A PRACTICAL TREATISE

ON THE OFFICE AND

DUTIES OF CORONERS

IN

ONTARIO AND THE OTHER PROVINCES, AND THE TERRITORIES, OF CANADA,

AND IN THE

COLONY OF NEWFOUNDLAND,

WITH SCHEDULES OF FEES,

AND AN

APPENDIX OF FORMS.

FOURTH EDITION

BY

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To

His Honour John Anderson Ardagh

Senior Judge of the County Court

County of Simcoe, Ontario

the Fourth Edition of this Work

is Dedicated

in Acknowledgment of a Valued

Friendship

of Over Half a Century

Wm. Boys

PREFACE TO THE FOURTH EDITION.

The author of this work in publishing the fourth edition, feels that he must be looked upon as being somewhat like those actors who make repeated farewell tours and yet keep coming back to claim the patronage of the public, for in the dedication of the third edition he made the statement that "in all probability it would be the last he would publish," but owing to a gracious providence having spared his life beyond the ordinary span, and to the generous patronage that has been extended to the third edition, he has been called upon by the publishers to prepare another edition,—a call of a nature not usually resisted by authors.

The work, as it now appears, has been thoroughly revised and brought down to date with regard to all the provinces and the colony of Newfoundland, and several additions have been made to the Schedule of Forms.

The new chapter which was added to the third edition, containing a programme of the usual proceedings at an inquest in their consecutive order, is retained, as it has proved of service to coroners. The general arrangement adopted in the former editions will be found the same in the present edition, and it may be repeated here that when coroners use this work outside of Ontario, they must refer to the latter part of each section to see if there are

any statutory alterations of the law applicable to the particular province they are interested in. And they must also bear in mind that any statements of the law which are supported by the citation of provincial statutes, are only applicable to that province by which such statutes were passed.

In the present edition a list of the cases referred to will be found arranged in alphabetical order. Where no case, or statute, or previous writer, is cited for the coroner's law as mentioned in the text, the common law may be accepted as the authority for what is stated, except where it is apparent from the language used, that the writer is merely offering his own view upon the question for the consideration of the reader.

I desire again to acknowledge the valuable assistance I have received in the preparation of this edition, from George B. Nicol, Esquire, Barrister-at-law, by his making numerous and lengthy extracts for me from books in the Osgoode Hall Library.

WM. BOYS.

Barrie, 1905.

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THE OFFICE

AND

DUTIES OF CORONERS

IN

CANADA AND NEWFOUNDLAND.

PART I.

THEIR OFFICE AND DUTIES GENERALLY.

NOTE.—In the present edition of this work the reader will find the general coroner's law, and the special coroner's law of Ontario, in the earlier part of each section; and the special law (if there is any) of the other Provinces, and of the Territories of Canada, and of the Colony of Newfoundland, will be found mentioned towards the end of each section.

CHAPTER I.

OF THE OFFICE AND APPOINTMENT OF CORONERS.

SEC. 1.—THE ANTIQUITY OF THE OFFICE 1
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SEC. 1.—THE ANTIQUITY OF THE OFFICE.

The common law office of coroner is one of great antiquity, and much learning and research have been expended in shewing its origin and high repute; but any lengthy remarks on these subjects would be unsuited to a work designed for practical use. It will suffice to state that the origin of the office is involved in obscurity, but it is supposed to be coeval with that of sheriff, and to have been instituted to aid in keeping the peace when the

Earls gave up the wardship of the county. It was certainly in existence in the time of King Alfred, and the Coroner is mentioned in the charter of Athelstan to Beverly, anno 925. But in Crabb's History of the English Law, 1st American edition, p. 149, it is stated that some authorities are inclined to the view that the office was not regularly instituted until the latter half of the 12th century.[1] In the case of *In re Ward*, 30 L. J. c. 775, Lord Campbell said the office of coroner was a very ancient and important office in the realm of England. That the coroner, next to the sheriff, is the most important civil officer in the county, and that he performs the duty of the sheriff when the sheriff is disabled from doing so by having a personal interest in the duties to be performed.

The precise designation of the officer appears to have varied from time to time. In the reign of Richard the First he was called *Coronarius;* in that of John, *Coronator,* or *Custos placitorum coronæ,* because originally he had the custody of the rolls of the pleas of the crown. In the reign of Henry the Second, he was called *Serviens regis,* and in the Scotch law, Crowner, an appellation still in use among uneducated persons.

According to Sir Thomas Smith, who wrote in 1583, the name of the office came from the word "crowner" or "coromator," because "the death of every subject by violence is accounted to touch the crowne, and to be a detriment to it; in other words, a coroner was a representative of the crown."

The coroner's court is a court of record, and a criminal court.[2]

[1] Jer. O. C., 6th ed., 2; Impey, O. C. 473; Bacon on Gov., 66.

[2] 4 Inst. 271; 2 Hale's P. C. 53; *Reg.* v. *Hendershott,* 26 O. R. at p. 682; *The Queen* v. *Hammond,* 29 O. R. at p. 234; Jer., 6th ed., p. 63; *Reg.* v. *Herford,* 3 E. & E. 115; *Davidson* v. *Garrett,* 30 O. R. at p. 65 and 660; *Thomas* v. *Churton,* 2 B. & S. 475, 31 L. J. Q. B. 139. But in the United States the coroner's court has been held not to be a court of record, see *Crisfield* v. *Perine,* 15 Hern. (N. Y.) 200.

In *Newfoundland*, the office of coroner was abolished by 38 V. c. 8, N. F., and all inquests subsequent to 17th April, 1875, required to be held by stipendiary magistrates, who were given all the powers of coroners, except the powers of summoning juries.

SEC. 2—QUALIFICATIONS AND DISQUALIFICATIONS.

Formerly the office of coroner was of such high repute that no one under the degree of knighthood could aspire to its attainment,[3] and in the reign of Edward the Third a coroner was actually removed from the office because he was a *merchant!* It has, however, now fallen from such pristine dignity; and though still of great respectability, no qualifications are required beyond being a male of the full age of twenty-one years, of sound mind, and a subject of His Majesty, and possessing the amount of education and mental ability necessary for the proper discharge of the duties.[4]

These qualifications are no more than what all public officers by the common law are supposed, and ought, to possess. The coroner has often a very delicate and very important duty to perform, and it need hardly be said that the proper discharge of that duty depends almost entirely on his personal character and ability. Where these are deficient, scenes sometimes occur at inquests which throw discredit upon the office of coroner.

Coroners generally in Ontario are not competent or qualified to be justices of the peace during the time they exercise their office. But an exception is made in territorial and temporary judicial districts, where stipendiary magistrates may be appointed coroners for such districts.[5]

[3] 3 Ed. I. c. 10.

[4] It is said a coroner ought to have sufficient property to answer all such fines and duties as belong to him.

[5] R. S. O. c. 86, s. 8, and see chap. II.

And provincial coroners appointed in Ontario for holding fire investigations are justices of the peace for every county and part of Ontario by virtue of their office.[6]

It is not lawful for a coroner to conduct an inquest in any case where loss of life has been caused at or on a railroad, mine or other work whereof he is owner or part owner, either as a shareholder or otherwise, nor in any like case at, or on, a work where he is employed as medical attendant by the owner thereof, or by any agreement, or understanding, direct or indirect, with the employees at, or on, such work.[7]

Coroners when employed in the service of executing the process of the High Court or of the County Courts, must not directly or indirectly purchase any goods or chattels, lands or tenements by them exposed for sale under execution.

Before acting as coroner, the oath of allegiance and the oath of office should be taken,[8] since holding an inquest without taking these oaths would subject the coroner to a penalty, although his acts would probably be legal.

Coroners in Ontario are expressly excepted from those persons who are ineligible or disqualified to sit and vote in the Legislative Assembly of that province.[9]

In *Quebec.*—No coroner in this province can be a justice of the peace in cases arising out of facts which have been the subject of an inquest held by him, and every act so done by such coroner is absolutely void,[10] and in the case of the *Queen* v. *Graham*, 8 Que. Q. B. Crown side 167; 2 Can. Crown Cases 388, Mr. Justice Ouimet held that in Quebec a coroner is not a J. P. within the meaning of section 587 of the Criminal Code, 1892.

[6] R. S. O. c. 275, s. 11.
[7] R. S. O. c. 97, s. 7.
[8] R. S. O. c. 17, s. 37; R. S. O. c. 86, s. 8; see Forms Nos. 2 & 4.
[9] R. S. O. 1897, c. 12, s. 8.
[10] R. S. O. 1897, c. 12, s. 8.

A physician who is at the same time a coroner and who attended a deceased person, on whose body an inquest is called for, is not competent to hold such inquest.[1]

In *Nova Scotia*.—By R. S. N. S., 5th series, c. 75, s. 19, holding a tavern or shop license would disqualify a person from being a coroner in that province. And when an inquest is to be held in Nova Scotia upon the body of a person killed in a mine accident, no person having a personal interest in, or employed in, or in the management of, the mine in which the explosion or accident occurs, or any relative of the deceased person, can act as coroner therein.[2]

In *New Brunswick* every coroner before undertaking or performing any of the duties pertaining to his office must take, before the person to whom the *dedimus potestatem* is directed, the oath of allegiance, and also the oath set out in the appendix of forms No. 4½, and the person before whom such oaths are taken shall immediately after the taking thereof, return the *dedimus potestatem* to the provincial secretary, together with a certificate under his hand of the time and place of the taking of such oaths.[3]

In *Prince Edward Island*, coroners must reside in their respective counties.[4] The oath of office and allegiance must be taken before the Lieut.-Governor in Council, or the Lieut.-Governor, or before the Chief Justice of the Supreme Court, or any assistant judge of said court, or before any of the county court judges of the county. And the person administering the oath delivers to the coroner a certificate under his hand, that the oaths were duly taken before him, and this certificate must be filed in the

[1] *In re Haney* v. *Medd*, 34 C. L. J. 330; 57 V. c. 26, Que.
[2] R. S. N. S. c. 8, s. 24.
[3] 63 V. c. 5, N. B.
[4] See Art. 1855, P. E. I.

office of the provincial secretary before the coroner enters upon the duties of his office.[5]

In *British Columbia*, a coroner, before acting in his office, should take the oath of allegiance,[6] and the oath of office,[7] either before persons appointed by the Lieut.-Governor in Council for the purpose, or before a stipendiary magistrate, or justice of the peace, who shall have been lawfully acting as such and sworn. No fee can be demanded or received for administering these oaths. The oaths so taken are to be transmitted by the person administering the same to the provincial secretary, who files them in his office.[8]

In *Manitoba*, coroners cannot be justices of the peace, but "under special circumstances and in view of the public convenience, and in the promotion of the public interest," the Lieut.-Governor in Council may, by special commission under the Great Seal, confer upon one and the same person the offices of coroner and justice of the peace; and during the time the person holds such commission he can exercise and perform the duties of both offices.[9]

SEC. 3.—MODE OF APPOINTMENT.

In England, coroners are of several kinds—such as by virtue of office, by charter, privilege, or commission, by election, etc. Those by virtue of their office are the Lord Chief Justice and the other judges of the High Court, who are said to be sovereign coroners, and have jurisdiction in all parts of the realm.[10] But in Ontario coroners must be specially appointed by the Lieut.-Governor by commission

[5] 39 V. c. 14, ss. 1, 2, 3, P. E. I.
[6] See Form No. 3.
[7] See Form No. 5.
[8] 61 Vic. c. 50, ss. 4 & 5, B. C.
[9] R. S. M., c. 93, s. 8.
[10] 2 Hale, 53.

under the Great Seal;[1] unless, indeed, the Chief Justice and the other judges of the Supreme and High Courts in Canada are sovereign coroners *virtute officii*, in a similar manner to the judges of the corresponding courts in England. One or more coroners are first appointed for each county, city and town and for any provisional judicial, or territorial district, or provisional county, or for any portion of the territory of Ontario not attached to a county for ordinary municipal and judicial purposes.[2] The appointments are generally made upon the recommendation of a member of parliament, or other person possessing influence with the executive.

When one county separates from another, the municipal law of Ontario requires the Lieut.-Governor to appoint one or more coroners for the junior county, whose appointments take effect on the day the counties become disunited.[3]

With regard to the number of coroners for any county, city or town in Ontario there is no regulation. The number not being limited, the appointments are in part governed by the requirements of the locality, and possibly in part by the energy shewn by those seeking the office.

By section 22 of *The Statute Law Amendment Act, 1903*, Ontario, power is given to the Lieut.-Governor from time to time to appoint a coroner, to be designated "The coroner for the city of Toronto," and from and after such appointment all coroners or associate coroners theretofore or thereafter appointed in and for the county of York shall as to the city of Toronto, have and exercise

[1] It is said that in some counties the clerks of the peace claim the right to retain in their custody the coroners' commissions. If the fees are paid and oaths taken, there is no authority for their doing this, unless the commission contains the names of more than one coroner, when it should not be given to any particular one, but should be retained by the clerk of the peace.

[2] R. S. O. c. 97, s. 1 (1897).

[3] R. S. O. c. 223, s. 46, 49 (1897).

within the city of Toronto the powers only of associate coroners for the said city, but this does not limit the power of the Lieut.-Governor to make further appointments of associate coroners for the city of Toronto from time to time. The powers and duties of the coroner of the city of Toronto so appointed, and of all associate coroners in the said city respectively, are to be defined by and be exercised subject to such regulations as may from time to time be made by the Lieut.-Governor in Council.

Whenever the death of any person appears to have been caused by an accident upon a street, or highway, in the city of Toronto in the operation of any railway or street railway or electric railway on or across any street or highway, the Crown Attorney for the county of York must direct the coroner, or one of the associate coroners in the city of Toronto, to hold an inquest upon the body of the person so dying, and the coroner or associate coroner to whom such direction is given shall issue his warrant and hold an inquest accordingly.

And by this Act of 1903, section 4 of the Coroners Act, does not apply to, or be in force, as to inquests in the city of Toronto. Nor does it apply to investigations held in the city of Toronto under section 6 of the Coroners Act.

The coroner for the city of Toronto by this *Statute Law Amendment Act, 1903,* is paid such salary, not exceeding $1,500, as may be fixed by Order in Council, to be paid by the city half-yearly and is in lieu of all fees which would otherwise be payable to him, and the city is entitled to be reimbursed out of the Consolidated Revenue Fund one-half the amount of such salary, by the Ontario Government.

And by the same Statute Law Amendment Act, 1903, any coroner within whose jurisdiction the body of a per-

son is lying upon whose death an inquest ought to be held, may hold the inquest.

Under the power to make regulations with regard to the coroner of the city of Toronto the following regulations have been made up to the present time (1904).

1. Immediately on any death being reported to any police officer in the city of Toronto under circumstances that appear to require investigation by a coroner, it shall be the duty of such police officer forthwith to report the same to the coroner for the city of Toronto.

2. It is the duty of the coroner for the city of Toronto upon receiving any report as to a death within the limits of the city of Toronto under circumstances appearing to require investigation by a coroner, forthwith to make such enquiry as may be necessary in the premises, and either personally to investigate the circumstances under which the death in question has occurred, and to hold an inquest if he is so advised, or to request some associate coroner for the city of Toronto to issue a warrant and make an investigation, or hold an inquest. And in making such requisitions the coroner for the city of Toronto shall apportion the work as equitably as possible amongst the several active associate coroners for the city of Toronto.

3. It shall be the duty of an associate coroner, upon the receipt of a requisition to make an investigation or hold an inquest, signed by the coroner for the city of Toronto, or by the crown attorney for the county of York, as the case may be; forthwith to issue his warrant with such requisition thereto attached, and file the same at any police station in the city of Toronto, and proceed to make an investigation, or hold an inquest. And no fees shall be payable to any associate coroner in respect of any investigation or inquest held by him, unless the warrant and the requisition in that behalf, have been so filed by him.

4. The requisition hereinbefore referred to, signed by the coroner for the city of Toronto, or by the county crown attorney for the county of York, as the case may be, shall take the place of the declaration referred to in section 4 of "The Act respecting Coroners," so far as the same relates to investigations and inquests in the city of Toronto.

In *Ontario*, "provincial coroners," for purposes of holding fire investigations, are appointed by the Lieut.-Governor in Council under the Great Seal.[4] As to these coroners, see further on in this section.

The coroner, according to the definition at common law, is an officer of the king that hath cognizance of some pleas of the crown;[5] but there are several duties imposed by statute. The tenure of office is during the King's pleasure and the coroner's residence within the province;[6] but practically he holds office for life. Like other officers, he may be removed for several reasons, which will be further noticed under Chapter V.

In *Quebec*, the judges of the Court of Queen's Bench, crown side, are coroners in and throughout the province.

In *Nova Scotia*, coroners for the respective counties are appointed from time to time as occasion requires, by the Lieut.-Governor in Council. And in this province, in the absence of the coroner, an inquest may be held before a justice of the peace.[7] But for the city of Halifax and town of Dartmouth there are special provisions with regard to inquests in those municipalities.

In this province coroners are sworn into office before a judge of the Supreme Court, or the warden of the county.[8]

[4] R. S. O. (1897) c. 275, s. 11.
[5] Their power in proceeding to trial and indictment was taken away by *Magna Charta*, c. 17.
[6] See the Commission Form, No. 1.
[7] R. S. Nova Scotia, 5th series, 1884, c. 17, ss. 1, 7
[8] *Id.*, s. 1.

And in *Nova Scotia* by the Revised Statutes of that province, new series 1900, chapter 37, which is styled—"The Medical Examiner (Halifax and Dartmouth) Act,"—it is enacted for the purposes of that chapter, that the Nova Scotia Hospital and buildings and grounds in connection therewith, shall be deemed to be part of the town of Dartmouth, and that no coroner for the county of Halifax, shall hold any inquest within the city of Halifax, or the town of Dartmouth. And the Act provides that the Governor in Council may from time to time as a vacancy occurs, appoint a person to be medical examiner for the city of Halifax, and for the town of Dartmouth. The person so appointed must be a medical practitioner, who has been registered under the provisions of the Medical Act of the province, for not less than four years next before the date of such appointment. He holds office during pleasure, and before entering on the duties of his office, must take, and subscribe, before a judge of the Supreme Court, or a judge of a County Court, an oath in the form given in the Act, that he will faithfully perform the duties of such office; which oath when so taken and subscribed shall be filed with the provincial secretary.[9]

The medical examiner may appoint a person appointed by the Governor in Council, to act as deputy for him in the case of his own illness, absence or other inability to perform his duties.

Such deputy must have the same qualifications as those required of the medical examiner, and when acting in the place of the medical examiner, the deputy has all the powers conferred upon the medical examiner; and for any service performed by him as such deputy, he is entitled to the same fees as the medical examiner for similar services.

[9] R. S. N. S. 1900, c. 37, ss. 1, 2, 3, 4.

Before entering upon his duties the deputy must take and subscribe an oath similar to that required of the medical examiner, which oath shall be taken and filed in the same manner as directed for the oath taken by the medical examiner.[10]

In *New Brunswick*, under C. S. N. B. 1903 c. 124, s. 2, the Lieut.-Governor in Council may, whenever he shall think fit, appoint one or more coroners in and for each county in the province. And in New Brunswick, section 31 of 63 V. c. 5, states:—"Nothing in this Act shall prejudice the jurisdiction of a judge of the Supreme Court exercising the jurisdiction of a coroner by virtue of his office, and such judge may notwithstanding the passing of this Act exercise any jurisdiction previously exercisable by him in the same manner as if this Act had not been passed."

In *Prince Edward Island*, the Lieut.-Governor in Council is authorized by an Act passed in 1855 to appoint one or more coroners in and for each of the counties of Prince, King's and Queen's, in addition to the then existing coroners, and these coroners must reside in their respective counties unless they come within the provisions of 58 V. c. 4, hereafter mentioned. In the absence of a coroner an inquisition may be held before a justice of the peace;[1] and by 51 V. c. 12, s. 38, P. E. I., the coroners of the county of Queen's county are coroners of the city of Charlottetown, but are not to exercise any power or authority over the city relative to civic matters. And by 58 V. c. 4, P. E. I., the Lieut.-Governor in Council can appoint a coroner, or coroners, to act in and for any county in Prince Edward Island, notwithstanding that such coroner does not reside in the county for which he is appointed.

In *British Columbia*, the Lieut.-Governor in Council, from time to time, and wherever he shall think fit, appoints

[10] R. S. N. S., 1900, c. 37, s. 5.
[1] 39 V. c. 17, s. 4, P. E. I.

one or more coroners, either for the whole province or for any less extensive jurisdiction, as he may deem proper.[2]

In *Manitoba*, coroners are appointed by the Lieut.-Governor in Council under the Great Seal, and the appointments are for the whole province.[3]

In the *North-West Territories* coroners can be appointed by the Lieut.-Governor, from time to time, for the whole territories, and the Indian Commissioner for the territories, the judges of the Supreme Court, the Commissioner and assistant Commissioner of the mounted police, are also *ex officio* coroners for the territories.[4]

In *Keewatin*, the Lieut.-Governor, who is the Lieut.-Governor of Manitoba for the time being, appoints the coroners for the district.[5]

In *Manitoulin*, all coroners residing, on 23rd March, 1888, in that portion of Algoma set apart as "The Temporary Judicial District of Manitoulin," ceased to have any authority in the remainder of the district of Algoma, and became coroners for the temporary judicial district, without new commissions, by the same tenure of office and without again taking the oaths. The Lieut.-Governor of Ontario appoints the subsequent coroners for Manitoulin.[6]

By C. S. O. (1897) c. 86, s. 8, a Stipendiary Magistrate for any territorial or temporary judicial district in Ontario may be appointed a coroner for the district. This is one of the exceptions to the general rule which disqualifies a justice of the peace from being made a coroner in Ontario.

In *Newfoundland*, the office of coroner was abolished after 17th April, 1875, by 38 V. c. 8, N. F., and Stipendiary Magistrates were given *ex officio* all the powers of coroners, except the power of summoning juries.

[2] B. C. Statutes, 1897, c. 50.

[3] R. S. Man. c. 32, ss. 2, 3; and by the same Act all former appointments for the several counties of the province are extended to the whole province.

[4] R. S. Can. c. 50, s. 82, and Criminal Code, Part 45, p. 193.

[5] R. S. Can. c. 53, ss. 7, 23.

[6] R. S. O. c. 97, s. 1 (1897).

CHAPTER II.

THE DUTY AND AUTHORITY OF CORONERS GENERALLY.

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SEC. 1.—AS CONSERVATORS OF THE PEACE.

The duty and authority of coroners generally will be considered in this chapter. Their particular duties and mode of proceeding will be treated of hereafter.[1]

The powers of coroners are judicial and ministerial. *Judicial*, as in the case of inquests upon bodies, and must be executed in person and not by deputy in Canada, except in those parts of Canada where deputies can be appointed by the statute law, as in Nova Scotia, see p. 11.[2] *Ministerial*, as in the execution of process of the courts, and may be executed by deputy.[3]

Coroners in former days were the principal conservators of the peace within their counties, and may now bind to the peace any person who makes an affray in their presence.[4] And in England their duties extended to hearing appeals of felony, taking the appeals of approvals, and the confession and aspirations of felons who had fled to sanctuary, keeping a record of outlawries, and inquiring for and securing to the King treasure-trove, wrecks, deodands, and the forfeited chattels of felons.

[1] See Part II.
[2] Impey O. C. 473; 14 Ed. 1.
[3] Jer. O. C. 10, 121; *Rex* v. *Ferrand*, 3 B. & Ald. 260; 22 R. R. 373.
[4] 1 Bac. Abr. 491; 2 Hawk. P. C. c. 28, s. 5.

In Ontario by R. S. O. (1897) c. 86, s. 8, coroners are forbidden to act as justices of the peace during the time they use or execute their office, but in the case of *Kerr* v. *The British American Assurance Company*,[5] it seems to have been admitted that a coroner was a justice of the peace by virtue of his office, *Morrison, J.*, saying that Mr. J. H. Cameron, Q.C., very properly conceded on the argument, that a coroner is a magistrate; and *Adam Wilson, J.*, concurred in the judgment, which was, that a coroner is a magistrate who may give a certificate of loss under an insurance policy. At the time this case was decided, the Ontario Statute law in this respect was the same as it was up to the passage of 54 V. c. 37, Ont., by s. 1 of which Act, provincial coroners can be appointed by the Lieut.-Governor in Council who are both coroners and justices of the peace for every county and part of Ontario for the purposes of holding fire investigations.[6]

SEC. 2.—IN INQUESTS OF DEATH.

A coroner has not an absolute right to hold inquests in every case in which he chooses to do so,[7] but when it is made to appear to any coroner in Ontario that there is reason to believe *or suspect* a deceased person came to his death from violence, *criminal* or unfair means, or by culpable or negligent conduct of others, under such circumstances as require investigation *and not through mere accident or mischance*, or upon being notified by the proper authorities of the death, no matter from what cause, of any prisoner confined in any gaol, penitentiary, prison, house of correction, lock-up house, or house of industry, it is the duty of such coroner to hold an inquest forthwith upon the body, except in the case of a death taking place

[5] 32 U. C. Q. B. 569.
[6] See C. S. O. (1897) c. 275, ss. 2, 3, 11.
[7] See also c. xii., s. 1.

in any county house of industry, in which case such inquest shall not be necessary unless, after notification, the county crown attorney believes that such death took place under circumstances requiring investigation. This is the language of the R. S. of Ontario, c. 97, ss. 2 and 3, except the words in italics "or suspect" and "criminal," which are taken from the N. B. Act, C. S. 1903 c. 124, and it places the question of holding inquests in a clearer light than the old statute of Edward I., *De officio coronatoris*, which formerly regulated and defined the duties of coroners. By this latter statute the coroner was directed to hold an inquest on information of any "being slain or *suddenly dead*," and although dying suddenly was always interpreted as not meaning deaths from apoplexy, fever or other visitation of God, yet it left room for the very improper practice to spring up of holding inquests on the bodies of all who died suddenly. There is now no excuse for such a custom; and the coroners who hold inquests without the proper information or notice, are greatly to blame. And in Ontario no fees can be claimed unless, prior to issuing the warrant for summoning the jury, the coroner makes a declaration in writing under oath[9] stating that from information received by him, he is of the opinion that there is reason for believing that the deceased did not come to his death from natural causes or from mere accident or mischance, but from violence or unfair means or culpable or negligent conduct of others under circumstances requiring investigation by a coroner's inquest, unless the inquest is held upon the written request of the crown attorney, or in the districts of Muskoka, Parry Sound, Rainy River and Nipissing, upon the written request of a stipendiary magistrate, or the inquest is held on the body of a prisoner.[10] The language of Chief Justice Jervis is very appropriate to the subject. He

[9] See form No. 14.

[10] R. S. O. (1897) c. 97, ss. 3, 4.

says: "Coroners ought not in such cases, nor indeed in any case, to obtrude themselves into private families for the purpose of instituting inquiry, but should wait until they are sent for by the peace officers of the place, to whom it is the duty of those in whose houses violent or unnatural deaths occur, to make immediate communication, whilst the body is fresh, and, if possible, whilst it remains in the same situation as when the person died."[1] And before holding any inquest in Ontario the coroner must notify the county crown attorney of his intention so to do, who, if so directed by the Attorney-General, shall attend the inquest, and in case he so attends, he may, if he thinks fit, examine or cross-examine any witnesses called at the inquest, and the coroner shall summon such witnesses as the county crown attorney may direct.[2]

It is very desirable, as will be seen hereafter, that an inquest (when there is occasion for one) should be held with as little delay as possible; yet nothing can be more reprehensible than *unseemly* haste, instead of waiting until properly acquainted with the necessity for an inquiry.[3]

Cases may occur like one that happened in Ontario, wherein two separate coroners commenced to hold two separate inquests on the same body and finally the question as to which coroner was in the right, was settled by one of the juries complaining to the Attorney-General of the inconvenience they were put to by repeated adjournments owing to the doubt existing as to which coroner had the

[1] The language of LORD ELLENBOROUGH, C.J., in *Rex* v. *Kent* (Justices) 11 East, 229, is very much to the same effect and he pronounces the conduct referred to as "highly illegal."

[2] 60 Vic. c. 14. s. 24.

[3] Coroners have been known to arrive before death has taken place, and to have watched the advent of that which gives them jurisdiction with an avidity far from being creditable. An inquest must always be a painful proceeding to those who generally have charge of the body, more particularly when accompanied by a *post-mortem* examination: and coroners who wantonly give additional pain to that which a sudden death has already caused, cannot be too strongly condemned.

best right to proceed with the inquiry. The Attorney-General was reported to have investigated the case and to have given his opinion as to which coroner was the proper one to hold the inquest, and that appeared to have settled the dispute.[4]

Referring to this unseemly haste on the part of coroners, *Stephen, J.*, remarked in *Reg.* v. *Price*, 12 Q. B. D. 247,—"Nothing can justify such interference except a reasonable suspicion that there may have been something peculiar in the death, that it may have been due to other causes than common illness." And in the United States it has been held that unless the circumstances indicate that the death has occurred from other than natural causes, no inquest should be held. A. & E. Encyclopaedia of Law, Vol. 7, p. 604. But in *Reg.* v. *Stephenson*, 15 Cox, C. C. 679, it was held a coroner had power to hold an inquest where he has reasonable suspicion that death is due to other causes than common illness. However the presumption in the United States, and no doubt in Canada also, is that when a coroner acts he does so in a proper case.[5]

The power of justices to decline allowing items in coroners' accounts for holding inquests, which in their opinions were unnecessary, was tried before the Court of King's Bench in England, in *Rex* v. *Kent (Justices)*, 14

[4] In cases of this kind, which may occur without any impropriety, or unseemly haste, on the part of either coroner, it would seem more dignified if one of the coroners gave way, even at the expense of the undignified, but private act, of tossing a copper. This difficulty has occurred in the United States as well as in Canada, for an amusing case occurred there a short time ago. A young man committed suicide and two coroners were notified of the case. Both boarded the same train to secure the body. When they left the cars they raced together for the place where the body was, only to find a justice of the peace, an officer who can, in some cases, hold inquests in the United States, had secured the body and adjourned the inquest. The report stated that both coroners claimed the remains, and had a hot time over them.

[5] In one year in one city in Canada out of eighty-six coroners' warrants issued to hold inquests no less than thirty-eight were withdrawn. The withdrawals by one coroner alone were over half the number he issued! Such facts imply that warrants for inquests are sometimes issued in great haste, and before it is known whether an inquest may be properly held.

East, 299, when the court refused to compel the justices to allow an item in the coroner's account, which had been struck out because there was no ground for holding the inquisition. And it has been held in Ontario, that if the justices audit the accounts before them at all, the Superior Courts will not review their decision.[6]

But if the coroner exercises a reasonable discretion in coming to a conclusion "it is made to appear to him" there is a proper case for an inquest, his judgment in the matter will govern, and the Board of Audit in Ontario will not be justified in refusing to pass proper items of his account, provided the coroner has made the declaration in writing under oath above mentioned.[7]

Let it be borne in mind, then, that no inquest is now justifiable unless the deceased person came to his death from *violence*,[8] or *unfair means*,[9] or by *culpable*[10] or *negligent conduct*[1] of others, *under such circumstances* as *require* investigation, unless the deceased was a prisoner confined in a gaol. The jealous care with which the law watches over the 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; and the statute above mentioned requires those having charge of such prisoners *immediately* to give notice of the death to a coroner. Formerly in all cases of the death of a luna-

[6] *Davidson* v. *The Quarter Sessions of Waterloo*, 22 U. C. Q. B. 405.
[7] *In re Fergus and Cooley*, 18 U. C. Rep. 341.
[8] In judging whether a death is comprehended under any of these terms, they must be read in connection with the words "under such circumstances as require investigation," for every death from violence, negligent conduct, etc., need not of necessity require investigation. For instance, if a man is chopping by himself, and in felling a tree it strikes and kills him, without there being any reason to suppose he wilfully placed himself in its way, there would be no circumstances connected with his death calling for investigation, although caused by "violence." On the other hand, if another man was chopping with him and the circumstances of the death were such as would appear to require investigation, an inquest might properly be held.
[9] See the previous note.
[10] See note 3.
[1] See note 3.

tic in a private asylum in Ontario inquests had to be held, but the law has been changed and now when a patient dies in a private lunatic asylum, a statement of the cause of the death, with the name of any person present thereat, must be forthwith drawn up, and signed by the medical attendant of the house, and a copy duly certified by the proprietor or superintendent of such house must, *within forty-eight hours* after the death, be sent by the proprietor or superintendent to the nearest coroner.[2]

But it does not necessarily follow that, upon receipt of this statement, an inquest must be held. It is merely a notice to the nearest coroner of the death, and he should, on its receipt, enquire whether the circumstances attending the death call for investigation, and, if they do not, he should proceed no further.

In *Quebec* if there is reasonable suspicion as to the cause of, and circumstances attending, the death of any patient in a lunatic asylum, the coroner must summon a jury and hold an inquest.[3]

The Revised Statutes of the Province of Ontario (1897) c. 97, s. 3, require an inquest to be held on the death of a prisoner in the penitentiary, but the Dominion statute relating to penitentiaries in all the provinces, including Ontario, states, that if a convict dies in a penitentiary and the inspector, warden, surgeon or chaplain has reason to believe that the death of such convict arose from any other than ordinary causes, he shall call upon a coroner having jurisdiction, to hold an inquest upon the body of such deceased convict, and upon such requisition by one or more of the officers named, the coroner shall hold an inquest on the body of the deceased convict, and, for that purpose, he and the jury, and all other persons necessarily attending the inquest, are to have admittance to the prison.

[2] R. S. O. (1897) 318, s. 44; see forms Nos. 12 & 13.
[3] R. S. Que. Art. 3208; see R. S. C. c. 182, s. 65.

The language of this Dominion statute does not expressly take away the right a coroner has to hold an inquiry upon the body of a deceased convict when a proper case for one is otherwise brought to his notice, but, to avoid any unseemly conflict, or any difficulty in obtaining admission to a penitentiary, when a coroner thinks it proper to hold an inquest, the requisition mentioned had better be obtained from one of the proper officers of the institution. If such is refused, the coroner would be justified in not holding an inquest.

The statute of *Ontario* for the protection of infant children provides that no person shall retain or receive for hire, or reward, more than one infant; and, in case of twins, more than two infants, under the age of one year, for the purpose of nursing, or maintaining such infants apart from their parents, for a longer period than twenty-four hours; except in a house which has been registered by the municipal council of the locality; and in case of the death of an infant in any such registered house, the person registered must, within twenty-four hours after such death, cause notice thereof to be given to the coroner for the district within which the infant died, and the coroner must hold an inquest on the body unless a certificate under the hand of a registered medical practitioner is produced to him by the person so registered, certifying that such medical practitioner has personally attended or examined the infant, and specifying the cause of its death, and the coroner is satisfied by certificate that there is no ground for holding an inquest.[4] Inquests in these cases appear to be exceptions to the general rule in *Ontario*, which, under section 4 of R. S. O. (1897) c. 97, requires a coroner to take the oath therein prescribed before issuing his warrant to summon a jury, to entitle him to fees.

When judgment of death has been executed on any criminal, it is the duty of a coroner of the district, county

[4] R. S. O. (1897) c. 258, s. 8.

or place to which the prison where the offender was executed belongs, within twenty-four hours after the execution to hold an inquest on the body of the offender, and the jury at the inquest shall inquire into and ascertain the identity of the body, and whether judgment of death was duly executed on the offender. In these cases the inquisition must be in duplicate, and one of the originals is to be delivered to the sheriff. No officer of the prison or prisoner confined in the prison shall in any such case be a juror on the inquest.[5]

The coroner being a judicial officer when holding inquests must, in Canada, as stated in Part I., act in person, and not by deputy,[6] unless the power to appoint a deputy is expressly given by statute. In Ontario no such power is given by statute, but in some other parts of Canada that power is so given.

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.[7] By analogy to other legal proceedings, the information should be on oath, and the Government in Ontario will not now pay accounts for inquests unless they are accompanied by the information on oath mentioned in Part I., c. ii., s. 2. For the form of the information, see Form No. 10, and for form of oath see Form No. 14.

Generally the inquiry can only be taken upon view of the body *(super visum corporis)* and must be restricted

[5] 55-56 V. c. 29, s. 944, Dom., being the Criminal Code, 1892.

[6] Wood's Inst. 64, c. 1; *Rex* v. *Ferrand*, 3 B. & A. 260; 22 R. R. 373; 1 Chit. 745.

[7] "A coroner has jurisdiction to hold an inquest, and is justified in acting, upon information, which, if true, would make it his duty to hold an inquest if he believes the truth of the information:" *Reg* v. *Stephenson et al.*, 13 Q. B. D. 331. And in that case HAWKINS, J., said:—"Jurisdiction to inquire cannot depend upon the actual result of the inquiry." And Lord Chancellor SELBORNE, in the case of *In re Hull*, stated:—"I myself entirely agree with the opinion that the officious interference of coroners, when not sent for, and when they have received no notice from any public authority, would be in many cases a censurable excess of their duty."

to the cause of death of the person upon whom the inquest is taken. Any exception to this must depend upon very special circumstances, or special enactments by statute, see Part II., c. xii., ss. 7, 12.

If a coroner takes an inquisition without a view of the body, he may take a second inquisition *super visum corporis*, and that second inquisition will be good, for the first would be absolutely void. 2 Hale P. C., p. 58.

If the body is not found, or is too decomposed for a view, an inquest should not be held by a coroner, unless he is given a special writ, or commission for the purpose, but an inquiry by magistrates, or other authorized justices who may proceed on the testimony of witnesses without a view, should be made. 2 Hawk. P. C., c. 9, s. 23.

The question as to how much of the body must be forthcoming to warrant an inquest, depends upon whether the portion produced can possibly throw any light upon the cause of death. In cases of suspected poisoning any portion whatever might supply evidence one way or the other; and in cases of burnt bodies even the ashes might prove of importance. While on the other hand, an inquest might be held on a considerable portion of a body which would afford no evidence of the cause of death, or possibly it might be found the original owner of the portion was still alive! No general rule can be laid down on this question. Coroners should exercise a careful judgment in the matter after fully considering all the circumstances of each case that can be ascertained, and if there is any reasonable doubt regarding the propriety of an inquest, let the doubt be given against holding it, and leave the inquiry, if one is necessary, to the magistrates. In a case where the coroner caused a body that had been buried to be disinterred, and just looked at the face of the deceased and then ordered the corpse to be again covered up, it was held not a sufficient view. That he should have had an opportunity of seeing whether there were any marks of violence, and of

ascertaining from the appearance of the body, what was the occasion of the death; and at the time that he took the view, the jury should have attended him that they might have had the advantage of his remarks on the appearance of the body exhibited, and that the jury and coroner should see the body at the same time.[8]

And in the case of *Rex* v. *Bond*, 1 Stra. 22, the filing of an inquisition taken five years after the death, upon a view of a *skull*, which the coroner assured the jury he knew by a particular mark was the skull of a certain deceased person, was stayed by the court. If a body has been so long buried as to afford no information a coroner is not justified in causing it to be disinterred, and if he does so, he may be fined.[9] It is usually supposed that in an ordinary grave, a body will become skeletonized in about ten years.[10] Yet the skeleton alone might afford very material evidence in some cases as mentioned in Part I., c. v., s. 1.

The inquest and inquisition being judicial acts they must not be done in Canada on a Sunday. The criminal law is under the jurisdiction of the Dominion Parliament, and the observance of the Lord's Day can only be governed by Dominion statutes.[1]

Where there are several coroners for the same place, an inquest may be taken by one or more; but when one proceeds alone in the matter, the acts of others will be void.[2]

[8] *Rex* v. *Ferrand*, 3 B. & Ald. 260; ruling cases, vol. 7 (King's Bench, 1819).

[9] 2 Lev. 140; and see post Part I., c. 5, s. 1, and Part II., c. 12, s. 1.

[10] Tidy Vol. I., p. 135.

[1] 7 Co. 666; *Dakins' Case*, 2 Saund. 290; Jervis O. C., 6th ed., p. 10; *In re Elizabeth Cooper, et al.*; 5 Prac. Rep. 256; It is submitted that section 729 of the criminal code (55-56 V. c. 29) and the amendment thereto by 63-64 V. c. 46, may not apply to coroners' inquests, and see *Attorney-General for Ontario* v. *Hamilton Street Railway Co.*, L. R. App. Cas., 1903, p. 524.

[2] 2 H. P. C. 50, 59; Staund. P. C. 53a.

A coroner has no power after holding an inquest *super visum corporis* and recording the verdict, to hold a second like inquest *mero motu*, on the same body; the first inquisition not having been quashed, and no writ of *melius inquirendum* having been awarded.[3]

In *Beaney* v. *The State*, 74 Md. 153, it was held in the United States that an inquest held by a coroner, and a commitment signed by him on a Sunday, were not void on that account. The court holding that no judicial act could be done on Sunday, but that it did not follow that no step could be taken on that day to apprehend a criminal, that an inquest held by a coroner's jury, and the commitment by a coroner, or magistrate, of an accused person to gaol, were rather ministerial, than judicial acts, and were not of that judicial character which precludes their being performed on a Sunday.

