which is tantamount to saying that the inquest may be commenced in one place and continued in another, or even in several others.

The Coroner has, indeed, this power, since the Statute which enjoins him to hold inquests in the case of fire, in Article 2995 of the Revised Statutes of Quebec, is at pains to mention that the powers of Common Law possessed by the Coroner in his inquests, in the matter of death, are not withdrawn from him by certain clauses of this Statute, which curtails the limits in practice; and that Common Law, as has already been seen, gives the Coroner, in ordinary inquests, the right to adjourn his inquest "to the same or another place", says Jervis, edition of 1888, p. 30, giving the authorities in support.

716. Besides, it is a recognized power of all Courts sitting at inquests, that they have the right to proceed to any spot within their jurisdiction. But it is also recognized that

the enquiring Court does not leave its locality, except when needful, in order to serve the interests of justice better.

In the same order of ideas one may affirm without fear of error, that the Coroner's inquest should not be held outside of the municipality where the fire took place, — the usual and natural place for it to be held, — except when it is needful in order to serve the interests of justice better.

Needless to say, in order to choose the place of the inquest, the Coroner is not to take into consideration the inconvenience that may be caused to him personally. He is bound to go to the proper place.

To go outside of the municipality of the fire, he should consider only the advantages that justice may gain from it.

When it is a question of accommodating witnesses, he must consider carefully whether in so acting he is not a cause of greater trouble to those interested at the inquest. above all, he would never be justified in obliging a jury, — when the inquest proceeds with a jury, — to come to sit at a place too far distant from their homes.

ARTICLE III.

THE JURY.

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717. The inquest is held by the Coroner sitting alone or with a jury.

It is obligatory to appoint a jury when the demand is made in writing, by the agent of an Insurance Company or by three householders in the neighborhood of the fire.

The jury should be chosen from among householders in the environs of the scene of the fire.

718. The law is contained in Article 2992 of the Revised Statutes of Quebec, and in Chapter 217, section 3 of the Revised Statutes of Ontario.

The law of Ontario applies to the territory of Manitoulin.

The rights and powers possessed by the Coroner in inquests in cases of fire cannot be other than those given him by the Statutes, since Common Law never conferred such power upon him.

719. In his inquests in cases of death, we have seen that the jury could be assigned among all qualified persons, — "good and lawful men", — residing in the district.

In inquests in cases of fire, the jurors, as has just been seen, should necessarily be chosen from among householders in the environs of the scene of the fire, and not elsewhere. Which means that such jurors should belong to the municipality in which the burned building is found; or, if the building happens to be upon the bounds of a municipality, the jurors should be persons residing within a short distance.

However, I do not believe that the Coroner would be justified in appointing as jurors persons residing in another district, although neighbors of the scene of the fire. Neither do I see anything against accepting such persons as jurors, if they consent to serve; and in that case I believe that they would be bound by the same obligations as the jurors of the district, provided that they have been warned of the possible inconvenience of a long inquest, or of adjournments. Once they have consented with knowledge of possible inconveniences, to take oath, and once having taken it, they assume all the obligations incumbent upon any sworn juror, the principal of which consists in sitting till the close of the inquest.

720. The law obliges the Coroner to appoint a jury for the purposes of this inquest, if such demands be made by three householders in the neighborhood of the fire. The Statute employs the words "three householders".

Obviously it is not necessary for these persons to be either proprietors or tenants by virtue of a lease. It suffices that they be householders, one way or another, whether by paying rent or by charity. The law is right; it is they who are the most interested; they whose home, effects and relatives might have perished in the fire had it been more widespread.

It is also obvious that, in the suppositions and quite possible case of a fire on the bounds of a district, this demand may be made, wholly or in part, by the neighbors, whose houses are in another district than that where the fire occurred.

The law might have added to the words "householders" that of proprietors.

It may happen that the proprietors of houses in the neighborhood would have the same interest and would understand the usefulness of a jury, and yet they cannot demand it when they do not occupy the houses they own.

It is understood that by the word "neighborhood" the law does not mean to say "exclusively the houses closest to the fire", but has it in view to extend this privilege to the householders of a whole village or group of houses.

721. The Coroner is again bound to proceed with a jury if the demand is made, says the Statute, by any agent of an Insurance company.

The legislator, no doubt, meant to say, by any agent of an interested Insurance Company. He did not believe that an Insurance Company having no interest, or carrying no risk in the locality, would take the trouble to make such a demand. As the Statute stands, however, there can be no doubt that such a demand made by a *genuine agent,* of any Insurance company whatsoever, obliges the summoning of a jury.

Besides, it may be said that every Insurance Company is always interested in having the crime of arson investigated and punished.

It will be noticed that the demand has to be made in writing.

722. This obligation of a demand in writing, may, at first sight, lead to the supposition that it is the legislators' wish that these inquests be made rather without a jury by the Coroner alone.

At any rate, it leaves it to the Coroner's discretion, — when he is not regularly requested, as has just been said, — to summon a jury or to proceed alone.

723. Circumstances may arise where the interests of justice will be better served by a Coroner's inquest without jury; whether because it is difficult to find and bring the jurors together; — who also must be twelve in number, — whether because the proofs to be gathered are scattered through places distant from each other, and making it,

for that reason, easier for the Coroner to come to a knowledge by going to the witnesses himself; or, again, it may happen to be very important that the greatest secrecy be maintained as to the investigations made, which is impossible in inquests with a jury.

724. When there are no reasons, such as these, or other reasons as cogent, it is always better to make use of a jury.

Public opinion will be better satisfied, and the Coroner's responsibility will be so much the less for being shared by twelve judges of the facts.

ARTICLE IV.

PRELIMINARY MEASURES TO AN INQUEST ON FIRES.

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725. Once the Coroner has been requested, according to law, to hold an inquest in a case of fire.

1. He fixes the place and time where the inquest will be held;

2. He makes sure of the possession, in the state in which they were found, of the places burned, and of objects of a nature to throw light on the cause of the fire;

3. He gives orders to a constable to summon jurors, — not less than twelve, — (if the inquest is to be held with jurors) and the witnesses in a position to enlighten justice.

In connection with these preliminary measures, the Coroner proceeds in the same manner as at his inquests in matters of death, and possesses the same powers as at such inquests.

726. It has been seen in the preceding Article that the powers conferred upon the Coroner at inquests in cases of fire, cannot be other than those given him by the Statute, since Common Law does not authorize him to hold such inquests; and we have just read in the last paragraph of the

present Article that the Coroner proceeds at inquests in cases of fire in the same manner as at inquests in cases of death, and that he possesses the same powers as at such inquests. Yet the Statute which imposes this new duty upon the Coroner says nothing of the kind.

Hence the need of explanations.

The Statute says nothing about the time that should be fixed for the inquest, nor by whom the date should be fixed. It naturally follows, as has already been said on more than one occasion, that if the law creates an obligation, it creates, by that very fact, the means necessary to fulfill such obligation. Hence, if the Coroner is to hold an inquest, it must be possible to fix it for a certain date, on which the jurors, the witnesses, and those interested may attend. It must also be held in a stated place.

Article II of the present Part treats of the spot where the inquest should be held. It is needless to recapitulate.

727. Who should fix the time and place of the inquest?

It is a foregone conclusion ; common sense dictates what custom in all parts and at all times has sanctioned, namely, that it appertains to the president of every Court to decide upon this point.

And the legislator judged it unnecessary to say so.

When he declares that Coroners shall summon jurors and witnesses; when he declares that the Coroner may punish the refractory jurors and witnesses, in the Articles of this law; he never for a moment suspected that it could be pleaded, against the summoning, and against the imposition of a fine for default on the part of witnesses or jurors, the fact that the time and place of the inquest were irregularly fixed.

Besides, it is not necessary for the law to say it.

Its very silence implies this power of the Coroner.

As a fact, were it not so, the latter could not open the inquest which the law orders him to open; because if the Statute does not say that he shall fix the time and place, neither does it say that the "time and place" shall be fixed by another person specified; and it follows that if this power is not conferred upon any body there cannot be an inquest,

and as the Statute directs that there be an inquest by the Coroner, it necessarily follows that upon the Coroner is conferred the power to fix the time and place of such inquest.

728. Neither does the Statute say that the Coroner shall make sure of the possession of the burned places in the state in which they are found after the fire, and also of objects seemingly qualified to lead to the discovery of the cause or origin of the fire.

However, the mere fact that the Statute says that the Coroner shall hold an inquest, suffices to cover the obligation imposed to seek, by all ordinary legal means, whether a crime has been committed.

It is a judicial inquest which the law orders; the fact is quite plain when one remembers that this same law speaks of the summoning of the jury and of witnesses.

To say judicial inquest, is to say an inquest held with all the means usually employed to attain the object aimed at; in the present case, the discovery of a crime, or knowledge of an accident.

In former Articles on the Coroner's ordinary investigations and inquests, the usefulness, and often the necessity of the visit to the spot has been seen. This same usefulness, this same necessity, applies quite as well to inquests in cases of fire, and therefore, the visit to the spot may be made; to that end, as in ordinary inquests, the Coroner may take possession of the spot and of the objects found thereon, under the same conditions as in these ordinary inquests.

For a knowledge of these conditions, the reader is referred to Article IV, Part III.

The Statute, Article 2995, Revised Statutes of Quebec; ch. 217 of the Revised Statutes of Ontario, confers this power, if not explicitly, at least in a general way, when it says that nothing contained in the present law on inquests concerning fires, "shall affect the power delegated by law to every Coroner to force any person *whomsoever* to appear, or *other procedure.*"

Here is another procedure authorized in ordinary inquests; it is authorized just as much, by the fact, in these extraordinary inquests.

729. The Statute in question does not mention the number of jurors required in the present inquests. Nor does it say anything of the manner of summoning jurors and witnesses.

It leaves the Coroner to proceed as at his ordinary inquests.

730. It concedes his possession of these powers by virtue of Common Law, and contents itself with covering the whole by recognizing that he possesses at these inquests all the powers that the law grants him for all procedure at the other inquests; as has been seen above.

All that has been written upon the summoning of jurors and witnesses in ordinary inquests, hence applies here. The reader has only to refer to Articles VI, VII, VIII, and IX of Part III.

ARTICLE V.

PROCEDURE AT INQUEST ON A FIRE.

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731. The Coroner proceeds at the inquest in cases of fire as at inquests in matters of death.