This may be good law in the United States, but in England and Canada the taking of an inquest has been held to be a judicial act and invalid if taken on a Sunday. In the case of *In re Elizabeth Cooper et al.*, 5 Pr. R. 256, *Galt, J.*, in giving judgment on a motion to discharge the prisoners said:—"The inquest and inquisition, being judicial acts done on a Sunday, appear to me to be void. As therefore there is nothing to support the warrant, the prisoners must be discharged."

When a precept is issued and a jury summoned to attend an inquest the coroner is bound to proceed with the inquiry and cannot dismiss the jury without doing so. A refusal to proceed with the inquest under such circumstances is a misbehaviour in the performance of his duty, and in England has been held to be punishable, and no doubt would be so held in Canada except where the law has been varied by statute. See *In re Ward*, 3 DeG. & J. 700; 30 L. J. Ch. 775; 7 Jur. (N.S.) 853. In *Ontario*

[3] *Reg.* v. *White*, 3 El. & El. 137, and see Part II., c. xiii., s. 3.

the law has been varied so that if a coroner in that province after the death of any person has been reported to him, and he has in consequence of information received by him, made the declaration required by R. S. O. c. 97, s. 4, and after viewing the body and making such inquiries as he deems necessary, he comes to the conclusion that an inquest is unnecessary, he has the right to issue a warrant to bury, in the same manner as he would have had power to do in case an inquest had been actually held, and to withdraw the warrant for the holding of an inquest in case he has issued such warrant. In every such case in Ontario the coroner must forthwith make and file with the county crown attorney a declaration in writing under oath setting forth briefly the results of such inquiry and the grounds on which the warrant for burial was issued. This declaration can be administered by a justice of the peace, a commissioner for taking affidavits in the High Court of Justice, or a notary public. The coroner for such investigation and services is entitled to a fee of $5.00 and mileage, provided the county crown attorney certifies that there were sufficient grounds to warrant such investigation, and such fee is in lieu of all fees to which the coroner would be entitled in respect of any proceedings taken by him towards holding an inquest. This provision does not apply to, or affect the case of a prisoner dying in any penitentiary, gaol, prison, house of correction, lock-up house or house of industry; nor relieve any coroner from the performance of the duties imposed by section 3 of R. S. O. c. 97, namely—that upon receipt of notice from the warden, gaoler, keeper or superintendent of the penitentiary, gaol, prison, house of correction, lock-up house or house of industry in which a prisoner dies, the coroner shall forthwith hold an inquest upon the body except in the case of a death in any county house of industry, in which case an inquest shall not be held unless the county crown attor-

ney believes the death took place under circumstances requiring investigation.

It is a punishable offence to bury the body of a person who dies a violent death, without affording an opportunity of holding an inquest.[4]

If an inquest ought to be held, it is a misdemeanor for any one with the intent thereby to prevent an inquest, so to dispose of the body as to prevent the coroner from holding the inquest.[5]

If a person having legal charge of a dead body chooses to burn it instead of burying it, he does not commit a misdemeanor unless the burning is so done as to amount to a public nuisance, or for the purpose of preventing the holding of an inquest thereon in a case where an inquest ought to be held.[6]

A coroner is guilty of an indictable offence in taking a sum of money for not holding an inquest; whether he has any pretence for holding the inquest or not, he is equally criminal in having extorted money to refrain from doing his office.[7]

One inquisition may be taken on the bodies of several persons killed by the same cause and dying at the same time;[8] but the mileage and fees can only be charged for the one inquest.[9]

After receiving notice, the coroner summons a jury, and proceeds with the inquest as directed in chapter xii., Part II.

When more than one person is killed by the same cause and they die at the same time, but the bodies cannot be

[4] *Reg.* v. *Stephenson*, 13 Q. B. D. 331; *Reg.* v. *Price*, 12 Q. B. D. 247.

[5] *The Queen* v. *Price*, L. R. 12 Q. B. 247; *The Queen* v. *Stephenson*, L. R. 13 Q. B. D. 331.

[6] *The Queen* v. *Price*, L. R. 12 Q. B. D. 247; *The Queen* v. *Stephenson*, L. R. 13 Q. B. D. 331.

[7] *Rex* v. *Harrison*, 1 East, P. C. 482.

[8] *Reg* v. *West*, 1 G. & D. 481; 5 jur. 485; 1 Q. B. 826.

[9] *Rex* v. *Warwick* (justices), 5 B. & C. 430.

obtained for an inquest to be held on them all at the same time, and separate inquests are held; the depositions taken on the first inquest cannot be used on any subsequent one. The evidence must be taken as if no previous inquest had been held on any of the deceased.[10]

In *Quebec* no inquest can be held on the body of any deceased person, unless the coroner shall, prior to the issuing of his warrant for summoning the jury, have made a declaration in writing, stating that from information received by him he is of opinion that there is reason to believe that a crime has been committed, or that the deceased died from violence or unfair means or under such circumstances as require investigation; which declaration must contain the reasons and facts upon which such opinion is based, and must be returned and filed with the inquisition.[1]

Upon the death of any prisoner in Quebec, the warden, gaoler, keeper or superintendent of any penitentiary, gaol, reformatory, house of correction or lock-up, in which such prisoner dies, must immediately give notice to a coroner, detailing the death.[2]

In *Nova Scotia*, when a coroner is informed that the dead body of a person is lying within the limits of his jurisdiction and it appears:—

(*a*) That there is reasonable cause to suspect that such person died by violence, undue means or culpable negligence, or

(*b*) That such person died in gaol or other prison, or

(*c*) That such person died in such place and under such circumstances as to require an inquest under any statute of Nova Scotia,—the coroner shall issue a warrant to a

[10] *The Mitchelstown Inquisition*, 22 L. R. (Ir.) 279; *Reg.* v. *Yorkshire* (coroner), 9 Cox C. C. 373; *Reg.* v. *Hendershott et al.*, 26 O. R. 678.

[1] R. S. Que. 1888, article 2687.

[2] R. S. Q. 1888, Art. 2688.

constable for summoning not less than twelve nor more than twenty-three good and lawful men, to appear before him at a special time and place, there to inquire as jurors touching the death of such person as aforesaid.[3] And in Nova Scotia, when the dead body is found lying within the city of Halifax or town of Dartmouth, and it appears that there is reasonable cause to suspect that such person died by violence, undue means or culpable negligence, or that such person died in gaol or prison, or that such person died in such place or under circumstances as to require an inquest under any statute of Nova Scotia, the medical examiner shall forthwith repair to the place where such dead body is and take charge of the same and shall by inspection of the body and otherwise make diligent inquiry respecting the cause and manner of the death of such person and reduce to writing every circumstance respecting the condition of such body and tending to show the cause and manner of death of such person, together with his own opinion as to the cause of death, and shall sign such writing and file the same with the clerk of the crown for the county of Halifax. R. S. N. S. 1900, c. 37, s. 6.

And in Nova Scotia, where in the city of Halifax or town of Dartmouth by one accident the lives of two or more persons are lost, it is not necessary for the medical examiner to make an inquiry and report respecting the cause of death of each person separately, but he may make one report upon all, but if he deems a second inquiry and report necessary, he may make the same, and will be entitled to be paid his fees therefor, but before doing so he must make a statement under oath setting forth his opinion and that a second inquiry and report were necessary, giving the reasons therefor fully, and he must file the same with his report. R. S. N. S. 1900, c. 37, s. 10.

Upon the receipt of the report of the medical examiner the stipendiary magistrate for the city of Halifax or for

[3] R. S. N. S. 1900, c. 37, s. 3.

the town of Dartmouth, as the case may be, shall proceed to hold an inquest. R. S. N. S. 1900, c. 37, s. 11.

The inquest may be held in private and every person other than a person required or permitted to remain may be excluded. R. S. N. S. 1900, c. 37, s. 12.

The medical examiner in the discharge of his duties has the right to enter where the dead body, the subject of the inquiry, is suspected to be, and if such entry is refused he may enter any dwelling or building, and every person who prevents or obstructs the medical examiner is liable to a penalty not exceeding fifty dollars, and in default of payment to imprisonment not exceeding thirty days. R. S. N. S. 1900, c. 37, s. 17.

But when an inquest is held upon the body of any person who has died in gaol or prison, an officer of the gaol, or prison, or a prisoner therein, or a person engaged in any sort of trade, or dealing, with the gaol or prison, must not be a juror on such inquest (R. S. N. S. 1900, c. 36, s. 12, s.s. 2), and when the coroner finds the death has been caused by an explosion or accident in a mine, of which notice should be given to the commissioner, or deputy inspector for the district, of his intention to hold such inquest, and in the absence, or non-arrival, or non-attendance, of the deputy inspector, the coroner shall adjourn such inquest whenever practicable, to enable the inspector, deputy inspector, or some other properly qualified person appointed by the commissioner, to be present to watch the proceedings, and at least four days before holding the adjourned inquest, the coroner must send to the commissioner, or to the deputy inspector, for the district, notice in writing of the time and place of holding such adjourned inquest. But before the adjournment the coroner may take evidence to identify the body and may order the interment thereof. The inspector or such other person appointed by the commissioner, or a person so appointed

by the workmen of the mine at which the accident occurred, must be allowed at any such inquest to examine any witness, but subject nevertheless to the order of the coroner. If the inspector or such other person so appointed by the commissioner is not present at the inquest, and evidence is given of any neglect having caused, or contributed to, the explosion or accident, or of any defect in or about the mine, appearing to the coroner or jury to require a remedy, the coroner must send notice in writing to the inspector, of such neglect or default.[4]

It is the duty of every police officer of the city of Halifax and the town of Dartmouth to notify the medical examiner of the deaths requiring to be examined into and to assist him in performing his duties. R. S. N. S. 1900, c. 37, s. 20.

Except as in the Medical Examiner Act it is otherwise provided, the medical examiner has all the powers and privileges of a coroner. R. S. N. S. 1900, c. 37, s. 17, s.s. 3.

When services are rendered in bringing ashore a dead body found in the waters of Halifax harbour the medical examiner may allow such sum as he deems reasonable therefor, and the sum is paid on a certificate of the medical examiner that the same was incurred and is reasonable and proper. R. S. N. S. 1900, s. 37, s. 18.

In *Nova Scotia*, in the absence of any coroner an inquest may be held before a justice of the peace, who shall be entitled in such case to the same fees as a coroner.[5]

In *New Brunswick*, the general law is that no inquest can be held upon the body of any deceased person by a coroner until it has been made to appear to him that there is reason to believe that the deceased died from violence, criminal or unfair means, or by culpable or negligent conduct either of himself or of others, under such cir-

[4] R. S. N. S. c. 8, s. 24.
[5] R. S. N. S. 1900, c. 36, s. 13.

cumstances as require investigation and not through mere natural causes or from mere accident or mischance. But in particular cases this provision of the law of New Brunswick is varied, for upon the death of a prisoner, the warden, gaoler, keeper or superintendent of the penitentiary, gaol, prison, lock-up house or other public institution in which the prisoner died, shall immediately give notice of the death to some coroner of the county in which the death has taken place, and the coroner, if he thinks that it is a case requiring investigation, may, upon making the declaration required by the Act, C. S. N. B. 1903, c. 124, s. 7, in other cases,[6] proceed to hold an inquest on the body. And by section six of that statute, a coroner shall in all cases hold an inquest upon being required to do so in writing by a judge of the Supreme Court, or of any County Court, or by any member of the Executive Government of the Province of New Brunswick.[7] Except in the cases mentioned in section six of that statute, no fees shall be paid to a coroner in respect of any inquest unless prior to the issuing of his warrant for summoning the jury he shall have made a declaration in writing under oath,[8] (which oath may be administered by a justice of the peace, commissioner for taking affidavits to be read in the Supreme Court, a notary public, or any two freeholders resident in the county in which such inquest is to be held, and shall be returned and filed with the inquisition), stating that from information received by him, he is of opinion that there is reason for believing or suspecting that (*give name of deceased*) did not come to his *or her* death from mere natural causes, or from mere accident or mischance, but came to his death from violence, criminal or unfair means, or the culpable or negligent conduct of himself or others under circumstances requiring investi-

[6] See form in schedule of forms.

[7] 2 C. S. N. B. 1903, c. 124, ss. 5, 6.

[8] See form in schedule of forms.

gation by a coroner's inquest.[9] And by section 8 of C. S. N. B. 1903, c. 124, when a coroner is informed that the dead body of a person is within his jurisdiction, and there is reasonable cause to believe or suspect that such person died under such circumstances as to require an inquest under that or under any law in force in that province, or upon requisition being made to him in writing by a judge of the Superior Court, or of any County Court, or by a member of the Executive Government of the Province of New Brunswick, the coroner, whether the cause of death arose within his jurisdiction or not, shall, so soon as practicable, issue his warrant (see form in schedule) to any constable for summoning not fewer than seven nor more than thirteen good and lawful men duly qualified as petit jurors under the provisions of chapter 126 of the C. S. N. B. 1903, to appear before him at a specified time and place there to enquire as jurors touching the death of such person. Only such a number of persons in excess of seven shall be so summoned, as will be likely to form a jury after allowing for failures to attend or sufficient objection to qualification. If necessary to complete the jury, further jurors may be at any time summoned in like manner, as near as may be, as the original jurors were summoned.[10]

When a coroner in New Brunswick is satisfied that the death of any person has occurred within his jurisdiction, but either from the nature of the event causing the death, or from any other reason, neither the body nor any part thereof which the coroner or jury can view can be found or recovered, the coroner may, after having first obtained the consent in writing of the Attorney-General so to do, proceed to summon a jury and hold an inquiry as to the cause of the death of such person, without any

[9] C. S. N. B. 1903, c. 124, s. 7.
[10] C. S. N. B. 1903, c. 124, s. 8.

view of the body, in the same manner in all other respects as other inquests are held under the Act, C. S. N. B. 1903, c. 124, s. 23. Any coroner of the county in which the death occurred has jurisdiction to hold an inquiry in the cases referred to. This provision of the new Brunswick Coroner's Act, it is submitted, is not intended to apply to bodies which may have floated out of the jurisdiction of the coroner either by the sea, river or other waters, for by section 35 of the Act it is provided that:—"Any one of the coroners of the county in which the body of the person upon whose death the inquest ought to be held, is lying, shall have jurisdiction to hold an inquest, and when the body is found in the sea, or in any river, creek, lake, pond, or in any arm of the sea, the inquest shall be held only by one of the coroners of the county where the body is first brought to land." Therefore a coroner had better not act under section 18 of the New Brunswick statute unless it is clear the body, or any part thereof, cannot be found either in his jurisdiction or in any other coroner's jurisdiction; otherwise there may arise an unseemly contest between himself and a brother coroner in another county.

In *New Brunswick* a coroner upon holding an inquest upon any body may, if he thinks fit, after the view of the body, by order under his hand authorize the body to be buried before verdict.[1]

Where in *New Brunswick* the Supreme Court, or any judge thereof, upon application made by, or under, the authority of the Attorney-General, is satisfied either:—

(1) (*a*) That a coroner refuses or neglects to hold an inquest that ought to be held; or (*b*) where an inquest has been held by a coroner, that by reason of fraud, rejection of evidence, irregularity of proceedings, insufficiency of inquiry, or otherwise, it is necessary or desirable, in the

[1] C. S. N. B. 1903, c. 124, s. 32.

interests of justice, that another inquest should be held; the court or judge may order an inquest to be held touching the said death, and may order the said coroner to pay such costs of, and incidental to, the application as to the court or judge may seem just; and where an inquest has been already held, may quash the inquisition on that inquest.

(2) The court or judge may order that such inquest shall be held either by the said first mentioned coroner, or by some other coroner, in and for the said county.

(3) Upon any such inquest it shall not be necessary unless the court or judge otherwise order, to view the body, but save as aforesaid, the inquest shall be held in like manner in all respects as any other inquest under the Coroners' Act.[2]

Also in New Brunswick whenever it may appear to the coroner that an inquest is not necessary, or when any two justices of any county in which any person may have died shall certify to the coroner that he would be justified in granting a permissive warrant for burial without holding an inquisition, he may forthwith, without an inquisition, issue such warrant.[3]

In *British Columbia* the occasion which warrants an inquest being held, is now by statute 61 V. c. 50, s. 6, stated to be as follows:—When a coroner is informed that the dead body of a person is lying within his jurisdiction, and there is reasonable cause to suspect that such person has died either a violent or an unnatural death, or has died a sudden death of which the cause is unknown, or that such person has died in prison, or in such place, or under such circumstances as to require an inquest in pursuance of any Act, the coroner, whether the cause of death arose within his jurisdiction or not, shall as soon as practicable,

[2] C. S. N. B. 1903, c. 124, s. 34.
[3] C. S. N. B. 1903, c. 124, s. 40.

issue his warrant for summoning six good and lawful men to appear before him at a specified time and place, there to inquire as jurors touching the death of such person as aforesaid; and in case six jurymen (duly qualified according to law) do not appear in obedience to such summons, other jurymen may be summoned to make up the deficiency, and so on from time to time until a sufficient number is selected. But where an inquest is held on the body of a prisoner who dies within a prison, an officer of the prison or a prisoner therein or a person engaged in any sort of trade or dealing with the prison must not be a juror on such inquest.[4]

In British Columbia 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, and where a body is found drowned, the inquest must be held only by the coroner having jurisdiction in the place where the body is first brought to land.[5]

In *Prince Edward Island* the coroner's law of England is taken as it stood in 1773, with some few statutory provisions added since that date, and the language of Chief Justice Jervis quoted in Part I., c. ii., s. 2, sufficiently points out when an inquest should be held in this province. But in *Prince Edward Island* the coroner having authority to hold an inquest is the one resident nearest the place where the deceased person died, or in his absence out of his county, or in the event of his being incapacitated from acting by illness, interest or otherwise, then the inquest is to be held by such coroner whose residence is next nearest to the place of death of the deceased.[6]

In this province, in the absence of a coroner, an inquest may be held before a justice of the peace.[7]

[4] 61 V. c. 50, s. 6, B. Col.
[5] 61 V. c. 50, s. 10, B. Col.
[6] P. E. I. Act of 1855.
[7] 39 V. c. 17, s. 4, P. E. I.

In *Manitoba* coroners cannot claim any fees for inquests unless prior to holding them they take a similar declaration as is required in Ontario,[8] unless the inquest is held upon the written request of the Attorney-General or of a police magistrate, or when the inquest is held upon the body of a prisoner who has died in any prison, gaol, house of correction or lock-up. The declaration is to be administered by a justice of the peace or by any other person authorized by the Manitoba Oaths Act, to take affidavits for use in Manitoba, and must be returned and filed with the inquisition.[9]

In *British Columbia* the Lieut.-Governor in Council can appoint from time to time under the statute of 1897, c. 50, s. 2, s.s. 2, a fit and proper person to act as deputy of any coroner in the holding of inquests, and all inquests taken, and other acts performed by such deputy coroner under and by virtue of any such appointment, shall be deemed and taken to be the acts and deeds of the coroner for whom such deputy acts. A deputy must take the oaths provided for a coroner by the Act, but varied to suit the circumstances, and which must be transmitted to the provincial secretary of British Columbia to be filed among the records of his office. But no such deputy can act except during the illness of the coroner, or during his absence from any lawful or reasonable cause, or on the written request of the coroner. And in British Columbia when the Supreme Court of that province upon application made by or under the authority of the Attorney-General for that province is satisfied either that a coroner refuses or neglects to hold an inquest which ought to be held by a coroner, and by reason of fraud, rejection of evidence, irregularity of proceedings, insufficiency of inquiry, or otherwise, it is necessary or desirable in the interests of justice, that another inquest should be held, the

[8] See Part I., c. ii., s. 2, and form No. 14.
[9] Rev. Stat., Man., c. 32. s. 5.

court may order an inquest to be held touching the said death, and may, if the court think it just, order the said coroner to pay such costs of and incidental to the application as to the court may seem just, and where an inquest has been already held may quash the inquisition on that inquest, and the court may order that such inquest shall be held either by the said coroner or by any other coroner for the time being holding office within and for the province or for any part or district thereof, and the coroner ordered to hold the inquest shall for that purpose have the same powers and jurisdiction as, and be deemed to be, the said coroner. Upon any such inquest it shall not be necessary, unless the court otherwise order, to view the body, but, save as aforesaid, the inquest must be held in like manner in all respects as any other inquest under the British Columbia Act (61 V. c. 50, s. 9). Any power vested by that statute in the Supreme Court of British Columbia may, subject to any rules of court, for the time being in force, be exercised by any judge of that court.[10]

In *The North-West Territories* upon the death of any prisoner, the gaoler, or officer in charge of the gaol wherein such prisoner dies, must immediately give notice of the death to the nearest resident coroner, and upon receipt of such notice the coroner must proceed forthwith to hold an inquest upon the body. In all other cases no inquest is to be held upon the body of any deceased person by any coroner, unless it has been made to appear to such coroner that there is reason to believe the deceased died from violence or unfair means, or by culpable or negligent conduct, either of himself or of others, under such circumstances as require investigation, and not through mere accident or mischance.[1] How it is to be "made to appear" that an inquest is necessary, is left to the discretion of the

[10] 61 V. c. 50, s. 9, s.s. (4), B. Col.

[1] Rev. Stat., Can., c. 50, s. 83, 84.

coroner, but it is recommended that he should take a statement of the facts relied upon, on oath.

In the *District of Keewatin* the law relating to coroners does not appear to have been changed since the district was set apart, and consequently the law relating to the *North-West Territories* will govern as to when an inquest should be held. See Part I., c. ii., s. 2, and R. S. C. 1886, c. 50, ss. 83, 84.

In *The Temporary Judicial District of Manitoulin* the law as to when an inquest should be held is the same as in *Ontario*. See Part I., c. ii., s. 2.

In *Newfoundland* in all cases of persons slain, drowned, suddenly dead, *felo de se*, or dead in prison, or in cases where the medical attendant on any deceased person refuses to certify that such person died from natural causes; an inquiry respecting the death of such person must be held by a stipendiary magistrate, who in addition to all other powers possessed by him, has all the powers excepting the power of summoning juries, which a coroner has or may have hereafter under the law of England.[2] And the proceedings in such enquiry and all depositions connected therewith must be transmitted to the Attorney or Solicitor-General for such further proceedings as may be required by law. In all places where there shall be no resident stipendiary magistrate, or when he shall be absent, any justice of the peace in or near the locality shall and may perform and exercise all the functions, powers and authorities, which are or might be exercised or performed by a stipendiary magistrate under the provisions of the consolidated statutes.[3]

SEC. 3.—TO INQUIRE INTO THE ORIGIN OF FIRES.

A coroner has no *ex officio* jurisdiction to hold an inquest to inquire into the origin of a fire by which no

[2] Con. Stats. N. F., 2nd series, c. 53, ss. 13, 15.
[3] Con. Stats. N. F., 2nd series, c. 53, ss. 13, 15.

death has been occasioned,[4] but coroners now have authority, by an Ontario statute, and it is their duty in Ontario to institute an inquiry into the origin of fires. The first statute on the subject, 18 V. c. 157, was limited to Quebec and Montreal, but this was repealed by 20 V. c. 36, forming c. 88 of the Con. Stats. Can., 1859, and now embodied in c. 275, s. 2, Rev. Stat. Ont. 1897, which enacts that whenever any fire has occurred whereby any house or other building has been wholly or in part consumed, the coroner within whose jurisdiction the locality is situated, shall institute an inquiry into the cause or origin of such fire, and whether it was kindled by design, or was the result of negligence or accident, and act according to the result of such inquiry.

It is not the duty of coroners to institute inquiry into the cause or origin of all fires indiscriminately. They should first be satisfied that there is reason to believe the fire was the result of culpable or negligent conduct or design, or occurred under such circumstances as, in the interests of justice and for the due protection of property, require investigation.

The statute does not point out how the circumstances justifying the holding of an inquiry shall be made to appear, and it therefore rests with the coroner to act upon such information as he may deem sufficient, whether upon oath or otherwise.[5]

And as regards provincial coroners, before they enter upon any investigation regarding fires, they must obtain the consent in writing of either the Attorney-General for Ontario, or the county attorney for the county wherein the investigation is proposed to be held.[6]

[4] *Reg.* v. *Herford*, 3 El. & El. 115; 7 Ruling cases 156.

[5] R. S. O. 1897, c. 275, s. 2, *In re Fergus & Cooley*, 18 U. C. Q. B. 341.

[6] R. S. O. 1897, c. 275, s. 11, s.s. (2).

In cases of loss by fire in which any fire insurance company is interested, any justice of the peace, or any one having lawful authority to administer an oath or affirmation in any legal proceeding, may also in Ontario, investigate into the cause of the fire and as to the persons profiting thereby.[7]

Formerly in Ontario for fire investigations the coroner was entitled to be paid his fees by the treasurer of the municipality, whether he made it appear to the authorities that an inquiry was proper or not.[8] Now, no municipality is liable for any such expense, unless the investigation be required by a requisition under the hands and seals of the mayor or other head officer of the municipality, and of at least two other members of the council thereof; and such requisition is not to be given unless there are strong special and public reasons for granting the same.[9] And no expense of or for an adjournment of any such inquest is chargeable against or payable by the party, or municipal corporation, calling for or requesting the investigation to be held, unless it is clearly shewn by the coroner, and certified under his hand, why and for what purpose an adjournment took place, or became necessary in his opinion.[10]

It has been held that the want of funds in the treasurer's hands was no answer to an application for a mandamus to the treasurer to pay the coroner's fees in a case where the municipality was liable for them, and where the payment was not refused on that ground.[1]

When investigating accidents by fire, a coroner can in his discretion impannel a jury or not, unless he is required to do so on the written requisition of an insurance agent,

[7] R. S. O. c. 275, s. 1.
[8] Con. Stat. Can. 1859, c. 88, s. 9.
[9] R. S. O. 1897, c. 275, s. 9.
[10] R. S. O. 1897, c. 217, s. 10.
[1] *In re Fergus and Cooley*, 18 U. C. Q. B. 341.

or of any three householders resident in the vicinity of the fire.[2] His duties and powers in these investigations, as to taking down the evidence, summoning jurors and witnesses, &c., are the same as in ordinary inquests.[3]

The jury and witnesses in these investigations will be noticed in Part II., c. xii., s. 3, and the fees in Part II., c. xiv., s. 6.

In the case of *Kerr* v. *The British America Ass. Co.*, 32 U. C. Q. B. 569, it was held that a coroner is a magistrate who may give a certificate of loss *under an insurance policy*. This case was decided before 54 V. c. 37 (O.), by section one of which statute, now section seven of chapter 275 of R. S. O. 1897, certain coroners are made justices of the peace for every county and part of Ontario for the purposes of holding fire investigations. By this statute it seems a new order of coroners has been created in Ontario called "provincial coroners." They are by virtue of their appointment both coroners and justices of the peace for every county and part of the province for the purposes of holding fire investigations only. Before provincial coroners can enter on any such investigation they must obtain the consent in writing of either the Attorney-General, or county attorney for the county wherein the investigation is proposed to be held.[4] Their fees are the same as those chargeable by ordinary coroners when holding fire investigations,[a] and they are paid in like manner. And in all other respects—as under what circumstances an inquest can be had—when a jury may be impanelled—the power to summon witnesses, &c., the power and proceedings of provincial coroners are the same

[2] R. S. O. 1897, c. 275, s. 3.

[3] R. S. O. 1897, c. 275, ss. 4, 5, 6.

[4] As to this consent being imperative or merely directory, the legal reader may receive some assistance from a perusal of the judgments of *Meredith, C.J.*, and *Rose, J.*, in the case of *Davidson* v. *Garrett*, 30 O. R. 653.

a See c. 14, s. 2.

as those of a justice of the peace under the Summary Convictions Act, R. S. C. 1886, c. 178.[5]

The creation of this new order of "provincial coroners" does not appear to be intended to interfere with, or in any way supersede, the duties and powers of ordinary coroners as to holding fire investigations, and so far, the power in Ontario to appoint coroners solely to conduct fire investigations, has been sparingly exercised. The writer has noticed the publication of only three such appointments. Those appeared in the Ontario *Gazette* of Feb. 8th, 1902, and these were all of inspectors of criminal investigations. Messrs. Murray, Rogers and Grier.

In *Nova Scotia*, *New Brunswick*, *Prince Edward Island*, *British Columbia*, *Manitoba*, *The North-West Territories* and *Keewatin*, coroners have no power to hold fire investigations. But in some of these provinces and territories special statutory provisions are made for holding fire investigations by mayors, justices of the peace, stipendiary magistrates or councillors.

In *Manitoulin*, coroners have the same powers and duties as regards fire investigations as coroners have in other parts of Ontario.

In *Quebec*, article 2989 of the Revised Statutes of that province of 1888, requires coroners there to inquire into the origin of fires in cities, towns and incorporated villages, but excepts the cities of Montreal and Quebec from its operation. And by 58 V. c. 34, Que., it is provided that the coroner shall not institute such inquiry unless it has been previously 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 interests of justice, and for the protection of property, require an investigation. In the city of Montreal the evidence may be taken by steno-

[5] R. S. O. 1897, c. 275, s. 14.

graphy, by a stenographer appointed by the Lieut.-Governor in Council, whose fees at the rate fixed by Order in Council are paid monthly by the said city.[6]

And in the cities of Quebec and Montreal fire inquests cannot be held by coroners, but must be held by an officer designated as the fire commissioner of Quebec or Montreal as the case may be. At Quebec his jurisdiction extends to the *banlieue* of the city of Quebec, and to the town of Levis wherein such commissioner may exercise his powers in the same manner and to the same effect as in the city of Quebec.[7]

The Lieut.-Governor in Council appoints from time to time, a fit and proper person to fill the office of fire commissioner in each of the cities of Montreal and Quebec.[8] And it is the duty of that officer either in person or by some competent person employed by him for that purpose to institute an inquiry into the cause or origin of such fire, and whether it was kindled by design or was the result of negligence or accident.[9]

In *Newfoundland*, wherever any building or property is injured or destroyed by fire, the stipendiary magistrate or justice for the district in which the fire occurs, or such justice as the Governor in Council may appoint therefor, shall make an investigation to ascertain the cause or origin thereof, and these officials have power to enforce the attendance of such persons to give evidence before them as they may require by summons or warrant and to examine them under oath. And the proceedings and all depositions connected therewith must be returned to the Attorney-General for such further proceedings as *may be* prescribed by law.[10]

[6] 58 V. c. 34, Que.
[7] R. S. Que. Art. 2998.
[8] R. S. Que. Art. 2999.
[9] R. S. Que., Art. 3000.
[10] Con. Stats. N. F. 2nd series, c. 53, s. 12.

In *Prince Edward Island* by statute 57 V. c. 22, justices of the peace when properly called upon to do so, can hold investigations into the origin of fires.

SEC. 4.—TO RETURN INQUISITIONS.

In every case of investigation *super visum corporis* found before coroners in Ontario, the inquisition, and every recognizance taken before them, with the written information (if any), and the depositions and statements (if any) of the accused, shall be forthwith delivered to the crown attorney for the county in which such inquisition has been found.[1]

The returns of fire inquests held in Ontario, either by ordinary coroners or by provincial coroners, are to be made to the clerk of the peace for the district or county within which they have been taken.[2]

Under this section it will be proper to mention that coroners in Ontario are required to return lists of the inquests *super visum corporis* held by them during the preceding year, together with the findings of the juries, to the provincial treasurer, on or before the first day of January in every year,[3] and the coroner who holds an inquest, before the body is interred, should supply the division registrar of the division in which the death took place, according to his knowledge or belief, with all the particulars required to be registered, touching such death by the form provided in the R. S. O. 1897, c. 44, s. 22. After the expiration of two years next after any death, or where the dead body of any person is elsewhere than in a house, unless a certificate has been given by a coroner, the death cannot be registered except with the written authority of the Registrar-General, and the fact of such author-

[1] R. S. O. 1897, c. 97, s. 18.
[2] R. S. O. 1897, c. 275, s. 14.
[3] R. S. O. 1897, c. 97, s. 19.

ity being given must be entered in the schedule provided for the registration of deaths.[4]

The division registrar is the clerk of the municipality other than counties, and where there is no organized municipality the Lieut.-Governor in Council can appoint a division registrar for such place, and may make such rules and regulations as may be necessary to secure a correct record of births, marriages, and deaths occurring therein until the territory comprising the registration division, or some part thereof, either with or without other territory, becomes a municipality.[5]

After the expiration of two years next after any death, or where the dead body of any person is found elsewhere than in a house, unless a certificate has been given by a coroner, the death must not be registered except with the written authority of the Registrar-General, and the fact of such authority being given must be entered in the schedule provided for the registration of deaths.[6]

In *Quebec*, by R. S. 1888, Article 3961, every coroner whether he does or does not hold an inquest on any body found publicly exposed, must immediately notify the inspector of anatomy, or the sub-inspector of anatomy, of the finding thereof. And, except in the case of contagious disease, certified by a physician, no body unclaimed may be delivered up unless on the order of the inspector, or sub-inspector of anatomy, and to the person mentioned in such order.

In *Nova Scotia*, coroners must return the inquisition together with the depositions of witnesses to the clerk of the crown for the county, immediately at the conclusion of any inquest held by him, and the clerk of the crown shall without fee file the same, and give the coroner a certificate stating that the same has been filed, with the

[4] R. S. O. 1897, c. 44, s. 26. See form No. 114, and R. S. O. 1897, c. 44, s. 26.
[5] R. S. O. 1897, c. 44, ss. 10, 11.
[6] R. S. O. 1897, c. 44, s. 26.

date of the inquisition, and the date of filing the same, and upon presentation of such certificate to the municipal treasurer by the coroner, the coroner is entitled to receive from the municipal treasurer $7 for his own services, together with 25c. for each juror who served on the jury, and fifty cents for the constable, and such juror and constable's fees shall be paid by the coroner to the persons entitled to receive the same.[7] And on or before the 1st day of November in every year, coroners in Nova Scotia must return a list in triplicate of all the inquests held by them during the year, ending the 30th of September, last preceding, together with the findings of the jury on each such inquest, to the office of the provincial secretary, under a penalty of $20. And in inquests arising out of mine accidents when the inspector or some other person appointed by the commissioner is not present, and the evidence shows any neglect as having caused or contributed to the death or the explosion or accident or that any defect in or about the mine exists which appears to the coroner or jury to require a remedy, it is the duty of the coroner to give the inspector notice in writing of such neglect or default.[8]

In *New Brunswick*, the coroner must take down in writing the evidence or testimony of all persons who may give evidence at any inquest held or taken by or before him, and the same, together with the inquisition and the declaration under oath of the coroner, made before the issuing of the warrant for the summoning of the jury if any such declaration be necessary, must in all cases, except where a verdict of murder or manslaughter shall be rendered against any person or persons, be immediately thereafter transmitted by the coroner to the clerk of the peace for the county in which the inquest is taken, who must file the same in his office.[9] No fees for holding an inquest will be paid until after the coroner shall have

[7] R. S. N. S. 1900, c. 36, ss. 7, 8, 14.
[8] R. S. N. S. 1900, c. 19, s. 43, ss. (5).
[9] C. S. N. B. 1903, c. 124, s. 20.

filed in the office of the clerk of the peace (or transmitted to the magistrate or justice as and when required by the Criminal Code, 1892), the examinations or depositions taken at the inquest, together with the inquisition and declaration above mentioned. Every deposition must be signed by the witness and also by the coroner.[10] And in New Brunswick coroners are also required on or before the first day of January in each year, to return to the provincial secretary a list of inquests held by them during the preceding year, together with the findings of the juries, and any coroner who shall refuse or neglect to make such return is liable to a penalty not exceeding $20 for each week during which he shall remain in default, to be recovered in the name of the provincial secretary in any court of competent jurisdiction, and to be further liable to be dismissed from office, but the penalties to be collected from any one coroner for failing to make a return so required in any one year can in no case exceed one hundred dollars.[1]

In *New Brunswick*, by the Act of 1887, chapter 5, declared to be in force by the Act of 1901, c. 6, the coroner who attends an inquest must supply the Division Registrar, according to his knowledge or belief, with all the particulars of inquests held by him required by the form given in the statute. Any false statement in his return subjects the coroner to a fine of $40. And neglect to make the return makes him liable to a fine of from $1 to $20 with costs.

In *Prince Edward Island*, a law was passed in 1836 regulating the duties of coroners, and among these duties, coroners were required to certify and subscribe the evidence taken before them, and all recognizances and the inquisition, in cases of manslaughter or murder or accessory to murder before the fact, and deliver or transmit the same to the proper officer of the court in which the trial

[10] C. S. N. B. 1903, c. 124, s. 21.
[1] C. S. N. B. 1903, s. 41.

was to be held, before or at the opening of the court; under a penalty of such fine as the court should think meet. In 1855 another Act was passed making it the duty of all coroners holding inquests under the authority of that Act to transmit the proceedings and finding of the same to the Lieut.-Governor in Council, in order to their publication if thought necessary. Again in 1876 a further Act was passed[2] requiring coroners to return their inquisitions to the clerk of the crown within fifteen days after holding the same, who is to file the same without fee, and give the coroner a certificate containing the date of the inquisition and the date of filing the same. No express provision is made in either of the last two statutes, repealing the requirements of the others, but inasmuch as when the inquisitions are filed under the last statute with the clerk of the crown, it becomes impossible to file them with any other officer, this last statute must be taken as superseding the other two, and the returns had better be made in all cases to the clerk of the crown.

In *British Columbia* the coroners are required forthwith after an inquest, to return the inquisition and every recognizance taken before them, with the depositions and statements (if any) of the accused, to the Attorney-General of the province. And also they are required, on or before the first day of January in every year, to return to the provincial secretary, a list of the inquests held by them during the preceding year, together with the findings of the juries.[3] And in British Columbia after the termination of an inquest on any death they must send to the Registrar-General or district registrar whose duty it is by law to register the death, such certificate of the finding of the jury, and within such time as is required by the "Births, Deaths and Marriages Act."

[2] 39 V. c. 17, P. E. I.
[3] 61 V. c. 50, ss. 11, 21, B.C.

In *British Columbia*, by the R. S. 1897 c. 33, ss. 17, 28, the coroner who attends any inquest must, before the body is buried, supply the District Registrar, according to the knowledge or belief of the coroner, all the particulars required to be registered touching such death by the form given in Schedule B of the Act, under a penalty of not less than $25 or more than $100.

In *Manitoba*, coroners are required to file inquisitions and the oath taken prior to issuing the warrant for summoning the jury.

And in *Manitoba*, coroners who attend any inquest must, before the interment of the body, supply to the clerk of the municipality in which the inquest is held, according to the coroner's knowledge or belief, all particulars required to be registered according to the Act of Manitoba —R. S. c. 173, s. 19—under a penalty for neglecting so to do of not less than five dollars or more than twenty-five dollars, with costs: see section 28 of the Act. Every registration should be made within the time mentioned, but may be made within two years. And any knowing or wilful false statement in these returns incurs a penalty of $40.

In the *North-West Territories*, a coroner who attends any inquest must supply to the Registrar of the Division in which the death took place, according to his knowledge and belief, all the particulars of the case, according to the Form C in the schedule to Consolidated Ordinance of 1898, chapter 14, under a penalty for neglect of a fine of $1 and up to $50; and for a false return $25.

In *Keewatin*, coroners make returns of inquests held by them to the Lieut.-Governor in such form and at such times as he directs.[4]

In *Manitoulin*, coroners make their returns of inquisition as in the rest of Ontario. See Part I. c. ii., s. 5.

[4] R. S. C. c. 53, s. 27, s. 10.

In *Newfoundland*, the proceedings on an inquest and all depositions connected therewith are returned by the stipendiary magistrates, who alone can hold inquests there, to the Attorney or Solicitor-General, for such further action as may be required.[5] The returns in fire inquests should be made to the Attorney-General only.[6]

SEC. 5.—TO EXECUTE PROCESS.

In addition to his judicial functions, the coroner also acts ministerially as a substitute for the sheriff, and executes process when that officer is incapacitated by interest in the suit, or makes default.[7] When so acting, the coroner can do all lawful acts which the sheriff might have done, and has all the responsibilities of the sheriff and sheriff's officers.[8]

In the case of *Gilchrist* v. *Conger*, referred to in the note, *Robinson, C.J.*, in giving judgment said:—"And in the 17th chapter of the old treatise of Umfreville on the office of coroner, section one, it is laid down that 'in case of process to coroners upon any disability in the sheriff, the sheriff is no longer considered as an officer of the court in that suit wherein the process to the coroners is awarded, nor should he afterwards intromit, act or intermeddle in that cause.' And that 'the coroners in that case are in all respects considered as immediate officers of the court in *loco vice comites*, and may do all such lawful acts as the sheriff himself might have done, if not under any challenge or incapacity,' and this as well in regard to judicial as other process. In Comyn's Digest, 'officer' G. 13, it is said without any qualification or exception: 'Process shall be directed to the coroners where

[5] 52 V. c. 8, s. 2 (Newf.)
[6] 52 V. c. 25, s. 21 (Newf.)
[7] 4 Inst. 271, *Gilchrist* v. *Conger*, 11 U. C. 197; R. S. O. 1897, c. 61, s. 76, and c. 224, ss. 261, 262 and c. 78, s. 2.
[8] Hob. 85. R. S. O. 1897, c. 17, s. 37.

the sheriff is a party plaintiff or defendant.' Where therefore our replevin act speaks of the sheriff as the officer to whom the writ is to be directed, and who is to take security, it must, we think, be taken to be said with the reservation of that exception, which is universal, that he is not a party interested in the suit, or proceeding," pp. 198, 199. And *Draper, J.*, in the same case said:—"In these, and numerous similar instances, where a right, remedy or proceeding, of general application to suitors is given, though the sheriff is mentioned through whose instrumentality the object is to be obtained, where the sheriff is a party seeking the remedy, or against whom it is sought, the act must be done by the coroner, to prevent a failure of justice." And his lordship quoted from Dwarris, p. 721. And *Burns, J.*, concurred in the judgment.