He has the same powers as at inquests in matters of death.

732. The Statute, in Quebec as in Ontario, contains six clauses or sections speaking of the powers of Coroners in the holding of inquests in cases of fire. In the Revised Statutes of Quebec they are Articles 2991 to 2995 inclusive. In Ontario, they are found in chapter 217 of the Revised Statutes of that Province.

These sections of the law speak of the power of summoning witnesses, of questioning them under oath, of the summoning of the jurors, of the condemnation of refractory jurors and witnesses, of the manner of collecting the fines imposed in these cases; and, finally, end by a general recognition that nothing contained in this law withdraws from the Coroner the power that the law grants him at his ordinary other inquests on deaths.

All these powers have been treated of in the Fourth Part of this book. The reader may refer to it.

733. The few modifications that the Statute brings to bear on the mode of procedure refers to the summoning of a jury, and the manner of punishing refractory witnesses and jurors.

The first modification has formed the subject of Article III of the present Part (VI). The second was inserted in Article VI, Part IV, its proper place. It suffices to re-read them.

734. So that there only remains to add here that all that is contained in the Articles of Part IV, applies to inquests in cases of fire. With few exceptions.

These Articles treat:

1. Of the spot and time of the inquest;
2. Of the publicity of the inquest;
3. Of the swearing of jurors;
4. Of the inquest properly speaking, or of the questioning of witnesses;
5. Of the evidence;
6. Of contempt of Court;
7. Of experts;
8. Of the adjournment and visit to the spot;
9. Of the exposition of the facts;
10. Of the verdict;
11. Of the record;
12. Of costs;
13. Of inquests ordered by superior authority.

Article I of Part IV applies only in taking account of the slight modification found in Article II of the present Part, (VI).

The few modifications to be brought to bear on the procedure described in Part IV, up to Article II, inclusively, are only of the slightest, which come necessarily from the very fact that the inquest is not for the same matter. It is easy to perceive them at once. The principles remain the same.

The subject treated of in Part IV by Article XII does not apply, and costs of inquests in cases of fire will form the subject of a subsequent Article.

Article XIII of Part IV applies, without doubt, in the present case. A Superior Court may always order an inferior Court, or an officer of justice, to fulfill a duty of his office that he has neglected, or to do better what he has not done well.

ARTICLE VI.

OF COSTS IN INQUESTS ON FIRES.

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735. The Coroner is entitled to $10.00 per day, but not for more than three days, if the inquest takes place in an incorporated city, town, or village; and to $5.00 per day for the first day, and $4.00 for the two following days if the inquest is held in some other place. He has not the right to more than three days fees.

In the first case the Coroner's fee is payable by the Treasurer of the municipality; in the second, by the person or persons who demand the inquest.

736. This law is contained in Articles 2993 and 2997 of the Revised Statutes of Quebec, and in chapter 217 of the Revised Statutes of Ontario.

737. The law of Ontario is opposed to adjournments; and the costs for the second and third day can be exacted only if the Coroner shows that there was necessity to adjourn.

In what would such necessity consist?

The law does not say. But it is evident that an adjournment can take place only in the cases where it is necessary

to attain the object of the inquest itself; for instance, the hearing of new witnesses necessary, who might still be found or heard. It does not seem that the fact of the Coroner having decided upon an adjournment, — because of other urgent matters personal to himself, or to a juror, or to an interested person, — would be accepted as a valid cause for such adjournment.

However, I should be inclined to think, in spite of everything, that the sudden illness of the Coroner, or of some of the jurors, would be accepted as sufficient cause for postponing the inquest.

At all events, the Coroner is bound, in Ontario, to give the reasons of the adjournment with his account, if he desires to be paid.

In Quebec the idea has not yet occurred that the Coroner might profit by this means in the way of emoluments; which is a good mark for the Coroners of our Province, as well as for our legislators.

738. On presentation of the bill of fees for inquests duly held, the Treasurer of the municipality is bound to pay. That is what the law says, not so imperatively, but in such terms that it has been decided that want of funds in the civic treasury was no excuse for a municipality. This decision given in a case of Fergus & Cooley is found at p. 341, Vol. XVIII, of reports "Upper Canada Queen's Bench."

It is evident that the Coroner may recover his fee by means of a law-suit when it is refused him. That is what he did in the case above cited.

739. This difference in the amount of fees when it is a question of a municipality of a town or village, or of a municipality of a parish, is rather comical.

It is difficult to understand how the same work is worth less by half in one case than in another.

This difference is a flaw in the law.

And what is worse is that outside of cities, towns and villages, the unfortunate whose property has been set fire to,

— who has good reason to believe so, at least, — if he wishes a judicial investigation as to the crime or the criminal, is bound to pay for it himself; while if he had been within the bounds of the village. sometimes only an acre distant, he could have made the municipality bear the costs.

Is he not entitled to the same protection and consideration as another?

To establish this difference. legislators must have appealed to the principle that municipalities once formed as corporation of cities, towns or villages, undertake to perform police duties within their limits, and presume that the fire might have been avoided, had there been closer measures of surveillance on the part of the authorities.

But practically it is well known that this theory is worthless, and besides, the municipal bodies of parishes are bound to hold the same police surveillance as are those of villages, towns and cities.

It would perhaps be easy to do away with these anomalies by reducing the fees in one case and increasing them in another, and in causing the expenses to come always upon the municipal body.

740. It has been seen that in no case is the Coroner entitled to more than three days fees. So that he must hold his inquest within three days.

741. Would he, after three days inquest, with his work uncompleted, be justified in discontinuing and exacting his fees?

The case has never presented itself.

For my own part, I remember having proceeded for thirteen days with a fire inquest, succeeding only after that long task, in finding out the crime and the criminals, who were ultimately sent to the penitentiary.

Had I stopped short after the first three days, society would never have been avenged, and three criminals would have continued to commit arson with impunity in our country parts.

The municipality paid for the thirteen days without needing to be taken by the throat.

Had it refused, it would have been within its rights and, — a rare sight in our day, — a magistrate giving his time and work to justice gratuitously.

In such a case there only remains for the Coroner to inform the municipal authorities of the result so far attained, and to wait until they come and offer him reasonable remuneration for continuing.

742. It is not becoming that a magistrate, whatever his magisterial degree, should have to request payment for his work.

But here something much more anomalous arises.

We know, and we have seen, that an inquest is not to be held without certain expenses resulting therefrom. For instance, there must be a clerk to take down the inquest; there must be a constable to summon jurors and witnesses, as well as to maintain order during the inquest; there must be a place wherein to hold the inquest.

The Statute is totally silent with regard to all this.

What does it mean? It has never been seriously claimed that the Coroner is obliged to pay these expenses out of his fee.

I have held an inquest in which the expenses, wholly legitimate, amounted to thirty-eight dollars; eight dollars more than the fee granted by law.

It cannot be claimed that the law would oblige a magistrate to hold an inquest, give to society his time, work, energy, mind, and knowledge of law and of police matters, and that at the same time that very law would oblige him to pay out of his own monies the necessary costs incurred for the holding of such inquest.

In my own case, just cited, the officers of law in our Province advised me to make sure in advance of the payment of these costs. That course, to my mind, is incompatible with the standing given to the Coroner by law. I never followed it.

But I have since exacted, — and I believe it to be the sole reasonable solution in the present difficulty, — that the municipality in which the inquest is to be held, furnish a suitable place, and an acceptable clerk and constable.

Should the municipality refuse to meet this demand, I believe that it could be forced to do so by an order from a Superior Court.

ARTICLE VII.

PROCEDURE AFTER INQUEST.

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743. **The person or persons whom the inquest designates as author of the crime, — if the inquest has afforded such revelation, — is or are arrested upon a warrant issued by the Coroner, enjoining the arrest and the bringing of the accused before a Justice of the Peace, for the purpose of preliminary enquiry.**

The depositions taken by the Coroner, and all the record, is then transmitted to the Justice of the Peace, who proceeds with the preliminary enquiry.

When there are no accused, the record is placed in the hands of the Clerk of the Peace of the district.

744. The Statute mentions nothing in the matter of the arrest of the authors of the crime that the inquest may have made known. It might be inferred from this, that the law intended that, in this alternative, those interested being then put in possession of sufficient evidence, should come forward and denounce the criminals, as in the case of ordinary offences, before the magistrate appointed for that purpose.

There is no doubt that this mode of procedure would be legal. However, as we have seen that the law clearly expresses itself as leaving to the Coroner in these inquests all the powers he possesses in virtue of Common law in his ordinary inquests, it is plain that, as in the latter, he may also

in fire inquests cause the arrest of persons denounced by the evidence.

745. We know that the inquest may be held by the Coroner alone, or by the Coroner with a jury. In the latter case the form of the warrant of arrest would, by changing the designation of the crime, be in conformity with that given in Article II, Part V.

In the first case the warrant might be worded as follows:

CANADA
Province of Quebec
District of.....

THE CORONER'S COURT.

To each and every constable of the district of.....

Whereas, in the course of an inquest held before me, Coroner for the district of....., in the matter of a fire that destroyed (wholly or in part) a house situated in the village of..... in the said district, occupied by M. M. (or which was unoccupied) the evidence has shown that the fire was the outcome of a crime perpetrated wilfully, without legal justification and without color of right, by (names and surnames with place of residence and occupation).

These presents, etc., as in the form of Article II, Part V.

746. Although the law does not mention the fact that the depositions of the Coroner's inquest in cases of fire should be transmitted, when there is an arrest, to the Justice of the Peace who proceeds with the preliminary enquiry, it is well to do so to help the latter to conduct his enquiry with knowledge of the facts.

747. Virtually, the record of these inquests of the Coroner should be returned, after the inquest, to the usual guardian, to wit: the Clerk of the Peace.

The Statute of Quebec does not mention this obligation.

The Statute of Ontario states it in Chapter 217 of the Revised Statutes of that Province, and again in the Statute 57 Vict., ch. 37.

The reticence of the law of Quebec on this subject is explained in the same way as its reticence on this point as to inquests in the matter of death.

We have already seen the motives for which the records in these latter inquests should be transmitted to the Clerk of the Peace. They apply equally in the present case, and we shall not revert to them.

ARTICLE VIII.

CORONERS ARE CONSERVATORS OF THE PEACE AND SUBSTITUTES OF THE SHERIFF.

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748. Coroners are Conservators of the Peace, and as such may arrest, or cause the arrest of felons.