When judgment is recovered against a sheriff and his sureties on their covenants in Ontario and Nova Scotia, the plaintiff or his attorney must, by endorsement on the writ, direct the coroner or other officer charged with the execution of such writ, to levy the amount thereof upon the goods and chattels of the sheriff in the first place, and in default of goods and chattels of the sheriff to satisfy the amount, then to levy the same, or the residue thereof, of the goods and chattels of the other defendant or defendants; and so in like manner with any writ against lands and tenements, upon a judgment on any such covenant.[9]

If a sheriff forfeits his office and becomes liable to removal, he is still to execute process until his successor is appointed.[10]

Where there is no sheriff or in case a sheriff dies, or is removed from office, or resigns his office and his resignation is accepted, process is not to be awarded to the

[9] R. S. O. 1897, c. 17, s. 32.
[10] R. S. O. 1897, c. 17, s. 33.

coroner, but to the under sheriff or deputy.[1] Coroners are not the proper officers of the court in any case but where the sheriff is absolutely improper, not where there is no sheriff at all.[2] And where a sheriff is unable to attend on account of sickness, or is absent from the county, and there are no circumstances that would have rendered him unable to act had he been present, his deputy, and not a coroner, is the proper party to serve process.

When the process is awarded to the coroner, the sheriff is no longer considered as an officer in the suit;[3] and as judicial writs follow the course of their original, where the first process is awarded to the coroners the execution must be directed to them also,[4] even though a new sheriff be appointed in the meantime.[5]

Interest in the sheriff who has executed the earlier proceedings in the suit, is no reason for directing final process to the coroner; although, if the interest of the sheriff be suggested upon the roll, it is said the court will award the *venire* to the coroner.[6]

Process against the deputy sheriff may, it seems, be awarded to the sheriff.[7]

When the sheriff is interested in a suit the jury must be summoned by the coroner under a *venire* awarded in the particular case. The number of jurymen summoned in such a case need not be over twelve unless the writ of *venire* orders otherwise.[8]

It was held in *Clandinan* v. *Dickson et al.*, 8 U. C. Q. B. 281, that the Act 48 Geo. III. c. 13, s. 5, gives no authority to the coroner to summon a special jury; where

[1] R. S. O. 1897, c. 17, s. 53.
[2] *Rex* v. *Warrington*, 1 Salto. 152.
[3] Cros. Eliz. 894.
[4] 2 Hen. VI. 21, *a*; Bro. Exon. 110; 14 H. 8, 316; Jer. O. C. 78.
[5] Com. Dig. Officer, G. 13.
[6] Jer. O. C. 78.
[7] *Gordon* v. *Bonter*, 6 U. C. Law Journal, 112.
[8] R. S. O. 1897, c. 61, s. 102; *Fraser* v. *Dickson*, 5 U. C. Q. B. 231.

the sheriff is interested, some indifferent person appointed by the court must strike the jury.

By R. S. O. 1897, c. 61, s. 76, in an action where the sheriff is the opposing party, the judge of the County Court, if required by either plaintiff or defendant, must issue a precept to a coroner of his county, at least fourteen days before the week in which the general sessions of the peace are to be holden, requiring him to summon the number of jurors expressed in the precept. And by the same statute, section 102, it is directed that the manner of drafting, and striking, returning and summoning, jurors by the sheriff, shall be observed and followed by coroners, elisors, and other officers, having the return of jury process; and that they shall for such purpose have free access, at all reasonable times, to the jurors' book in the office of the clerk of the peace of the proper county; and the coroner shall possess all the powers, and perform all the duties, in any way connected with the drafting, striking, returning and summoning, such jurors as are prescribed in the Act to, or vested in, the sheriffs of the different counties, with respect to jurors returned by them upon similar process.

In *Gilchrist* v. *Conger*, 11 U. C. Q. B. 197, it was held that where the sheriff is defendant, a writ of replevin, under 14 and 15 V. c. 64, could be directed to the coroners, though the statute does not provide for such a case, it being a well known rule of construction that a remedial statute shall be extended by equity to other persons besides those expressly named.

In an action on a replevin bond given to B, one of the coroners of the county, the defendants having moved in arrest of judgment on the ground that the bond was made to, and assigned by, one coroner, not the coroners of the county; it was held that the bond being properly set out in the declaration, and no issue or point being raised on the record, the court were not bound to take

judicial notice that there were more coroners than one in the county, and the declaration was therefore sustained. *Draper, C.J.*, said: "The declaration does not shew that there is any other coroner than the one named as the obligee, and that though he is stated to be 'one of the coroners of the united counties,' &c., this is merely matter of description, not requiring proof, or containing an admission that there were other coroners. And as to the assignment, one coroner may assign, though there are several, if he states he does so for all, and in the name of all, and if there were more than one, *non constat* on the declaration that the assignment was not so made. But as the bond was only given to one, and assigned by him, we are not, I apprehend, to notice anything out of the record, or to take judicial notice that there is more than one, as no statute makes it necessary there should be.'[9]

In a case where a coroner has seized a note under a *fi. fa.* directed to him, and in suing for the note the declaration did not shew how the *fi. fa.* came to be directed to the coroner, it was held that where a writ can under certain circumstances be properly directed to a coroner, the court would assume these circumstances existed in the case before him.[10]

Under 48 Geo. III. c. 13, s. 5, it was held the coroner had no authority to summon a *special* jury; but it should have been done by some indifferent person appointed by the court, the sheriff being interested.[1]

When a coroner is required to arrest a sheriff, a difficulty must present itself in knowing what to do with the prisoner. If incarcerated in his own prison, he might dismiss the gaoler and turnkeys, who are all of his own appointment, and let himself out! and the coroner would

[9] *Johnston et al.* v. *Parke et al.*, 12 C. P. 179, but see *post*, Part I., c. ii., s. 5.

[10] *Brown* v. *Gordon*, 16 U. C. Q. B. 342.

[1] *Clandinan* v. *Dickson et al.*, 8 U. C. Rep. 281, but see *Rex* v. *Dolby*, cited Umf. 144.

have no authority (in all cases at least) to take him into another county and imprison him there.[2]

If required to arrest a sheriff on *habeas corpus*, and have his body before the court at Osgoode Hall by a day named, the coroner might then perhaps start for Toronto immediately after the arrest, and lodge his prisoner in the gaol there until he was wanted; but when he arrests a sheriff on a *capias*, for instance, what can be done with him? In some cases he might no doubt be legally imprisoned in a private house, but in others no imprisonment would seem to be legal except in the common gaol of the county—imprisonment under the Division Court Act, for instance. Generally, from there being no danger of the sheriff absconding, the coroner need only tell him he is his prisoner, and take a promise from him to appear when required. But if there is any likelihood of the sheriff keeping out of the way, perhaps the best method of securing him would be to confine him in the coroner's or some other convenient house in charge of one or more bailiffs, according to the necessity of the case. However, the writer knows of no authority by which to point out the proper course to be pursued.

Another difficulty occurs in the execution and return of writs directed to coroners, which, however, more concerns the members of the legal profession than the persons for whom this work is specially written. It arises from the rule that where coroners act ministerially, although one may execute the writ,[3] the return must be in the name of all.[4]

[2] The Municipal Act of Ontario (R. S. O. 1897, c. 223, s. 504), now requires the appointment or dismissal of a gaoler to be approved of by the Lieut.-Governor, but as the nomination of the gaoler still rests with the sheriff, the gaoler could hardly refuse to vacate the gaol if told to do so by the person who appointed him, and by the time the Lieut.-Governor refused his approval of the dismissal, the mischief referred to in the text would be done.

[3] 2 H. P. C. 56.

[4] 2 Hawk. P. C. c. 9, s. 45; Staun. P. C. 53 (*a*), and see Part I., c. ii., s. 5.

The practice in this country, as far as the writer is aware, is to direct the writ to the "coroners" of the county, and to hand it to one coroner, who makes a return in his own name; and if it is a writ of *fi. fa.*, it is endorsed on the back thus: "Mr. Coroner, levy and make," &c., &c. And the coroner also makes the return simply in his own name. This general practice, if indeed it is such, seems clearly improper; for so inflexible is the rule mentioned that in the case of *Rex* v. *Dolby*,[5] the coroners were directed to return a special jury, which was done; but a *tales* being required, it was returned by one coroner, who happened to be in court. This was objected to on the ground that the return must be by all, and the validity of the objection was admitted. The difficulty does not now appear to arise in England, for none of the practice books state how the return by all the coroners is obtained. Probably they have no more than one or two coroners for each county, and the return by all is easily effected. In this country, where coroners are very numerous in every county, and some widely separated from others, it is impossible to comply with the law. Until a remedy is provided by Act of Parliament, no more can be done than to give the profession warning of the difficulty.[6]

If the writ be directed to the "coroners," where there are more than two coroners in the county, it may be executed by the survivors, although one die before the return; but if only one survive, he can neither execute nor return the writ until another is appointed.[7]

[5] Cited Umf. 144, but see 48 Geo. III. c. 13, s. 5, and see Part I., c. ii., s. 5.

[6] In adopting this course, the writer has followed the example of the late Chief Justice Harrison in his notes to the Common Law Procedure Act, p. 23, and see *Johnston et al.* v. *Parks et al.*, 12 C. P. 179, referred to in Part I., c. ii., s. 5.

[7] H. P. C. 56; F. N. B. 163; Cro. Jac. 383.

If the coroner will not execute a writ, and an attachment is taken out against him, it must not be delivered to another coroner to serve, but an elisor for that purpose will be appointed by a judge in chambers on affidavits stating the facts; who, if he accepts the writ and afterwards will not execute it, can also be attached. If he does not accept the writ he cannot be made to. More than one elisor will be appointed if required.

Personal service of process on a sheriff by a coroner is not necessary if he cannot be conveniently found. Service in such a case can be made upon the deputy-sheriff, or if he cannot be conveniently found, then upon the sheriff's clerk, or bailiff of the sheriff, who may for the time being be present in, or have charge of the sheriff's office.[8]

A written order under the hand of the solicitor in the action by whom a writ of *capias ad satisfaciendum* has been issued, will justify a coroner in discharging the party in his custody, unless the party for whom the solicitor proposes to act has given written notice to the contrary.[9]

A writ of attachment should be personally delivered to the coroner, in order to bring him into contempt.[10]

An attachment against a sheriff must issue to elisors in the first instance, if the coroner is the defendant in the cause.[1]

Coroners, in their ministerial capacity, may do all such lawful acts as the sheriff might have done, and are subject to the same duties, process and penalties as the sheriff.[2]

In the Creditors Relief Act (R. S. O. 1897, c. 78), the word "sheriff" includes coroners.

[8] Con. Rule 891.
[9] Con Rules, 892, 899.
[10] 1 H. & W. 332, and see books of practice.
[1] *Reg.* v. *Glamorganshire* (*Sheriff*), 1 D. N. S. 308, 5 Jur. N. S. 1010 B. C.
[2] R. S. O. 1897, c. 17, ss. 28, 35, 36, 37.

The ministerial duties of the coroner need not be discharged personally, but, as in the case of the sheriff, he may by warrant delegate his authority to another.[3]

By the Ontario consolidated rule No. 892, all rules respecting the delivery of writs and process, and the service, execution and return thereof by sheriff, and the fees and expenses relating thereto, extend and apply to coroners employed in the service, or executing of the process of the High Court, or of any of the county courts.

Coroners acting in civil proceedings in Ontario are entitled to the fees and allowances set forth in the tariff C appended to the consolidated rules.[4]

It was held in the case of *In re Duggan, coroner*, 2 Q. B. 118, that a coroner is not entitled to poundage on an attachment against a sheriff. In that case *Robinson, C.J.*, said in giving judgment:—"2 Geo. IV. c. 1, s. 9, gives the sheriff poundage on executions, and in such language as to leave no doubt that sums recovered by judgment were alone in the contemplation of the legislature. Under the authority given to the court by that statute, to regulate costs, poundage has, by a rule of court, been given to the sheriff only on writs of execution. We do not see that we might not by a rule to be made under that statute, allow poundage to sheriffs and coroners on moneys made upon attachments, if it be thought just and expedient; but hitherto no such rule has been made, and the matter has been left upon the same footing on which it stands in England, and therefore we cannot order that in this case poundage should be allowed. Rule refused. *Rex* v. *Palmer*, 2 East 411." As the Ontario Consolidated Rules now provide for sheriffs *and* coroners receiving poundage and fees on executions *and* attachments, it is submitted that the case of *In re Duggan, coroner*, does not

[3] Jer. O. C. 71.

[4] See Con. Rule No. 892, 1189.

now apply, and that a coroner is now entitled to poundage on attachments as well as on executions against sheriffs. See Rules 892, 1189, and Tariff C, items 39 and 72.

In *Quebec*, before giving instructions to the sheriff to summon a panel of jurors, the clerk of the crown, or clerk of the peace, must enquire of the sheriff whether he knows of any lawful cause whereby he is disqualified from summoning the jurors, and if the sheriff admits any ground of disqualification, the Attorney-General is notified, and the proper steps taken to have the jurors summoned by the coroner for the district.[5]

In *Nova Scotia* it was held under the Judicature Act of that province, that a replevin bond must have two sureties, and the defendant, a coroner acting in the place of the sheriff in a case where the sheriff was disqualified, and who accepted a bond with only one surety, was personally responsible—neither the plaintiff in the replevin nor the surety being possessed of sufficient property to respond to the judgment against them on the bond. It was held also that there was no distinction between the liability of a coroner acting in a case where the sheriff is an interested party, and that of the sheriff's liability when acting in a similar case in which the sheriff is not a party—the coroner being in such cases, at common law, *ex-officio* sheriff—so that not only all the common law, but all the statutory liabilities, as well as the rights of the office of sheriff, attach to the coroner while acting in the capacity of the sheriff.[6]

And in Nova Scotia, where a sheriff is disqualified to act in any action or other proceeding by reason of being a party thereto, or from any other cause, any writ, or other process in such action or proceeding which would other-

[5] R. S. Q. 1888, Art. 2657*a*; 54 V. c. 24 (Q.), and see also Arts. 2657*b*, 2657*c*, 2657*d*, 2661, for further provisions regarding summoning jurors.

[6] *Horsfall* v. *Sutherland*, 31 N. S. R. 471.

wise require to be executed by the sheriff, may be executed in Halifax by the chief of police, in Dartmouth by the chief of police, and in any other place within the province by a coroner for the county within which such writ or process is to be executed.[7] The person so executing such writ or process has, while engaged in executing the same, all the rights and fees of the sheriff.[8]

In *Nova Scotia, New Brunswick, Prince Edward Island, British Columbia, Manitoba, The North-West Territories* and *Keewatin*, there does not appear to be any statute law relating to the general execution of process by coroners when acting ministerially, except as above mentioned as regards *Nova Scotia;* the general law, as stated in this section, will apply in these provinces and territories the same as it does in Ontario. But in *Manitoba*, in the Rules of Court appended to chapter six of the statutes of that province of 1895, rule No. 725 states:—"All rules referring to writs of execution shall extend and apply to coroners, district registrars and elisors employed in the service of executing the process of the Court." The fees, however, to be charged by coroners when acting ministerially will be the same as the sheriff is allowed in each province or territory. But as regards coroners summoning juries for the Superor Court and county courts, and their fees therefor, in New Brunswick, see Con. Stats. (N.B.) 1877, c. 45, s. 12; 31 V. c. 26 (N. B.); 45 V. c. 19 (N.B.).

Manitoulin, being part of Ontario, will be governed by the Ontario law, as stated in this section.

To trace all the law relating to the execution of civil process by coroners, would be to write the office of sheriff. Coroners are therefore referred to works on the duties of that officer for any further information they may require under the present heading.

[7] R. S. N. S. 1900, c. 28, s. 40, s.s. (1).
[8] R. S. N. S. 1900, c. 28, s. 40, s.s. (2).

SEC. 6.—OTHER DUTIES.

As to the other duties of coroners, it may be mentioned that the statute *De Officio Coronatoris*, 4 Ed. I. st. 2, gave authority to coroners to inquire of other felonies besides homicide (though this, however, is doubted by some writers); to enquire of *treasure troves*, of *royal fishes*, and of *wrecks;* to receive an *appeal of felony* or *mayhem*, to take the *confession* and *abjuration of felons*, and to *pronounce judgment of outlawry*. Some of these duties have been expressly abolished by statute, and the others, except those regarding treasure troves, may be said to have become almost, if not quite, obsolete in Canada.[9] The jurisdiction of the coroner in regard to treasure troves is to inquire who were the finders, and does not extend to an inquiry as to the title of the gold or silver coin, plate or bullion, found.[10] Any person who finds treasure of the nature mentioned, or knows of the finding of such treasure, should notify a coroner of the city or county, otherwise he may be accused of concealing it, and be fined and imprisoned.[1]

[9] The case in England of *The Attorney-General* v. *Moore*, [1893], 1 c. 676, is a recent instance of an inquest as to *treasure trove*. Another instance occurred in 1896, in England, where a coroner and jury, under instructions from the Treasury, inquired into the ownership of £90 in sovereigns found by a boy moving a loose sod, under which was a hole containing a tin full of sovereigns. The jury could not satisfy themselves as to the proper owner, and returned an open verdict, and the police were left to settle as to the ownership. See *Mail and Empire* newspaper of Sept. 5th, 1896. If this was a correct statement of the case, the coroner would seem to have been remiss in his duty in not informing the jury they had nothing to do with the ownership, or title, to the treasure. This duty was merely to inquire who were the finders, and who was suspected thereof, and that it was treasure trove. Being treasure trove it followed as a matter of course, it belonged to the Crown unless the Crown disposed of it by grant to a subject of the franchise of treasure trove. The title of the Crown is independent of the coroner's jury. *Atty.-General* v. *Moore*, L. R. 1 Ch. D. [1893] 676.

As regards Forfeiture, see Part II., c. iii., s. 1, and c. x.

[10] *R.* v. *Toole*, 16 W. R. 439 Ch. D.

[1] 3 Inst. 133; 1 Blk's Com. 296; *R.* v. *Thomas and Willett*, 9 Cox C. C. 376; where also the forms of the inquisition and indictment can be found set out in full. See also *Reg.* v. *Herford*, 29 L. J. Q. B. 249; 3 El. & El. 115; 7 R. Cases, p. 170.

CHAPTER III.

OF THE JURISDICTION OF CORONERS IN INQUESTS OF DEATH.

SEC. 1.—THEIR GENERAL JURISDICTION 63
" 2.—THEIR JURISDICTION IN PARTICULAR CASES. 65
" 3.—SUPREME JURISDICTION 66

SEC. 1.—THEIR GENERAL JURISDICTION.

The general jurisdiction of the coroner is confined to death happening within the limits of his county, city or town, and cannot be enlarged by any private Act or delegation from the crown.[1] But this statement must be read with the assumption that the body is found where the death took place, and must be considered in connection with the statements regarding particular cases made in sec. 2 of this chapter.

A coroner for a county, it seems, may act in a city or town within his county.[2] But since the appointment of a coroner for the city of Toronto alone, coroners appointed and thereafter appointed, in and for the county of York, shall, as to the city of Toronto, have and exercise within the city of Toronto, the powers only of associate coroners for the city of Toronto.[3]

When one county separates from another, or a city or town becomes incorporated in Ontario, coroners are appointed for the junior county, or the city, or town, as the case may be.

[1] 2 Finch, 388.

[2] *Ry.* v. *Berry*, 9 P. R. 123; and see remarks on the subject in section 2 of this chapter.

[3] 3 Ed. VII. c. 7, s. 22.

In *Nova Scotia*, inquests may be held by a justice of the peace in the absence of any coroner.[4]

In *New Brunswick*, any one of the coroners of the county in which the body of the person upon whose death the inquest ought to be held, is lying, has jurisdiction to hold such inquest, and when the body is found in the sea, or in any river, creek, lake, pond, or in any arm of the sea, the inquest must be held only by one of the coroners of the county where the body is first brought to land.[5] And in section 37 of the Act of New Brunswick just cited, it is stated that except as therein otherwise expressly provided, nothing in that chapter shall be taken to restrict the jurisdiction, powers and authority of coroners at common law, and all proceedings both before, at the time of, and subsequent to any coroner's inquest, shall be commenced, carried on and completed in the same manner as has heretofore been the practice, except where otherwise expressly provided by that chapter.

In *Prince Edward Island*, inquests may be held by a Justice of the Peace in the absence of a coroner, and the Justice of the Peace is entitled to the same fees as a coroner.[6]

In *British Columbia*, where a place has been provided by any sanitary, health or municipal authority for the receipt of dead bodies during the time required to conduct a *post mortem* examination, the coroner may order the removal of a dead body to and from such place for carrying on such examination, and the cost of such removal shall be deemed to be part of the expenses incurred in and about the holding of an inquest.[7]

[4] R. S. N. S. 1900, c. 36, s. 13.
[5] C. S. N. B. 1903, c. 124, s. 35.
[6] Act of 1855 and 39 V. c. 17, s. 4 (P. E. I.)
[7] 61 V. c. 50, s. 14, B. C.

SEC. 2.—THEIR JURISDICTION IN PARTICULAR CASES.[8]

Coroners of counties have jurisdiction concurrent with coroners of the Admiralty over deaths happening in the arms of the sea (*infra corpus comitatus*)[9] and in great rivers[10] and in ships lying in harbour,[1] but they have none upon the high seas.

In *Regina* v. *Berry*,[2] it was held by *Osler, J.*, that a coroner for the county of Carleton, Ontario, had jurisdiction to hold an inquest in the city of Ottawa situate in that county, "there being nothing in the Coroners' Act, R S. O. c. 79 [now R. S. O. 1897, c. 97] to limit the jurisdiction of a coroner." This decision will not warrant a coroner *for a city or town*, assuming to act outside the limits of his city or town; nor, it is submitted, would it be prudent in the case of a death of a prisoner, for the notice of death under the third section of the Coroners' Act (R. S. O. 1897 c. 97) to be given to a county coroner where the death has taken place in a city or town having a coroner of its own. And if the notice is given in such a case to a coroner for the county he had better decline to act for fear of want of jurisdiction.

[8] Under this section, in the former editions of this work, reference was made to cases of murder or manslaughter, committed in any place with respect to which it might be uncertain as to what county or district the offence was committed in, and to the coroner's jurisdiction, within one mile of the boundary of his county in such cases. These cases, and others also referred to, were provided for by R. S. C. c. 174, ss. 9, 10, 11, 12, but this statute has been repealed by the criminal code, and these particular sections, although embodied in Part XLIV of the code, cannot now be stated with any confidence as applying to coroners' inquests, since the interpretation clauses contain nothing that include a coroner's inquiry, nor does the body of the code mention anything that would apply in this particular. It will, therefore, be better for coroners to confine themselves strictly to the limits of their own districts except in the cases still retained in the text.

[9] 2 H. P. C. 15, 16, 54.

[10] 2 H. P. C. 15, 16, 54.

[1] 1 Str. 1097, 231.

[2] 9 Pr. R. 123.

The great lakes of Canada are within the Admiralty jurisdiction, and offences committed on them, although in American waters, are as if committed on the high seas, but coroners should not act in such cases unless the body is within their county.[3]

Coroners of counties have also jurisdiction when the death happens between high and low water mark upon the sea coast, during the time when the soil is not covered with water.[4]

In all these cases of extended jurisdiction the coroner had better see that the body is brought within his county before holding the inquest.[5]

Where there is any doubt, the jurisdiction of the common law ought to be preferred.[6]

SEC. 3.—SUPREME JURISDICTION.

Coroners *virtute officii* have supreme jurisdiction everywhere,[7] within the limits of their ordinary official jurisdictions.

[3] *Reg.* v. *Sharp*, 5 Pr. Rep. 135.

[4] 3 Inst. 113; 5 Rep. 107; Lacie's Case, 2 Hale, 17, 20; 1 East. P. C. c. 51, s. 131, and see *Parker* v. *Elliott*, 1 C. P. 470-491, note, and *Gage* v. *Bates*, 7 C. P. 116.

[5] It is said of a Memphis, Tennessee, coroner, that he complained his luck was against him, because there had been four street shootings in that American city, without fatal results; and, in three instances, the bodies of drowned men had floated out of his jurisdiction.

[6] East. P. C. c. 17, s. 10.

[7] 4 Rep. 47.

CHAPTER IV.

OF THE RIGHTS OF CORONERS.

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SEC. 1.—GENERAL REMARKS.

Coroners, while acting judicially in Ontario, have no right to appoint a deputy;[1] but in some of the provinces, coroners have, in their judicial capacity, the right by statute to appoint deputies; see Chapter II. and Index.

In England, this right has been conferred by statute;[2] but we have no such enactment in Ontario. The ministerial duties of coroners may however be executed by deputy, but the return of process must be made in the name of all.[3]

Difficulties arise regarding the jurisdiction of particular coroners to hold inquests where the cause of death happens in one jurisdiction, and the death happens, and the body lies in another; or where, as in a case in Ontario, the deceased was injured on a railway train in one county, and died in another county, and the body was removed to his home in a third county. A coroner in the third county proceeded to hold an inquest, but his doing so was objected to by the authorities of that county on the ground that the inquest should not be held there and the expense of it put upon them. They were reported to have been advised the

[1] Cromp. Just. 227 *a*; 2 H. P. C. 58; 1 E. P. C. 383.
[2] 6 & 7 V. c. 83, etc.
[3] Jer. O. C. 78, and see Chap. II., s. 5.

position so taken by them was correct, and that the inquest should be held in the county within which the death took place. The soundness of this advice seems questionable. In the first place an inquest must be held *super visum corporis*, and how could the coroner in the county where the death took place, obtain the body which was in another county, to hold an inquest thereon? He would have no jurisdiction to go out of his county and bring it within his jurisdiction, unless with the consent of those having charge of it—a consent which would rarely be given where, as in this case, the cause of death was an accident on a railway train, and the body was carried on to the man's home. And if he obtained such consent, and the body was removed to his county, it would still be doubtful if he could legally hold the inquest, and make the authorities of his county pay the expenses. The same difficulty would arise if a coroner of the county in which the injury was received, attempted to hold the inquest.

This question of jurisdiction has been met with both in England and the United States, but has been got over by statutory enactments after the respective courts had dealt with it in different ways. Lord Hale, in England, considered where the stroke was given in one county, and the death occurred in another, the coroner of the county where the party died was to proceed in the matter as if the stroke had been given in that county.[4] No doubt the body in this case remained where the death took place.

In the "Reporter's Note" to *Rex* v. *Ferrand*, 3 B. & Ald. 260; 22 R. R. 373, as given in vol. 7, p. 140, of Ruling Cases, it is stated, after referring to the law requiring a coroner to take an inquest *super visum corporis*, that in ancient times, if a man were hurt in the county of A, and died in county of B, the coroner of B could not take an inquisition of his death, because the stroke was not

[4] Hale P. C. 426, 427; 2 Hale P. C. 66.

given in that county; and the coroner of A could not take the inquisition because the body was in the county of B, but they used to remove the body into the county of A and then the coroner of A used to take the inquisition. Nothing is said as to who removed the body, or by what authority it was removed. In those days the people were held in greater subjection than they are now, and were generally more ignorant, and probably any official who attempted to remove a body for the purpose of an inquest, would not have his right to do so questioned. Now things are different in this respect, and any such attempt would be met by a demand for its authority, and it does not seem that any could be shown. If, however, the coroner for the county where the body lies, proceeds to hold an inquest, it would be difficult to question his authority to do so, for *prima facie* he could have jurisdiction in the case. In England, before the law in this respect was settled by statute, the decided cases differed. Where a death occurred in the county of W from an injury received in the county of S, it was decided the inquest was rightly held in the county of W.[5] But in *Reg.* v. *G. W. Ry.*, 3 Q. B. 333, where an inquisition was taken by a coroner of a borough, upon a body lying dead there, it appeared that the death was caused by the deceased falling in the county from a carriage, and that he died in the borough, and the jury found the death to have happened accidentally, and laid a deodand on the carriage. The Court (before 6 & 7 Vic. c. 12) quashed the inquisition, as it was held the coroner of the borough had no jurisdiction to inquire in the case of death occasioned by an accident happening out of the borough. Again in the case of *Reg.* v. *Hinde*, 5 Q. B. 944; 13 L. J. M. C. 150, it was held where a person was found drowned in a river within the concurrent jurisdiction, exclusively of all others, of the coroner for a city and

[5] *Reg.* v. *Grand Junction Ry.*, 3 Perry & D. 57; 11 A. & E. 128*n*.

the Admiralty, and the body was taken to a place on shore, beyond the city limits, the coroner and jury of the city cannot view the body at such place for the purpose of an inquest, and an inquisition taken on such view will be quashed. This was on an injunction taken after the English statute of 6 & 7 Vic. c. 12. Again in a case in England of manslaughter, where the cause of death occurred in a county, and the body after death was removed to a city, and the coroner of the city held the inquest, and E. was tried for the manslaughter on the inquisition; it seems that the inquest was considered to be properly held under 6 & 7 Vic. c. 12, although it was said that statute was a little obscurely worded: *Reg.* v. *Ellis*, 2 Car. & K. 470. This English statute after reciting "that it often happens that it is unknown where persons lying dead, have come by their deaths; and also that such persons may die in other places than those in which the cause of death happened"—then by section 1 it is enacted that the coroner within whose jurisdiction the body shall be lying dead, shall hold the inquest.

Finally in England this question as to which coroner should hold the inquest in the class of cases above referred to, has been placed beyond all doubt by the statute of 1887, 50-51 Vic. c. 71, ss. 3, 7. The inquest there must now be held by the coroner within whose jurisdiction the body is lying, and when a body is found dead in the sea, or any creek, river or navigable canal within the flowing of the sea, where there is no deputy coroner for the jurisdiction of the Admiralty of England, the inquest must be held by the coroner having jurisdiction in the place where the body is first brought to land.

In the United States the inquest must also be held in the county where the body is found.[6]

[6] A. & E. Enc. of Law, p. 605.

In Ontario by a recent statute we now have a provision that any coroner within whose jurisdiction the body of a person is lying upon whose death an inquest ought to be held, may hold the inquest.[7] Until some statutory provision is made in regard to the cases here referred to in the other parts of the Dominion, or until there is some judicial decision on the point, coroners, for whom this work is intended, had better not, in the writer's opinion, attempt to hold any inquest except when they find the dead body within their jurisdiction, and in order to find it there, they had better not have anything whatever to do with its being brought from another jurisdiction into theirs.

In this connection the legal reader may be reminded where a court *has jurisdiction* of the cause and proceeds *inverso ordine*, or erroneously, then the party who sues, or the officer or minister of the court, who executes according to its tenor, the precept or process of the court, will not be liable to an action. But when the court *has not jurisdiction* of the cause, then the whole proceeding is *coram non judice*, and actions will lie against the parties without any regard to the precept or process; for in this case it is not necessary to obey one who is not judge of the cause, any more than it is to obey a mere stranger.[8]

SEC. 2.—THEIR RIGHT TO FEES.

Their office was originally one of such great dignity, that coroners *would* not take any reward for their services,[9] and afterwards (when no doubt, the weakness of human nature began to get the better of our forefathers' pride) they were forbidden by statute to accept anything for executing their office, upon pain of heavy forfeiture.[10]

[7] 3 Ed. XII. c. 7, s. 22.
[8] *Broom's Legal Maxims*, p. 88, and see *Davidson* v. *Garrett et al.*, 30 O. R. 653.
[9] 1 Com. 347.
[10] 2 Inst. 210, 176.

It was not until the reign of Hen. VII. that coroners were paid a regular fee for holding inquisitions, and then only in cases of persons slain, when they received 13s. 4d.[1] Afterwards, they were paid for all inquests except those taken upon the view of bodies dying in a gaol or prison.[2] And now, they receive remuneration in all cases, provided the coroner *prior* to his issuing his warrant for summoning the jury makes a declaration in writing under oath taken before a Justice of the Peace, a commissioner for taking affidavits in the High Court or a Notary Public, and which declaration is returned and filed with the inquisition stating that from information received by him he is of opinion that there is reason for believing that the deceased did not come to his death from natural causes or from mere accident or mischance, but came to his death from violence or unfair means or culpable or negligent conduct of others, under circumstances requiring investigation by a coroner's inquest.[3] But this requirement does not apply to inquests held upon the written request of the county attorney, or to an inquest held in the Districts of Muskoka, Parry Sound, Rainy River and Nipissing, upon the written request of a stipendiary magistrate, or to the inquest on a prisoner held upon notice thereof from the warden, gaoler, keeper or superintendent of the penitentiary, gaol, prison, house of correction, lock-up house or house of industry in which the prisoner dies.[4]

If payment is refused on other grounds than want of funds, a mandamus will be granted notwithstanding there are no funds in the treasurer's hands.[5] But the court refused to compel the sessions to allow an item in the coroner's account, when the justices were of the opinion there

[1] 3 Hen. VII., c. 1.
[2] 25 Geo. II., c. 29.
[3] R. S. O. 1897, c. 97, s. 4 (1).
[4] R. S. O. 1897, c. 97, ss. 3 and 4 (2).
[5] *In re Askin and Charteris*, 13 U. C. Q. B. 498.

was no ground for holding the inquest—there being no reason to suppose the deceased had died any other than a natural, though sudden, death.[6]

In the case of *In re Harbottle and Wilson*, 30 U. C. Q. B. 314, it was held in Ontario the coroner had no right to summon a second medical witness without such medical witness is named in writing, and his attendance required, by a majority of the jurymen as provided by the statute; and a *mandamus* to the coroner to make his order on the county treasurer for the fees of such a witness under section ten of the Act, was refused. And *semble* that on an application for such mandamus, the county treasurer, as well as the coroner, must be called upon. The *post-mortem* should be made by the first medical witness.

In *Quebec*, within fifteen days following the holding of any inquest, the coroner must send a detailed statement of the costs attending the same to the Attorney-General, together with a certified copy of the declaration, or demand, made, or received, by him, as the case may be.[7] And in that province the Lieutenant-Governor-in-Council may assign to the coroner of the District of Montreal a fixed salary, not to exceed the sum of two thousand four hundred dollars per annum, payable out of the Consolidated Revenue Fund of the Province, and every such coroner thereafter ceases to have a right to the fees ordinarily payable to coroners under Article 2692 of the R. S. of Quebec.[8]

In *Nova Scotia*, the medical examiner is entitled to be paid for every inquiry instituted in which he does not perform a *post-mortem*, the sum of $4; and when he does perform a *post-mortem* the sum of $12.[9]

[6] *Rex* v. *Kent*, 11 East 229; 10 R. R. 484.

[7] Revised Stats., Que., Art. 2690.

[8] 58 V. c. 33, s. 2, Que.

[9] R. S. N. S. c. 37, s. 22.

In *New Brunswick*, in any case in which the death of any person has been reported to a coroner, and he has in consequence of information received by him, viewed the body of such deceased person, and having made such further inquiries as he deems necessary, comes to the conclusion as the result of such further inquiries, that an inquest is unnecessary, he is, for his attendance and services in such case, entitled to be paid the sum of $4 by the council of the city, town or county in which such death occurred, and such services were rendered; and such city, town or county council respectively shall, upon an account thereof being duly presented, with a statement of the circumstances, order that the amount thereof be paid by the treasurer out of any city, town or county funds in his hands. But if the council be of the opinion that any inquest or view, as the case may be, was unnecessary, and was held without any reasonable grounds therefor, it may refuse to pay the coroner's bill therefor unless upon the certificate of the Attorney-General stating that in his opinion the bill is one that should be paid. On the production to the council of such certificate, the council must thereupon pass an order for the payment of such bill, and in such case pay the coroner $1 additional to compensate him for having to obtain such certificate.[10]

If the authorities refuse to allow fees to a coroner, his only remedy is to apply to a superior court for a mandamus.[1]

The writ must state all the circumstances of the case; must shew that he is entitled to the relief prayed; and that he had a right to require the auditors to do that, for the non-performance of which the writ was sued out.[2]

[10] 63 V. c. 5, ss. 32, 33, N. B.

[1] From the judgment of the Court of Queen's Bench, in *re Davidson and the Quarter Sessions of Waterloo*, 22 U. C. Q. B. 405, it seems the superior courts will only compel an audit. So if a coroner's account is audited and portions thereof disallowed, the auditors' judgment in the matter will not be interfered with.

[2] 4 T. R. 52.

It has been held in England that where two or more inquests are held at the same place on the same day, the coroner is only entitled to one sum per mile for travelling expenses from the place of his abode to the place where the inquisitions are held, and that a coroner was not entitled to be paid for an inquisition taken upon a dead body under 25 Geo. II. c. 29, unless the inquisition was signed by all the jurors.[3]

For the fees of coroners and constables in Nova Scotia, see pp. 46, 423.

In *Newfoundland*, the act abolishing the office of coroner,[4] and requiring inquests to be held by a stipendiary magistrate, does not provide for the payment of any special fees to the magistrate for holding the inquest.

For the execution of process and other acts incident to their ministerial character, coroners are also entitled to fees.

For a Schedule of Fees, see Chapter XIV., and for how accounts should be rendered, see Chap. XII., s. 14.

Sec. 3.—THEIR EXEMPTION FROM SERVING OFFICES.

Coroners are exempt from serving offices which are inconsistent with the duties of coroner, and are not liable to be summoned as jurors.[5] And they are exempted from being elected, or appointed, members of a municipal council, or to any other municipal office in Ontario.[6]

[3] *Rex* v. *Justices of Warwick*, 5 B. & C. 430; *Rex* v. *Norfolk* (Justices), 1 Nolan, 141.

[4] 38 V. c. 8 (Newf.).

[5] 2 Roll. Abr. 632, s. 4; F. N. B. 167; R. S. O. 1897, c. 61, s. 6, s.s. 13.

[6] 3 Ed. VII., c. 19, s. 84.

In *Manitoba*, coroners are exempted from serving on grand and petty juries,[7] and from being elected, or appointed, members of the municipal council or to any municipal office.[8]

Sec. 4.—THEIR PRIVILEGE FROM ARREST.

The same principle which exempts judges and officers of the superior courts from arrest while executing their judicial duties, seems to apply to coroners; and in a case tried in England, Mr. Justice Gaselee expressed his opinion that this exemption extended to coroners, while going, remaining, or returning, for the purpose of taking an inquest. And see Middlesex (Dep. Coroner) *Ex parte*, 6 H. & N. 501; 7 Jur. N. S. 103.

Sec. 5.—AS TO THEIR OTHER RIGHTS AND PRIVILEGES.

In this place it may be stated that coroners were formerly entitled in Ontario to a copy of the Provincial Statutes of each session; but under the present regulations they are not so entitled; an order in council having been passed in 1859 discontinuing the practice which had theretofore obtained, of furnishing the statutes to coroners, and a circular letter to that effect was addressed to the Clerks of the Peace in Upper Canada, on the 27th of June of that year. They ought to be furnished with lists of constables by the Clerks of the Peace, whenever ordered to be so furnished by the Justices in General or adjourned Sessions.[9]

A coroner, as a judge of a court of record, is not liable to a civil action for anything done by him in his judicial

[7] R. S. Man., c. 81, s 3.
[8] R. S. Man., c. 100, s. 55.
[9] R. S. O. 1897, c. 101, sch. p. 1043.

capacity, if he acts indiscreetly or erroneously; and generally where there is reasonable and probable cause for the act complained of, it is of no moment whether there was malice or not.[10]

An action does not lie against a coroner for defamatory words spoken by him while holding an inquest.[1]

And as no action will lie against a judge of a Court of Record for an act done by him in his judicial capacity, therefore as a coroner is a judge of a Court of Record, trespass will not lie against a coroner for turning a man out of a room where he is about to hold an inquisition.[2]

[10] *Garner* v. *Coleman*, 19 C. P. 106.
[1] *Thomas* v. *Churton*, 8 Jur. N. S. 795; 2 B. & S. 475.
[2] *Garnett* v. *Farrand*, 6 B. & C. 611, and see c. 1. s. 1. and c. 12, s. 2.

CHAPTER V.

OF THE LIABILITIES OF CORONERS.

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SEC. 1.—FOR MISCONDUCT.

No action will lie against a coroner for any act honestly done by him in his judicial capacity, but if coroners be guilty of any misconduct, either in their judicial or ministerial capacity, they are liable to be punished.[1]

If a coroner, after notice, do not view the body and take an inquisition in a convenient time;[2] if he conceals felonies, or is remiss in his duty through favour; if he misconducts himself in taking an inquisition; if he does not return the inquisition in proper time; or takes an inquisition without viewing the body; or if he do not reduce to writing the evidence given to the jury before them, or so much thereof as shall be material, and certify and subscribe the same, together with the recognizances and inquisitions before them taken; or in Ontario if he do not return a list of inquests held by him, together with the findings of the juries, to the provincial treasurer, on or before the first day of January in every year; or if he does not supply the Division Registrar of the division in which a death takes place, and into the cause of which he makes inquiry, before the interment of the body, with all the particulars required to be registered; or if he wilfully and

[1] Jer. O. C. 63; *Garrett* v. *Ferrand*, 6 B. & C. 611; *Thomas* v. *Churton*, 2 B. & S. 475; *Kemp* v. *Neville*, 10 C. B. N. S. 523. *Garner* v. *Coleman*, 19 C. P. 106.

[2] See Form of Indictment in the Appendix of Forms.

knowingly demands or receives any other or greater fee or allowance than the fee or allowance to which he is entitled; in any and all these cases he renders himself liable to punishment.[3]

And if a coroner neglects to discharge the duties required of him by the Ontario Act respecting Anatomy[4] he is liable to a fine of not more than $20 for every such offence. These duties will be found stated in Chapter XII., section 8, and relate to the disposal of certain dead bodies.

It is not lawful for a coroner to conduct an inquest in any case where loss of life has been caused at or on a railroad, mine or other work, whereof he is owner or part owner, either as a shareholder or otherwise, nor in any like case at or on a work where he is employed as medical attendant by the owner thereof, or by any agreement or understanding direct or indirect with the employees at or on such work.[5]

Coroners in Ontario taking money to excuse any man from serving or being summoned to serve on juries, may be fined.[6] And they may be indicted for accepting a reward for not holding an inquest.[7]

Coroners generally in Ontario during the time they use or exercise the ordinary duties of their office, are not qualified to be justices of the peace; and if they act as such, their proceedings are void and of no effect, and they themselves become liable to be heavily fined.[8] But see the special exceptions mentioned in Chap. I., s. 2.

[3] 2 H. P. C. 58; 3 Ed. I. c. 10; 1 Leach, c. L. 43; Jer. O. C. 59; R. S. O. 1897, c. 44, s. 22; and c. 101, s. 7; and c. 97, s. 19; and c. 44, s. 22.

[4] R. S. O. 1897, c. 177, s. 16.

[5] R. S. O. 1897, c. 97, s. 7.

[6] R. S. O. 1897, c. 61, s. 172.

[7] *Reg.* v. *Harrison*, 1 East P. C. 482.

[8] R. S. O. 1897, c. 86, s. 8; and see p. 10; *Davies* v. *Justices of Pembrokshire*, L. R. 7 Q. B. D. 513.

If the body has been so long buried as to afford no information on view, a coroner will not be justified in causing it to be disinterred; and if he do so, he may be fined.[9]

But in some cases it is hard to say what lapse of time would destroy all information which might be obtained by disinterring the body. For instance, in cases of poisoning, or when identification is important and there is any fracture of bones,[10] any false teeth, &c.[1]

A coroner is not justified in delaying the inquest upon a dead body in a state of decomposition for so long a period as five days, in order that the body may be identified and buried and registered under the right name, and the mere fact that it has been placed in a mortuary can make no difference.[2]

A coroner is guilty of an indictable offence in taking a sum of money for not holding an inquest. Whether he has any pretense for holding the inquest or not, he is equally criminal in having extorted money to refrain from doing his office.[3]

If a coroner inserts in the inquisition a material fact not found by the jury, he may be indicted for forgery.[4]

By Stat. 1 Hen. VIII., justices of assize and justices of the peace within the county have power to inquire of, and punish the defaults of coroners.

[9] 2 Lev. 140, see *post*, Chap. V., s. 1.

[10] It will be remembered that in the case of Dr. Livingstone, after his body was brought to the coast by a long journey from the interior of Africa, and then by ship to England, its identity was considered proved by a peculiar and unusual false joint known to exist in one of his arms, the result of a fracture received in an encounter with a tiger.

And in 1900, a case of manslaughter, if not murder, was considered to be revealed in the United States after fourteen years, by finding a skeleton in an old well, and identifying the skeleton as that of a missing man, by a shin bone, which was known to have been broken and not properly set.

[1] See remarks in c. 2, s. 2, and in c. 12, s. 1.

[2] *In re Hull*, L. R. 9 Q. B. D. 689.

[3] *Rex* v. *Harrison*, 1 East P. C. 482.

[4] 3 Salk. 172.

In their ministerial character coroners are liable, like sheriffs in actions of debt, for an escape,[5] case for a false return,[6] or by attachment,[7] according to the circumstances of the case, and generally, if coroners misconduct themselves in the execution of any writ, warrant or process, entrusted to them; or wilfully and without the consent of the person in whose favour the writ, warrant or process was issued, make any false return thereof, they are guilty of an indictable offence and liable to be fined and imprisoned,[8] and by an Ontario statute,[9] they shall answer in damages to any party aggrieved by such misconduct or false return.

Coroners cannot, when acting ministerially, directly or indirectly purchase any goods or chattels, lands or tenements, exposed to sale by them under execution.[10]

Coroners entrusted with the execution of any writ, warrant or process, mesne or final, who wilfully misconduct themselves in the execution of the same, or wilfully make any false return to such writ, warrant or process, unless by the consent of the party in whose favour the process may have issued, shall, upon conviction thereof before a court of competent jurisdiction, be liable to fine and imprisonment in the discretion of the court, and shall answer in damages to any party aggrieved by such misconduct or false return.[1]

In *Nova Scotia*, coroners who do not make a return in triplicate of the inquests held by them, together with the findings of the juries, to the office of the provincial secretary, on or before the 10th of January in every year, are

[5] 3 Lev. 399; 6 Mod. 37.
[6] Freem. 191.
[7] 2 Bl. 911, 1218.
[8] 55-56 V. c. 29, s. 143 Can.
[9] R. S. O. 1897, c. 17.
[10] R. S. O. 1897, c. 17.
[1] R. S. O. 1897, c. 17.

liable to a penalty of $20.[2] And coroners and others who fail to comply with the provisions of R. S. N. S. c. 8, s. 24, are guilty of an offence against that Act.[3]

In *New Brunswick*, the only penalty prescribed by statute for a coroner's neglect in immediately returning the examinations or depositions taken of an inquest to the Clerk of the Peace is, that he shall not be paid his fees until the return is made.[4] A statutory penalty is now provided for neglect in making, on or before the first day of January in each year, a return of inquests held by a coroner during the preceding year, together with the findings of the juries, to the Provincial Secretary; any coroner who shall refuse or neglect to make such return shall be liable to a penalty not exceeding $20 for each week during which he shall remain in default, to be recovered in the name of the Provincial Secretary in any court of competent jurisdiction, and shall further be liable to be dismissed from office. The penalties to be collected from any one coroner for failing to make a return so required in any one year shall in no case exceed one hundred dollars.[5] For not taking the declaration required before issuing his warrant for the jury, the coroner forfeits his fees altogether.[6]

In *Prince Edward Island*, coroners who do not make their proper returns in cases of homicide are liable to pay such fine as the court to whose officer the returns should be made, shall think meet.[7]

In *British Columbia*, there is no statutory penalty prescribed for a coroner's neglect in making returns of inquests held by him.[8]

[2] R. S. N. S., 5th series, 1884, c. 17, s. 8.

[3] The provisions here referred to will be found in their proper places throughout this work.

[4] 63 V. c. 5, s. 16.

[5] 63 V. c. 5, s. 35, N. B.

[6] 63 V. c. 5, s. 7, and form (B), N. B.

[7] See Acts of 1836, P. E. I.

[8] 51 V. c. 24, s. 17, B. C.

In *Manitoba*, coroners forfeit their fees for all inquests held without making the declaration required before issuing the warrant for the jury.[9]

In *The North-West Territories*, there is no statutory penalty for not making returns of inquests.

In *Keewatin*, there is no statutory penalty for not making returns, but such returns as the Lieut.-Governor directs to be made are required to be made by R. S. C. c. 53, s. 27.

In *Manitoulin*, the law is the same as in the rest of the province of Ontario.

In *Newfoundland*, any person taking greater fees than prescribed by law, for each offence forfeits the sum of $50.[10]

SEC. 2.—TO BE REMOVED.

If a coroner is convicted of extortion, wilful neglect of his duty, or misdemeanour in his office, the court before whom he is so convicted has power, under 25 Geo. II. c. 29, to adjudge that he be removed from his office. Or a coroner may be removed by being made a sheriff, or by the Queen's writ *De coronatore exonerando*,[1] for a cause therein assigned.[2] To the credit of Canadian coroners, the writer has never heard of but one removal of a coroner in Canada for misconduct.

It was held in England that the Great Seal has powers independently of the 25 Geo. II. c. 29, to remove coroners from their office for neglect of duty.[3] Prolonged absence from duty; intoxication; refusal to hold an inquest without reasonable excuse; delay in holding an inquest on a body

[9] R. S. Man. c. 32, s. 5, and see c. II., s. 2.
[10] 52 V. c. 25, s. 31, N. F.
[1] See Form No. 7.
[2] Jer. O. C. 62, 6th ed.
[3] *Ex parte Parnell*, 1 J. & W. 451; *Ex parte Pasley*, 3 D. & W. 34 (Ir.).

in a state of decomposition, or general inability—have been held, in England, to be sufficient grounds for the removal of coroners.[4]

Confinement in prison out of the county for twelve months was held a sufficient ground for the removal of a coroner from his office, although during his absence another coroner of the same county had performed his duties. Notice to a coroner of a petition for his removal is not necessary. The practice in England is to issue the writs *de coronatore exonerando* and *de coronatore elegendo* at the same time. The latter is dated last, but it is not irregular to execute it before a return is made to the former.[5]

Where a coroner is removed for cause it has been held in England he cannot traverse the grounds upon which he was removed, but that he is entitled, upon showing that the grounds are false, to sue out a *supersedeas* to any new writ *de coronatore elegendo*.[6]

It appears a criminal information may be laid against a coroner for corruption in his office by secretly examining witnesses before the jury is sworn.[7]

SEC. 3.—FOR THE ACTS OF CO-CORONERS.

The default of one coroner, when acting *judicially*, will not render his co-coroner liable; but when coroners act *ministerially*, it is said they are all responsible for each other's acts civilly, although not criminally.[8]

[4] *Re Ward* (1861), 3 De G. F. & J.; 30 L. J. Ch. 775; 4 L. T. 458; *Re Hull* (1882), 9 Q. B. D. 689; 2 Danver's Ab.: tit. *coroner*.

[5] *Ex parte Parnell*, 1 J. & W. 451; *Ward, In re*, 3 De G. F. & J. 700; 30 L. J. Ch. 775; 7 Jur. N. S. 853.

[6] 12 Hale P. C. 11 and 56.

[7] *Rex v. Whitcome*, 1 C. & P.

[8] 1 Mod. 198; 2 Mod. 23; Freem. 91.

PART II.

THEIR OFFICE AND DUTIES IN PARTICULAR.

CHAPTER I.

OF OFFENDERS.

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SEC. 1.—WHO MAY COMMIT CRIMES.

The consent of the will is the great criterion by which to judge of the criminality of actions; hence where there is no will there ought not to be any liability. It is a general principle of our criminal law that there must be, as an essential ingredient in a criminal offence, some blameworthy condition of mind. Sometimes it is negligence, sometimes malice, sometimes guilty knowledge—but as a general rule there must be something of that kind, which is designated by the expression *mens rea*.[1] Five heads contain all the causes which the law recognizes as exempting, in part or in whole, from liability by reason of defect in the will.[2]

[1] *Per Cave, J., Chisholm* v. *Doulton*, 58 L. J. M. C. 133; 22 Q. B. D. 736; 16 Cox C. C. 675.
[2] 1 H. P. C. 14.

INFANTS.

Under seven years, no person can be convicted of an offence by reason of any act or omission of such person.[3]

When of the age of seven and under fourteen, the presumption of law is that an infant is not capable of a mischievous discretion; but this presumption can be rebutted by evidence of his capacity to judge between good and evil, and that he was competent to know the nature and consequences of his conduct and to appreciate that it was wrong.[4]

If, therefore, circumstances of malice be proved to the satisfaction of the *jury*, and that the accused is competent to know the nature and consequences of his conduct, and to appreciate that it was wrong, an offender when of the age of seven and under fourteen years of age may be convicted and punished for a capital crime.[5] Persons of fourteen and over that age are *prima facie* responsible for all their acts,[6] and cannot escape punishment except they are shown to come under one of the other heads of exemption.

SEC. 2.—PERSONS NON COMPOS MENTIS.

The second class of persons who are not responsible for their actions by reason of want of will is the insane. All persons at the age of discretion are presumed by law to be sane, and, unless the contrary is proved, are accountable for their actions; and if a lunatic has lucid intervals, the law presumes the offence of such a person to have been committed in a lucid interval, unless it appears to the contrary.[7]

[3] 55-56 V. c. 29, s. 9, Dom.
[4] 4 Com. 23; 55-56 V. c. 29, s. 10, Dom. *Rex* v. *Owen*, 4 C. & P. 236; *S. P. Ry.* v. *Smith*, 1 Cox C. C. 260.
[5] 1 H. P. C. 25, 27; 4 Com. 23; 55-56 V. c. 29, s. 10, Dom.
[6] 1 H. P. C. 25.
[7] 1 Hale, 33, 34; 55-56 V. c. 39, s. 11, Dom.

The delusions which indicate a defect of sanity such as will relieve a person from criminal responsibility, are delusions of the senses, or such as relate to facts or objects—not mere wrong notions or impressions, or of a moral nature; and the aberration must be mental, not moral, to affect the intellect of the individual.[8]

The want of motive for the commission of the crime and its being committed under circumstances which render detection inevitable, are important points for the consideration of the jury, when coupled with evidence of insanity on any particular point.[9]

No person can be convicted of an offence by reason of an act done or omitted by him, when labouring under natural imbecility or disease of the mind, to such an extent as to render him incapable of appreciating the nature and quality of the act or omission, and of knowing that such act or omission was wrong; and a person labouring under specific delusions, but in other respects sane, shall not be acquitted on the ground of insanity, unless the delusions caused him to believe in the existence of some state of things which, if it existed, would justify or excuse his act or omission.[10]

Those who are defective in the understanding and are over the age of discretion, are divided into three heads:—1. *Dementia naturalis*, idiotcy or natural fatuity. 2. *Dementia accidentalis*, adventitious insanity. 3. *Dementia affectata*, acquired madness.

1. *Idiotcy or natural fatuity.* An idiot is a fool or madman from his birth, without any lucid intervals. The deaf and dumb who cannot distinguish right from wrong are by presumption of law idiots, and are not answerable for their actions, but this presumption may be rebutted by

[8] *Reg.* v. *Burton*, 3 F. & F. 772.
[9] *Reg.* v. *Layton*, 4 C. C. 149.
[10] 55-56 V. c. 29, s. 11. Dom. *Rex* v. *Offord*, 5 C. & P. 168.

strong evidence of understanding. Owing to the humane and successful efforts which have of late years been made to instruct this unfortunate class of persons, many of them have been raised from a state of at least *legal* idiotcy to one of high intelligence, and are in consequence responsible for their actions.[1] The question of idiotcy is one of fact to be decided by the jury, but every one is presumed to be sane at the time of doing or omitting to do any act until the contrary is proved.[2]

2. *Adventitious insanity* may be either *partial*, its victim being insane on only one subject, or *total*, permanent (usually called madness) or temporary (the object of it being afflicted with the disorder at certain periods and under certain circumstances only), commonly called lunacy.[3] While labouring under this disorder, no one is criminally responsible for his actions;[4] although a partial aberration of intellect which does not prevent the party from distinguishing right from wrong will not excuse his guilt.[5] Cases of much difficulty sometimes arise with this class of persons.

Before leaving the subject of insanity in connection with inquests, some statements taken from decided cases in the courts, may be offered to coroners when taking evidence and addressing juries, on inquests.

If a party kills another under the influence of an insane delusion with the view of redressing or avenging some supposed grievance or injury, or of producing some public benefit, he is nevertheless punishable if he knew at the

[1] 1 Hale, 34; 55-56 V. c. 29, ss. 7, 11, Dom.

[2] Bac. Abr. Idiots (A.) Bro. Idiots 1; 55-56 V. c. 29, s. 11, s.-s. 3, Dom.

[3] "In other cases reason is not driven from her seat, but distraction sits down upon it along with her, holds her trembling upon it, and frightens her from her propriety."—Erskine's Speech in defence of Hadfield, vol. 4, p. 126, 3rd ed., by Rigway; and see the nice distinctions therein drawn with regard to insanity.

[4] 4 Rep. 125 Bac. Abr. Idiots (A).

[5] 1 H. P. C. 30; 55-56 V. c. 29, s. 11 Dom.

time that he was acting contrary to law. If the accused was conscious that the act was one which he ought not to do, and if the act was at the same time contrary to law, he is punishable. And a party labouring under a partial delusion must be considered in the same situation as to responsibility as if the facts in respect to which the delusion exists, were real.[6]

Where an accused person is supposed to be insane, a medical man who has been present in court, and has heard the evidence given, may be asked, as a matter of science, whether the facts stated by the witnesses, supposing them to be true, show a state of mind incapable of distinguishing between right and wrong.[7] But this mode of asking the question was not approved of in *Reg.* v. *Francis*, 4 Cox C. C. 57, where on a trial for murder evidence was called on the prisoner's behalf to prove his insanity, and a physician, who had been in court during the whole trial, was then called on the part of the prosecution, and asked whether, having heard the whole evidence, he was of opinion that the prisoner at the time he committed the alleged act was of unsound mind. It was held, notwithstanding the opinion of the judge in *Reg.* v. *Macnaughton*, 10 Cl. & F. 200; 1 Car. & K. 130, that such a question ought not to be put, but that the proper mode of examination was to take particular facts, and assuming them to be true, to ask the witness whether in his judgment, they were indicative of insanity on the part of the prisoner at the time the alleged act was committed.

A medical witness called upon to give an opinion upon the state of mind of a prisoner, cannot speak upon the responsibility of the prisoner, that being for the jury under

[6] Macnaughton's case, 10 Cl. & F. 200; 8 Scott (N. R.) 595; 1 Car. & K. 130.

[7] *Reg.* v. *Macnaughton*, 10 Cl. & F. 200; *Rex* v. *Wright*, R. R. C. C. 456; *Rex* v. *Searle*, 1 M. & Rob. 75.

the direction of the judge. He can only give an opinion as to the state of mind of the accused.[8]

To entitle a prisoner to be acquitted on the ground of insanity, he must at the time of committing the offence, have been so insane that he did not know right from wrong.[9]

The circumstances of a person having acted under an irresistible influence to the commission of homicide, is no defence if at the time he committed the act, he knew he was doing what was wrong.[10]

A mere uncontrollable influence of the mind, co-existing with the full possession of the reasoning powers, will not warrant an acquittal on the ground of insanity; the question for the jury being whether the prisoner, at the time he committed the act, knew the character and nature of the act, and that it was a wrongful one.[1]

Where a person is in a state of mind in which he is liable to fits of madness, it is for the jury to consider whether the act done was during such a fit, though there is nothing before or after the act to indicate it, and though there is some evidence of design and malice.[2]

When the defence of insanity is set up, in order to warrant the jury in acquitting the prisoner, it must be proved affirmatively that he is insane; if the fact be left in doubt, and if the crime charged in the indictment is proved, it is their duty to convict the prisoner.[3]

Where the prisoner sets up insanity as a ground of defence, one cardinal rule is that the burden of proving his innocence on that ground, rests on the party accused. The question in such a case for the jury is not whether the pris-

[8] *Reg.* v. *Richards*, 1 F. & F. 87.
[9] *Reg.* v. *Higginson*, 1 Car. & K. 129.
[10] *Reg.* v. *Haynes*, 1 F. & F. 666.
[1] *Reg.* v. *Barton*, 3 Cox C. C. 275.
[2] *Reg.* v. *Richards*, 1 F. & F. 87.
[3] *Reg.* v. *Stokes*, 3 Car. & K. 185.

oner was of sound mind, but whether he has made out to their satisfaction that he was not of sound mind.[4]

Every person is presumed to be sane and to possess a sufficient degree of reason to be responsible for his crimes until the contrary is proved; and to establish a defence on the ground of insanity, it must be clearly proved that at the time of committing the act, the party accused was labouring under such defect of reason from disease of the mind, as not to know the nature and quality of the act he was doing, or that what he was doing was wrong.[5]

On the plea of insanity in a case of murder the question for the jury is—did the prisoner do the act under a delusion believing it to be other than it was? If he knew what he was doing, and that it was likely to cause death, and was contrary to the law of God and man, and that the law directed that persons who did such acts should be punished, he is guilty of murder.[6]

In order to prove insanity it is not necessary to adduce medical evidence; if facts are proved indicating an unsound state of mind that is sufficient.[7]

To prove a plea of insanity, evidence that a grandfather of the person had been insane, may be adduced, after it has been proved by medical testimony that such disease is often hereditary.[8]

This section may be closed with the warning to medical witnesses on questions of insanity contained in a remark by Dr. Andrew Wilson, in one of his interesting "Science Jottings" which have appeared in *The Illustrated London News*. The one referred to appeared in the issue of that paper of September 7th, 1901. The doctor stated—"I am not unwise enough to attempt to define insanity. An old

[4] *Reg.* v. *Layton*, 4 Cox C. C. 149.
[5] *Reg.* v. *Macnaughton*, 10 Ch. & F. 200; 1 Car. & K. 130.
[6] *Reg.* v. *Townley*, 3 F. & F. 839.
[7] *Reg.* v. *Dart*, 13 Cox C. C. 143.
[8] *Reg.* v. *Tucket*, 1 Cox C. C. 103.

professor of mine was given to allege that if you did so in course of, say a criminal trial, you would either make the definition so wide that it would include the judge on the bench, or so narrow that the prisoner at the bar would be left out."

Under this head may also be classed persons rendered *non compos* by a disease, as fever or palsy, or from concussion, or injury to the brain, etc.

3. *Acquired madness* arises from drunkenness or the administration of something which produces frenzy. Voluntary drunkenness is no excuse for crime, but on the contrary, aggravates it.[9] Still the insanity or delirium tremens caused by a habit of intoxication, excuses from punishment if it produces such a degree of madness, even for a time, as to render a person incapable of distinguishing right from wrong.[10] Intoxication, too, may be considered as a circumstance tending to show a want of premeditation.[1]

SEC. 3.—PERSONS IN SUBJECTION TO POWER OR OTHERS.

Persons who do acts in obedience to existing laws or from the coercion of those under whom the private relations of society place them in subjection, are in many cases excused from the consequences of criminal misconduct. The classes of these persons usually requiring to be noticed are married women, children and servants. When the husband was actually present while the wife committed some crimes, the law presumed she was acting under his coercion;[2] but this presumption ceased on 1st July, 1893, on which day the new criminal code came into

[9] 1 H. P. C. 32; Co. Litt. 247.
[10] H. P. C. 32; *Reg.* v. *Davis*, 14 Cox C. C. 563.
[1] 1 Russ. s. 7; C. & P. 817, 297, 145; *Reg.* v. *Davis*, 14 C. C. 563. But see Roscoe's Cr. Ev. 637.
[2] 1 H. P. C. 45, 47, 48, 516; 4 Bla. Com. 29.

force. By that statute it is enacted that no presumption shall be made that a married woman committing an offence, does so under compulsion, because she commits it in the presence of her husband.[3] But if it is proved on her behalf that the offence was really committed by compulsion of her husband, who is present when the crime is committed, the wife will still be excused if she commits a crime not of a heinous character.[4] This protection also extends to children, servants, and all other persons, as well as wives, who, under compulsion by threats of immediate death, or grievous bodily harm, from a person actually present at the commission of the offence, if the accused is subject to such threats and believes such threats would be executed; and who is not a party to any association, or conspiracy, the being a party to which rendered him subject to compulsion. This protection will not apply to acts of treason as defined in the first five paragraphs of section sixty-five of the code, nor to murder, piracy, offences deemed to be piracy, attempting to murder, assisting in rape, forcible abduction, robbery, causing serious bodily harm, and arson.[5]

If husband and wife jointly commit a murder, both are equally amenable to the law, as the doctrine of presumed coercion of the wife does not apply in murder.[6] But if the only part the wife takes in the transaction is in harbouring and comforting her husband after the crime is committed, she is not liable as principal or an accessory after the fact.[7]

The apprehension of personal danger does not furnish any excuse for assisting in committing a murder.[8]

[3] 55-56 V. c. 29, s. 13, Dom.
[4] Murder and homicide are crimes of a heinous character.
[5] 55-56 V. c. 29, s. 13, Dom.
[6] *Reg.* v. *Manning*, 2 Car. & K. 903.
[7] *Ib.*
[8] *Reg.* v. *Tyler*, 8 Car. & P. 606.

A master is not criminally responsible for a death caused by his servants' negligence, and still less for an offence depending on the servant's malice.[9]

SEC. 4.—IGNORANCE.

Ignorance of the law is no excuse for crime, even in foreigners residing in Canada.[10] Ignorance, or mistake, of *fact*, may excuse in some cases, as where a man kills one of his own family in mistake for a burglar.[1] Belief, though erroneous, of a prisoner in the existence of a right to do the act complained of, excludes criminality.[2]

SEC. 5.—MISFORTUNE.

If a person be doing anything *unlawful*, and a result ensue which he did not intend (as the death of another), the want of foresight is no excuse; but if accidental mischief follow from the performance of a *lawful* act, the party is excused from guilt.[3]

[9] *Chisholm* v. *Doulton*, 58 L. J. M. C. 133; 22 Q. B. D. 736.
[10] 7 C. & P. 456; 1 H. P. C. 42; 55-56 V. c. 29, s. 14, Dom.
[1] 1 H. P. C. 42-43; 4 Bla. Com. 27.
[2] *Reg.* v. *Twose*, 14 Cox C. C. 327.
[3] 4 Bla. Com. 27; 55-56 V. c. 29, s. 7, Dom.

CHAPTER II.

OF PARTIES AND ACCESSORIES.

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SEC. 1.—PARTIES TO THE COMMISSION OF OFFENCES.

Every one is a party to and guilty of an offence who:—

(*a*) actually commits it; or

(*b*) does or omits an act for the purpose of aiding any person to commit the offence; or

(*c*) abets any person in commission of the offence; or

(*d*) counsels or procures any person to commit the offence.

And if several persons form a common intention to prosecute any unlawful purpose, and to assist each other therein, each of them is a party to every offence committed by any one of them in the prosecution of such common purpose, the commission of which offence was, or ought to have been known to be a probable consequence of the prosecution of such common purpose.[1]

And every one who counsels or procures another to be a party to an offence of which that other is afterwards guilty, is a party to that offence, although it may be committed in a way different from that which was counselled or suggested. And every one who counsels or procures another to be a party to an offence, is a party to every offence which that other commits in consequence of such counselling or procuring, and which the person counselling

[1] 55-56 V. c. 29, s. 61, Dom.

or procuring knew or ought to have known to be likely to be committed in consequence of such counselling or procuring.[2]

Every one who having an intent to commit an offence does, or omits an act for the purpose of accomplishing his object, is guilty of an attempt to commit the offence intended, whether under the circumstances it was possible to commit such offence or not. The question whether an act done or omitted with intent to commit an offence is, or is not only preparation for the commission of that offence, and too remote to constitute an attempt to commit it, is a question of law, and is to be decided by the judge or coroner, and is not one of fact to be left to the jury.[3]

The offence need not of necessity be consummated in *presence* of the aiders and abettors, provided they are present assisting at its cause. For instance, if poison be laid for a man, those present and concurring in laying it are all guilty of the offence, although absent when the poison is taken.[4]

The participation of aiders and abettors is either from a combination to commit the offence itself, or arising out of a combination to resist all opposers to the prosecution of some other unlawful purpose.[5]

Those who, being absent at the time of the offence committed, do yet procure counsel, command or abet another to commit an offence, are guilty of the offence.[6] The procuring is either direct, by hire, counsel, command or conspiracy; or indirect, by shewing an express liking, approbation or assent to another's felonious design of committing an offence.[7] But he who barely conceals an offence to be committed is guilty only of misprison of felony.[8]

[2] 55-56 V. c. 29, s. 62, Dom.
[3] 55-56 V. c. 29, s. 64, Dom.
[4] Fost. C. L. 349; Kel. 52.
[5] 2 Hawk. P. C. c. 29, s. 9.
[6] 1 H. P. C. 615; *Reg.* v. *Bleasdale*, 2 Car. & K. 765.
[7] 2 Hawk. P. C. c. 29, s. 16.
[8] 2 Hawk. P. C. c. 29, s. 23.

Those who procure the commission of an offence, though by the intervention of a third party with whom they have no communication, are guilty of the offence.[9]

If a man advise a woman to kill her child so soon as it is born, and she do so in pursuance of such advice, he is an accessory to the murder, though no murder could have been committed at the time of the advice.[10]

The act must be the probable result of the evil advice, and not substantially different from that advised. The test question, according to Mr. Justice Foster, being: "Did the principal commit the felony he stands charged with under the influence of the flagitious advice, and was the event, in the ordinary course of things, a probable consequence of that felony; or did he, following the suggestions of his own wicked heart, wilfully and knowingly commit a felony of another kind, or upon a different subject."[1]

To manslaughter, it being sudden and unpremeditated, there can be no accessories before the fact.[2]

An accessory cannot be guilty of a higher crime than his principal.[3]

SEC. 2.—ACCESSORIES BEFORE THE FACT.

"Accessories before the fact," since the criminal code came into force (July 1st, 1893), are unknown to the law by that expression, being now included under "Parties to the commission of offences," and see under Aiders and Abettors, ante pp. 95, 96.

[9] 1 Fost. C. L. 125; 19 How. St. Tr. 746, 748, 804; 5 C. & P. 535; 55-56 V. c. 29, ss. 61, 234, Dom.

[10] 2 Hawk. P. C. c. 29, s. 18; Dyer, 168; 55-56 V. c. 29, ss. 61, 234, Dom.

[1] Fost. C. L. 372.

[2] 1 H. P. C. 347, 450, 616. Erle, J., in *R.* v. *Gaylor*, Dears & B., C. C. 288, said he thought Lord Hale was here speaking of manslaughter *per infortunium* and *se defendendo* only.

[3] 3 Inst. 139.

Although the term "accessories before the fact" is done away with in our criminal procedure, the offence itself is still illegal. It is merely known now by a different term and consequently the decisions of our courts relating to accessories before the fact can still be taken as authorities, and some of them are here mentioned as likely to be of use to coroners.

An accessory before the fact must be absent at the time when the crime is committed and the act must be done in consequence of some counsel or procurement of his.[4]

It is not essential there should have been any direct communication between an accessory before the fact and the principal felon. It is enough if the accessory directs an intermediate agent to procure another to commit a felony; and it will be sufficient even if the accessory does not name the person to be procured, but merely directs the agent to employ *some* person.[5]

Where the prisoner had procured certain drugs and gave them to his wife with intent that she should take them in order to procure abortion, and she did take them in his absence, and died from their effects—on an indictment against him for manslaughter, it was objected that he was only an accessory before the fact to manslaughter, but it was held that he was properly found guilty of manslaughter.[6]

Two men having quarrelled, agreed to fight with their fists, and to bind themselves to fight, each put down £1, so that £2 might be paid to the winner. The prisoner consented to hold the £2 and pay it over to the winner. Otherwise he had nothing to do with the fight, and he was not present at it. There was no reason to suppose that the life of either man would be endangered. The men fought

[4] *Reg.* v. *Brown*, 14 Cox C. C. 144.
[5] *Rex* v. *Cooper*, 5 Car. & P. 535.
[6] *Reg.* v. *Gaylor*, Dears. & B. C. C. 288; 7 Cox C. C. 253.

and one of them received injuries of which he afterwards died. The prisoner having been informed who was the winner, but not knowing of the other man's danger, paid over the £2 to the winner. It was held that the prisoner was not an accessory before the fact to the manslaughter of the man killed.[7]

A wife can be amenable as an accessory before the fact to a murder committed by her husband; but if the only part she takes in the transaction is in harbouring and comforting her husband after the crime is committed, she is not liable as an accessory after the fact.[8]

The doctrine of presumed coercion of the wife, by the husband, does not apply in cases of murder.[9]

SEC. 3.—ACCESSORIES AFTER THE FACT.

Accessories after the fact are not to be inquired of by coroners, as their duties are confined to ascertaining the cause of death.

[7] *Reg.* v. *Taylor*, 44 L. J. M. C. 67; L. R. 2 C. C. 147; 13 Cox C. C. 68.
[8] *Reg.* v. *Manning*, 2 Car. & K. 903.
[9] *Reg.* v. *Manning*, 2 Car. & K. 903.

CHAPTER III.

OF CRIMES WHICH COME UNDER THE NOTICE OF CORONERS.

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SEC. 1.—OF FELO DE SE, OR SUICIDES.

1. *Definition.*—A *felo de se* is one who, being of the age of discretion and *compos mentis*, kills himself or commits some unlawful act the consequence of which is his own death.[1]

[1] 1 Hal. P. C. 30, 411; 1 Hawk. P. C. c. 27, ss. 1, 4.

2. *Practical Remarks.*—It is not necessary that there should be an intention to commit self-murder to constitute this offence, provided there is an intention to do an unlawful act; for if one attempts to murder another and unintentionally kills himself, he is *felo de se.*[2]

If two persons agree to die together, and one is persuaded by the other to buy poison, which both take, and the one who bought it survives and the other does not, the one who dies is *felo de se.*[3] But if one desire or command another to kill him, the person killed is not *felo de se*, for his assent being against the laws of God and man is void.[4]

The person must die within a year and a day of the commencement of the cause of death, the whole day upon which the hurt was done being reckoned the first, to constitute the offence of *felo de se.*[5]

As many persons look upon all suicides as deranged, coroners should caution the jury against being influenced by such a notion.[6]

A lunatic who kills himself during a fit of lunacy is not *felo de se*, but if he kills himself in a lucid interval he is *felo de se.*[7]

The best rule, perhaps, a coroner can adopt to guide a jury in such cases is the one suggested by Wheatly in his work on the Book of Common Prayer, p. 463, where he states the coroner's jury should judge whether the signs of madness in the person who takes his own life, would avail to acquit the same person of murdering another man: if not, there is no reason why they should be urged as a plea for acquitting him of murdering himself.

[2] 1 Hawk. P. C., c. 27. s. 4.
[3] Moor. 754: 1 Hawk. P. C., c. 27. s. 6.
[4] 2 Hawk. P. C., c. 27. s. 6
[5] H. P. C. 411.
[6] Jer. 142.
[7] 1 Hal. P. C. 412.

An ignominious burial and forfeiture of property of the *felo de se* has been considered the appropriate means of deterring others from a like offence.[8]

If a woman takes poison with intent to procure a miscarriage, and dies of it, she is guilty of self-murder, whether she was quick with child or not; and the person who furnished her with the poison for that purpose, will, if absent when she took it, be an accessory before the fact only.[9]

Every one who counsels or procures any person to commit suicide, actually committed in consequence of such counselling or procurement, or who aids or abets any person in the commission of suicide, is guilty of an indictable offence, and is liable to imprisonment for life. And every one who attempts to commit suicide is guilty of an indictable offence and is liable to two years' imprisonment.[10]

In a doubtful case of suicide or murder, a medical witness said he found the throat of the deceased had been cut in an unusual way to bear out the theory of suicide, as those attempting to take their own life, usually cut up more to one side under the left ear. If this suggestion is reliable, the question whether the party was right or left-handed may make a difference as to which side the cut would be the highest.

The burial, according to the rules of the Church of England, must be without the Christian rites of the Church, as the Rubric directs that the office for the burial of the dead "is not to be used for any who have laid violent hands upon themselves." It seems that the body ought to be buried with a stake driven through it, in some public street or highway, in accordance with the ancient custom in England before 4 Geo. IV. c. 52, by which statute coroners were forbidden to issue warrants directing the interment of suicides in any public highway; and

[8] Jer. 143.
[9] *Rex* v. *Russell*, 1 M. C. C. 356.
[10] 55-56 V. c. 29, ss. 237, 238.

directing a private interment, without any stake being driven through the body, in the churchyard or other burial ground, within twenty-four hours from the finding of the inquisition, and between the hours of nine and twelve at night, and then by 45-46 V. c. 19, the remains of a suicide were ordered to be buried as if the verdict of *felo de se* had not been found. These statutes are not in force in Ontario, and we must consequently be governed by the more barbarous law previously existing, unless coroners are willing to depart from their strict duty, and issue process for the remains to be buried according to the subsequent and less severe provisions of the later English enactments—a departure from duty which would have the sanction of humanity to support it. The law of Canada in this respect calls for direct and positive amendment, although it has been supposed the burial of a *felo de se* relates to the criminal law and, not having been carried into the criminal code, is no longer in force in Canada. This, the writer has reason to believe, was the opinion of the late Attorney-General Mowat. As far as he is aware, there has been only one case reported in the newspapers in which the trustees of a cemetery in Ontario have refused interment of the body of a suicide on the ground that a *felo de se* was not entitled to burial in consecrated ground.

The forfeiture of *felo de se* of land and chattels has been abolished in Canada by 55-56 V. c. 29, s. 965 (D.). And the same Act also abolishes all other forfeitures for any indictable offence in Canada. And in England the forfeiture of goods and chattels of a *felo de se* was abolished by 33-34 V. c. 23.

The special committee appointed by the Medico-Chirurgical Society of Montreal to consider the advisability of amending the coroner's law of Quebec, was reported to have come to the conclusion that the existing law of that Province did not demand an inquest in cases of *felo de se*.

This conclusion appears to be somewhat doubtful, for section 965 of the Dominion Criminal Code refers to inquests as well as other proceedings in connection with the offence of *felo de se*, without excepting the provisions from applying to Quebec; and as far as the writer can discover there is no statute in Quebec which exempts a case of *felo de se* from calling for an inquest.

In *Nova Scotia, New Brunswick, Prince Edward Island, The North-West Territories* and *Keewatin*, the law as to *felo de se* is the same as in *Ontario*.

In *Manitoba* a statute has been passed which enacts that coroners are not to direct the burial of any body in any public highway, but in cases where upon inquisition the jury find that the death was by suicide, the coroner is to direct private interment without any stake being driven through the body, in the churchyard or other burial ground, within twenty-four hours from the finding of the inquisition.[1] In other respects the law as to *felo de se* is the same as in *Ontario*.

In *British Columbia*, where the law of England was adopted as from the 19th November, 1858, the English statute of 4 Geo. IV. c. 52, will govern as to the burial of suicides.

SEC. 2.—OF MURDER.

1. *Definition.*—Homicide is either culpable or not culpable. It 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 threats or fear of violence, or by deception, to do an act which causes that person's death, or by wilfully frightening a child or

[1] R. S. M. c. 15, s. 19.

sick person. Culpable homicide is either murder or manslaughter. Homicide which is not culpable is not an offence. Culpable homicide is murder in each of the following cases:—

(*a*) If the offender means to cause the death of the person killed;

(*b*) If the offender means to cause to the person killed any bodily injury, which is known to the offender to be likely to cause death, and is reckless whether death ensues or not.

(*c*) If the offender means to cause death or, being so reckless as aforesaid, means to cause such bodily injury as aforesaid, to one person; and by accident or mistake, kills another person, though he does not mean to hurt the person killed;

(*d*) If the offender for any unlawful object, does an act which he knows, or ought to have known, to be likely to cause death, and thereby kills any person; though he may have desired that his object should be effected without hurting any one.[2]

Culpable homicide is also murder in each of the following cases, whether the offender means or not death to ensue, or knows or not that death is likely to ensue:—

(*a*) If he means to inflict grievous bodily injury for the purposes of facilitating the commission of any of the offences hereafter mentioned, or the flight of the offender upon the commission, or attempted commission, thereof, and death ensues from such injury; or

(*b*) If he administers any stupefying, or overpowering thing, for either of the purposes aforesaid, and death ensues from the effect thereof; or

(*c*) If he by any means wilfully stops the breath of any person, for either of the purposes aforesaid, and death ensues from such stopping of the breath.

[2] 55-56 V. c. 29, ss. 220, 227, Can.

The following are the offences referred to in the three last paragraphs, viz.:—

Treason and the other offences mentioned in Part IV of the Criminal Code 1892, sections 65 to 78, piracy and offences deemed to be piracy, escape or rescue from prison, or lawful custody resisting lawful apprehension, murder, rape, forcible abduction, robbery, burglary and arson.[3]

Culpable homicide which would otherwise be murder, may be reduced to manslaughter by certain provocations, for which see *post*.