Coroners act as substitutes of the Sheriff, when the latter, on account of absence, without an authorized deputy, or because of interest in the cases in litigation, is prevented from acting.

749. There has often been occasion in the present work to mention that the Coroner is a Conservator of the peace, and to show that, as such, it is his duty to see that the peace is kept.

This duty implies the right to arrest and to hold for punishment those who render themselves guilty of offences. It is needless to repeat what has been said formerly on this subject.

750. There exists, however, an unfortunate confusion of ideas when Conservators of the Peace and Justices of the Peace are mentioned.

To the majority, (eminent jurists have seemed to accept this opinion) he who says Justice of the Peace, or Conservator of the Peace, says one and the same thing. So that every Justice of the Peace is a Conservator of the Peace, which is true; and every Conservator of the Peace is Justice of the Peace, which is not true.

751. Justices of the Peace are Conservators of the Peace.

They were created at the coming to the throne of Edward III., solely to act in concert with the Conservators of the Peace already existing; among others, the coroners and sheriffs. The law of that time does not name them except under the names of "conservators, wardens, or keepers of the peace." Their whole duty was confined to seeing that the peace was kept and their powers consisted of the powers possessed by the other Conservators of the Peace.

752. But the same King, in the thirty-fourth year of his reign, granted to Justices of the Peace the power "to try felonies," and it was then only, says Blackstone, Vol. I, p. 350, "that they acquired the more honorable appellation of Justices."

That was the birth of sessions of the peace; that is to say, of criminal assizes, presided over by two Justices of the Peace.

All cases then were decided only by jurors.

753. It is no wonder that the olden Conservators of the Peace, elected by the people, should brook ill the concession to creatures of the Crown, (to these new comers) of powers and prerogatives which the law seemed to refuse to themselves.

No wonder that sheriffs and coroners hastily claimed quite as much power as the new Conservators of the Peace.

A line was drawn through the name "Conservator of the Peace."

The appellation was expunged from their vocabulary; and instead of saying, "every coroner is *ex officio* conservator of the peace", they were pleased to say, "The Coroner is, *in virtue of his office, a Justice of the Peace or magistrate.*"

It is for the same reason that it is said, mistakenly, that mayors and aldermen are Justices of the Peace *ex officio;* they are only Conservators of the Peace.

The appellation of "magistrate" implies and includes that of Conservator of the Peace, and legally, is a very broad term; it sounds well.

Bnt neither one nor the other of these public functionaries are Justices of the Peace *ex officio,* so long as a law has not expressly declared it.

Neither one nor the other has the right to sit as Justice of the Peace at the General Sessions, or at the Special Sessions since created, unless the law has decreed it by a Statute; because, according to Common Law, the Conservator of the Peace has never had this power, which the law gave expressly and solely to those whom it appointed Justices of the Peace, to whom it added later, — giving them much more extended powers, — Judges of the Sessions of the Peace, recorders, and various other special magistrates.

The Coroner, whose name is not found on the list of the general commission of the peace, or who is not named Justice of the Peace in virtue of a special commission, is nothing but a magistrate, possessing only the powers of the olden Conservators of the peace; that is to say, the power to arrest felons and to hold them for judgment by the other Courts.

He may still, as Coroner, because he is a Conservator of the Peace, receive an oath in extra judicial affairs.

It is because he has not the powers of a Justice of the Peace as Coroner, that he may not, as Coroner, hold other inquests than those which the law assigns to him; those which have formed the subject of the present work.

754. The Coroner acts as substitute to the Sheriff, "and executes process where that officer is incapacitated by interest in the suit, or makes default."

The law that rules it so is to be found in the Revised Statutes of Ontario, ch. 16, and in the Code of Civil Procedure of Quebec.

These two Statutes do but declare that law to exist from Common Law.

We have already had occasion to cite several authorities declaring the nature, in Common Law, of the Coroner's duties; to wit: Judicial at inquests and ministerial when he executes the orders of Courts.

755. "Writs are directed to the county coroners when any just exception is taken to the Sheriff," says Jervis at p. 78 of his treatise, edition of 1888. "If there be but one Sheriff, who is either a party to or interested, the writ should be directed to the coroners", as we read besides, at the same page.

756. And the same authority adds:

"The Coroner is in such cases in all respects considered as the immediate officer of the Court in place of the Sheriff, and may do all lawful acts which the Sheriff might have done, if not under any challenge or incapacity, and may even take the posse comitatus.

Hence, to state the duties of the Coroner in such cases, would be to state the duties of the Sheriff *in toto*.

It will be understood that it is impossible in a work of this nature to copy a large part of our Codes of Procedure.

The Coroner called upon to replace the Sheriff, should consult the law in each case, so as to make sure of what he is to do, and how he should proceed.

757. Suffice to say that in these cases, contrarily to his judicial acts, he may delegate his powers to a stated person, even as the Sheriff may do, and as he does habitually, in having his writs executed by bailiffs.

This is the opinion accepted by the authorities who wrote on this subject, guided by the rules of Common Law; but it is my duty to add that the last edition of our Civil Code of Quebec seems to say that the Coroner has to act personally.

CONCLUSION.

DRAFT PROJECT OF LAW.

758. The draft project of law to follow contains, as briefly as possible, the essence of all the principles stated in the course of the preceding parts of this work.