No one is criminally responsible for the killing of another unless the death takes place within a year and a day of the cause of death. The period of a year and a day must be reckoned inclusive of the day on which the last unlawful act contributing to the cause of death took place. Where the cause of death is an omission to fulfil a legal duty, the period is to be reckoned inclusive of the day on which such omissions ceased, and where the death is in part caused by an unlawful act, and in part by an omission, the period shall be reckoned inclusive of the day on which the last unlawful act took place, or the omission ceased, whichever happened last.[4]

Before the Criminal Code 1892 came into force the definition of murder was: "The unlawful killing by a person of sound memory and discretion, of any reasonable creature in being, and under the Queen's peace, by any means, with malice aforethought either expressed or implied."[5]

2. *Practical Remarks.*—In considering the general definition of murder, several things are to be noticed. *The person committing the crime must be a free agent*, and of sound memory and discretion, *i.e.*, he must not come within

[3] 55-56 V. c. 29, s. 228.
[4] 55-56 V. c. 29, s. 222.
[5] Inst. 47.

any of the classes of persons exempt from responsibility, before enumerated. Next—*The killing must be unlawful.* Consequently, when a criminal is executed by the proper officer, in pursuance of his sentence, this is justifiable homicide. But if done by any other person, or not according to the sentence, as by beheading when the sentence was hanging, it is murder. Officers of justice, gaolers and their officers, and others acting under authority, are protected in the proper execution of their duties; yet if they wilfully exceed the limits of their authority without just cause, and death follow, the law implies malice, and considers them guilty of murder. If they are resisted in the legal execution of their duty, they may repel force by force, but they must not kill where no resistance is made, or after the resistance is over, and time has elapsed for the blood to cool.

The law extends to persons authorized to execute, arrest or assist in arresting offenders, or to prevent the escape of prisoners after being arrested, the protection following:—

Every ministerial officer of any court authorized to execute a lawful sentence, and every gaoler, and every person lawfully assisting such ministerial officer or gaoler, is justified in executing such sentence. And every ministerial officer of any court duly authorized to execute any process of such court, whether of a civil or criminal nature, and every person lawfully assisting him, is justified in executing the same; and every gaoler who is required under such process to receive and detain any person is justified in receiving him.[6]

It is lawful for every parent, or person in the place of a parent, schoolmaster or master, to use force by way of correction towards any child, pupil or apprentice under his care, provided that

[6] 55-56 V. c. 29, ss. 15, 16.

such force is reasonable under the circumstances. It is also lawful for the master or officer in command of a ship on a voyage, to use force for the purpose of maintaining good order and discipline on board of his ship, provided that he believes, on reasonable grounds, that such force is necessary, and provided also that the force used is reasonable in degree.[7]

Every one is protected from criminal responsibility for performing with reasonable care and skill any surgical operation upon any person for his benefit, provided that performing the operation was reasonable, having regard to the patient's state at the time, and to all the circumstances of the case.[8]

Every one authorized by law to use force, is criminally responsible for any excess, according to the nature and quality of the act which constitutes the excess.[9]

No one has a right to consent to the infliction of death upon himself; and if such consent is given, it can have no effect upon the criminal responsibility of any person by whom such death may be caused.[10]

Every one is protected from criminal responsibility for any act done in obedience to the laws for the time being made and enforced by those in possession (*de facto*) of the sovereign power in and over the place where the act is done.[1]

The law relating to the execution of lawful warrants; the execution of sentence, or process, with or without jurisdiction or warrant, arresting the wrong person, executing a warrant or process that is bad in law; to persons assisting peace officers; to self-defence; defence of dwelling-house by night or day; defence of real property, and to other

[7] 55-56 V. c. 29, ss. 55, 56.
[8] 55-56 V. c. 29, s. 57.
[9] 55-56 V. c. 29, s. 58.
[10] 55-56 V. c. 29, s. 59.
[1] 55-56 V. c. 29, s. 60.

matters which may possibly come before coroners as matters of justification or excuse, will be found in Part II. of the Criminal Code, 55-56 Vic. c. 29.

The Lieut.-Governor of any province in Canada may, from time to time, make regulations for the purpose of preventing escapes, and preserving discipline in the case of prisoners in any common gaol, employed beyond the limits thereof, and prisoners properly employed on works without the Central Prison for the province of Ontario, are subject during such employment to all the rules and regulations and discipline of such prison, so far as the same are applicable, and also to such other regulations for the purpose of preventing escapes, and otherwise, as are approved by the Lieut.-Governor in that behalf.[2] Under the regulations made in pursuance of this latter authority it will be remembered that the prisoner Robert Scott was lawfully shot by a guard while attempting to escape from the Ontario Central Prison.

Procuring by false evidence the conviction and death of any person by the sentence of the law is not homicide.[3]

No one is criminally responsible for the killing of another by any influence on the mind alone, nor for the killing of another by any disorder, or disease arising from such influence, save in either case by wilfully frightening a child or sick person.[4]

Every one who, by any act or omission, causes the death of another, kills that person, although the effect of the bodily injury caused to such other person be merely to accelerate his death while labouring under some disorder or disease arising from some other cause.[5]

Every one who, by any act or omission, causes the death of another, kills that person, although death from

[2] R. S. C. c. 183, ss. 8, 23.
[3] 55-56 V. c. 29, s. 221, Can.
[4] 55-56 V. c. 29, s. 223, Can.
[5] 55-56 V. c. 29, s. 224, Can.

that cause might have been prevented by resorting to proper means.[6]

Every one who causes a bodily injury, which is of itself of a dangerous nature, to any person, from which death results, kills that person, although the immediate cause of death be treatment, proper or improper, applied in good faith.[7]

When a wound is wilfully, and without justifiable cause, inflicted, and ultimately becomes the cause of death, the party who inflicted it is guilty of murder, though life might have been preserved, if the deceased had not refused to submit to a surgical operation.[8]

If a person encourages another to murder himself, and is present abetting him while he does so, such person is guilty of murder as principal.[9]

The person killed must be a reasonable creature in being, and under the King's peace. Outlaws or aliens, being under the King's protection, may be the subjects of this offence. Killing an alien enemy in the time of war is not murder.[10] The person killed must be *in being*;[1] therefore a child *in ventre sa mere* cannot be the subject of murder. But if the child be born alive, and afterwards dies from potions or injuries received while in the womb, it is murder in such as administered or gave them.[2] The legal and other questions connected with infanticide being of much importance to coroners, a section is devoted to their consideration alone, to which the reader is referred for additional information on the subject. See section 3.

[6] 55-56 V. c. 29. s. 225, Can.
[7] 55-56 V. c. 29, s. 226, Can.
[8] *Reg.* v. *Holland*, 2 M. & Rob. 351.
[9] *Rex* v. *Dyson*, R. & R. 523.
[10] 3 Inst. 50; 1 H. P. C. 433.
[1] For the definition of when a child becomes a human being within the provisions of the Criminal Code, see s. 3 of this chapter, and 55-56 V., c. 29, s. 219, Dom.
[2] 1 Hawk. P. C. c. 31, s. 16; Jer. 151.

The killing may be by any unlawful means.—The means and manner of death are immaterial, provided there is a corporal damage to the party.[3] With this exception to the proviso that if the party is a child, or sick person, and is wilfully frightened to death, the offence is culpable homicide, and may amount to murder.[4]

The means need not obviously tend to cause death, provided they apparently endanger life, and do ultimately occasion death, and are wilfully committed.[5] Hence, carrying a sick person against his will, in a severe storm, from one town to another, by reason whereof he died, has been held to be murder.[6] Murder may also be committed by means of an innocent agent as by persuading a lunatic to kill another person, or by purposely turning loose a furious animal with a knowledge of its disposition.[7] If a physician or surgeon intending to do his patient good unfortunately kill him, this is only homicide by misadventure;[8] and it makes no difference whether the party be a regular physician or surgeon or not, if he act honestly and use his best skill to cure.[9] A medical practitioner must be guilty of criminal misconduct arising from the grossest ignorance or most criminal inattention, to render him guilty of manslaughter;[10] and a person acting as a medical man or surgeon, whether licensed or not, is not criminally responsible for a patient's death, unless his conduct shows gross ignorance of his art, or gross inattention to his patient's safety.[1]

[3] Jer. 152; 55-56 V. c. 29, ss. 220, 223, Dom.
[4] 55-56 V. c. 29, ss. 220, 223, Can.
[5] 1 E. P. C. 225.
[6] 1 E. P. C. 225.
[7] 4 Bla. Com. 197; 2 Mood. C. C. 120; 9 C. & P. 356.
[8] 4 Bla. Com. 197; 1 Hale, 429.
[9] 1 Hale P. C. 429; *Rex* v. *VanButchell*, 3 C. & P. 629.
[10] 3 C. & P. 635.
[1] 1 Russ. 497; and the following is the language of the Canada Criminal Code (55-56 V. c. 29, s. 57, Dom.): "Every one is protected from criminal responsibility for performing with reasonable care and skill any surgical operation upon any person for his benefit, provided that performing the operation was reasonable, having regard to the patient's state at the time, and to all the circumstances

On an indictment for manslaughter, by reason of gross negligence and ignorance in surgical treatment, neither on the one side, nor the other, can evidence be gone into of former cases treated by the prisoner, but witnesses may be asked *causa scientiae* their opinion as to his skill.[2]

In the case of *Town* v. *Archer*, 4 O. L. R., (1902) at p. 387, *Falconbridge, C.J.*, said:—"The general rule of skill required of a medical practitioner was thus summed up by *Erle, C.J.*, in *Rich* v. *Pierpont*, (1862) 3 F. & F. 35, at p. 40:—'A medical man was certainly not answerable merely because some other practitioner might possibly have shown greater skill and knowledge; but he was bound to have that degree of skill which could not be defined, but which, in the opinion of the jury, was a competent degree of skill and knowledge. What that was the jury were to judge. It was not enough to make the defendant liable that some medical men, of far greater experience or ability, might have used a greater degree of skill, nor that even he might possibly have used some greater degree of care. The question was whether there had been a want of competent care and skill to such an extent as to lead to the bad result.'"

Falconbridge, C.J., also in the same case, quoted from the charge to the jury of *Tindal, C.J.*, in *Lanphier* v. *Phipos*, (1838) 8 C. & P. at p. 479:—"'What you have to say is this, whether you are satisfied that the injury sustained is attributable to the want of a reasonable and proper degree of care and skill in the defendant's treatment. Every person who enters into a learned profession undertakes to bring to the exercise of it a reasonable degree of care and skill. He does not undertake, if it is an attorney,

of the case." And see *Reg.* v. *Long*, 3 Car. & P. 629; *Rex* v. *Williamson*, 3 Car. & P. 635; *Rex* v. *Spiller*, 5 Car. & P. 333; *Rex* v. *St. John Long*, 4 Car. & P. 398; *Reg.* v. *Chamberlain*, 10 Cox C. C. 486; *Reg.* v. *Markness*, 4 F. & F. 356; *Reg.* v. *Spencer*, 10 Cox C. C. 525.

[2] *Reg.* v. *Whitehead*, 3 Car. & K. 202.

that at all events you shall gain your case, nor does a surgeon undertake that he will perform a cure; nor does he undertake to use the highest possible degree of skill—but he undertakes to bring a fair, reasonable and competent degree of skill, and you will say whether, in this case, the injury was occasioned by the want of such skill in the defendant.'" *Falconbridge, C.J.*, also said:—"It has been held in some American cases that the locality in which a medical man practises is to be taken into account, and that a man practising in a small village or rural district, is not to be expected to exercise the high degree of skill of one having the opportunities afforded by a large city; and that he is bound to exercise the average degree of skill possessed by the profession in such localities generally. I should hesitate to lay down the law in that way. All the men practising in a given locality might be equally ignorant and behind the times, and regard must be had to the present advanced state of the profession, and to the easy means of communication with, and access to, the large centres of education and science. . . . There is no implied warranty on the part of a physician or surgeon that he will effect a cure. He can be treated as an insurer or guarantor of success, only if there be an express agreement to that effect. . . If a surgeon treat a patient improperly, he is liable to an action even though he undertook *gratis* to attend to the patient. The failure on the part of a medical man to give a patient proper instructions as to the care and use of an injured limb is negligence for which the medical man is liable for injury resulting therefrom."

The consent of the party killed does not extenuate the crime, such consent being merely void;[3] one who kills another by his desire, or command, or persuades another to kill himself, is a murderer.[4]

[3] 55-56 V. c. 29, s. 59, Dom.
[4] 1 Hawk. P. C. c. 27, s. 6; *Rex* v. *Sawyer*, 3 Russ. C. & M. 5.

There must be malice aforethought. This malice may be *express* and apparent, from the act being done with a deliberate mind, evinced by external circumstances; or it may be *implied* from the nature of the act or the means used, without any direct enmity being proved, as where one kills another on a sudden, without any considerable provocation, the law implies malice.[5] So if a man deliberately strike another with a murderous instrument, without a sufficient cause, malice will be presumed. If the act intended to be done is founded in malice, the act done, although done by accident, in pursuance of that intention, follows its nature.[6] Hence if a man attempt to kill another, and accidentally kill himself, he is *felo de se*;[7] or if in attempting to procure abortion death ensue, the person killing is guilty of murder.[8]

To do an act "with malice aforethought" has been defined to mean "to do a cruel act voluntarily;" anybody who intentionally inflicts grievous bodily harm on another, intending to do bodily harm, is guilty of murder if he causes death. The intention of the party guilty of murder being an element of the crime itself, the fact that a man was intoxicated at the time he caused the death of another may be taken into consideration by the jury in considering whether he formed the intention necessary to constitute the crime of murder.[9]

When a person fires at another a fire arm, knowing it to be loaded, and therefore intending either to kill, or to do grievous bodily harm, if death ensues the crime is murder; and if in such case the person who fires the weapon, though he does not know it to be loaded, has taken no care to ascertain, it is manslaughter.[10]

[5] Jer. 161; Impey, 501.
[6] 1 E. P. C. 230.
[7] 1 Hawk. P. C. c. 27, s. 4.
[8] 1 E. P. C. 230.
[9] 16 Cox C. C. 306.
[10] *Reg.* v. *Campbell*, 11 Cox C. C. 323.

Although malice is presumed in every case of homicide, it may be rebutted by the accused shewing;

(1) *There was provocation.*—To clear himself of homicide, which would otherwise be murder, the accused must prove—

(i) That the provocation was of a description of which he was conscious.

(ii) That it was unsought for, and was the immediate cause of the act.

(iii) That the act was committed in the heat of passion caused by sudden provocation. Any wrongful act, or insult, of such a nature as to be sufficient to deprive an ordinary person of the power of self-control, may be provocation if the offender acts upon it on the sudden, and before there has been time for his passion to cool. Whether or not any particular wrongful act or insult amounts to provocation, and whether or not the person provoked was actually deprived of the power of self-control by the provocation which he received, are questions of fact to be decided by the jury and not by the coroner. No one can be held to give provocation to another by doing that which he had a legal right to do, or by doing anything which the offender incited him to do, in order to provide the offender with an excuse for killing, or doing bodily harm to any person.[1]

If a man kills his wife in the act of adultery, it is manslaughter and not murder.[2]

An arrest will not necessarily reduce the offence from murder to manslaughter because the arrest was illegal, but if the illegality is known to the offender it may be evidence of provocation.[3]

[1] 55-56 V. c. 29, s. 229, Can.
[2] *Rex* v. *Pearson*, 2 Lewin, C. C. 216; 1 H. P. C. 486.
[3] 55-56 V. c. 29, s. 229, Can.

(iv) That although the accused assaulted, or provoked an assault from the other party, still he used only such force under reasonable apprehension of death or grievous bodily harm from the violence of the person first assaulted, or provoked; and in the belief, on reasonable grounds, that it was necessary, for his own preservation from death or grievous bodily harm, provided he did not commence the assault with intent to kill or do grievous bodily harm, and did not endeavour at any time before the necessity for preserving himself arose, to kill or do grievous bodily harm. And provided also, that before such necessity arose he declined further conflict, and quitted or retreated from it as far as was practicable.[4]

(v) That the accused was unlawfully assaulted, not having provoked such assault, and used only such force as was necessary for the purpose of self-defence, and that the death was caused under reasonable apprehension of death, or grievous bodily harm to himself, from the violence with which the assault was originally made, or with which the assailant pursued his purpose, and he believing, on reasonable grounds, that he could not otherwise preserve himself from death or grievous bodily harm.

Provocation within the meaning of this and the last preceding excuse (Nos. iv and v) may be given by blows, words or gestures.[5]

(2) *That the party was killed in mutual combat.* And this excuse will only avail or extenuate the offence where the occasion was sudden and unpremeditated, and not the result of preconceived malice, and where the parties at the onset were on an equal footing in point of defence. The

[4] 55-56 V. c. 29, s. 46, Can.

[5] 55-56 V. c. 29, ss. 45, 46, Can. Before this statute was passed in Canada, the general rule of law was that provocation by words would not reduce the crime of murder to that of manslaughter, but special circumstances attending such a provocation might be held to take the case out of the general rule. *Reg.* v. *Bothwell*, 12 Cox C. C. 145.

quarrel must not be a mere cloak for the purpose of gratifying a concerted malicious design.[6]

Deliberate duelling is murder, both in the principals and seconds, if death ensue;[7] and no provocation, however grievous, will excuse the offender.[8] But mere presence at a duel is not sufficient to make spectators principals in the combat; if, however, they sustain the principals either by advice or assistance, or go to the ground for the purpose of encouraging and forwarding the unlawful conflict, although they do not say or do anything, yet if they are present assisting and encouraging by their presence at the moment when the fatal shot is fired, they are, in law, guilty of murder.[9]

If two persons quarrel, and agree to fight a considerable time after when the blood must have cooled and death follows, it is murder;[10] and it is the same in all fights where the circumstances shew that the parties do not commence in the heat of passion.[1]

All struggles in anger, whether fighting or wrestling or any other mode, are unlawful, and death occasioned by them is manslaughter at least.[2]

As boxing and sword-playing are *unlawful* acts, if either of the parties be killed, such killing is felony or manslaughter; and, in general, if death ensues from any idle, dangerous and unlawful sport, the slayer is guilty of manslaughter. To teach and learn to box and fence are equally lawful. They are both the art of self-defence; but

[6] Jer. 174; *Rex* v. *Snow*, 1 Leach, C. C. 151; 1 East 244; and see *Rex* v. *Taylor*, 5 Burr. 2792. It has been held to be the duty of a coroner in a case of death occurring in a pugilistic encounter to examine a surgeon as to the cause of death. *Reg.* v. *Quinch*, 4 Car. & P. 571.

[7] 4 Bla. Com. 199; *Reg.* v. *Cuddy*, 1 Car. & K. 210.

[8] 3 East, 531; 1 H. P. C. 452.

[9] *Reg.* v. *Young*, 8 Car. & P. 644.

[10] 1 Hawk. P. C. c. 31, s. 32.

[1] 1 Lev. 180.

[2] *Reg.* v. *Canniff*, 4 Car. & P. 359.

sparring exhibitions are unlawful, because they tend to form prize-fighters and prize-fighting is illegal.[3]

A mere stakeholder who had nothing further to do with a fight upon which the stakes depended, and who was not present at it, has been held not to be an accessory where manslaughter ensued. He must incite, or procure, or encourage, the act. The mere consent to hold the stakes does not amount to such a participation as is necessary to support a conviction of manslaughter. Whether there could be an accessory before the fact to manslaughter of this kind, which is not in any way contemplated beforehand, but which occurs accidentally, seems doubtful.[4]

(3) *That the killing was occasioned by correction.* Parents, or persons in the place of parents, schoolmasters, or masters, and other persons having proper authority, may give reasonable correction, under the circumstances, to any child, pupil or apprentice under their care;[5] but the correction must not exceed the bounds of moderation, either in the manner, the instrument, or the quality of the punishment; or else, if death ensues, it will be manslaughter, if not actual murder.[6]

If two persons mutually agree to commit suicide together, and the means employed to produce death only take effect on one, the survivor will, in point of law, be guilty of the murder of the one who died.[7]

If persons assemble to obstruct the officers of the law, all so assembling are guilty of an unlawful assembly,

[3] *Hunt* v. *Bell*, 1 Bing. 1. This statement in the text perhaps should be taken with some degree of modification, as it was held in *Reg.* v. *Young*, 10 Cox C. C. 371, that there is nothing unlawful in sparring, unless, perhaps, the men fight until they are so weak that a dangerous fall is like to be the result of the continuance of the game, and therefore, except in the latter case, death caused by an injury received during a sparring match, does not amount to manslaughter.

[4] *Rex* v. *Taylor*, L. R. 2. C. C. R. 149.

[5] 1 E. P. C. 261; 55-56 V. c. 29, s. 55, Dom.

[6] 1 H. P. C. 473. And see p. 108.

[7] *Reg.* v. *Alison*, 8 Car. & P. 418; *Rex* v. *Dyson*, R. & R. 523; *Reg.* v. *Stormouth*, J. P. 729.

whether a riot take place or not, and if a homicide be committed in consequence of that unlawful assembly, every one taking part in the unlawful assembly may be personally responsible for the homicide.[8]

If while engaged in a friendly game, one of the players commits an unlawful act whereby death is caused to another, he is guilty of manslaughter. In such a case it is immaterial to consider whether the act which caused the death was in accordance with the rules and practice of the game. The act would be unlawful if the person who committed it intended to produce serious injury to another, or if committing an act which he knows may produce serious injury, he is indifferent and reckless as to the consequences.[9]

A kick is not a justifiable mode of turning a man out of your house, though he is a trespasser; therefore if it causes death, it is manslaughter.[10]

An infant two years of age is not capable of appreciating correction: a father, therefore, is not justified in correcting it, and if the infant dies owing to such correction the father is guilty of manslaughter.[1]

(4) *That the killing was without intention whilst doing another act.* If the act is being done with an unlawful object, the killing which unintentionally follows is murder, unless the accused did not know, and it was not in law imperative that he should know, the act was likely to cause death.[2] Accidental homicide may be murder if it happens in the prosecution of any illegal act; as in carrying away furniture to avoid distress for rent.[3] If a person causes death by an act known to be in itself eminently

[8] *Reg.* v. *McNaughton*, 14 Cox C. C. 576.
[9] *Reg.* v. *Bradshaw*, 14 Cox C. C. 83.
[10] *Rex* v. *Wild*, 2 Lewin, C. C. 214.
[1] *Reg.* v. *Griffin*, 11 Cox C. C. 402, and see ss. 2 of this section.
[2] Fost. C. L. 261; 55-56 V. c. 29, s. 227, Dom.
[3] *Rex* v. *Hodgson*, 1 Leach C. C. 6; 1 East P. C. 258.

dangerous to life, he is guilty of murder, but it has been doubted whether the rule, that an act done in the commission of a felony which causes death is in all cases murder, is not stated too broadly; and whether it should not be confined to *felonious* acts dangerous to life.[4] And if the death ensue without intention from doing an act lawful in itself, with proper caution, according to its nature, it is generally homicide by misadventure.[5]

An important class of cases which often comes under the notice of coroners is that of deaths caused by negligent or wanton conduct, but without malice. This class includes deaths arising from furious or careless driving, from racing, from the want of competent skill to perform acts which the person holds himself out as capable of performing, from doing a duty imposed by law negligently, or omitting altogether to perform such duty, from neglect of ordinary precautions in the execution of lawful occupations, and indeed arising from all accidents which are the result of negligence, omission, or wanton conduct in the performance of lawful acts. If there is express malice discoverable in these cases, or if there is such a wanton indifference to the safety of others shown in them as to constitute malice by implication, of course the killing would be murder. But usually malice is wanting, and then the circumstances of each case must be considered to see if the offence is manslaughter or accidental death. No more can here be done than briefly to mention and illustrate the general principles which govern these cases.

The broadest principle perhaps that can be laid down as applicable to the whole class of cases is this: if the circumstances indicate a wanton and malicious disregard of human life, the killing may amount to murder; if they indicate negligence only, the killing will be manslaughter;

[4] *Reg.* v. *Serne*, 16 Cox C. C. 311.

[5] Jer. O. C. 176.

and if they show an absence of even negligence, the killing will then be merely by misadventure or accident. And it seems that the death being partly caused by the fault of the deceased will not lessen the offence.[6]

It seems also that the greatest possible care in performing the act is not to be expected or required, but there should be such care taken as is usual with persons in similar situations.[7]

While a person is expected to anticipate and guard against all reasonable consequences, he is not expected to anticipate and guard against that which no reasonable man would expect to occur.[8]

In the case of carriers of passengers for hire somewhat greater care may be required, for *Hubbard, J.*, in *Ingalls* v. *Bell*, 9 Mete. 1, 15, is reported to have said "that carriers of passengers for hire are bound to use the utmost care and diligence in the providing of safe, sufficient, and suitable carriages, etc., in order to prevent those injuries which human care and foresight can guard against; and that if an accident happens from a defect in the coach, which might have been discovered and remedied upon the most careful and thorough examination of the coach, such accident must be ascribed to negligence, for which the owner is liable in case of injury to a passenger happening by reason of such accident. On the other hand, where an accident arises from a hidden and internal defect, which a careful examination would not disclose, and which could not be guarded against by the exercise of a sound judgment and the most vigilant oversight, then the proprietor is not liable for the injury, but the misfortune must be borne by the sufferer, as one of

[6] Per Pollock, C.B., in *R.* v. *Swindall*, 2 C. & K. 230; and see 1 C. & P. 320; 55-56 V. c. 29, Part XVIII. p. 93.

[7] 1 East. P. C. 263.

[8] *Greenland* v. *Chapter*, 5 Ex. 248.

that class of injuries for which the law can afford no redress in the form of a pecuniary recompense."[9]

With regard to *accidents from driving*, Garrow, B., said it is the duty of every man who drives any carriage to drive it with such care and caution as to prevent, as far as in his own power, any accident or injury that may occur.[10]

A person driving a cart at an unusually rapid pace, drove over a man and killed him, and it was held manslaughter, though he called to the deceased to get out of the way, and he might have done so if he had not been in a state of intoxication.[1]

If a person drives carelessly, and runs over a child in the street, if he sees the child and yet drives over him, it is murder; if he does not see the child, manslaughter; and if the child runs over the way and it is impossible to stop before running over him, it is accidental death.[2]

What constitutes *negligence* in the case of driving must depend greatly upon the circumstances of each particular case.[3]

Negligence is the omission to do something which a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do. Negligence includes two questions: (1) Whether a particular act has been performed or omitted; (2) Whether the performance or omission was a breach of legal duty.[4]

As to accidents *from racing*, the test questions put to the jury in a case where death resulted to a person on an omnibus from the driver racing with another omnibus

[9] *Readhead* v. *Midland R. W. Co.*, L. R. 2 Q. B. 412; 4 Q. B. 379.

[10] *R.* v. *Walker*, 1 C. & P. 320.

[1] *R.* v. *Walker*, 1 C. & P. 320.

[2] 1 Hale, P. C. 476; Foster, 263.

[3] Roscoe's Cr. Ev. 683.

[4] *Brown* v. *G. W. R. Co.*, 40 U. C. Q. B. 340.

were these: Were the two omnibuses racing? And was the prisoner driving as fast as he could, in order to get past the other omnibus? And had he urged his horses to so rapid a pace that he could not control them? *Patterson, J.*, told the jury that if they were of that opinion, to convict the prisoner of manslaughter.[5]

If each of two persons is driving a cart at a dangerous rate and they are inviting each other to drive at a dangerous rate, and one of the carts runs over a man and kills him, each of the two is guilty of manslaughter.[6]

But it was held in *Rex* v. *Mastin*, 6 Car. & P. 396, that if A. and B. are riding fast along a highway as if racing, and A. rides by without doing any mischief, but B. rides against the horse of C., whereby C. is thrown and killed, it was not manslaughter.

If a driver happens to kill a person, and it appears he might have seen the danger, but did not look before him, it will be manslaughter for want of due circumspection.[7]

The same rule applies to navigating a river as to travelling on a road. If death ensues from too much speed or negligent conduct in running a vessel, it will be manslaughter, just as if caused by furious driving or similar conduct on a public highway.[8]

In order to convict the captain of a steamer of manslaughter, in causing a death by running down another vessel, some act of *personal* misconduct or negligence must be shown.[9]

With regard to persons practising medicine or surgery, we have already seen if they are guilty of criminal misconduct, arising either from gross negligence or criminal inattention in the course of their employment, and in con-

[5] *R.* v. *Timmins*, 7 C & P. 499.
[6] *Reg.* v. *Swindall*, 2 Car. & K. 230; 2 Cox C. C. 141.
[7] Foster, 263.
[8] 9 C. & P. 672.
[9] 7 C. & P. 153.

sequence death ensues, it is manslaughter, and this whether they are licensed or not.[1] In *R.* v. *Long*,[2] *Mr. Justice Bayley* said, "It matters not whether a man has received a medical education or not. The thing to look at is, whether in reference to the remedy he has used, and the conduct he has displayed, he has acted with a due degree of caution, or, on the contrary, has acted with gross and improper rashness and want of caution."

A medical man is bound to use proper skill and caution in dealing with a poisonous drug, or a dangerous instrument; and if he does not do so, and death ensues, he is guilty of manslaughter; *aliter*, if it is want of skill arising from mere error of judgment.[3]

A *chemist* who negligently supplies wrong drugs, in consequence of which death ensues, is guilty of manslaughter.[4]

Spirituous liquors are sometimes the cause of death without there being any intention of producing so unfortunate a result on the part of those causing them to be taken. In these cases, if they are given to a child in a quantity quite unfit for its tender age out of mere brutal sport, it is manslaughter.[5] So also if a person make another excessively drunk with the view of carrying an unlawful object into effect, and the party dies from such drunkenness.[6] But the simple fact of persons getting together to drink, or one pressing another to do so, and from which death ensues, will not be manslaughter.[7]

Deaths from *exposure*, or *the want of proper food* and *necessaries*, are also included in the class of cases now under

[1] 3 C. & P. 635; 4 C. & P. 398; 5 C. & P. 333; Roscoe's Cr. Ev. 688, 661, and cases there cited.
[2] 4 C. & P. 440.
[3] *Reg.* v. *Macleod*, 12 Cox C. C. 534; *Reg.* v. *Spilling*, 2 M. & Rob. 107.
[4] 1 Lewin, C. C. 169.
[5] 3 C. & P. 211.
[6] 1 C. & Mars. 236.
[7] 1 C. & Mars. 236.

consideration. The criminal code in section number 209, states that every one who has charge of any other person unable by reason either of detention, age, sickness, insanity or any other cause, to withdraw himself from such charge, and unable to provide himself with the necessaries of life, is, whether such charge is undertaken by him under any contract, or is imposed upon him by law, or by reason of his unlawful act, under a legal duty to supply that person with the necessaries of life, and is criminally responsible for omitting, without lawful excuse, to perform such duty if the death of such person is caused, or if his life is endangered, or his health has been, or is likely to be, permanently injured, by such omission. The word "necessaries" has been interpreted as used in this section of the criminal code, to include proper medical aid, assistance, care and treatment; and that the law of the land must be obeyed even though there be something in the shape of belief in the conscience of the person coming under its obligation, which would lead him to obey what in his state of mind, he may consider a higher power or authority.[8] And if the neglect is wilful and deliberate, with the intention of bringing about death or of causing grievous bodily harm, it will even amount to murder.[9] If the parties accused are husband and wife, before the latter can be convicted, it must be shewn that the husband supplied sufficient food, etc., and the wife did not give it.[10] Except in the case of infants, when the mother is liable if the death was caused by her not suckling the child when she was capable of

[8] 8 C. & P. 425; and see 1 C. & K. 600; 1 Den. C. C. R. 356; 3 C. & K. 123; 2 C. & K. 343, 368; Penge case, before Mr. Justice Hawkins Sep., 1877; *The Queen* v. *Instan* [1893], 1 Q. B. 450; 55-56 V. c. 29, ss. 209, 220, Dom. And see section 217 of this statute *re* apprentices and servants.

[9] 1 East. P. C. 225. See Penge case, before Mr. Justice Hawkins, in England, Sep., 1877.

[10] 1 Russ. 490; 7 C. & P. 277.

doing so.[1] In which case it must be alleged it was the prisoner's duty to supply the child with food.[2]

Medical attendance is included in the expression "necessaries of life."

In the case of dropping infant children at doors, in streets, or on the highways, and thus causing their death, the question is whether the prisoner had reasonable ground for believing that the child would be found and preserved. If she had, the offence will only be manslaughter.[3]

Where a gaoler knowing a prisoner, lodged in a certain room in the prison, to be infected with small-pox, confined another prisoner, against his will, in the same room, and the latter prisoner who had not had the distemper, of which the gaoler had notice, caught it and died of it, it was held to be murder in the gaoler.[4]

If a gaoler knows a prisoner in his charge is sick, and neglects or refuses to procure medical or other necessary assistance, in consequence of which the prisoner dies, he will be guilty of manslaughter or murder, according to the apparent necessity of the case, and the *animus* shown by the gaoler.

But it is said where the death ensues from incautious neglect, however culpable, rather than from any actual malice, or artful disposition to injure, or obstinate perseverance in doing an act necessarily attended with danger, regardless of its consequences, the offence will be reduced to manslaughter.[5]

If a man who has received a serious blow or injury does not alter his mode of life in consequence, that does not

[1] 8 C. & P. 611.

[2] 8 C. & P. 611.

[3] Carr & M. 164; see also 1 Den. C. C. R. 356; S. C. L. J. M. C. 53.

[4] 2 Str. 856; Foster, 322; 1 East. P. C. 331.

[5] 1 East. P. C. 226; 1 Russ. 490.

exonerate the wrongdoer from criminal liability if such conduct has the effect of causing death.[6]

The numerous deaths resulting from *railway* and *steamboat* traffic, *machinery* of all kinds, *poisoning*, and in fact resulting from all other causes usually termed *accidental*, also come under this class of cases, and are all governed by the principles above referred to. But in these cases any wanton neglect of the statutory provisions for the safety of railway employees and the public,[7] and of the Railway Acts,[8] The Steamboat Inspection Act,[9] The Acts regulating the Sale of Poisons,[10] The Acts for the Protection of Persons employed in Factories,[1] The Act respecting Compensation to Workmen,[2] The Act respecting the Safety of Ships and the Prevention of Accidents on board thereof,[3] The Act respecting the Navigation of Canadian Waters,[4] The Act respecting the protection of Navigable Waters,[5] The Act respecting Bridges,[6] The Act respecting the improper use of Fire-arms and other Weapons,[7] The Act respecting Explosive Substances,[8] The Act respecting Prize Fighting,[9] The Street Railway Act,[10] The Act regulating Travelling on Highways and Bridges,[1] The Act respecting the Use of Traction Engines on Highways,[2] The Act to

[6] *Reg.* v. *Flynn*, 16 W. R. 319.
[7] R. S. O. 1897, c. 216.
[8] R. S. O. 1897, c. 207.
[9] 61 V. c. 46, Dom. By section 33, sub-sec. 8 of this Act, the certificate of an engineer on a steamboat may be cancelled in consequence of the finding of a coroner's inquest.
[10] R. S. O. 1897, c. 170.
[1] R. S. O. 1897, c. 256.
[2] 55 V. c. 30, Ont.; 56 V. c. 3, s. 2.
[3] R. S. C. c. 77.
[4] R. S. C. c. 79.
[5] R. S. C. c. 91.
[6] R. S. C. c. 93.
[7] R. S. C. c. 148.
[8] R. S. C. c. 150.
[9] 55-56 V. c. 29, ss. 92 to 97, and page 484, Dom.
[10] R. S. O. 1897, c. 208.
[1] R. S. O. 1897, c. 236.
[2] R. S. O. 1897, c. 242.

regulate the Means of Egress from Public Buildings,[3] The Act requiring Threshing, Sawing and other Machines to be protected,[4] and of all other Acts of the various Provinces, or of Newfoundland, of a similar character, or purpose, ought to be considered in determining the degree of guilt of the persons by whose neglect or fault the deaths occur, and it should be borne in mind that ignorance of the law is not an excuse for any offence.[5]

(5) *That the killing happened from resistance to the execution of public duty.* Officers of justice and others in authority may repel force by force in the legal execution of their duty;[6] and if death ensue, the implied malice will be rebutted, unless no sufficient resistance was made, or sufficient time intervenes for the blood to cool.[7]

Generally as regards the responsibility incurred by persons trying to arrest others, and of persons trying to escape arrest, see the Criminal Code, 55-56 V. c. 29, ss. 7 to 60 (C).

No one is responsible for the killing of another unless the death takes place within a year and a day of the cause and in part by an omission; the period is to be reckoned inclusive of the day on which the last unlawful act contributing to the cause of death took place. Where the cause of death is an omission to fulfil a legal duty the period is reckoned inclusive of the day on which such omission ceased. Where death is in part caused by an unlawful act and in part by an omission, the period is to be reckoned inclusive of the day on which the last unlawful act took place or the omission ceased, whichever happened last.[8]

Instances of a class of cases have recently occurred in Ontario, which go to show that there are persons, not at all

[3] R. S. O. 1897, c. 263.
[4] R. S. O. 1897, c. 265.
[5] 55-56 V. c. 29, s. 14, Dom.
[6] Fost. C. L. 270, 271.
[7] 1 E. P. C. 297.
[8] 55-56 V. c. 29, ss. 221, 222.

belonging to the criminal class, who imagine that they have a right to shoot thieves of a petty character who come at night upon their premises to steal, etc., and who make no attempt to use force to accomplish their purpose. These persons are quite mistaken in their view of the law. In the case of *Rex* v. *Scully*, 1 Car. & P. 319; 28 R. R. 780, it was held that a person set to watch a yard or a garden, is not justified in shooting anyone who comes into it in the night, even if he should see the party go into his master's hen-roost; but if from the conduct of the party, he has fair grounds for believing his own life to be in actual and immediate danger, he is then justified in shooting him.

SEC. 3.—INFANTICIDE.

Infanticide might have been treated of in the previous section; but the importance of the subject to coroners requires that it should be dwelt upon at greater length and with more particularity than would be appropriate to the heading, "General Remarks," and is therefore made the subject of a separate section.

Infanticide, medically speaking, contains two branches: (1) The criminal destruction of the foetus *in utero;* (2) The murder of the child after birth. The latter branch is the only one which comes under the jurisdiction of coroners, and alone requires notice in this work.

No *murder* can be committed of an infant in its mother's womb. It is not until actual birth that the child becomes "a human being," so as to be embraced in the legal definition of murder.[1]

Manslaughter, however, may be committed before actual birth, for in the case of *Rex* v. *Senior*, 1 M. C. C. 344;

[1] 1 Hale, 433.

1 Lewin, C. C. 183, where an unskilful practitioner of midwifery wounded the head of a child before the child was perfectly born, and it was afterwards born alive, but subsequently died of its injury, it was held to be manslaughter although the child was *in ventre sa mere* at the time when the wound was given.

But it has been held that if a person, intending to procure abortion, does an act which causes a child to be born so much earlier than the natural time, that it is born in a state much less capable of living, and afterwards dies in consequence of its exposure to the external world, the person who by this misconduct so brings the child into the world, and puts it thereby in a situation in which it cannot live, is guilty of murder; and the mere existence of a probability that something might have been done to prevent the death, would not render it less murder.[2]

The author of *The Vestiges of Creation* states that "at one of the last stages of man's foetal career, he exhibits an intermaxillary bone which is characteristic of the perfect ape; this is suppressed, and he may then be said to take leave of the Simial type, and becomes a true human creature." But whether this is correct or not, does not concern coroners, or medical witnesses, at inquests, since to be a subject of murder the "true human creature" must proceed further and be born alive. For the Criminal Code[3] states that a child becomes a human being within the meaning of the Act, and so capable of being a subject of murder, when it has completely proceeded in a living state from the body of its mother, whether it has breathed or not, whether it has an independent circulation or not, and whether the navel string is severed or not. The killing of such a child is homicide when it dies in consequence of injuries received before, during, or after birth.

[2] *Reg.* v. *West*, 2 Car. & K. 784; 2 Cox C. C. 500.
[3] 55-56 V. c. 29, ss. 218, 219, Can.

Therefore, in considering the crime of infanticide in its second branch, the first question that presents itself is:

1. *When is a child born alive?*—A common test of live birth is the act of breathing; but a child may breathe during the birth, and before the whole body is brought into the world, which would not be sufficient life to constitute it a human being, and to make its destruction murder.[4]

A child may breathe *in utero* after the membranes have been ruptured, but all such cases reported were in exceptionally difficult labours.[5]

Again; a child may be wholly produced, and remain for some time without respiring, life being kept up from the foetal circulation continuing, or from causes which appear to be involved in much obscurity.[6] When a living child is destroyed while remaining in this state, there are no certain medical signs by which it can be proved to have been living when maltreated;[7] although some indirect evidence of the existence of life previous to respiration may be obtained from wounds and ecchymoses found on the body of the child.[8] The child being seen to move or breathe, would of course be evidence of life.[9]

[4] 5 C. & P. 329; 55-56 V. c. 29, s. 219, Dom. In these cases there is a very strong presumption against the probability of the child dying unless through foul play, before being wholly born alive.—1 Beck, 498; Taylor, 339.

[5] Tidy Vol. 3, pp. 158, 159.

[6] Taylor, 326; 1 Beck. 448; see 6 C. & P. 349.

[7] Taylor, 324.

[8] 1 Beck, 448.

[9] Cases of this kind may be divided into two classes:—1. Where the child's life is merely a continuation of its foetal existence, and is dependent on the life of its mother; and 2. Where the child's life is independent of that of its mother, yet there are no medical signs of its having been born alive to be discovered in the body after death. It has been doubtful if the destruction of a child coming under the first class would be murder. In *Rex* v. *Enock*, 5 C. & P. 539, *Parke, J.*, said there must be an *independent* circulation in the child before it can be considered alive for the purpose of constituting its destruction, murder. See also 9 C. & P. 754. And in *Reg.* v. *Christopher* (Dorset Lent Assizes, 1845), *Erle, J.*, said the child must have an existence *distinct* and *independent* from the mother. But see 2 Moo. C. C. 260. This doubt is set at rest by the Criminal

Breathing is only *one* proof of life. Other proofs are admissible of life in a child before the establishment of respiration; and its destruction after being completely born in a living state, but before it has breathed, is murder.[19]

Respiration is the *best* test of a child having been born alive; and it has been decided that a child is born alive, in the legal sense, when breathing and living, by reason of breathing through its own lungs alone, it exists as a living child without deriving any of its living, or power of living, by or through any connection with its mother.[1] But in deciding whether or not it has respired, much skill is often necessary. Immersing the lungs in water—it being supposed that if they floated the child must have breathed—was, at one time, the usual test. It is now exploded; as air may have passed into the lungs by inflation, or they may have become permeated with air from decomposition. And even if respiration be proved, still it must be borne in mind that the child may have breathed during birth, before arriving at that stage of life when it may be the subject of murder.[2] And on the other hand, children have occasionally lived for many hours, and even days, without any signs of respiration being discoverable in their bodies after death.[3]

Absence of the signs of respiration is no proof of natural dead birth; as the mother may cause herself to be

Code, 1892, which as before stated declares that a child becomes a human being when it has completely proceeded in a living state from the body of its mother, whether it has breathed or not, whether it has an independent circulation or not, and whether the navel string is severed or not. And the killing of such a child is homicide. See 55-56 V. c. 29, s. 219, Can.

[19] *Rex* v. *Brain*, 6 C. & P., 349; *Rex* v. *Sellis*, 7 C. & P. 850; 55-56 V. c. 29, s. 219, Dom.

[1] *Reg.* v. *Handley*, 13 Cox C. C. 79.

[2] This has been the case when the labour was long protracted after the waters have escaped, and the infant slow in descending through the passages.

[3] Taylor, 325, 327.

delivered in a water-bath, or the mouth and nostrils of the child may be covered in the act of birth.

Nearly all the changes occurring with normal respiration in a child may result from artificial inflation, or from putrefactive decomposition, except the presence of an increased quantity of blood in the lungs, and the giving off of *minute* air bubbles when the lungs are pressed under water, the gas bubbles of putrefaction being comparatively of large size.[4]

Because of the inconstancy of living weights, the *static test* of live birth by weighing the lungs, is considered worthless, it being necessary to trust to the average living weights, and the lungs of the same child cannot be weighed before and after respiration.[5]

A muscular twitch on the part of an infant is unlikely to be mechanical or independent of vital power, but it can scarcely be accepted as *proof* of live birth.[6] In a case of alleged child murder, the rigidity of the body of the infant, Doctor Taylor states, was wrongly assumed to indicate that the child had been born alive, and had had an independent existence. See Taylor, vol. I., p. 54.

Pulsation of the cord is an undoubted sign of life; also beating of the heart.[7] But, of course, these signs of live birth must be observed after the child has completely proceeded from the mother.

A warm room and warm clothing are of vital importance to a new-born child, consequently the conditions under which the child was exposed at the time of birth should be ascertained.[8]

Neglecting to provide reasonable assistance, by a woman in her delivery, and the child is permanently injured

[4] Tidy vol. 3, p. 160.
[5] Tidy, vol. 3, p. 162.
[6] Tidy, vol. 3, p. 155.
[7] Tidy, vol. 3, p. 156.
[8] Tidy, vol. 2, p. 65.

thereby, or dies, either just before, or during, or shortly after birth; and this neglect is with the intent that the child shall not live, or to conceal the fact of her having had a child, is an indictable offence, unless the woman proves such death or permanent injury was not caused by such neglect, or by any wrongful act to which she was a party. If the intent of such neglect be that the child shall not live, the punishment is imprisonment for life, but if the intent is merely to conceal the fact of her having had a child, the punishment is reduced to imprisonment for seven years.[9]

A woman, who knows she is to be confined, and who wilfully abstains from taking the necessary precautions to preserve the life of the child after its birth, in consequence of which the child dies, is not guilty of manslaughter.[10]

And any one who disposes of the dead body of a child in any manner, with intent to conceal the fact that its mother was delivered of it, whether the child died before, or during, or after birth, is guilty of an indictable offence.[1]

In all cases of *overlaying* infants where an imputation of neglect or wilful murder is suggested, a *post-mortem* is an absolutely essential part of the inquiry, however clear the case may appear to be; for several cases have occurred where intentional overlaying was suspected, but where a *post-mortem* has shown disease was the cause of death.[2]

The presence of any marks of putrefaction *in utero* proves the child must have been born dead. The presence of marks of severe violence on *various parts* of the body, if possessing vital characters, renders it *probable* that the child was entirely born alive when the violence was inflicted.[3] The presence of food in the stomach proves the child was entirely born alive.[4]

[9] 55-56 V. c. 29, s. 239, Can.
[10] *Reg.* v. *Knight*, 2 F. & F. 46.
[1] 55-56 V. c. 29, s. 240, Can.
[2] Tidy, vol. 3, p. 277.
[3] Taylor, 352.
[4] Taylor, 353.

2. *Hydrostatic Test.*—Although employing this test as conclusive evidence of the child having breathed or not, is now exploded, yet when used by an intelligent physician, thoroughly acquainted with its real value, and who considers its result with other circumstances, it is a proper and important test to employ in many cases of infanticide. The approved mode of performing it will be found described in chapter vii.

A person using the hydrostatic test in cases of alleged infanticide should remember that the lungs floating is not *a proof* that the child has been *born alive*, nor their sinking *a proof* that it was *born dead*. At most it can only prove the child has *breathed* or not. The fact of living or dead birth has, strictly speaking, no relation to the employment of this test.[5] As already stated, the lungs may sink from disease;[6] or they may sink, although the child has lived for hours and even for days;[7] and they may float from putrefaction, either after the child is still-born, or after death *in utero* previous to its birth, or from artificial inflation;[8] or from respiration before complete birth. And Dr. Taylor states the absence of air from the lungs and their sinking in water cannot be relied upon as positive evidence that the child was born dead.[9]

The employment, however, of pressure as an essential part of the hydrostatic test disposes for the most part of putrefaction as a difficulty.[10]

3. *Of the Uterine Age of a Child.*—In cases of premature birth, it is to be noticed as tending to narrow the difficulty of deciding the question of living production, that earlier than between the fourth and fifth months the gen-

[5] Taylor, 325.
[6] Taylor, 325.
[7] Taylor, 327.
[8] Taylor, 330.
[9] Taylor, 335, 339.
[10] Tidy, vol. 3, p. 166.

eral opinion is that no foetus can be said to be born alive;[1] from the fifth to the seventh it may be born alive, but cannot maintain existence; and at the seventh it may be reared.

The following is a summary of the principal facts upon which an opinion respecting the uterine age of a child may be based, taken from Taylor's *Medical Jurisprudence:*

(*a*) At *six months*—Length, from nine to ten inches; weight, one to two pounds; eyelids, agglutinated; pupils, closed by membranae pupillaires; testicles not apparent in the male.

(*b*) At *seven months*—Length, from thirteen to fourteen inches; weight, three to four pounds; eyelids, not adherent; membranae pupillaires, disappearing; nails, imperfectly developed; testicles, not apparent in the male.

(*c*) At *eight months*—Length, from fourteen to sixteen inches; weight, from four to five pounds; membranae pupillaires, absent; nails, perfectly developed, and reaching to the ends of the fingers; testicles in the inguinal canal.

(*d*) At *nine months*—Length, from sixteen to twenty-one inches; weight, from five to nine pounds; membranae pupillaires, absent; head well covered with fine hair; testicles in the scrotum; skin pale; features perfect; these and the body are *well developed*, even when the length and weight of the child are much less than those above assigned.

(*e*) The point of insertion of the umbilical cord, with respect to the length of the body, affords no certain evidence of the degree of maturity.

There are no certain signs by which to determine how long a child has survived birth for the first twenty-four hours.[2]

4. *Monstrosities.*—Some persons have the notion that monstrosities may be destroyed; but this is not correct. If

[1] Tidy, vol. 3, p. 31.
[2] Taylor, 354.

destroyed under an impression of this kind, the want of malice might reduce the act below murder, although it would amount at least to manslaughter.

5. *Legal points.*—The onus of proving the child had completely proceeded in a living state from the body of its mother rests on the prosecution, as the law humanely presumes that every new-born infant is born dead; but if proved to have been wholly born alive, further proof shewing its capacity to live is not necessary, for even if a want of viability, or capacity to live, be proved, its destruction would still be murder.[3]

In all cases where there is not the most clear and decisive proof that the child was born alive, it is the bounden duty of the coroner to tell the jury that they ought not to think of returning a verdict of wilful murder against the mother.[4]

If a child is wilfully injured before or during birth, and dies from the injury *after* birth, this would be homicide.[5]

Where there is wanton exposure of an infant without the intent to produce death, but with the expectation of shifting its support upon some third person, and death ensues, it is manslaughter.[6]

The wilful prevention of the commencement of respiration in a child after being wholly born in a living state, is homicide.[7]

And if a person unlawfully intending to procure abortion, does an act which causes a child to be born so much earlier than the natural time, that it is born in a state much less capable of living, and afterwards dies in conse-

[3] *Reg.* v. *West*, Nottingham Lent Assizes, 1848.
[4] *Rex* v. *Bayley*, Car. C. L. 243.
[5] 3 Inst. 50; 1 Bla. Com. 129; Hawk. P. C. b. 1, c. 31, s. 16; 55-56 V. c. 29, s. 219, Dom.
[6] Wharton & Stille, 790.
[7] 55-56 Vict. c. 29, s. 219.

quence of its exposure to the external world, the person who by this misconduct so brings the child into the world and puts it thereby in a situation in which it cannot live, is guilty of murder, and the mere existence of a possibility that something might have been done to prevent the death will not render it less murder.[a]

Causing the death of a child by giving it spirituous liquors in a quantity unfit for its tender age, is manslaughter.[8]

If a woman takes poison with intent to procure a miscarriage, and dies of it, she is guilty of self-murder, whether she was quick with child or not; and the person who furnished her with the poison for that purpose, will, if absent when she takes it, be an accessory before the fact only.[9]

The omission of a self-delivered woman to tie the umbilical cord, in consequence of which her child dies, is not murder, as her distress and pain may cause this neglect, or she may not be aware of the necessity for applying a ligature to the cord, or she may become insensible after delivery. But *wilfully* neglecting to perform this office for the child, if satisfactorily proved, would be murder if death was the consequence of such neglect.

As before stated,[10] if a man advise a woman to kill her child so soon as it is born, and she do so in pursuance of such advice, he is an accessory to the murder, though no murder could have been committed at the time of the advice.[1]

Abortion may properly be induced in cases where the life of a woman is at stake, and there is less to be feared

[a] *Reg.* v. *West*, Car. & R. 784; 2 Cox, C. C. 500; 55-56 V. c. 29, ss. 219, 227, Dom.

[8] 3 C. & P. 210.

[9] *Rex* v. *Russell*, 1 M. C. C. 356.

[10] Page 65.

[1] Hawk. P. C. c. 29, s. 18; Dyer, 168; 55-56 V. c. 29, ss. 61, 234, Dom.

from the operation than from natural delivery, and the action is *bona fide;* but Prof. Tidy strongly, and properly, urges that it should not be undertaken without the most mature consideration, nor until after consultation with another practitioner, and only then with full consent in writing, if possible, of the husband or guardian of the woman.[2] Under the criminal code every one is guilty of an indictable offence and is liable to imprisonment for life, who causes the death of any child which has not become a human being, in such a manner that he would have been guilty of murder if such child had been born;[3] but *no one* is guilty of any offence who by means which he in good faith considers necessary for the preservation of the life of the mother, causes the death of any child before or during its birth.

In a case of infanticide, the coroner's jury should not find as to the concealment of birth, if any there be; for the concealment, under the present law, is no presumptive evidence of infanticide, and has no connection with the cause of death, to inquire of which is the purpose of the coroner's inquest.[4]

Under the provisions of the statute regulating Maternity Boarding Houses and for the Protection of Infant Children, the keepers of these houses must within 24 hours after the death of every infant retained, or received in their houses, cause notice thereof to be given to the coroner for the district within which the infant died, and the coroner must hold an inquest on the body of the infant unless a certificate, under the hand of a registered medical practitioner, is produced to him by the person so registered, certifying that such registered medical practitioner has personally attended, or examined the infant, and specifying

[2] Tidy, vol. 3, p. 100.
[3] 55-56 V. c. 29, s. 271, Dom.
[4] 55-56 V. c. 29, s. 697, Dom.

the cause of its death; and the coroner is satisfied by certificate that there is no ground for holding an inquest. If the person so registered neglects to give the above notice, he is guilty of an offence against Part II. of the statute, and liable to a penalty not exceeding $20 and costs. And in default of payment, to imprisonment in the common gaol of the county in which the offence was committed, for a period of not less than six calendar months, and to be kept at hard labour, in the discretion of the Police Magistrate, or other convicting Justices, and shall in addition be liable to have his name and house struck off the register.[5]

6. *Cautions.*—A child may die from the cord becoming twisted round its neck *in utero*, before parturition. This cause of death sometimes gives rise to an idea that the child was strangled.[6]

The mark left on the neck by the umbilical cord twisting round it, is broad, grooved, perfectly soft and never excoriated. A hard parchmenty depression points away from the cord as the cause of the groove. There will be as many marks of the cord as there are twists. Marks from folds of skin or ridges in the fat of the neck are liable to be mistaken for cord marks.[7]

In cases of death of children by strangulation through the cord being twisted round the neck, the lungs are not likely to shew signs of expansion.[8]

If death from suffocation is expected, the mouth and fauces should be examined for foreign substances, which might give some clue to the means employed to produce it. Any peculiar smell about the body should be noted, in order to see if poisonous vapours were used to suffocate the child. In these cases it must be remembered that suffocation may arise from accident or unintentional neglect, par-

[5] R. S. O. 1897, c. 258, ss. 8, 10.
[6] Taylor, 357.
[7] Tidy, vol. 3, p. 193.
[8] Tidy, vol. 3, p. 196.

ticularly if the mother is delivered when alone, and is much distressed, or faints. Care should be taken to distinguish in these cases between means used simply to *conceal the birth*, and means used to *destroy the child.*

It was stated at an inquest held in England in 1896 that a wet cloth placed over the mouth of a child immediately after birth will suffocate it without leaving any trace of the cause of death. When such a case is thought possible, a strong magnifying glass should be used in looking for impressions of the cloth upon the child's skin, and all external evidence bearing upon the case should be carefully gathered and fully noted.

If the body is found in water, care should be taken to ascertain if the child was drowned or killed before being placed in the water. The number of verdicts of "Found drowned" might doubtless be reduced by a proper attention to this caution.

The pains of labour may be mistaken for other sensations, and the child in consequence be born under circumstances which would inevitably cause its loss without any blame attaching to the mother. A careful examination of the ends of the cord, to see if it was cut or torn asunder, may afford important evidence in these cases. A lens should be used for the purpose, as the torn ends have sometimes been found nearly as sharp-edged and flat as if cut.[9]

Severe injuries are sometimes unintentionally inflicted on infants suddenly born, while the mother is standing, sitting, or on her knees.[10]

In deaths from starvation, mere neglect or imprudence, without actual malice, will not make them cases of infanticide.[1]

[9] Med. Gaz. vol. 48, p. 985.
[10] Taylor, 368.
[1] See 55-56 V. c. 29, ss. 209, 210, 211, 215, 216, Dom.; and see also *The Queen* v. *Instan*, (1893) 1 Q. B. 450.

Fractures of the skull, with extravasation, sometimes occur from natural causes during parturition, and may lead to a suspicion of criminal violence. These fractures and extravasations are generally of very slight extent, while those caused by criminal violence are commonly much more severe.[2]

Tumours on the head, containing blood, arising from the same causes, sometimes lead to a similar suspicion.[3]

Severe wounds are sometimes accidentally inflicted upon children by clumsy attempts to sever the navel-string. In such cases the string is generally found cut.[4]

Attempts innocently made by the female to aid her delivery sometimes cause injuries to the child's body.[5]

Naevi materni, or mothers' marks, in newly born children, are more common than is generally supposed, and may closely simulate marks of violence.[6]

Where the cause of death of a child is doubtful, the orbital walls should be closely examined for needle punctures or wounds of other sharp instruments under the upper eyelid. The symptoms produced by such injuries would be convulsions.[7]

7. *Evidence*—The consideration of evidence in general is reserved for another chapter.[8]

A few points relating to infanticide, in particular, will here be noticed.

Mere appearances of violence on the child's body are not sufficient of themselves. The evidence must go further, and show intentional murder.

In order to connect the murdered child with the mother sometimes an examination of the accused is necessary. Un-

[2] Taylor, 367.
[3] Taylor, 366.
[4] Taylor, 365.
[5] Taylor, 372.
[6] Tidy, vol. 1, p. 152.
[7] Tidy, vol. 3, p. 197.
[8] See chapter XI.

less this takes place within twelve or fifteen days from delivery, no satisfactory evidence can in general be obtained.[9]

Whether a suspected female can be forced to furnish evidence against herself by submitting to an examination seems doubtful. The spirit of our laws is opposed to such compulsory evidence, and coroners are advised not to compel, or attempt to compel, an examination.

Trying to frighten the accused into submission is equally objectionable. A refusal to submit to such an examination should hardly be considered as implying guilt; for some innocent women of delicate feelings might naturally prefer lying under an imputation of crime, to submitting to a proceeding so revolting to them.

The concealment of birth is now no presumptive evidence of infanticide.[10] In most cases of this nature the unfortunate woman has every reason to attempt concealment; and to imply guilt from conduct, the innocent motives for which can be so easily understood, is shocking to human nature.

From the murder of bastard children by the mother, being a crime difficult to be proved, at one time a special legislative provision was enacted for its detection,[1] which made concealment of the birth almost conclusive evidence of the child's murder. But the severity of the statute.[2] rendered its provisions fruitless, since few juries could be found willing to convict the unfortunate objects of accusation on such objectionable evidence, and it was repealed in England by 43 Geo. III. c. 58. In Canada this Act was repealed by Provincial Statutes now embodied in the

[9] Taylor, 382.
[10] 55-56 V. c. 29, s. 697, Dom.
[1] 21 Jac. 1, c. 27.
[2] The reader will remember the story of Sir Walter Scott, called "The Heart of Mid-Lothian," which is founded on a trial under a similar enactment in Scotland.

Dominion Statutes, 55-56 V. c. 29, s. 697; and the trial of women charged with the murder of their bastard children placed on the same footing as to the rules of evidence and presumptions as other trials for murder.

SEC. 4—MANSLAUGHTER.

1. *Definition.*—Manslaughter is defined to be the unlawful killing of another without malice, either express or implied, or as the criminal code defines it, "culpable homicide, not amounting to murder, is manslaughter;"[1] and may be either voluntary, upon a sudden heat, or involuntary, ensuing from the commission of some unlawful act, or from the pursuit of some lawful act criminally or improperly performed.[2] The main distinction between manslaughter and murder is the absence of "malice aforethought."[3]

2. *Practical Remarks.*—All homicide is presumed to be malicious until the contrary is proved.[4]

If the act is committed in the heat of passion caused by a wrongful act or insult of such a nature as to be sufficient to deprive an ordinary person of the power of self-control, it will reduce the offence of killing to manslaughter where a malicious intention is not manifested by the use of deadly weapons or other circumstances of the case.[5] When no such malice accompanies the act, and the party provoked give the other a box on the ear or stroke with a stick or other weapon, not likely to kill, and death unfortunately ensues, it will be only manslaughter.[6] And

[1] 55-56 V. c. 29, s. 230; *Rex* v. *Taylor*, 2 Lewis C. C. 215.
[2] 4 Blac. Com. 191.
[3] A distinction as venerable as the Mosaic Law. See Num. xxxv. 15 and following verses.
[4] 1 E. P. C. 224.
[5] Jer. O. C. 185; Moir's case, Rosc. C. E. 717. 55, 56 V. c. 29, s. 229, Dom., and see remarks on Provocation in Part II., c. iii., s. 2, s-s. 2.
[6] Fost. 291.

if the death result from a violent and unlawful restraint of personal liberty,[7] or from the first transport of passion, arising from the detection by the husband of the adulterer in the act,[8] the killing is reduced to manslaughter. So if one insults another, and gets a blow for his language, which he returns, and a scuffle ensues, and the party insulting is killed, it is manslaughter only, for his blow to the person insulted is considered a new provocation, on the principle that the second blow makes the affray, and the conflict a sudden, unpremeditated falling out.[9] So an assault upon a man's person, accompanied with circumstances of great violence or insolence, which would reasonably cause a sudden transport of passion and heat of blood, will make the killing only manslaughter.[10] Provocation of a slight kind will extenuate the guilt of homicide, where the party killing does not act with cruelty or use dangerous instruments;[1] but if the instrument used is such that a rational man would conclude death would follow, it is reasonable for the jury to find death was intended.[2]

Prize fighting with or without anger and generally, all fighting, wrestling or other contests, *in anger*, are unlawful, and if death result, it is manslaughter at least.[3]

Where a blow is given which necessitates, in a surgeon's opinion, the administration of restoratives to the person injured, and the person being unable to swallow, is choked, the death is in law caused by the blow.[4]

When an injury was inflicted on a person by a blow, which, in the judgment of a competent medical man, rendered an operation advisable, and, as a preliminary to the

[7] 1 E. P. C. 233.
[8] 1 H. P. C. 486; *Rex* v. *Pearson*, 2 Lewin, C. C. 216.
[9] 1 Hale 455.
[10] 1 Russ. 581.
[1] Fost. 291.
[2] 2 Lew. 225.
[3] 9 C. & P. 359; 55-56 V. c. 29, ss. 93, 94, Dom.
[4] *Reg.* v. *McIntyre*, 2 Cox C. C. 397.

operation, chloroform was administered to the patient, who died during its administration, and it was agreed that the patient would not have died but for its administration, it was held that the person causing the injury was liable to be indicted for manslaughter.[5]

Where a prisoner committed a felony on the person of a child whereby she died, a verdict of manslaughter can be upheld.[6]

In the case of *Reg* v. *Murton*, 3 F. & F. 492, the prisoner violently assaulted his wife, and the medical evidence showed she was diseased, but that she might have lived for an indefinite period; and that the effect of the violence was to hasten her death by a shock to the nervous system calculated to aggravate the disease. It was held that the prisoner was guilty of manslaughter.

Killing one who endeavours to commit a *felony* by force has been considered justifiable homicide, if the intent to commit such crime clearly appears.[7]

Lawful sports must be indulged in with due caution, according to their nature. For instance, death arising from accident, through shooting at a target placed in a position dangerous to persons passing along highways or other places commonly used, would probably be manslaughter.[8]

If on a sudden quarrel between two parties of men, a blow intended for an individual of one party, would, if death ensued, have amounted to manslaughter, it will be manslaughter, though, by accident, it kills another.[9]

That which constitutes murder when by design and malice prepense, constitutes manslaughter when arising from culpable negligence.[10]

[5] *Reg.* v. *Davis*, 15 Cox C. C. 174.
[6] *Reg.* v. *Greenwood*, 7 Cox C. C. 404.
[7] 1 H. P. C. 484; Jer. 192.
[8] Arch. C. P. 510.
[9] *Reg.* v. *Brown*, 1 Leach C. C. 148; 1 East. P. C. 231, 245, 274.
[10] *Reg.* v. *Hughes*, Dears. & B. 248; 7 Cox C. C. 301.

Manslaughter by negligence occurs when a person in doing anything dangerous in itself, or having charge of anything dangerous in itself, conducts himself in regard to it in such a careless manner as to be guilty of culpable negligence.[1]

To render a person liable to conviction for manslaughter through neglect of duty, there must be such a degree of culpability in his conduct as to amount to gross negligence.[2]

An act of omission, as well as of commission, may be so criminal as to be the subject of an indictment for manslaughter.[3]

A prisoner was indicted for the manslaughter of a passenger in a train of which he was in charge as guard. The prisoner had directed the train to be divided on an incline, whereby a portion of the train ran backwards and collided with another train, causing the death of many of the passengers; and it was held, that in order to convict the prisoner, the jury must find him guilty of gross negligence, or recklessly negligent conduct; and that mere intellectual defect, or mistake of judgment, without wilful disobedience as to a traffic regulation, would not create criminal liability.[4]

If the driver of a carriage is racing with another carriage, and from being unable to pull up his horses in time, the first mentioned carriage is upset, and a person thrown off it is killed, this is manslaughter in the driver of the carriage.[5]

If the driver of a conveyance uses all reasonable care and diligence, and an accident happens through some

[1] *Reg.* v. *Doherty*, 16 C. C. 306.
[2] *Reg.* v. *Finney*, 12 Cox C. C. 625.
[3] *Reg.* v. *Lowe*, 3 Car. & K. 123; 4 Cox C. C. 451.
[4] *Reg.* v. *Elliott*, 16 Cox C. C. 710.
[5] *Rex* v. *Timmins*, 7 Car. & P. 440.

chance which he could not foresee, or avoid, he is not to be held liable for the result of such accident.[6]

One who points a gun at another without previously examining whether it is loaded or not, if the weapon should accidentally go off and kill him towards whom it is pointed, is guilty of manslaughter.[7]

Violence which hastens the death of a diseased person by shock to the nervous system calculated to aggravate the disease, is manslaughter.[8]

If two or more persons go out together with a purpose to commit a breach of the peace, and in the course of the accomplishment of that common design, one of them kills a man, the other also is guilty of manslaughter.[9]

Generally it may be laid down, that where one party by his negligence has contributed to the death of another, he is guilty of manslaughter.[10]

In all cases of homicide upon provocation, if sufficient time has elapsed for the passion to cool and reason to regain its propriety, the killing is then deliberate, and amounts to murder.[a]

SEC. 5.—HOMICIDE WHICH IS NOT CULPABLE.

Homicide which is not culpable may be considered under three heads:—(1) Homicide *per infortunium* by misadventure; (2) Homicide *se et sua defendendo*, in self-defence, and (3) Justifiable homicide. Excusable homicide does not amount to felony, although some fault attaches upon the party by whom it is committed. Before 9 Geo.

[6] *Reg.* v. *Murray*, 5 Cox C. C. 509.
[7] *Reg.* v. *Jones*, 12 Cox C. C. 628.
[8] *Reg.* v. *Murton*, 3 F. & F. 492.
[9] *Reg.* v. *Harrington*, 5 Cox C. C. 231.
[10] *Reg.* v. *Swindall*, 2 Car. & K. 230; 2 Cox C. C. 141.
a Fost. Cr. Law, 296. See also the remarks under the head of "Murder," sec. 2.

IV. c. 31, s. 10, forfeiture of goods was a punishment for this offence; but now the party is entitled to be set free, without punishment or forfeiture.

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1. HOMICIDE PER INFORTUNIUM.

1. *Definition.*—Homicide *per infortunium*, or by misadventure, is where a man doing a lawful act with proper caution, and in a proper manner, without any intention of hurt, unfortunately kills another by mere accident or misadventure.[1]

2. *Practical remarks.*—In illustration of homicide by misadventure, the following may be considered:—Where the head of an axe accidentally flies off, while one is chopping, and kills a stander-by; when a person shooting at game, or at a mark, with due caution, undesignedly kills another; when a parent, moderately correcting his child, old enough to appreciate correction,[2] or a master his apprentice or scholar, and happens to occasion death. In such cases the death is only misadventure.

If poison is laid for vermin, and a person takes it and is killed, if it was laid in such a manner or place as to be mistaken for food, the better opinion seems to be that it is manslaughter; but if laid with a proper degree of caution as to manner and place, it is misadventure only.[3]

It seems killing a person by drawing the trigger of a gun in sport, supposing it to be unloaded, is homicide by misadventure, if the gun was tried with the ramrod, or the usual precautions taken to ascertain it was not loaded,[4] or if there was reasonable grounds to believe that it was not.[5]

[1] 4 Bla. Com. 182.
[2] *Reg.* v. *Griffin*, 11 Cox C. C. 402.
[3] 1 H. P. C. 431; Jer. 217.
[4] Jer. 218; 1 Russ. 658; Impey, O. C. 508.
[5] Fost. 265; 1 Russ. 659.

2. HOMICIDE SE ET SUA DEFENDENDO.

1. *Definition.*—Homicide in self-defence is a kind of homicide committed in defence of one's person or property, or from unavoidable necessity, upon sudden affray, and is considered by the law in some measure blamable and barely excusable.

2. *Practical remarks.*—Where a man is assaulted in the course of a sudden brawl or quarrel, and before a mortal stroke given, he declines any further combat, he may protect himself by killing the person who assaults him if such an act be necessary in order to avoid immediate death.[a]

This kind of homicide is often barely distinguishable from manslaughter. The true criterion between them is this:—When both parties are actually combatting at the time the mortal stroke is given, the slayer is guilty of manslaughter; but if the slayer has not begun to fight, or, having begun, endeavours to decline any further struggle, and afterwards, being closely pressed by his antagonist, kills him to avoid his own destruction, this is homicide, excusable by self-defence.[6]

To make the plea of self-defence good, it must appear that the slayer had no other possible or at least probable means of escaping from his assailant.[7]

The plea of self-defence extends to excusing masters and servants, parents and children, husbands and wives, killing assailants in the necessary defence of each other.[8]

Killing from unavoidable necessity is said to take place in cases such as the following: If two persons being shipwrecked, or otherwise thrown into water, get on the same

a 1 Russ. 661; 55-56 V. c. 29, ss. 45, 46, Dom.
[6] 4 Bla. Com. 184; Fost. 277.
[7] Impey, O. C. 506; Jer. 220; 55-56 V. c. 29, ss. 45, 46, 47, Dom.
[8] 1 Hale, 484.

plank, which, proving unable to save them both, one thrusts the other from it, whereby he is drowned. The principle of self-preservation which prompts every man to save his own life in preference to that of another, where one must inevitably perish, it has been said excuses the homicide in such cases.[9] This principle of self-preservation, if really sound in the case just stated, cannot be considered to extend to the justification of the immediate and direct taking of another's life. Two cases of this kind have been reported. One where a shipwrecked party in order to save themselves from perishing by starvation, killed a boy who was one of their number, and they were found guilty of wilful murder.[10] And the other was the case of an Indian who with the others was unable to obtain food, and it is said the Indian killed his daughter. This latter case has happily been contradicted and is probably a false report. If true it was undoubtedly a case of murder in the eye of the law.

SEC. 3.—JUSTIFIABLE HOMICIDE.

(1) *Definition.*—This kind of homicide is such as the law requires, or permits to be done; and is not only justifiable in all cases, but in some commendable. It is of three kinds: First, homicide in the execution of the law;[1] second, homicide for the advancement of public justice; third, homicide in the just defence of property, or for the prevention of some atrocious crime which cannot otherwise be avoided. In all these cases the slayer is not blamable, and is entitled to his acquittal and discharge.

[9] 4 Bla. Com. 186, but see *Reg.* v. *Dudley and Stephens*, L. R. 14 Q. B. D. 273, 560; and *Arp* v. *The State*, Alabama Supt. Court, 12 So. 301, Amer. Digest, 1893, col. 2410.

[10] *Reg.* v. *Dudley and Stephens*, L. R. 14 Q. B. D. 273, 560.

[1] 55-56 V. c. 29, s. 15, Dom.

(2) *Practical remarks*—1. Killing in execution of the law must be done when, and in the manner, the law requires. Therefore *wantonly* to kill the greatest of malefactors, is murder.[2] Or, if an officer, whose duty it is to execute a criminal, behead the party when he ought to have hanged him, it is murder;[3] unless, perhaps, when he acts contrary to the judgment in obedience to a warrant from the Crown.[4]

(2) Killing in advancement of public justice can only be done when there is an apparent necessity for it: without the necessity it is not justifiable.[5] If an officer of justice or other person is restricted in the legal execution of his duty, he may repel force by force.[6] But he must not kill after the resistance has ceased.[7] And if the party merely *flies* to avoid arrest, the officer will not be justified in killing him unless he is a *felon*, and cannot otherwise be overtaken. Killing a person who flies from arrest for an offence, would be murder or manslaughter, according to the circumstances of the case.[8]

It is the duty of every one executing any process or warrant to have it with him and to produce it if required, and every one arresting another, whether with or without warrant, should give notice, where practicable, of the process or warrant under which he acts, or of the cause of the arrest. But a failure to fulfil either of these duties, will not of itself deprive the person executing the process or warrant, or his assistants, of protection from criminal responsibility, but is relevant to the enquiry whether the process or warrant might not have been executed or the

[2] 1 H. P. C. 497.
[3] 1 Hale, 433, 501; 2 Hale, 411; 4 Bla. Com. 179.
[4] Fost. 268; 4 Bla. Com. 405. And see 55-56 V. c. 29, Part. II.
[5] 4 Bla. Com. 180.
[6] 1 H. P. C. 494; 2 *Ibid.* Jer. 181.
[7] E. P. C. 297.
[8] Fost. 271; Hale, 481; Jer. 228, and see 55-56 V. c. 29, Part II., Dom.

arrest effected, by reasonable means in a less violent manner.[9]

In the case of a riot,[10] if the officers (and those commanded to assist them), endeavouring at the proper time[1] to disperse, seize or apprehend any of the persons committing the riot and acting in good faith and on reasonable and probable grounds believing it necessary in order to suppress the riot to use force, and it is not disproportioned to the danger which they on reasonable and probable grounds believe to be apprehended from the continuance of the riot, happen to kill any such persons, they are by statute justified and free from all blame.[2] They would be justified also by the common law.[3]

And persons acting without orders, who in good faith, and on reasonable and probable grounds believe that serious mischief will arise from a riot before there is time to procure the intervention of any of the proper authorities, are justified in using such force as they, in good faith, and on reasonable and probable grounds, believe to be necessary for the suppression of such riot, and is not disproportioned to the danger which they, on reasonable grounds, believe to be apprehended from the continuance of the riot.[4]

If a gaoler or his officer is assaulted by a prisoner, in gaol or going to gaol, or by others in his behalf, provided the assault is made with a view of the prisoner's escaping, he will be justified in killing the assailant, whether a pris-

[9] 55-56 V. c. 29, s. 32, Dom.

[10] A riot is an unlawful assembly of three or more persons who have begun to disturb the peace tumultuously, and when there are twelve or more persons unlawfully, riotously, and tumultuously assembled together, to the disturbance of the public peace, the Riot Act should be read. 55-56 V. c. 29, ss. 80, 83, Dom.

[1] *i.e.*, thirty minutes after the Riot Act has been read. 55-56 V. c. 29, s. 84, Dom.

[2] 55-56 V. c. 29, ss. 40, 41, Dom.

[3] 1 H. P. C. 495; 1 E. P. C. 304.

[4] 55-56 V. c. 29, s. 42, Dom.

oner in civil or criminal suits, and this without first retreating.[5]

(3) A person who is in peaceable possession of real or personal property under a claim of right, and those acting under him, are protected from criminal responsibility for defending such possession, even against another person entitled by law to the possession of such property, if they use no more force than is necessary.[6]

[5] Fost. 321; 1 Hale, 481, 496; 55-56 V. c. 29, ss. 17, 18, 31, Dom.
[6] 55-56 V. c. 29, s. 49, Can.

CHAPTER IV.

OF POISONS.

It may be remarked generally with regard to poisons that there are certain modifying circumstances connected with them, some of which relate to the poison itself, while others are connected with the system of the individual who takes the poison. *Habit* diminishes the power of poisons, particularly opium, alcohol and arsenic. *Disease* may modify or increase the action of poisons. In paralysis the action of strychnine is modified. In tetanus and delirium tremens, opium is modified, and in apoplexy and inflammation of the brain, its action is increased. *Sleep* usually retards the actions of poisons, especially arsenic and irritants, but not of narcotics. *Exercise* accelerates the effects of all poisons except narcotics.[1]

Usually the action of poisons is more rapid when the dose is large. The form of the dose, whether solid or in solution, pure or admixed, will vary the symptoms, as will idiosyncrasy, state of health, etc.

A combination of poisons will in some cases increase, and in others decrease their effects. Others again will neutralize each other. The salts of calcium and the potassium salts, by a careful equipoise in the dose—the one contracting the ventricle and the other relaxing it—can be made to neutralize each other. Veratrine and the potassium salts will act in a like manner. Arsenic is modified by alcohol, and probably other irritant poisons are also. Alcohol too modifies the effects of the bites of poisonous snakes. In a case where a large dose of corrosive sublimate and laudanum was taken a remarkable postponement of the

[1] Brown & Stewart, p. 320.

usual symptoms is recorded. Prof. Reese also mentions the following poisons as found to be antagonizing in their influence, by his own experiments: *Morphine and Atropine* (in the human subject but not in cats and dogs); *Atropine and Eserine; Atropine and Strychnine.* He states also that there is good reason for admitting the antagonism between *Aconite and Digitalis.* He says *Morphine and Prussic Acid, Strychnine and Prussic Acid,* and *Strychnine and Morphine,* are not antagonistic.

A class of bodies called *Ptomaines* has attracted much attention and may here be noted. The symptoms are of a narcotic irritant poison. Ptomaines have been found in decayed meat and poultry, cheese, sausages, certain shellfish, canned meat and vegetables, milk, ice-cream, etc. They bear a strong resemblance to some of the vegetable alkaloids in their chemical and physiological reactions. Numerous ptomaines have been discovered in putrefied human bodies, among which are a *strychnine-like* substance, an *atropine-like* one, a *veratrine-like,* a *conine-like,* and a *nicotine-like,* ptomaine. These substances may interfere with the usual chemical tests and even cause a failure to discover strychnine and other alkaloids in a dead body, and raise a difficulty for toxicologists, and suggest a new and plausible line of defence in trials for murder by poisoning. The importance of this subject is shown by an Italian criminal trial where the medical witness who performed the autopsy, gave it as his opinion that strychnia was probably present, while for the defence the great Selmi pointed out differences from strychnia, and said he considered the compound to be a ptomaine.[2]

Selmi obtained from a dead body, one month after death, a considerable amount of a *crystallizable* ptomaine, giving reactions like those of alkaloidal poisons, and hav-

[2] Brown & Stewart, p. 13.

ing poisonous effects on frogs, and he has even supposed that death from various diseases may be due to the formation of these compounds.[3]

Dr. Andrew Wilson, in his interesting "Science Jottings" column of the *Illustrated London News* of January 21st, 1899, referred to some cases of food-poisoning and stated: "The usual explanation of such cases has been to refer the poisonous principles of the meat to substances known as 'ptomaines,' which presumedly represent the toxins or poisonous principles produced by the action of certain microbes flourishing in the meat." And he further stated: "Why one person escapes and another is seized in cases of food-poisoning, may be explained on several grounds. There is a probability that certain persons may possess an immunity against the attack of a particular microbe, such as is not exhibited by their neighbours, and we know that this feature is seen in the case of ailments of other than food-poisoning epidemics. Or much again may depend on the process of cooking to which the food has been subjected. Variations in the effects may be produced, for instance, by certain portions of the food having been better cooked than others, with the result that the bacilli are destroyed in the former case, and only scotched in the latter. In the Oldham case over one hundred pies were eaten with impunity, and these pies, it must be concluded, were better cooked than those which produced evil results. Further, it is known that the *Bacillus Enteriditis* (the name given to the microbe concerned in meat-poisoning cases), is killed by an exposure of one minute's duration to a temperature of 70 degrees centigrade, and this fact alone points to the probability that the different degrees of heat to which even one portion of meat may be exposed, will account for the soundness of one part, as opposed to the poisonous nature of another. . . . It is a remarkable

[3] Brown & Stewart, pp. 13, 14.

fact, as stated by Dr. Durham, that no case has yet occurred in which mutton has been the offending viand."

Dr. Wilson again in his "Science Jottings" column of the *Illustrated London News* of November 25th, 1899, stated: "It is well known that the poisonous principles called ptomaines are generated very readily, and rapidly, in foods which, perfectly sound so long as they remain hermetically sealed from the air in tins, become hurtful when the contents of the tins are exposed to the air. This is specially the case when the exposure takes place in close, stuffy and confined places. Still more likely is it that poisonous properties will be produced when the foods are left open in places adjacent to sinks or drains, or in sleeping places, where, in the case of the poor, the ventilation is far from adequate. The rule regarding all tinned foods should be to consume them as quickly as possible after they have been opened, and, I would add, that the layers of meat which have been in contact with the tin, should not be consumed at all. And he mentions a case where at Sheffield twenty-three persons suffered from the effects of eating canned beef purchased at one and the same shop." The tin of meat had, however, only been opened that morning. And this fact would seem to suggest either very rapid decomposition of the meat, or a deteriorated condition of the food before it was tinned." His whole statement shows the necessity of not judging of the effect of tinned meat, etc., from its previous effect not showing a poisonous tendency. A can when opened may be perfectly wholesome and yet prove to be poisonous shortly afterwards.