The author does not pretend to believe that it should necessarily be incorporated in the Statutes of the country without dispute. Not so; (no man is a prophet in his own country) this project is here only to show, in a forceful and palpable manner, what is lacking in our Statutes, and what should be added, either in the form suggested, or in any other.

Whatever may be done, — short of revolutionizing every thing, — which is neither likely nor wise, one can hardly go far astray, fundamentally, from that which the present project humbly submits to the attention of legislators.

"An Act to consolidate the Law relating to Coroners."

LAW OF CORONERS.

PRELIMINARY:

1. This Act may be cited as the Coroner's Act of Quebec, 19....

PART I.

2. The Lieutenant Governor in Council names one or several coroners in each district.

3. Every Coroner exercises his functions during the pleasure of the Lieutenant Governor in Council.

4. When more than one Coroner is named for a district, there may be assigned to each a special territory, over which he shall exercise his functions more particularly.

5. Before entering upon his functions, the Coroner takes oaths of allegiance and of office before a Commissioner *per dedimus protestatem*.

6. The duties of the Coroner oblige him to seek homicide by preliminary investigations or by regular inquests in all cases contemplated by the present law, and in the manner established by this law; to hold inquests in the case of fire when the law exacts it.

7. His jurisdiction extends to all cases of suspicious death of a person whose corpse is found in his district; and to every case of fire in the district, except for the cities of Montreal and Quebec, and the suburbs of Quebec, and the Town of Levis, where inquests in the matter of fires are held by Commissioners specially designated by law.

8. The Coroner becomes, in and by virtue of his functions, a Justice of the Peace; and may fulfil all the duties assigned to the latter, except that he may not hold the preliminary enquiry in the matter of a homicide, or of a fire, denounced by a verdict after the Coroner's inquest, at which he himself has presided.

The Coroner's Assistants.

9. Each Coroner may name, to replace him in case of illness or absence, a Deputy approved by the Attorney General.

10. This Deputy takes oaths of allegiance and of office before the Coroner. This oath is deposited in the office of the Clerk of the Peace of the district.

While acting as such the Deputy Coroner has all the powers of a Coroner, and should fulfil all the Coroner's obligations.

11. Assistants called Medical Examiners may be named by the Coroner, with the approval of the Attorney General, for the purpose of (in places distant from the spot where the Coroner sits) examining bodies and making investigations to ascertain whether there are grounds for summoning jurors, by reason of suspicion of homicide.

12. The Coroner's Assistants, — that is, Medical Examiners, — take oaths of allegiance and of office before the Coroner, and their oath is deposited in the office of the Clerk of the Peace of the district.

13. The Medical Examiner possesses, in the ends of investigation, all the powers that the present law grants the Coroner in his investigations; with the exception of the power granted to the Coroner to call in an expert physician; he is bound by the same obligations.

14. The Coroner may swear one or several persons to act as constables at his inquests.

He may procure the services of a clerk or secretary at his inquests with a jury.

NOTICE OF DEATH.

15. When anybody dies a violent or unnatural death, or a sudden death whose cause is unknown, notice thereof should be given, within twenty-four hours, to the Coroner of the district, or to one of his assistants.

The owner of the house or property in which this death is ascertained, and the secretary of the municipality are jointly and severally obliged to see that this notice is given.

16. When a prisoner or detained person dies in a prison, penitentiary, or house of correction or of reform, or in a private hospital for lunatics or inebriates, notice should be given, within the twenty-four hours, to the Coroner of the district, or to one of his assistants, by the person in charge of the establishment.

17. Knowingly to neglect giving such notice is punishable, as an infraction of the present law, by summary conviction, before a Justice of the Peace, by a fine of $100.00 at most, or, in default of immediate payment, or on the date specified in the Judgment, by an imprisonment in the Common Jail, with or without hard labor, of not more than three months.

18. No person whose death should be the subject of a preliminary investigation or of a regular inquest on the part of the Coroner, may be buried or cremated without the permission of the Coroner or one of his assistants.

19. To bury or cremate without such permission, in these cases, is an infraction of the present law, punishable in the same manner as the infraction mentioned in Article 17 of the present law.

20. Notification of death is given in the most speedy and least costly way, by telegram or telephone, if possible.

INVESTIGATIONS.

21. If the notice does not denounce a probable crime, the Coroner informs himself of the circumstances which have preceded and accompanied the death.

If, all information being taken, it is evident that the death is not the result of a homicide, criminal either by act or omission, but that it is the outcome of an accident or of a natural cause, the Coroner gives permission to bury.

22. To attain to certain knowledge of the circumstances of a death, the Coroner may swear the persons who know the facts. He may, in cases where there are marks or signs of violence, cause the corpse to be examined by a Medical expert, to learn their nature and legal bearing.

He may have the corpse removed to a suitable place, when it is publicly exposed, and when that course is absolutely necessary.

23. The Coroner shall keep a record of all the facts established in his investigation; put it on a regular file, and deposit the whole in the hands of the Clerk of the Peace of the district.

24. When the investigation is made by an assistant of the Coroner, (Deputy Coroner or Medical Examiner) the latter is bound to transmit to the Coroner the record of the facts established; within the shortest delay possible.

INQUESTS.