And again in "Science Jottings" in the *Illustrated London News* of October 18th, 1902, Dr. Wilson, referring to the cases of food-poisoning at Derby then recently having occurred from eating pork-pies, and to a case about the same time at Fulham from eating rabbit, stated: "A food apparently sound may, in the first instance, produce

fatal results when consumed. This constitutes the real danger. An article of diet obviously bad, and giving evidence to the senses of its decay, would be rejected unhesitatingly, although 'high' game and cheese are certainly articles which may be said to form notable exceptions to this rule. But taking ordinary foods of the meat description, we may assuredly hold that freshness is the one desirable quality in them. Yet . . . meats apparently quite healthy and sound have been known to be capable of giving rise to serious illness, and to death. The report given by Professor Delepine, of Manchester, on the Derby cases . . . shows that the poisonous qualities of the pork-pies were due to the presence of germs therein belonging to what is called the 'colon' family. The typical representative of this group is a certain bacillus known as the *Bacillus Coli*. It is a perfectly harmless microbe in its ordinary environment, when it finds itself in that part of the human digestive system we term the 'colon.' But there are indications that under other circumstances, this colon-bacillus may develop disease-producing powers. It has even been asserted that a regular series of transitional forms can be developed between the colon-microbe and that of typhoid fever itself. Some authorities, indeed, have expressed the opinion that, harmless as it is in the digestive system, this bacillus, when allowed to breed in sewage, develops into the typhoid germ. I do not suppose this assertion is as yet capable of proof, but we certainly know instances of germs masquerading under more than one form. Probably such variations depend on the environment.

"Allied to the colon bacillus is another, however, called the *B. Enteriditis*, a name which suggests its connection with inflammatory states of the digestive organs. Whether or not this last is the microbe which gained access to the Derby pies remains to be seen. Bacteriologists at least

credit it with the power of producing symptoms allied to, or resembling, those of food-poisoning cases. Whatever microbe did infect the pork, it is certain that the evil effects induced were due to toxins, or poisonous principles which germs form as the result of their development in the bodies they affect. Should this view be accepted, it will dispose, in a way, of the idea that the Derby fatalities were due to what has been called 'ptomaine' poisoning.

"'Ptomaines' are poisonous principles which are developed in flesh undergoing decomposition. The nature of these bodies has been duly studied, but it is still a moot point whether or not they are generated independently of germs. Some observers regard them as allied in nature to the toxins to which I have just made allusion. This view regards them as the products of germ life. The other view, that they are produced independently of microbic action, assumes, of course, their purely chemical nature—that is, regarded as apart from all vital action. There can be no doubt of the highly poisonous nature of ptomaines. They may prove fatal in very minute doses, and they cause symptoms which, I believe, are not to be easily, if at all, distinguished from those which are the results of toxin-poisoning."

"Leaving these purely technical questions to be settled by the progress of science, there remain certain public phases of food-poisoning cases which are full of instruction. In the first place, we find that certain classes of foods are more liable, apparently, to be affected than others. Pork heads the list, for the reason that pig's flesh is richer in gelatine than other meats, and gelatine is a typical breeding medium for many microbes. The 'jelly' of meat foods is therefore much more likely to be injurious where contamination has occurred than the other constituents of the flesh. Next in order comes the suggestion that infection of foods must be due to some specific cause

operating at one time and not at another. I regard contamination from drains and sewage generally as the most likely source of the mischief. This theory fits the facts of the Derby case, and of other cases as well; for if the germs causing the disaster are allied to those found in sewage, then such an origin of the infection I have suggested may very well be considered as at least feasible.

"The reiterated public lesson that cleanliness is the basis of all practical health-science finds therefore an apt illustration from the recent food-poisoning cases. There have been instances in which tinned foods, half consumed and exposed in places where drains have been under repair, have caused death. I know of one case in which contamination similarly arose through foods being kept in a cellar in which the drains were imperfect. As for the case of 'high' game being eaten with impunity, I fancy the explanation of that fact depends again upon conditions of germ-life. It is known that ptomaines are apt to be developed in highest intensity during the early stages of decomposition of meats. If this view be taken, then I should say the eater of "high" game escapes because his delicacy has passed the stage when it is dangerous. If he ate it earlier he might repent his rashness."

Ptomaines appear to be no respecters of persons—whether high or low—rich or poor—for we hear of persons occupying the highest positions and possessing enormous fortunes, being attacked by them. A gentleman of great wealth, after accumulating great riches in the United States and then retiring to Scotland, has been reported to be ill of ptomaine-poisoning. And a British capitalist of equal, if not greater means, was recently reported to be seriously ill at Johannesburg with the same disease, contracted at a dinner party at which Lord Milner was present. In that case the ptomaine poison was located in the fish

after it was supposed an attempt had been made to poison the party.

The case of a child not quite five years old, which occurred in Toronto, may here be recalled. She was taken to the Fair and was there given ice-cream. Before she had finished eating it she complained of not feeling well, and a few minutes later was so ill that she had to be taken home. Two doctors did all they could for the child, but she died. One of the doctors informed a reporter he believed there was an epidemic of such cases in the city, since in his own practice he had no less than five patients suffering from ice-cream poisoning. He said the poison is caused by re-freezing old cream. In thawing the milk fermentation is set up and immediately the compound becomes poisonous—that even fresh ice-cream often contains poison caused by the use of tainted milk, that he believed this milk was frequently deliberately used in manufacturing ice-cream, and by the clever mixing of flavourings, the odour or taste of the tainted milk was destroyed, thus making detection almost impossible. Another reason why it was difficult to detect the poison was that the ice-cream froze, for a time, the organs of taste in the tongue and mouth. Poison, continued the doctor, was often found in over-ripe fruit. Green fruits with all their cholera-morbus terrors, were less dangerous than fruit that had commenced to decay. Too much precaution could not be taken in the preparation of frozen creams, and the avoidance of "spotted" fruits.

A case of poisoning from eating some chickens occurred in the United States in 1896. The head of the household, a medical man, being away from home, sent to his wife and family two cooked chickens, which they partook of with the effect that they were all taken dangerously ill, the youngest dying. An attending physician was reported to have stated the case was clearly one of ptomaine-poisoning from decomposed chicken meat.

In a Toronto newspaper of December 27th, 1901, it was stated a clegyman, his wife and son, were all dangerously ill from poisoning as a result of eating canned salmon; and in the same newspaper under the date of March 8th, 1902, the following statement appeared: "Manchester, March 7th. In an address to-day before the Royal Commission of Arsenical Poisoning, Dr. Reynolds, of the Manchester Infirmary, stated that in September, 1901, Major Ronald Ross, the authority on tropical medicine, asked him to see a supposed case of beri-beri. The patient was suffering from neuritis. She had lived almost entirely on tinned California fruits. Dr. Reynolds suggested to the commission that tinned foods in general should be further examined with a view to detecting arsenic."

The same newspaper in August, 1902, stated a gentleman and his son had died from the effects of canned salmon which they had eaten the night before. They were seized with severe cramps in the stomach, and a physician stated they were suffering from ptomaine poisoning.

On July 14th, 1902, a lady in the United States was reported to have died of ptomaine poisoning. She had been out with her husband during the evening, and had eaten freely of lobster and ice-cream.

And in the same month it was reported from Shanghai, China, that thirteen English and American boys attending the Inland Mission Schools of Chefoo, were seized with illness after partaking of chicken-pie. Twelve of the boys died, supposedly from ptomaine poisoning.

Canned lobster has sometimes caused sudden illness of a serious nature. And mackerel and mussels are quite poisonous to some persons, and with regard to these two latter articles of diet, it was recommended in *Chambers' Journal* of March 9th, 1895, that in such cases vomiting should be induced, if not present, by an emetic of a table-

spoonful of mustard in warm water. The sickness and purging, which usually set in immediately, must not be stopped until all the poisonous matter is expelled. Then give a little brandy and soda-water, and let the patient sleep as long as possible. Symptoms—violent pain in the head and stomach, and a feeling of nausea.

That canned goods are necessarily unhealthy is denied by the German authority—Prof. Lehmann. After he had finished an examination lasting two years, concerning the healthiness of food stuffs put up in tins, he stated: "Vegetables, meats and certain kinds of fruit, may be canned in tin without the least detriment to the health of the consumer. And if people eating canned goods are poisoned, the goods are to blame, not the tin. At the same time it should be prohibited by law to can vegetables and fruits containing any degree of sourness. Vinegar or wine-acid contained in tin becomes dangerous. Fruits, meats and vegetables containing the same, should be put up in glass, porcelain or wood."

The subject of ptomaines cannot be treated at length in a work of this description, and is only mentioned to recall it to the mind of the medical witness and to put him on his guard when performing a *post-mortem* in a case of poisoning. If a trial follows he may hear a good deal about ptomaines, and he should take care before it is too late, to prepare himself for cross-examination on the subject.

The Department of Inland Revenue at Ottawa a few years ago sent a circular to the medical men of Canada desiring to be informed whether any cases of illness apparently attributable to the use of tinned foods, had come under their notice, and whether the symptoms in any such cases pointed to metallic, or to ptomaine poisoning, etc., and it is to be hoped the answers received will be tabulated and given to the public.

The quantity of poison *found* in the stomach, except of metallic poisons, is generally only a small fraction of the quantity taken, being merely the surplus beyond the fatal dose,[4] and it has in fact no direct connection with the fatal result, that being caused by the absorbed portion only.[5]

The appearances common to dead bodies generally are often mistaken for the effects of poison.[6]

Unhealthy or improper food, or acute disease, may cause suspicious symptoms. This is a common solution of suspected poisoning.[7]

The results of experiments with poisons on animals, are not altogether conclusive as to man, but if a *recent vomit* proves poisonous to an animal, *with the same symptoms as in the man*, that is almost conclusive evidence.[8]

But Prof. John G. Adami of McGill College, Montreal, during the trial of John R. Hooper on a charge of murdering his wife, stated that there was a great deal of discussion as to the applicability of experiments on the lower animals to establish a rule for men.

If possible, the approximate *quantity* of the poison should be ascertained and stated, particularly where the substance *may* have been administered medicinally.[9]

Dr. Maclagan, Professor of Medical Jurisprudence, University of Edinburgh, stated on the trial of Dr. Pritchard for the murder of his wife and mother-in-law, that all the alkaloids are very often not found though known to have been taken.[10]

In cases of suspected poisoning, and where there is a possibility of the body having been embalmed, the fact as to whether it was embalmed or not, and the possibility

[4] Browne & Stewart, p. 14.
[5] Reese, p. 203.
[6] Browne & Stewart, p. 15.
[7] Browne & Stewart, p. 15.
[8] Browne & Stewart, p. 15.
[9] Browne & Stewart, p. 15.
[10] Browne & Stewart, p. 423.

or impossibility of the poisons used in the process of embalming having been introduced into the body, should be ascertained and the evidence noted and preserved. Liquid poisons injected for the purpose of embalming may penetrate into the different organs, and even into the brain and spinal marrow, and it should be borne in mind that embalming may be resorted to with the intention of confounding the discovery of poison criminally administered.[1]

Orfila, as quoted by Reese, says in a case of true *post-mortem* imbibition, the poison would be found on the *exterior* rather than on the interior of the organs; while in a real case of poisoning, the absorbed poison would always be equally deposited in the *interior* of the organs.[2]

It has been noticed that hard white crystalline deposits of sulphate of lime form on the surface of soft organs a few months after burial of the body. When these crystals form on the mucous membrane of the stomach, they may be mistaken for the effects of poison.[3]

Dark coloured wine, highly coloured fruits or certain medicines taken shortly before death, may stain the stomach so as to prove deceptive.[4]

In cases of suspected poisoning, the interval that elapsed between the taking of food or drink, and the first symptoms, should be discovered if possible, as most poisons act very soon after their administration, unless they are given in small quantities at intervals. If other persons partook of the same food or drink, *their* state should be enquired into. The course of the symptoms to a fatal end —whether rapid or slow—should be noted; as the symptoms of some diseases simulate those of some poisons, the greatest care should be taken not to be deceived in this direction. Prof. Reese states that the disorders which most simulate

[1] Reese, pp. 218, 221.
[2] Reese, p. 221.
[3] Tidy, Vol. 1, p. 79.
[4] Tidy, Vol. 1, p. 89.

irritant poisons are cholera-morbus, malignant cholera, gastro-enteritis, peritonitis, ulceration of the stomach, ilius, and hernia. And those which most resemble *neurotic* poisoning are apoplexy, epilepsy, inflammation of the brain, tetanus and certain cardiac diseases.

When a coroner holds an inquest on the dead body of a person who has died from poison, he should see when, how, and where the deceased obtained the poison. If it was got from a druggist, or other person, it should be ascertained if the druggist, or other person, was properly authorized to deal with it under the provisions of the Pharmacy Act (R. S. O. c. 179, ss. 26, 27, 28), and the attention of the jury should be called to the result of such inquiry.

Classification of poisons.[5]—

IRRITANTS.

Mineral	Non-metallic	Acids, Sulphuric.	
		Metalloids, Phosphorus.	
	Metallic	Alkalic compounds, Potash.	
		Heavy metals and compounds	(Arsenic).

Vegetable, Savin.
Animal, Cantharides.

NEUROTICS.

Cerebral, Morphine.
Spinal, Strychnine.
Cerebro-spinal, Coniine.

Irritant poisons occasion violent vomiting and purging, either preceded, accompanied or followed by intense pain in the abdomen, commencing in the region of the stomach. Effects are chiefly manifested by inflammation of the stomach and intestines. Many poisons of this class

[5] Many of the following observations upon poisons, their classifications, symptoms and antidotes, were originally compiled for the first edition of this work, by the late Prof. Croft of the University of Toronto, and have now been extended from Dr. Taylor's works on Poisons and Medical Jurisprudence, Tidy's Legal Medicine, Reese's Medical Jurisprudence and Toxicology and other standard works.

possess strong corrosive properties, and when swallowed produce an acrid or burning taste, extending from the mouth down the œsophagus to the stomach. Others possess no corrosive action, and are called pure irritants. These produce their characteristic symptoms less rapidly than those of the former class, the effects not becoming visible till after the lapse of half an hour from the act of swallowing, unless in some exceptional cases.

Soon after death the bile undergoes changes and its colouring matter oozes through the gall-bladder whereby parts of the stomach and intestines may become stained of a yellow or greenish-yellow colour, not unlikely to be mistaken for the action of a corrosive poison.[6]

Prof. Tidy concludes that *post-mortem discolourations* of the stomach, considering the many chances of error, are scarcely to be regarded, *per se*, as of much importance in proof of the administration of an irritant poison.[7]

Neurotic poisons act chiefly on the brain and spinal marrow; the *cerebrals*, acting principally on the brain, producing stupor and insensibility, without convulsions; the *spinals*, acting on the spinal marrow, producing violent convulsions, sometimes of the tetanic kind, not necessarily attended by loss of sensibility or consciousness, and rarely inducing narcotism; the *cerebro-spinal* acting both on the brain and spinal marrow, causing delirium, convulsions, coma and paralysis. The cerebral poisons have no acrid taste, and rarely give rise to vomiting or diarrhœa, and they do not irritate or inflame the viscera. Some of the irritant poisons will, however, occasionally produce narcotic effects, as has been observed with arsenic, while opium may sometimes produce pain and vomiting with an absence of the usual symptoms of cerebral disturbance. Several of the cerebro-spinals, when taken in the form of

[6] Tidy, Vol. I., p. 68.
[7] Tidy, Vol. I., p. 90.

roots or leaves, often have a compound action, producing their ordinary effects together with those of irritant poisons.

Some short remarks are here offered upon the most common poisons, calling attention to the general symptoms, fatal doses, etc., which may be useful for convenient reference by coroners and medical witnesses who have not made toxicology a special or recent study.

IRRITANT POISON.

Mineral Irritants.[8]

Sulphuric Acid (Oil of Vitriol).—Cases generally referable to suicide or accident. The symptoms which commence immediately are violent burning pain, extending through the throat and gullet to the stomach; violent retching and vomiting, the latter accompanied by the discharge of tough mucous and of a liquid of a dark coffee brown colour, mixed or streaked with blood; mouth excoriated, tongue and lining membrane white and swollen, hence difficulty in breathing; a thick viscid phlegm is formed, rendering speaking and swallowing very difficult; abdomen distended and painful; any of the acid getting on to the lips or neck produces brown spots; any of the acid itself or of the matter first vomited, falling on dark cloth, causes a red or brownish-red stain, and on coloured clothes, produces yellow or red stains, and destroys the texture of the stuff; great exhaustion and general weakness; pulse quick and small; skin cold or clammy; great thirst and obstinate constipation.

[8] Prof. Reese insists that in every medico-legal case of poisoning with antimony and other metals, the actual metal should be obtained as the only absolute and unequivocal proof; and this, too, in quantities sufficient to admit of positive identification by all the recognized tests.

Fatal dose for an adult is a fluid drachm, and for an infant half that quantity, but the degree of concentration must be considered.

Fatal period.—Usually within twenty-four hours, but when the action produces suffocation, death may be quite sudden.

It is said the bodies of persons poisoned by this acid resist putrefaction for a long time.

The moisture adherent to the charred hole made by this acid in clothing, will distinguish it from one made by a heated body, which will be found dry unless moistened after being burnt.

For antidotes for Sulphuric acid (oil of vitriol) and other poisons see Chapter V.

Nitric acid (*aqua fortis*). The symptoms are very similar to the above. Gaseous eructations are produced; the vomited matter has a peculiar smell; and the membrane of the mouth, etc., is at first white, becoming gradually yellow or brown. Stains produced by the acid are generally yellow.

Teeth, white, but yellowish at their junction with the gums. The vapours of this acid may cause death by bronchial congestion.

Fatal dose.—Two drachms of concentrated acid have proved fatal to an adult.

Fatal period.—Usually within twenty-four hours, but may be protracted to a much longer time.

For antidote for Nitric acid (aqua fortis) see Chapter V.

Hydrochloric acid is rarely used as a poison. The symptoms are very similar to those above described.

A greyish, or white, appearance of the tongue and interior of the mouth, with the formation of a false mem-

brane, is usually observed. This acid is known also as *Muriatic acid* and *Spirit of Salt*.

The stains of this acid on dark cloth are at first bright red, changing after some days to a reddish brown.

Fatal dose.—Half an ounce for an adult; a drachm has killed a child.

Fatal period.—From a few hours to many weeks.

For antidote for Hydrochloric acid, see Chapter V.

Oxalic acid, although a vegetable substance, may be ranked with the preceding acids. Cases of poisoning by this acid are generally referable to suicide or accident. It produces a hot, burning taste, and causes vomiting almost immediately, unless taken in a diluted form; the vomited matters have a greenish brown, almost black appearance; burning pain in the stomach, with tenderness of the abdomen, followed by cold, clammy perspiration, and convulsions; pain and vomiting may sometimes be absent: there is in general an entire prostration of strength; unconsciousness of surrounding objects, and a kind of stupor; legs sometimes drawn up; pulse small, irregular, and scarcely perceptible; the lining membrane of the mouth, etc., is commonly white and softened; but often coated with the dark brown mucous matter discharged from the stomach. Oxalic acid stains black cloth an orange and brownish red.

This acid is used in the arts under the name of *acid of sugar*, and may be mistaken for sulphate of magnesium (Epsom salts).

Fatal dose.—Half an ounce to an ounce for an adult.

Fatal period.—Usually within an hour, but death has occurred in three minutes, in ten minutes and after many hours and even days.

Phosphorus.—The symptoms are slow in appearing: they may not occur for some hours or even days. A disagreeable taste resembling garlic is peculiar to phosphorus;

the breath has a garlic odour; an acrid burning sensation in the throat; intense thirst; severe pain and heat with a pricking sensation in the stomach, followed by distention of the abdomen; nausea and vomiting continuing until death; the first vomited matters are dark green or like coffee grounds, emit the odour of garlic, and white vapours, and sometimes appear phosphorescent in the dark; purging is often caused, and the motions are luminous in the dark. Pupils dilated, cold perspiration, great anxiety. Pulse small, frequent, prostration of strength, and other symptoms of collapse.

Urine highly albuminous and apt to be suppressed. Chronic cases from this poison are apt to be fatal and may result from the vapours of phosphorus in the manufacture of matches.

At an inquest held in Western Canada, a lecturer in the Detroit Medical College testified that the liver would be smaller than normal from the effects of phosphorus. And he attributed the death to inflammation.

Fatal dose.—One-tenth of a grain has proved fatal; sucking two matches killed one child and the tops of eight matches killed another older child.

Fatal period.—Usually one to five days.

Alkalies.—These may be taken by accident, in the form of pearlash or soap-lees. They produce an acrid, caustic taste, and, if strong, soften and corrode the lining membranes; burning heat in the throat, extending down the gullet to the pit of the stomach; when vomiting occurs, the vomited matters are sometimes mixed with blood of a dark brown colour, and portions of the mucous membrane; purging, with severe pain in the abdomen, resembling colic; the lips, tongue and throat soon become swollen, soft and red. Pulse quick and feeble, countenance anxious.

Body covered with a cold and clammy sweat. Respiration rapid.

Fatal period.—From a few hours to months.

Fatal dose.—Half an ounce of caustic potash is usually fatal.

Ammonia and its carbonate produce symptoms similar to the above.

Arsenic.—The symptoms may commence within a few minutes of the act of swallowing, or may be delayed for several hours; in general they commence within an hour; faintness, depression and nausea, with intense burning pain in the region of the stomach, increased by pressure; the pain in the abdomen becomes more and more severe, and there is violent vomiting of a brown, turbid matter, mixed with mucus, and sometimes streaked with blood; purging, more or less violent, accompanied by severe cramps in the calves of the legs; dryness and burning heat in the throat, with intense thirst; pulse small, irregular, scarcely perceptible; skin sometimes hot, at others cold; great restlessness, and painful respiration; before death, coma, paralysis and tetanic convulsions or spasms in the muscles of the extremities. The symptoms are generally continuous, but sometimes there are remissions and even intermissions. The pain, which is compared to a burning coal, is sometimes absent, and there may be neither vomiting nor purging, although the former is seldom wanting. The intense thirst is sometimes absent, and occasionally the symptoms almost resemble those of a narcotic poison.

Some cases resemble cholera morbus, while others indicate severe nervous disturbance. There may be immediate collapse. Other cases resemble those of narcotics, the autopsy frequently revealing no trace of inflammation of the stomach. In cases of recovery from the first effects, or of poisoning by repeated small doses, there will be in-

flammation of the conjunctiva, suffusion of the eyes, and intolerance of light. A peculiar eruption is often produced, resembling nettle-rash. Local paralysis, preceded by numbness or tingling of the fingers and toes, is of frequent occurrence. Salivation, strangury, exfoliation of the cuticle and skin of the tongue, with falling off of the hair, foetor of the breath and emaciation, are all symptoms of chronic poisoning.

It is very dangerous to use arsenic externally as a face powder, or in soap, or in any other way. It improves the complexion at first, but soon the skin looks puffy and opaque, the eyes smart and the eyelids thicken, the hair also looks dull and lifeless.

An American newspaper in 1902 stated that a prominent specialist in the General Hospital at Birmingham, England, had called attention to the danger of persons being poisoned by the dyes in their clothing, but that graver dangers may be experienced sometimes from the most inoffensive occupation, and cited a case where a man was taken to the city hospital in Cincinatti suffering from arsenical poisoning which he had contracted from the handling of carpets. He was sixty-two years of age, and had been employed as a carpet layer for many years, and the doctors maintained that the dyes, which, as a general rule, are fixed with arsenic, had been slowly absorbed into his system.

Arsenic is used to harden lead in making shot, and the use of shot in cleaning bottles, etc., may contribute a trace of the poison.

If white arsenic *in the solid state* is found in the stomach, it cannot have come from wall paper, clothing, cooking vessels, etc.

Arsenic is not a normal constituent of the human body, nor is it found in the soil in a soluble state, and hence there is no danger of a dead body imbibing this poison after bur-

ial from the surrounding earth. Yet in cases where bodies are exhumed *there is danger* of some of the earth being sent with the portions selected for analysis, and consequently in these cases the chemist should call for a sample of the surrounding earth from the place of burial if death is suspected by poison.[9]

Reese states that arsenic is not a cumulative poison, and that the symptoms of chronic poisoning usually result from small doses of arsenic frequently repeated.[10]

Arsenic possesses a strong antiseptic power, causing the preservation of the body for a long period, and thereby rendering it possible to detect the poison after burial for a long time. In one case it was detected after fourteen years. This power in arsenic is not always exerted.

The first symptoms ordinarily appear in half an hour to an hour, but they have been immediate.

Fatal dose.—Two grains, but recoveries have taken place after doses of one to two ounces.

Fatal period.—The majority of cases end fatally within twenty-four hours, and these generally within eight or ten hours. One death is recorded by Dr. Taylor in twenty minutes from a large dose.

An epidemic in November, 1900, at Manchester, England, of over a thousand cases, many of which proved fatal, was at first treated as peripheral neuritis, due to an excess of alcohol. The symptoms appeared largely in the face. The eyes were puffy and watery, the skin dark coloured from pigmentation, the walk as of one with sore feet, and the hands as without strength to grasp. Upon the beer of

[9] A case occurred in Ontario where strong suspicions of poisoning by arsenic were created by the discovery of that poison during the analysis, but an examination of portions of earth from the grave-yard in which the body had been buried, at once allayed these suspicions. Care, however, must be taken not to confound arsenic communicated by the soil to the body with arsenic communicated from the body to the adjacent soil.

[10] Reese, pp. 271, 273, 3rd ed.

local breweries being analyzed it was found to contain sufficient arsenic to account for the symptoms. The poison was found in the sugar used in brewing the common beers, which was manufactured by the use of commercial sulphuric acid. The commercial sulphuric acid used by brewers in England in making the common grades of beer, is made from pyrites, almost all of which comes from Spain.

In France in 1878 it was also found that the glucose used in brewing contained arsenic.

A commission appointed in London, England, to enquire into the use of arsenic in making beer, made a preliminary report in which the opinion was expressed that the admission of arsenic in brewing was unavoidable with the use of certain ingredients. And it admits that there is force in the objection that it is hardly possible to produce beer that is free from arsenic. If this is correct the analyst in cases of death from poison should bear it in mind where slight traces only of arsenic are found.

Dr. F. P. Vandenburgh, who was called as a witness in the Sternaman case, as reported, stated that in the event of the body having been embalmed by injecting arsenical fluid into the stomach, the condition of the soil containing moisture and numerous alkaline deposits, would have a tendency to draw the poisonous fluid to other parts of the body after six weeks of burial. He also stated that the amount of arsenic found in Sternaman's stomach had nothing to do with the cause of his death, as only the arsenic which had been dissolved and conveyed to the vital parts, would be of any consequence. He further was reported to have made use of words ridiculing the Marsh test for arsenic.

It is said that among the peasants of Styria and the Tyrol, arsenic eaters are common. White arsenic is the form used, and the eaters are principally hunters and wood-

cutters, and they eat it in the belief that it wards off fatigue and improves their staying power. It is taken fasting, usually in a cup of coffee, the first dose being minute, with increasing strength day by day until doses of twelve and fifteen grains are taken. The arsenic eaters are usually long lived, though liable to sudden death. They have a fresh, youthful appearance, and are seldom attacked by infectious diseases. But all this seems quite as likely to be due to the out-of-door life and healthy occupation of hunting and wood-cutting, as to the effects of the poison. After the first dose the usual symptoms of slight arsenic poisoning are evident, but these soon disappear on continuing the treatment. In the arsenic factories of Salzburg it is stated the workmen who are not arsenic eaters soon succumb to the fumes. Even the managers of these works are advised to eat arsenic before taking up their positions. To begin the practice of eating arsenic before twelve years old, or after thirty, is considered most dangerous, and after fifty years of age, the daily habit should be gradually abandoned, otherwise sudden death will ensue. For a confirmed arsenic eater to suddenly do without the drug altogether, is to court immediate death. Those who are foolish enough to contract the habit of eating arsenic, should gradually acclimatize, as it were, the system, by reducing the dose from day to day. It is said that when the graveyards in Upper Styria are opened the bodies of arsenic eaters can be distinguished by their almost perfect state of preservation.

Chloride of mercury or corrosive sublimate.—The symptoms come on immediately, or after a few minutes, the poison exerting a chemical or corrosive action on the animal membranes. A strong metallic taste is perceived in the mouth, a sense of constriction of the throat during the act of swallowing, amounting almost to choking, and

a burning heat in the throat, extending to the stomach; shortly a violent pain is felt in this organ, and over the whole abdomen, increased by pressure; frequent vomiting of long, stringy masses of white mucus, mixed with blood, together with profuse purging, the evacuations being of a mucus character, and sometimes streaked with blood; pulse small, frequent and irregular; tongue white and shrivelled; skin cold and clammy; respiration difficult; intense thirst; and death is commonly preceded by syncope, convulsions and general insensibility; urine often suppressed; salivation is sometimes produced in a few hours, but more generally only after the lapse of some days, if the patient survives so long; sometimes the mucous membranes of the mouth are uninjured, and pain on pressure is occasionally absent. When taken in small doses at intervals, colicky pains, nausea, vomiting and general uneasiness are produced; the salivary glands become painful, inflamed and ulcerated, the tongue and gums red and swollen, and the breath has a peculiarly offensive odour; difficulty in swallowing and breathing. Salivation often occurs, but this may be produced in some persons by very small doses of calomel. Calomel occasionally acts as a poison, even in small doses, apparently from the idiosyncrasy of the individual. Excessive salivation and gangrene of the salivary glands may be produced.

A bluish line is sometimes found at the edge of the gums as in lead poisoning.

Fatal dose.—For an adult three grains.

Fatal period.—Generally from one to five days, but death has occurred in half an hour.

Salts of lead.—Acetate and carbonate of lead produce colic and constipation of the bowels; the vomiting is commonly not very violent; pain in the mouth, throat and stomach are commonly observed; sometimes dragging pains

in the loins, cramps and paralysis of the lower extremities, are produced. The symptoms often remain for a long time, returning again and again. The carbonate is not so poisonous as the acetate, requiring large doses to produce any very serious effect; but when swallowed in small quantities for a length of time, it produces the usual symptoms of lead poisoning (painter's colic). The pain in the stomach is generally relieved by pressure, and has intermissions. If any faeces are passed, they are usually of a dark colour. A peculiarly well marked character in cases of poisoning by lead, especially when the poison has been gradually absorbed during a considerable period, is a clearly defined blue line round the gums, where they join the teeth, resembling the bluish line found at the edge of the gums in cases of poisoning by corrosive sublimate. Occasionally purging is produced, and sometimes the symptoms reappear after the patient has apparently recovered. Chronic poisoning by lead may occur among persons exposed to the powder of many preparations of that metal, especially white lead, and may also be caused to a certain extent by the continued use of some hair-dyes. Even handling articles containing lead may, under some circumstances, produce paralysis. Chronic poisoning may also be caused by the use of certain waters, when kept in leaden cisterns.

Rain water or water from snow should never be kept in leaden utensils, or used when drawn through leaden pipes.

Fatal dose.—Uncertain. An ounce has been taken without fatal effects, but a less quantity may occasion alarming symptoms.

Fatal period.—From a few hours to several days.

Copper.—Poisoning by the sulphate or acetate of copper (blue vitriol and verdigris) is not common, owing to the colour and strong taste of these salts; but serious effects may be produced by the use of pickles and other culinary preparations made in copper vessels.

Even water drawn from a copper boiler may be dangerous to use.

When a considerable quantity of either of the above salts has been taken, the following symptoms are usually observed:—Metallic taste; constriction of the throat; griping pains in the stomach and bowels; pain in the abdomen, increased on pressure; increased flow of saliva; purging and vomiting, the vomited matter being generally of a bluish or greenish colour, and that from the bowels greenish and tinged with blood. Prof. Tidy states that jaundice is the specially diagnostic symptom of copper poisoning.

When the poison is absorbed, the breathing becomes hurried and difficult; quick pulse; weakness; thirst; coldness and paralysis of the limbs; headache; stupor and convulsions. A green paint made of the oxychloride of copper (Brunswick green) has sometimes caused death when taken into the stomach; and articles of food containing salt, if left in copper vessels, are apt to become injurious. When chronic poisoning ensues from the after effects of a large quantity of some preparation of copper, or from the gradual assimilation of small quantities, excessive irritability of the alimentary canal is established, with tenderness of the abdomen, and colicky pains resembling dysentery; frequent tendency to evacuate and to vomit; loss of appetite; prostration and paralysis.

Fatal dose.—Half an ounce of verdigris has proved fatal, and an ounce of the sulphate, but larger quantities have been taken without fatal results.

Fatal period.—From four to twelve hours.

Antimony.—Although several of the preparations of antimony, especially tartar-emetic, are largely used in medicine, and occasionally in large quantities, they may at all times, and under peculiar circumstances, act as poisons; children, for instance, having been frequently killed by

comparatively small doses of tartar-emetic. When a large quantity has been swallowed a metallic taste is noticed, followed in a few minutes by violent vomiting; pain in the stomach and bowels; purging, and burning heat and choking in the throat; sometimes great thirst and flow of saliva; cramps in the arms and legs; sometimes severe tetanic spasms; coldness of the surface; clammy perspiration; congested state of the head and face; extreme depression; loss of muscular power; pulse small and feeble or barely perceptible; respiration short and painful; lips and face livid; eyes sunk; loss of voice; incapacity for exertion; wandering or delirium, with loss of consciousness. These symptoms do not all occur together: several may be entirely absent, even the vomiting and purging. Generally the quantity of urine is increased. Persons may recover after taking a large dose of tartar-emetic; but if subjected to repeated doses during recovery, fatal results may ensue. A peculiar eruption, resembling small-pox, is sometimes observed. When the poison has been administered in small and repeated doses, chronic poisoning is produced, which is principally characterized by nausea, vomiting, watery purging, loss of voice and strength; great depression; coldness of the skin, and clammy perspiration.

Fatal dose.—Two or three grains have produced death, and doses up to an ounce have failed to produce fatal results. Twenty to forty grains are said to be the usual minimum fatal dose for an adult.

Fatal period.—From an hour up to several hours.

Zinc.—Sulphate of zinc in an overdose produces pain in the abdomen, and violent vomiting coming on almost immediately, and followed by purging.

It has a strong metallic taste, with a burning sensation and constriction of the throat, small and frequent pulse, cold sweat, dilated pupils, coma and death. It is a heart depressant.

Fatal dose.—In one case an ounce and a half caused death in thirteen hours and a half, but the fatal dose seems uncertain.

Chloride of zinc produces similar symptoms, only more intense; but acts also as a corrosive, destroying the membranes and producing frothing. Loss of voice may occur.

Fatal period.—The most rapid death was in four hours, but cases may become chronic, lasting for years and ending in stricture and exhaustion.

Iron.—Green vitriol, or copperas, is sometimes used as an abortive, and may produce violent pain, vomiting and purging, sufficient to cause death.

In *Chambers' Journal* of October 2nd, 1899, it was said that Prof. Robert William Bunsen, of Heidelburg, had discovered an infallible antidote to the poisonous acid, iron-oxyhydrate, but without stating what it was.

Tin.—Chloride of tin, dyer's salts, may be accidentally swallowed. The effects are those of the metallic irritants.

Nitrobenzole (essence of mirbane).—This substance, when swallowed as a liquid or inhaled as vapour, acts as a violent poison, in its effects very much like prussic acid, but not nearly so rapid. A blue colouration of the skin, and more especially of the lips and nails, is very characteristic, resembling Asiatic cholera.

The essence of mirbane resembles oil of bitter almonds in its smell, and is sometimes used instead of it in scents, soaps, etc.

Aniline acts very much in the same way as nitrobenzole, the blue colour strongly marked. Inhalation of the vapour causes symptoms like intoxication. The aniline dyes are in many if not all cases more or less poisonous, partly from the dyes themselves, and partly from their often containing arsenic, used during their preparation.

Carbolic acid, when swallowed, causes a hot, burning sensation, extending from the mouth to the stomach. The lining membrane of the mouth is whitened and hardened. There is severe pain in the stomach, with vomiting of a frothy mucus. Urine is often olive-green in colour. Skin cold and clammy; lips, eyelids and ears livid; pupils of the eyes contracted and insensible to light. Breathing laboured and finally stertorous. The breath and the air of the room smell strongly of carbolic acid (tarry odour).

It is powerfully antiseptic. Coma usually precedes death and sometimes with convulsions.

Fatal dose.—Deaths have occurred from doses of one to two ounces, but much less would prove fatal—six or seven drops have produced dangerous symptoms.

Fatal period.—Death may happen in less than an hour. In one recorded case it occurred within ten minutes.

For a recently discovered antidote, see under Chapter V.

A prominent analyst was reported to have said at the Goldstein Inquest in August, 1900, that he had never heard of a case of *chronic* poisoning from carbolic acid. And a well known medical man, at the same inquest, stated that if carbolic acid was mixed with any other liquid, the taste could be detected—that carbolic acid poisoning produced an intense shock, and that in his opinion if carbolic acid was mixed with any other liquid, the taste could be detected. The autopsy resulted in the discovery of a large quantity of carbolic acid in the stomach—the fingers of the doctors conducting the post-mortem being reported as seriously burned by it. While they were examining the oesophagus the mucous lining peeled off. The wall of the stomach was described to be as thick and as hard as leather, showing every sign of chronic inflammation, while numerous congested spots were found. This condition, it was reported, would not exist under acute carbolic acid poison-

ing—that if carbolic acid sufficient to cause death within a short time were taken, the victim would be in terrible agony and would vomit blood, while Goldstein dropped dead as though from heart failure—that if the acid were administered in repeated doses it would produce the conditions in the stomach of the dead man and would cause him to die as he did, in which case the acid would be in the system long enough to be absorbed by the brain, liver and kidneys. The dead man appeared to be in the best of health the day before he died and was considered by his friends to be a healthy man, but on the morning of his death he complained that he had pains in his chest and was going to die. A constable who saw the corpse immediately after the death, said he did not notice anything peculiar about the corpse or any evidence of poisoning, there being every indication that the man had died easily, and that he formed the opinion at the time, he had died from natural causes. Two other medical men stated that such a thing as slow poisoning by so strong a poison as carbolic acid, was almost impossible.

VEGETABLE AND ANIMAL IRRITANTS.

Savin is often used as an abortive, as from the violent pain in the abdomen, vomiting and strangury which it produces, it may sometimes have that effect. Purging and salivation are sometimes observed.

Colchicum, which has been used intentionally as a poison, produces burning pain in the gullet and stomach; great thirst, violent vomiting, and occasionally violent bilious purging, dilated pupils, cold skin, feeble pulse and rapid convulsions.

Fatal dose.—Of the wine of the root, less than half an ounce; of the seeds, a tablespoonful, and of the dried bulb, forty-eight grains, have proved fatal.

Fatal period.—Seven hours to several days. Generally death results within twenty-four hours. Of eight or nine persons, who in Montreal in 1873, partook of colchicum supposing it was wine, five of the cases terminated fatally within thirty-six hours.

Referring to the trial in 1862 of Catherine Wilson for the murder of Maria Soames, Montague Williams, Q.C., in his *Leaves of a Life*, states the death was attributed to an overdose of colchicum, or some other vegetable irritant poison, and that traces of the poison were discovered. He defended the prisoner, basing his defence on the supposition, then entertained in the scientific world, that it was impossible to detect the presence of vegetable poisons in the blood after a short time had elapsed. This supposition has since been proved, as Mr. Williams himself states, to be false.

Cantharides, which is sometimes used as an abortive or as an aphrodisiac, produces burning in the mouth and throat, with difficulty in swallowing; violent pain in the abdomen; nausea, and vomiting of bloody mucus; great thirst and dryness of the throat, but in some cases salivation; incessant desire to void urine, which becomes albuminous. Purging is not always observed. The matters discharged are mixed with blood and mucus. After a time there is often severe priapism, and the genital organs are swollen and inflamed. In fatal cases faintness, giddiness and convulsions sometimes occur. Owing to the popular idea of its aphrodisiac properties, this substance is sometimes administered on sweetmeats, such as lozenges. The shining particles of the insect are easily recognizable under the microscope.

Fatal dose.—Twenty-four grains of the powder and an ounce of the tincture.

Poisonous mushrooms.—Symptoms, violent vomiting, purging, abdominal pains, thirst, anxiety, cold sweats

with giddiness, dimness of vision, trembling, dilated pupils, delirium, stupor, convulsions and death. The symptoms vary with different idiosyncrasies.

First symptoms.—Within an hour.

NEUROTIC POISONS.

These poisons affect principally the brain, spinal marrow and the nervous system. They possess no corrosive properties; produce no local chemical action; rarely give rise to vomiting or purging, and do not commonly leave any marked appearances in the stomach and bowels. Fulness of the vessels of the brain and its membranes is sometimes observed, as also a redness of the mucous membrane of the stomach, in cases of poisoning by prussic acid.

Their principal symptoms are drowsiness, giddiness, headache, delirium, stupor, coma and sometimes convulsions and paralysis.

CEREBRAL.