25. If the death is notified to the Coroner as a probable homicide, or if, after preliminary investigation, the Coroner finds it impossible to exclude suspicion of criminal homicide, there are grounds for a regular inquest with a jury.

26. Before summoning a jury, the Coroner shall make under oath (of office) a declaration to the effect that he was informed (naming the person who has informed him) of a death resulting from a probable homicide, or from a violent or supposedly violent death, and that then, after information taken, he has found it impossible to exclude all suspicion of criminal homicide.

This declaration should be transmitted to the Attorney General, at the same time as the report of the inquest.

27. If, after investigation, and burial permit being given, the Coroner believes that there has been a mistake, and that there are grounds to suspect a criminal homicide, whether because he differs in opinion with his assistant, or whether because new information to that effect has been given, there would be grounds to hold an inquest with a jury; the Coroner first making a special declaration to justify the holding of it. This declaration also to be affixed later to the report made to the Attorney General.

28. An inquest with a jury, in any case, may be ordered by the Superior Court, or by the Attorney General.

The Coroner is then bound to declare upon what order he holds such inquest, and to attach this declaration to his report of the inquest.

29. The inquest is held as soon as it is possible to procure the necessary witnesses.

30. It is held in the place, or near the place where the corpse is found.

If in the deceased's dwelling, no compensation is made.

In case of necessity a suitable place should be provided by the municipality for the inquest, or the medical examination, or for both.

31. For the ends of his inquest, the Coroner possesses the power of taking possession of the corpse, of the place where it is found, of the objects which, seemingly, would serve as evidence.

He may have the corpse removed, if necessary, to a suitable spot, and may, generally, take reasonable measures to facilitate the discovery of the truth.

32. The Coroner may call in, if it is necessary, in difficult cases, one or two physicians (of whom one shall be the medical examiner, if there be such) to make the examination.

He may order an autopsy in all cases of supposed homicide, or in all cases when without it certainty could not, apparently, be reached.

33. Order is given to a constable to summon the witnesses, and not less than ..... jurors, among the reputable citizens of the locality.

34. The summoning of jurors and witnesses may be made verbally; and the persons summoned are bound to obey as much as though summoned by written summons.

35. All the witnesses are questioned under oath; and through a sworn interpreter when necessary.

The rules of evidence before the Courts apply to inquests.

Before hearing the testimonies the Coroner swears the jurors, puts them in touch with the object of the inquest to be held, and makes them view the corpse upon which the inquest is about to open.

36. The Coroner maintains order at the sittings of the inquest. He may expel persons disturbing order, and may condemn them, for contempt of Court, to a fine of $4.00 (four dollars), or in default of payment of such fine, to an imprisonment of 15 days.

Jurors refusing to obey the order summoning them, or refusing to be sworn without valid reasons, or refusing to submit to the Coroner's orders, may be condemned in the same manner.

The same condemnation may be inflicted upon witnesses who make default to appear, or who refuse to give their evidence without legal excuse.

37. The inquest is public; in the sense that those interested have a right to be present, or to be represented by lawyers. Building inspectors have a right to be present at all inquests held on deaths resulting from accidents in public buildings.

If it is in the interests of justice, or of morals that the inquest be held secretly, the Coroner has the power to exclude all persons except interested parties and their lawyers.

38. The jurors and those interested may suggest to the Coroner, and put to the witnesses, pertinent questions.

39. The testimonies are taken in writing by the Coroner or his clerk.

It is not necessary to write such parts of the testimony as have no tendency to affirm or negative homicide.

The services of a stenographer, whom the Coroner shall swear to faithfully take the testimonies at the inquest, may be accepted, if the Attorney General authorize it, or if the costs of the shorthand and typewriting are to be paid otherwise than by the Province.

40. At all times, before and during the inquest, the Coroner may order the arrest and detention with or without a warrant, of any suspected person, or of any witness whom he believes likely to refuse to attend the inquest.

He may oblige all such persons to furnish bail with sureties sufficient to assure their attendance at the inquest.

41. The Coroner may, if it is absolutely necessary, call in as witnesses persons expert in the various branches of industry or science.

42. The chemical analysis demanded by the Coroner and the majority of the jury, shall be made with the approbation of the Attorney General who shall designate the analyst.

43. If the evidence cannot be sufficiently understood without visiting the spot, the Coroner shall take the jury, or cause them to be taken there, to make an examination.

44. The inquest shall not be adjourned to another day, except where it is absolutely impossible to learn the truth otherwise. The reasons of every adjournment shall be clearly given in the report of the inquest.

45. After the evidence is taken, the Coroner makes to the jury a *résumé* of it; he explains the law that applies to that special case, and indicates what appears to him the most exact manner of appreciating the legal value of the established facts.

46. The verdict should contain, as much as possible, the name of the person deceased, the date and place of the death, the manner in which the death occurred. It should, above all, declare whether there was homicide or not. In the case where it denounces a criminal homicide, it should, if it is possible, mention the author or authors of the crime.

At the close of a verdict the jury, if they consider it useful, may add suggestions for the protection of society.

After inquest.

47. The Coroner gives permission to bury as soon as the corpse is no longer required.

The Coroner is bound to meet, in his permit, all the exactions of the law, and of the municipal rules in the Statistics applying to the death in question.

48. The corpse, unless claimed by a relative who is related to the deceased in the degree of at least a second cousin, cannot be buried without the permission of the Inspector of Anatomy.

When permission is required and given by the Inspector of Anatomy, the Coroner has it buried at the cost of the municipality in which the death was discovered.

49. The money and effects belonging to the person deceased are handed over by the Coroner to any near relative of the deceased, on a receipt being given for them by such relative.

If no relative comes forward to claim them, reasonable costs for burial may be deducted from the money found, the balance to be deposited in a bank to the credit of the Treasurer of the Province, who should be notified of the fact; valuable effects belonging to the deceased should be put into the hands of the Clerk of the Peace of the district; effects of the deceased of nominal or no commercial value, may be given to the poor, or destroyed.

50. When the verdict has denounced a person or persons as guilty of criminal homicide, the Coroner fulfils the obligations prescribed by section 568 of the Criminal Code.

51. The Coroner deposits in the hands of the Clerk of the Peace of the district, at times fixed by the Attorney General, all the minutes and records of the inquests and investigations held by him, or by any of his assistants.

52. The Coroner is bound to make a report to the Attorney General, at intervals fixed by the latter, of all inquests and investigations made by him, or by his assistants.

53. The costs incurred for the investigations and inquests are paid by the Coroner, who is reimbursed by the Treasurer of the Province, on the bill being duly approved by the Attorney General; according to the following tariff:—

1.	To the Medical Expert.....	$4.00
2.	For autopsy and report.....	10.00
3.	To the secretary — per diem —.....	2.00
4.	To the constable,	
	1st. Summoning the jury.....	1.00
	2nd. Summoning each witness.....	.30
5.	To the Chemical Analyst for each analysis	10.00
6.	The special experts, the interpreter, and the stenographer are paid as agreed and approved in advance by the Attorney General.	

7. For the removal, keeping of the corpse, and notification of the Coroner, only what is reasonable shall be paid. The Coroner may exact accounts sworn to before him or one of his assistants.

54. The costs which devolve upon municipalities should be paid by the Treasurer thereof upon an order of the Coroner.

FEES.

55. The Coroner is entitled for each inquest without a jury, or investigation, to..... $4.00
The Coroner is entitled for an inquest with a jury to 6.00
For every day of justifiable adjournment of the inquest 2.00
For every inquest without a jury made by one of his assistants. 1.00
For every mile actually covered..... .10

56. The Deputy Coroner is entitled to the same remuneration as the Coroner, whom he replaces him.

57. The fees of the Coroner's assistant (the Medical Examiner) are:
For his inquest without a jury, examination and report 4.00
For every mile actually covered..... .10
But he can not be paid twice in the same case of death when, after a preliminary inquest without a jury, there is a regular inquest in which he also acts as Medical Expert.

58. The accounts are sent to the Attorney General, in duplicate, at intervals fixed by the latter. They should be accompanied by all the vouchers indicating the payments made by the Coroner; by a receipt from the Clerk of the Peace, establishing the fact that the records in each case mentioned in the account were transmitted to him; with the declaration establishing why a jury was or was not summoned, and why there was an adjournment (if such was the case).

59. If the Attorney General is convinced that a useless inquest with a jury, or an unjustifiable adjournment has taken place, he may order that no fee be paid to the Coroner for such useless inquest or such unjustifiable adjournment.

60. The Coroner shall keep a faithful and exact register, with a clear index of all the cases disposed of by him and his assistants, indicating tersely what was done.

These registers belong to the Province and shall be deposited finally with the Clerk of the Peace of the district.

61. Instead of fees, those Coroners who, because of the multiplicity of cases reported, are obliged to give the greater part of their time to the exercise of their functions, may be paid, by order of the Lieutenant Governor in Council, a fixed annual stipend.

The clerk and constable of such coroners, if the Lieutenant Governor in Council considers it more advantageous, may also be paid a fixed annual salary.

In each of these cases the fixed salary can not exceed the yearly average of fees paid to each of them during the last preceding four years.

INQUESTS IN ARSON.

62. Such an inquest is held only if the fire is denounced under oath as the result of a crime, or as happening under circumstances qualified to cause suspicion thereof.

63. The inquest is held in the place nearest to the burned building, or in any other spot of the district where the ends of justice are better attained.

64. The inquest is held by the Coroner sitting alone, or with a jury.

It is obligatory to summon a jury when the demand is made, in writing, by the agent of an Insurance company, or by three persons who are either householders or proprietors of houses or buildings in the neighborhood of the burned building.

65. The jury is chosen from among householders in the neighborhood of the burned building.

66. For the purposes of summoning jurors and witnesses; for the means to be taken to assure the knowledge of all the facts; for the conduct of all the inquest; the Coroner possesses all the powers which the law concedes to him in his ordinary inquests in cases of death.

67. The Coroner is entitled to a fee of $10.00 per diem, payable by the Treasurer of the municipality of the burned building.

This fee may be refused him if the inquest has been held without being legally demanded, or if there has been an adjournment, or adjournments adjudged unjustifiable by the Circuit Court.

68. When there has been a denunciation of the authors of the crime, the Coroner proceeds as in the case of Article 50 of the present law.

69. All the records of such inquests are transmitted to the Clerk of the Peace of the district, as soon as possible.

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