Opium, Laudanum.—The symptoms are giddiness, drowsiness, tendency to sleep; stupor, succeeded by perfect insensibility. When in this state the patient may be roused, but not at a later stage, when coma has supervened with stertorous breathing. The pulse is at first small, quick and irregular; the respiration hurried; but later the pulse is slow and full; the breathing slow and stertorous. The expression of the countenance is placid, pale and ghastly; the eyes heavy, pupils contracted and the lips livid; vomiting and purging are sometimes observed; convulsions are sometimes produced, especially in children; and all secretions are suspended, except by the skin, which is often bathed in perspiration. The contraction of the pupils is considered an important sign of opium poisoning, but the same effect on the eyes has been produced in apoplexy of the pons varolii and in uraemic poisoning in

Bright's disease. The symptoms usually commence in from half an hour to an hour, but sometimes in a few minutes. All the preparations of opium and of poppies, as well as morphia, act much in the same way; the latter substance producing, in addition, excessive itching of the skin, followed by an eruption, and frequently causing convulsions.

The stupor or coma produced by burns and scalds may be mistaken for opium poisoning, as there are no well-marked indications by which to distinguish the one from the other. Prof. Tidy does not concur in Taylor's recommendation to withhold opium from burnt children, since extreme pain may be and often is fatal.

Fatal dose.—Minimum four or five grains for an adult. Two or three drops may be fatal to young infants. Reese states that an infant may be narcotized by the milk of a nurse who has taken opium. On the other hand recoveries of adults constantly take place from very large doses; even up to several ounces. De Quincy used nine ounces of laudanum or three hundred and sixty grains of solid opium daily. The susceptibility to the effects of opium is exceptionally great in some individuals. A case is on record where an infant died from the effects of a laudanum poultice placed over the abdomen to relieve pain.

Fatal period.—Seven to twelve hours in the average cases with a wide range in some.

Morphine.—Symptoms much the same as those of opium, but usually come on earlier and may produce convulsions more frequently than opium and occasionally of a tetanic character.

Fatal dose.—Deaths have occurred from less than three-quarters of a grain and recoveries have been made after taking seventy-five and even one hundred and twenty grains. The external application of this poison has proved fatal.

Chloroform.—Symptoms: Local irritation in the stomach and stimulation of the system, rapidly followed by narcotism, insensibility, stupor, convulsions, dilated pupils (but sometimes contracted), flushed face, full and oppressed pulse and frothing at the mouth.

There seems reason to suppose chloroform retards the effect of prussic acid; see under prussic acid.

Fatal period.—Death may quickly follow if the chloroform is not properly diluted with air. One case proved fatal in one minute after breathing thirty drops, and another in a very short time after breathing the vapour of fifteen drops. Its action is depressant when taken by inhalation, producing syncope in most cases and in others asphyxia. Reese states it is undoubtedly a far more dangerous anaesthetic than ether. Other authorities hold the reverse opinion. In fact it is said that the question as to which is the safer to use is almost an international one between the American and English physicians.

Fatal dose.—A fluid drachm killed a boy four years old in about three hours after swallowing it, and death has often occurred from doses of half an ounce and upwards. It has been said the maximum of vapour to act safely is four and a half per cent., but Dr. Bell of Glasgow, senior physician to the Glasgow Hospital for Diseases Peculiar to Women, in his publication—"Chloroform—Its absolute safe administration"—states, from one per cent. to two per cent. of the chloroform in the air breathed is sufficient and will admit of safe anaesthesia even if the patient's lungs and heart are not sound. A few quotations from his work may be of use to coroners when dealing with a case of death under chloroform—particularly when they are not medical men. He says:

"Dr. Snow states: 'The second degree of anaesthesia is induced by the absorption of twelve minims of chloroform; the third degree of narcotism, or the degree in which sur-

gical operations are usually commenced, by eighteen minims; deep anaesthesia by twenty-four minims; and arrested respiration by thirty-six minims absorbed.'

"And the length of time which, according to Dr. Snow, it is most desirable to occupy in the administration of chloroform before the commencement of an operation, is about two minutes in infants, three minutes in children, and four or five minutes in adults. Circumstances occasionally occur to lengthen these periods. A patient should on no account be rendered insensible in less than two minutes.

"When anaesthesia of the proper degree is induced, only small doses are required to maintain it, as it is only necessary to replace what is lost by exhalation, etc., and so to maintain in the blood that percentage of chloroform which at first was required to induce anaesthesia.

"When chloroform vapour is projected into the air-way at the commencement of such inspiration and in gradually progressive doses, loss of common sensibility is produced before loss of consciousness. But with large doses, loss of consciousness comes first and danger is incurred.

"The dangers of chloroform reside in large doses, and especially in sudden large doses. Therefore never be tempted to administer them under *any circumstances*, as dangerous symptoms only can be expected to follow the administration of sudden large doses.

"The essential factors in safe chloroform administration are not only diluted chloroform and regular breathing, but an accurate knowledge of the doses administered in a given time. Dr. A. E. Sansom states:—'I consider its (chloroform) administration without stringent precautions to insure precise dilution, unsafe; and that due mechanical means for the dilution of chloroform vapour is an imperative necessity. It should be administered with great care and caution, slowly and deliberately, in gradually progres-

sive doses.' [*Chloroform, its Action and Administration*, by Dr. A. E. Sansom.]

"There are reasons for suspecting that dyspnoea under anaesthetics is frequently mistaken for natural breathing, instead of *the most important sign of rapidly approaching danger from an overdose*; for at coroners' inquests it is frequently stated that the deceased took the anaesthetic well, breathing quite regularly, when 'suddenly' and 'without any warning,' breathing ceased, and the pulse could not be felt." [*The Med. Times and Hospital Gazette*, September 21st, 1895.]

"Carter in his first series of 20 administrations averages per minute 4.39 minims. In his second series of 8 administrations he averages per minute 3.8 minims. Prof. Vincent (Lyons) in 78 administrations in children, averages per minute 4.53 minims. And in 22 administrations in adult females, he averages per minute 4.93 minims.

"The unique results obtained by Dr. Carter, and others, with a minimum quantity of the anaesthetic, prove conclusively that the danger-signals, usually observed under Syme's method of administration, can, by Snow's method, be avoided. In not one case was dyspnoea or apnoea produced, consequently the usual train of symptoms —cyanosis, perspiration, slow pulse, prostration, coldness and collapse, and blanching of the face—denoting sudden and complete arrest of respiration and the heart's action produced by the sudden influence of too concentrated vapour, were made an impossibility, whilst, in the words of Dr. John Snow, the 'respiration is allowed to go on in the natural way.'

"We have never been able to understand why the principle of exact measurement which is universally applied in the dispensing of medicines should be thought superfluous in dealing with so potent and lethal an agent

as chloroform." [*Medical Press and Circular*, November 25th, 1896.]

In a pamphlet on the Safe Administration of Chloroform published in 1858, Mr. William Martin Coates expressed his conviction, arrived at by experiments on the frog and observations on patients, that chloroform could only be safely administered by limiting the dose to the smallest quantity capable of inducing insensibility to pain. By repeated trials he found that by means of Snow's Inhaler 5 minims of this anaesthetic, followed by 10 in 20 seconds, and in 40 seconds by 15, and then 15 every minute until the patient became insensible, and afterwards an occasional 10 minims, sufficed in almost every case to produce and maintain complete anaesthesia. Very rarely 20 minims were required.

In the *Lancet* of December 23rd, 1882, Mr. Coates states:—"Although I have during these 24 years never been prevented administering chloroform by extreme age or infancy, by chronically diseased heart, lungs or kidneys, I have not had a death by chloroform. I have never refused chloroform to any patient in whose case pain was anticipated." (Quoted by Mr. Bell in "the Medical Press and Circular" of November 23rd, 1892.)

According to a newspaper report from Paris in February, 1902, a new anaesthetic has been discovered called acoine, which it is claimed will oust cocaine, morphine, chloral, antipyrine and all other anaesthetics. A little pinch dropped into a gnawing tooth instantly banishes pain. The properties of acoine were recently reported to the French Academy of Medicine by Dr. Chauvel, and were based on divers experiments. Acoine has the great advantage, it is claimed, of not being toxic.

And another anaesthetic was reported from Paris in March, 1903, as discovered by Dr. Courtane. It is said to be barely soluble in water, but easily soluble in glycerine, or fatty matters, and is not toxic.

But to return to Dr. Bell. He states:—"The yearly increase in the number of deaths under chloroform has been so appalling, yet inexcusable, that I have felt morally bound to make it my business, at frequent intervals during the past five years, to call attention to the fact that every one of these deaths was due, not to chloroform, but to the method of its administration—in other words—solely to ignorance on the part of those administering the anaesthetic." Page 3.

"I have pointed out that there exists a method of administering the anaesthetic *without danger* . . . chloroform when properly administered, is absolutely safe. It therefore goes without saying that each death which occurs, to put it mildly, should in justice be described as one of culpable homicide." Page 3.

"I have administered chloroform for a period extending over thirty years without having a death to record from its use. It has frequently been, and still is, my duty to employ this anaesthetic three and four times a day, and very rarely indeed in my experience has it been necessary to exceed from 18 to 20 minims to obtain complete anaesthesia." Pages 3, 4.

"The apparatus which I employ is Krohne and Sesemann's Regulating Inhaler, by the use of which the dosage can be most accurately measured, and the mixture of chloroform vapour with atmospheric air, regulated to a fraction." Page 4.[1]

"If coroners will not exercise their common sense, and cease to advise their juries that such deaths are due to 'misadventure,' which is the usual verdict returned, then the Legislature of necessity will require to be approached,

[1] One of these inhalers is used at the Barrie hospital, and has been pronounced to be quite successful, and a great saving in the quantity of chloroform used. Its cost laid down in Barrie was about $12. With the inhaler comes a very neat case with a strap for carrying it, slung over the shoulders. Its total weight, case and all, is three pounds eight ounces.

and so endeavours made to bring these officials to their senses. It stands to reason that as long as this method of burying ugly facts continues to exist, the needless and shameful mortality will go on unchecked." Page 6.

"Preliminary stethoscopic examination of the patient about to be chloroformed is a farce, as such an examination (as proved in every fatal case recorded) can obviously not prevent the giving of a lethal overdose. It is equally absurd that coroners should consider the administrator of a fatal overdose free from blame if he had taken the precaution of examining the condition of the deceased's heart and lungs. It is the height of absurdity to lead the jury to exonerate those concerned from all blame, and to add a rider that the chloroform was properly and skilfully administered, and that everything had been done that could be done for the patient, when his very corpse is unmistakable evidence of his having been poisoned with chloroform. The cause of death, the accidental giving of the lethal overdose, is never enquired into." Page 6.

The author on pp. 7 and 15 refers to Dr. John Snow's statement made over fifty years ago that these deaths are alone caused by too much vapour in the respired air, whether the respiration or the heart fails first, and that Dr. Snow proved that in fifty cases of fatal accident from chloroform, every one of them was caused by too much vapour of chloroform in the air the patients were breathing, and that unless due mechanical means were employed for regulating the proper proportion of air and of chloroform, deaths from this agent would continue to occur. That Dr. Snow "never lost an opportunity of demonstrating at medical meetings and assemblies of scientists, that chloroform cannot be administered in the way Simpson recommended on a cone, piece of lint or towel, in drachms or unmeasured, nor drop by drop, *always* with

perfect safety. The process of inhaling chloroform on a cloth is *always uncertain* and *irregular*, and it is apt to confirm the belief in peculiarities of constitution, idiosyncrasies and pre-disposition, which have no existence in the patient. Snow never had a fatal case from chloroform in upwards of 5,000 administrations, and never refused to administer chloroform to any patient requiring to undergo a painful surgical operation." Pages 7 and 8.

Dr. Bell states on p. 8: "My own thirty years' experience has led me to the firm conviction that, if the lungs and heart are sound enough to sustain life up to the moment the patient has to undergo an operation, they are surely sound enough to admit of safe anaesthesia with from one per cent. to two per cent. of vapour of chloroform in the air breathed with normal regularity."

Dr. Bell further states on the same page that "such evidence as—the patient suddenly ceased to breathe; he struggled very much, and exhaustion was the cause of death; or his heart suddenly stopped beating, as if it was the patient's own fault that he died—should no longer be allowed to pass without enquiring and ascertaining into the cause why the patient stopped breathing, why he struggled, and why his heart failed to beat."

"The evidence given and tacitly accepted by the coroner and jury at inquests in these lamentable—because so easily preventible—cases is, indeed, humiliating to every right-minded medical man. Medical ethics is the bar that prevents individual men from freely expressing their opinions.

"It is an incomprehensible condition of affairs that, although every other medicine in the Pharmacopoeia has its dosage prescribed, chloroform is permitted to be given *ad libitum*, and any reference to the quantity which should be administered, or which it is necessary to administer to produce the desired effect, completely ignored . . .

the jubilee year of chloroform has gone out with a higher record of deaths than any previous year since chloroform was discovered. In England alone 96 inquests on deaths from anaesthetics have been recorded; 26 deaths occurred in private practice—namely, 15 males and 11 females; 70 deaths in hospital and kindred institutions—48 males and 22 females." Page 9.

There were 96 deaths in England in 1897 from pure chloroform, a mixture of 1 pint alcohol, 2 parts chloroform and 3 parts ether, a mixture of chloroform and ether, nitrous oxide and ether, pure ether, ether followed by chloroform, ether followed by A. C. E. mixture and nitrous oxide and ether. Of these deaths 63 were males and 33 females. Page 9. In one of these cases—a boy 11 years old—it was stated breathing ceased in about 10 minutes or a quarter of an hour when *only* two drachms of chloroform were used. Dr. Bell remarks on this, page 9:—"*Only* two drachms had been used in ten minutes. The word '*only*' proved that ignorance and deceit, and not carelessness, is the cause of these deaths, for Carter has proved that twenty minims of chloroform are more than enough to cause perfect anaesthesia in a lady of 40 years for painless tooth extraction, lasting ten minutes. If 20 minims are enough in an adult, surely coroners should know that 20 minims in ten minutes are too much in a child of 11 years." The boy was operated on for a tumour under the shoulder-blade. Page 40.

Among 27 cases reported in the old country in 1898 it is to be noted one patient had a strong heart and was healthy, but her heart failed before the operation was commenced. Another had a sound heart and was in robust condition. Scarcely 2 drachms of chloroform were used when she collapsed. A third had his heart and lungs perfectly healthy. One drachm of chloroform was administered. Was in the operating theatre only one min-

ute when he ceased to breathe. A fourth was a strong and healthy lad; but he died suddenly after the chloroform began to be administered, and a fifth was strong and healthy. After a few inhalations he began to shout loudly, kick about and fight, and it required the force of 4 or 5 doctors to hold him down. Presently he settled down and began to breathe very heavily. Signs of asphyxia then set in. Tracheotomy was performed, artificial respiration was employed, ether injected, warm sponges and galvanism were applied; but all these means proved unavailing. Pages 11, 13, 14.

The fact that the patient has taken chloroform on a previous occasion does not appear to warrant the conclusion that it can be always taken with impunity—for among the 27 cases referred to above, one, a female, aged 19, had taken chloroform for a previous operation, but on the second occasion, after a few inspirations, her breathing laboured, and she died. Another, that of a male 22 years old, had taken chloroform four times before, but died suddenly upon the fifth occasion. Pages 12, 14.

In the *British Medical Journal* of April 17th, 1897, Dr. Leonard Hill stated:—"In a certain institution in Great Britain in the course of a recent year, not fewer than twelve deaths occurred. This is no exceptional case; the deaths from chloroform are not recorded in the medical journals, for these reflect upon the reputation of the administrator and the institution in which they occur." And in the following November, the same medical journal contained a statement by Professor Augustus Waller that:—"A large proportion of the cases of death, undoubtedly caused by chloroform, are never published. How large a proportion it is impossible to say, yet almost certainly the largest proportion of the total number of deaths. At one hospital, from which two deaths from chloroform were reported during a year, nine deaths actually occurred." Pages 14, 15.

"Not only immediate but remote deaths frequently follow over-administration. The *British Medical Journal*, November 13th, 1897, reports cases of 'post anaesthetic paralysis.' Rudiger found in a fatal case of monoplegia, after chloroform, an area of softening of the cerebral cortex. Chipault observed an attack of right hemiplegia in a patient recovering from chloroform; death occurred shortly afterwards. Reboul describes a similar case. The patient was sixty years of age; he inhaled the chloroform well. Dr. Bangler again directs attention to the well-ascertained fact that under certain conditions, acute fatty degeneration of the inner organs, especially the liver, is caused by an excess of chloroform in the system. These symptoms of poisoning by chloroform cause death in from four to ten days after its inhalation.—*Therapeutiche Monatshefte*, December, 1897." Page 15.

"Since the truth spoken by Dr. John Snow fifty years ago has been confirmed by results obtained in thousands of administrations, that anaesthesia can be safely induced in an adult with one per cent. of chloroform in the air breathed, and that it can then be sustained with very little vapour for any length of time, free from evil effect, it must be evident to the reader that death before, during, or any time after the completion of a successful operation, cannot occur from chloroform administered in the slow progressive way first taught by Dr. John Snow." Page 15.

Dr. Bell states:—"I entirely agree in the propriety of an empty stomach preparatory to the inhalation of chloroform, but if any one thinks this a means of avoiding danger, he might be seriously disappointed in a case in which danger should really exist. I, as well as others, had been in the habit of directing not to take food for two or three hours before inhaling ether, and the same directions have been given since the introduction of chloroform. But it constantly happens that I have to give it to patients whom

I have not seen before, and to whom the surgeon has omitted to give directions on this point, and not unfrequently the patient has taken a meal just before I arrived; yet in no case has the inhalation been either postponed or omitted on that account. The patient is indeed liable, though by no means certain, to vomit when the stomach is full, but the vomiting has not in any case been attended with ill consequences of any kind, and I have seen at least two hundred patients vomit while partially under the influence of chloroform. In two or three cases, in fact, the patients who had eaten a very full meal vomited and inhaled by turn during the whole operation. If the rejected food were liable to enter the glottis, of course there would be some inconvenience either at the time or afterwards." And the answer to the apprehension that the great proportion of deaths under chloroform are due to the patients having food in the stomach before inhaling, and the rejected fluid being liable to enter the paralysed glottis, and produce suffocation, is, "that the patients who have died from the effects of chloroform did not vomit, and that nothing was found in the windpipe to obstruct respiration in such of them as were examined after death." "The truth is," Dr. Bell states, "that the glottis is one of the organs of respiration, and retains more or less sensibility, as long as the patient has sensibility enough to breathe; and so long as there are sensibility and energy sufficient to effect the complicated act of vomiting, the functions of the glottis appear to be unimpaired. When the narcotism from chloroform is confined within reasonable bounds, there is as little danger of blood getting into the windpipe, in operations involving the mouth, as of vomited matter in other cases. . . If much blood flows into the throat there will be some embarrassment to the respiration whether a patient is insensible or not. The practice in such cases always was to lean the patient's head forward now and then, and if

this be attended to the blood does as little harm under the *proper* influence of chloroform as without it. I have given chloroform in many cases in which from eight to twelve teeth were removed at one operation; and although subsequent vomiting, in some of the cases, revealed a good deal of blood which had been swallowed, or flowed down the pharynx and oesophagus, there were never any symptoms of a drop having entered the windpipe or lungs," and the Doctor states he has satisfied himself that the glottis is fully competent to take care of the air passages, and that suffocation is not readily caused under the influence of chloroform." Pages 16, 17, 18.

In several cases mentioned by Dr. Bell in which much haemorrhage would necessarily occur from operations about the mouth, the patients were first made insensible by means of the inhaler, and insensibility was kept up during the operations by means of a sponge applied near the mouth from time to time; not more than about 15 to 20 minims of chloroform being put on the sponge at once. And he states besides the prevention of the dreadful pain, the chloroform had the further advantage, in large operations on the face, of greatly diminishing the tendency to syncope from the unavoidable loss of blood. And he adds:—"I have seen *no ill effect* from it in any case." Page 19.

"Professor Lizars," Dr. Bell states, "considers it necessary to pay attention to another point, which is the allowing the patient to breathe atmospheric air along with the chloroform, and an experienced assistant is required to administer the chloroform, and to do nothing else. He must watch its effects, allowing fresh atmospheric air to enter the nostrils and mouth occasionally during its administration and influence, otherwise the blood may become too greatly carbonized, and death ensue." These remarks, Dr. Bell states, are, on the whole, judicious, and he explains that Prof. Lizars perhaps means that the mixture of vapour

and air must be intermitted and breathed by turns surcharged with vapour. But Dr. Bell adds: "This is not at all requisite if the vapour is diluted to a sufficient point. If for instance the patient be breathing 95 or 96 per cent. of air with 4 or 5 degrees of vapour of chloroform, it will be unnecessary to intermit the process till insensibility be complete. It is not sufficiently understood, or at least borne in mind, that the vapour of chloroform requires to be largely diluted with air, not for the purpose of respiration—its physical constitution ensures that—but to prevent its operating with dangerous rapidity. In proof of this, it is only necessary to state the circumstances that in giving ether 70 or 80 degrees of air is breathed with 20 or 30 per cent. of vapour: whilst in the case of chloroform there should be 95 or 96 per cent. of air; and in the case of hydrocyanic acid, which I have administered in the hospital for consumption, there must be over 99 per cent. of air, with much less than 1 per cent. of vapour." Pages 20, 21.

Dr. Bell states others as well as himself have formed the opinion from the use of chloroform with a suitable inhaler, it is so free from danger when administered with skill and care, that it may be used in the smallest operations, and he states he has himself taken chloroform twice to have a tooth drawn, and would not undergo a similar operation without it so long as he could get a skilful person to administer it with a suitable apparatus. Page 21.

"The real cause of the deaths from chloroform"—he states—"undoubtedly is that in each case the patient has had an overdose," meaning more than was necessary to render the patient, or one of similar size and strength, insensible. And by the dose of chloroform it must be understood he means the quantity that is in the system at one time, and not the quantity inhaled during an operation. For instance, when the inhalation is left off two or three

minutes, a great part of the chloroform exhales by the breath, and the patient perhaps requires to inhale a little more. This should be considered a *repetition*, and not an increase, of the dose. Pages 23, 24.

According to Dr. Bell: The necessary points to be observed, in order to avoid the risk of giving an overdose, are: *Firstly*, that its vapour be systematically diluted with a sufficient quantity of air, by means of a suitable apparatus, when no accident can happen without the continued neglect of evident warning symptoms; *Secondly*, that the person exhibiting the chloroform should keep his whole attention directed to the patient, and be able to understand all the signs that occur. And he adds:—"I may state, however, that it is chiefly by attention to the state of respiration and the eye that danger is to be avoided." He also considers the pulse gives no guiding information concerning the chloroform, since if the vapour be of dangerous strength, the heart might suddenly cease to beat, and the first intimation of danger from the pulse would come only too late. He further states that if chloroform be given on a handkerchief at all, not more than from 15 to 20 minims should be put on at once. Page 24.

Dr. Snow considered one per cent. of chloroform vapour in respired air is all-sufficient for inducing perfect insensibility in adults in any ordinary surgical operation, and about one-fifth per cent. of vapour is all-sufficient for sustaining the state of insensibility when once induced. And this statement is endorsed by Dr. Bell. Page 25.

In 1897, in England alone there were 96 deaths under anaesthetics. In 74 of these chloroform was used, and in the others, ether, a mixture of ether and chloroform, a mixture of alcohol, chloroform and ether, or N. O. ether. Commenting upon these statistics Dr. Bell says it is not surprising that the public should entertain a wholesome dread of chloroform, and that a number of patients whose

lives could be saved by operations prefer to go on suffering rather than submit to the ordeal of taking chloroform, which, most assuredly, if properly administered, is free from the slightest risk. Pages 34, 35.

"Now, if chloroform be administered sufficiently diluted with atmospheric air, I have proved times without number that from 12 to 15 minims of chloroform only are necessary to produce the second degree of narcotism in about three or four minutes. To induce the third degree, or surgical anaesthesia, not more than twenty minims are required, while to induce the deepest degree of narcotism, which will occupy about eight minutes—and this is only necessary for the reduction of old-standing dislocations, and might be called the fourth degree—would only require from 24 to 30 minims. To arrest at any time the function of respiration, which is the first lethal effect of chloroform, would require about 36 minims of chloroform, but when the air breathed contains from five per cent. to ten per cent. and upwards of vapour, it may cause sudden death by paralysis of the heart, either before, during the progress of, or at any time after the completion of an operation." Pages 35, 36.

"The one grand point to be aimed at when it is necessary to produce insensibility by narcotic vapour is to administer to the patient such a mixture of vapour thoroughly incorporated with air as will produce the desired effects gradually, and enable the medical man to stop at the right moment. The conditions necessary to ensure uniformity of effect and perfect safety to the patient are—that the chloroform be pure and the mode of administering slow and regular, and what is a *sine qua non*, from a suitable inhaler, which makes certain that its proper dilution with atmospheric air has been attained. Until the handkerchief, piece of lint, towel, etc., have been abjured, we will never cease to hear of deaths under chloroform; where-

as, when the conditions I have named have been rigidly observed, no fatal case has ever occurred. . . Let me repeat that death under chloroform is alone caused by breathing air too highly charged with its vapour, and that it is impossible to administer the proper dosage to obtain the desired and safe effect without a properly constructed regulating inhaler is employed." Pages 37, 38.

"As chloroform is administered in as many separate doses as the patient makes inspirations, the danger inseparable from the open method may easily be recognized by considering how variable the percentage of vapour liable to be inhaled must necessarily be, and what unnecessary risk the patient is therefore being exposed to. Taking respiration at 20 per minute, the volume of each being 25 cubic inches, and according to Snow's estimate, 100 cubic inches of air being able to retain in solution at 60° F. 14 cubic inches of chloroform vapour, and at 65° F., 19 cubic inches, we arrive at the following conclusions:—20 minims, which is equal to 23 cubic inches of vapour or 4.6 per cent. in the atmospheric air breathed, would obviously be a dangerous dose, but there is certainly the possibility, and in many instances the probability, of two or three minims being absorbed at some inspirations, thus increasing the amount of chloroform to the percentage which is, as ascertained, certain to cause sudden death by syncope, or sudden arrest of the heart's action, when it will be impossible by artificial respiration or any other method to restore the patient's vitality." Page 37.

And he adds:—"I have no hesitation in stating that chloroform is by far the safest anaesthetic that can possibly be resorted to, exceeding far in value nitrous oxide or any other of the agents that have been so frequently employed." And he gives a table of ten operations he performed on females in which the average consumption was only 4·3 minims per minute, equal to ·9 per cent. of the

vapour in the air breathed, and he remarks thereon that such a percentage being far short of that which would be a poisonous dose, while it attains all that is desired—viz., rendering the patient quite insensible to pain—demonstrates without any further proof that when death does occur from chloroform it is due, not to the chloroform, but to the carelessness of the individual administering it. Pages 37, 38, 39.

"The symptoms of approaching danger under chloroform which are always the result of an overdose, appear in the following order: (*a*) coughing, (*b*) gasping, (*c*) choking, (*d*) struggling. If due attention is at once given on the appearance of the first symptom, "coughing," and it is at once corrected by giving the vapour more diluted, it follows that the other more dangerous symptoms are with certainty prevented from occurring. . . I am convinced from my own considerable experience, that with the means at our disposal, chloroform can be given in exact and regular dilution, which in its turn enables us to maintain with ease and absolute certainty the regular normal respiration throughout. With due attention to breathing and a little mechanical assistance, our mind is kept at ease as regards the safety of our patient." [This last quotation is taken from a letter in *The Medical Press and Circular*, May 3rd, 1893, from Dr. Bell.]

In *Chambers's Journal* for December 2nd, 1901, p. 845, the following notice regarding the administration of chloroform appeared, which no doubt is in accordance with the most up-to-date knowledge of the subject:—

"'Death under chloroform' is, unhappily, a somewhat familiar heading to newspaper reports of coroners' inquests, and investigation shows that a large number of deaths must be annually credited to chloroform administration in this country alone. Soon after the application of this beneficent agent to surgery, more than half a cen-

tury ago, Dr. Snow asserted that such deaths were caused by an overdose of chloroform vapour in the air breathed by the patients. He also pointed out that anaesthesia can be produced in an adult with perfect safety with only 1 or 1½ per cent. of chloroform in the air inhaled. It would seem, therefore, that the first requisite in safe administration is a means of exactly measuring the amount of chloroform given. This is secured by the regulating inhaler introduced by Messrs. Krohne & Sesemann, by which the chloroform vapour, delivered from a special form of bottle, can be exactly measured, and increased or diminished at will. An interesting pamphlet by Dr. Robert Bell of Glasgow gives detailed statistics as to deaths from chloroform, and shows how its administration can be conducted with absolute safety by means of the inhaler above referred to." April 28, 1902.

An eminent physician in Scotland has informed the author that—"patients who have once been put under chloroform by means of this inhaler, have always expressed their preference to it over the method of administering chloroform by means of the towel. That there is nothing unpleasant when chloroform is administered properly diluted with air; no suffocating sensation is experienced, and the patient gradually passes from consciousness to unconsciousness, resembling very much falling asleep in the natural way. By this means, too, there can be no possible dangerous result ensuing, as it is impossible for more than the required quantity to be introduced with each inspiration. The time certainly for putting the patient under the influence of chloroform is augmented, but what is that, compared to the safety of the patient? I have had cases under chloroform for a period of over seventy minutes, during the performance of tedious operations, and yet was able to proceed deliberately, handling the most delicate organs with perfect composure, knowing that the life of the patient was not in the slightest danger, and all this time have not used more chloroform than would have been em-

ployed in ten minutes by the ordinary method of administering it."

At a meeting of the Academy of Medicine in Paris, France, Dr. Huchard combatted the popular notion that people who have heart trouble cannot safely take chloroform, and he produced statistics in support of his statements. Professor Berger also spoke on the same occasion and agreed with Dr. Huchard. He said chloroform prudently used, was still the safest anaesthetic.

But the necessity for the greatest caution in administering chloroform is shewn from the number of deaths occurring from its administration. The writer noticed no less than three deaths reported from chloroform in Ontario during the one month of April, 1902, and apparently no inquest was held in any of these cases.

Chloral Hydrate.—Moderate doses act on the brain as a hypnotic. Large doses have a strong depressant action in the ganglia at the base of the brain and on the spinal cord, producing feeble action of the heart and lungs, with generally deep sleep. Pulse very slow and feeble, face pale.

Fatal dose.—Uncertain. Generally, thirty grains may be taken as a safe maximum dose, but in some cases that quantity has proved fatal. This drug has a tendency to accumulation and a sudden and dangerous action. The doses should not be repeated under six or eight hours.

Ether.—The odour of this anaesthetic is easily recognized when present. In large doses its symptoms are similar to those of alcohol. A short period of delirious excitement, then coma and other symptoms of narcotism.

Prussic or *hydrocyanic acid.*—The symptoms occasioned by a large dose of this acid may occur almost instantaneously, and are rarely delayed beyond one or two minutes. Hence the first symptoms are seldom seen, but when the patient is examined at the above period, he is found perfectly insensible; eyes fixed, prominent and glis-

tening, pupils dilated and unaffected by light; limbs flaccid; jaws fixed; frothing at the mouth; skin cold and covered with clammy perspiration; convulsive respiration at long intervals; pulse imperceptible; and involuntary evacuations are occasionally passed. The respiration is slow, deep, gasping, and sometimes heaving, sobbing and convulsive. When a small quantity has been swallowed, the patient has first experienced pain in the head, with confusion of intellect; giddiness, nausea; a quick pulse; loss of muscular power; shortness of breath and palpitation. There is generally frothing at the mouth, with a bloated appearance of the face, and prominence of the eyes.

At the Hammond trial at Bracebridge, Ontario, for causing the death of Kate Tough, one of the medical witnesses said prussic acid is scarcely ever used for murder, but of the poisons it is the most used for suicide. And at the same trial Dr. W. H. Ellis is reported to have said one-third of a grain of pure prussic acid was not enough to cause death, but that ten per cent. of the quantity taken was a high percentage to find at any post-mortem examination, that the smallest dose known to kill was nine-tenths of a grain. He also said he found about three and a half grains of phosphoric acid in the stomach, which was in the ratio of about ten to one to the prussic acid, which, however, was in the greater proportion when the dose was taken. That while prussic acid evaporates, phosphoric acid does not. The amount found in the stomach was about half the quantity required to kill, and assuming that only ten per cent. of the poison remained in the stomach at the time of his analysis, he considered the amount of the dose received by the girl would be three and one-third grains, an assured fatal dose.

The peculiar odour of prussic acid is an important thing to notice if present, but its absence is no proof of the non-existence of the poison. The smell affects persons differently. With some it produces a spasmodic constric-

tion about the throat, even without the odour being detected; with others it is suffocating or sickening with a kind of "nipping" in the nostrils or a sensation of dryness in the throat.

What is termed "smell blindness" or "anozism," is said to be exceedingly common, and in the case of prussic acid the powers of different persons (and apparently of the same persons at different times) to perceive the odour, are much diversified. Yet some chemists consider the odour when perceived, one of the most delicate and positive tests of prussic acid.[2]

Glycerine increases the stability of prussic acid and may be useful if suspected substances have to be kept a long time.

It should be borne in mind that nicotine, the poisonous principle of tobacco, produces very similar symptoms to prussic acid.

As regards the stability of prussic acid, the professional evidence given at the trial of John R. Hooper for murder, is important to notice. Dr. Norbert Fafard, of Montreal, said he had analyzed the viscera of two dogs which had been killed by prussic acid eleven days before, and in which decomposition was in an advanced stage. The blood, stomach and brains of the dogs were also submitted to him, and in each case the analysis revealed traces of prussic acid. That when the jars were opened the odour of putrefaction alone could be detected, and that it was his experience that prussic acid could be found even in putrefying matter, when present. Prof. John Gore Adami, of McGill College, also gave evidence at the same trial. He said he had poisoned three fox hounds with prussic acid and the bodies were kept for seven days in a temperature considerably above the freezing point, and the odour of prussic acid was still detected from the brains. The brains were very much congested, and the hearts contained blood, and he stated he

[2] Browne & Stewart, pp. 63-67.

thought the most recent authors were inclined to extend the delay during which the traces of prussic acid could be detected. He did not consider it necessary to have the blood to detect the acid. This witness further stated there was a great deal of discussion as to the applicability of experiments on the lower animals to establish a rule for men. Dr. James Cameron, of McGill College, was also called as a witness, and he said he was present at the autopsy of the dogs mentioned by Prof. Adami, and that the smell of the acid used was quite evident.

Chloroform, it would appear, retards the effect of prussic acid, for Prof. Adami said he had given one dog about half a drachm of the acid, and he died in a little over an hour, whereas another dog was chloroformed and was given one-half drachm. He began to recover at the end of an hour. He then gave him one drachm, and at the end of another hour, one and a half drachms more—in all three drachms, when the dog died in fifteen minutes later. This dog, however, was larger than the other.

Fatal dose.—For an adult, about fifty minims of the officinal acid, equal to nine-tenths of a grain of anhydrous acid. Fatal cases are recorded from taking seven-tenths of a grain, and a case was mentioned in the *Lancet* of a person dying from a dose of less than a grain. The inhalation of the vapour has proved fatal.

Fatal period.—Generally ten to fifteen minutes, but death has occurred as early as two minutes. Sensibility and power of volition and locomotion, may cease in a few seconds.[3] An external application of this poison to a wound in the hand caused death in one hour.

Oil of bitter almonds, bitter almond water, laurel water, and cyanide of potassium may all produce effects similar to those caused by prussic acid. Owing to the extensive use of the last named salt by photographers,

[3] Taylor I, p. 380.

many serious accidents have happened. The kernels of peach, apricot and cherry stones may also produce similar symptoms if eaten in quantity. Cyanide of potassium is said to have an alluring attraction for some people.

Alcohol, when swallowed as raw spirits or high wines, may act as a poison. Death may be produced almost instantaneously, or the ordinary symptoms of intoxication may come on after a few minutes, ending in insensibility and convulsions, which latter are often absent. With diluted alcohol excitement may be produced before stupor, but with concentrated, profound coma may be induced in a few minutes.

Acute alcoholism may be mistaken for opium-poisoning and concussion of the brain. The odour of the breath will generally reveal the nature of the case.

The convict Holmes in his confession stated he poured into his victim's stomach, after death, one and a half ounces of chloroform, so that at the post-mortem, the coroner's physician would be warranted in reporting that death was accidental, and due to a cleaning fluid composed of benzine and chloroform, and that the chloroform had at the time of the explosion passed into his stomach, and on receipt of such intelligence he believed the insurance company would at once pay the full claim under the policy. But, he said, the chloroform did more than this—it drove from his victim's entire body, tissue, brain and viscera, all evidence of recent intoxication to such an extent that the physicians who examined the body after death were warranted in stating that there was no evidence of, and they did not believe, the man was drunk at the time of his death, or within twelve hours theretofore. That they were wrong was proven by the well-known fact that all the testimony and circumstances at his trial tended to show that he must have been insensible from liquor, and that only in that condition could he have killed him; a fact so strongly

brought out that the judge in his charge commented upon it at some length.

Tobacco, when swallowed in a solid form or as an infusion, may produce faintness, nausea, vomiting, giddiness, delirium, loss of power in the limbs, relaxation of the muscular system, trembling, complete prostration of strength, coldness of the surface, with cold, clammy perspiration; convulsive movements; paralysis and death. Sometimes there is purging, with violent pain in the abdomen; sometimes a sense of sinking or depression in the region of the heart; slight dilatation of the pupils; dimness of sight, with confusion of ideas; weak pulse and difficulty of breathing are also observed. The poisonous principle of tobacco (nicotine) will cause death with almost the same rapidity as prussic acid, and with very similar symptoms.

The external application of tobacco to the sound or abraded skin may produce fatal results. A wet leaf applied to a child's throat for croup is dangerous. Tobacco smoking has caused death. Cigarettes are worse than cigars or pipes from the custom of inhaling the smoke from the former and thus poisoning the blood.

Fatal period.—Snuff swallowed in whiskey has caused death in one hour. An enema of tobacco caused death in fifteen minutes in one case, and in thirty-five minutes in another. A decoction of tobacco applied to the skin of a man for an eruptive disease resulted in death in three hours.

Poison of Snakes.—As deaths from snake poisoning may come under the notice of coroners and medical witnesses, the subject may be briefly noticed here. The bites of rattlesnakes are the only ones likely to interest Canadians. The late Prof. Croft paid some attention to the question, and in a paper from him and read by Dr. White before a joint meeting of the Canadian Institute, and the Natural History Society of Toronto, according to the *Daily*

Empire report, he stated that several hours generally pass before any constitutional effects are felt from the bite, although swelling of the parts adjoining the wound would intervene in a very short time. That in its properties the poison very much resembled the alkaloids such as strychnine, morphine and atropine. He gave a test of iodine which produced with the poison an insoluble precipitate, and he based upon this result the opinion that iodine or its preparations, if quickly applied, would no doubt prevent the constitutional effects of the poison. Other remedies he mentioned were the tubers of the Agave Virginica, the Peta and the Dagger plant. He stated, also, that hunters sometimes open the wound, fill it with gunpowder and then blow up the powder, which he naturally termed a somewhat heroic mode of treatment. Internal remedies other than stimulants he considered useless, and stimulants only to sustain strength. He mentioned also the snake-eating bird, the Pesano, which when wounded by a snake-bite is said to eat the Agave plant and then return to eat the snake.

In Venezuela, where poisonous snakes are common, it is said that a plant called *Ocumillo*, when powdered and applied to the bite of a snake, will effect a cure in almost all cases.

Hawkweed is also said to be an antidote for snake poison.

A case of death from a rattlesnake's bite was reported as having occurred on Strong Island near Amherstburg, Ontario, in April, 1901. While picking up chips in her yard a woman was suddenly attacked by the snake, and received three distinct bites on the left hand. Medical aid not being available, the old Indian remedy was resorted to. The hand and arm were encased thickly in blue clay, and big doses of whiskey were administered. Several hours had elapsed before a doctor could be procured, and meanwhile the arm had swollen to almost twice its natural size.

The patient was unable to rally and died. The snake had nine rattles.

In December, 1901, it was cabled from Paris, France, to the Canadian press, that success had been accomplished in the cure of snake bites, by the use of serum prepared by Dr. Chalmette, chief of the Pasteur Institute at Lille. It was claimed that a woman who was bitten in India was restored when at the point of death, and that Dr. Chalmette saved his own life with the serum after having been bitten by a cobra from which he was extracting its venom to be used in the composition of the serum. The doctor was stated to have shown the resemblance between the poison secreted by the salivary glands of snakes, and the microbe, or toxic poison, of diseases such as plague or diphtheria; and that the seropathic treatment of such diseases by inoculation with anti-toxic serum from the blood of animals inoculated with the disease, is applicable to snake bites with even greater success. The poisonous principle of all snake or viper venom is the same in kind, but not in degree of virulence. The venom of a cobra is eight times stronger than that of a French viper. The poison causes sharp pain, then torpor and cramp at the root of the affected member and almost the whole body. Fainting and syncope ensue. If the dose is mortal the breathing becomes painful, anxious, the mouth contracts, slavers, the tongue swells, the teeth clinch, and the victim falls in a coma to die in some hours. Anti-toxic serum for inoculation against snake-bite is prepared by Dr. Chalmette and is exported from France to all countries where poisonous snakes abound. Horses furnish the anti-toxic serum after being inoculated with increasing doses of the poison for several months until they become immune. A horse after six months treatment can stand venom enough to kill two hundred horses not vaccinated. Solutions of the dry venom in salt water, one per cent. in strength, are made, and used in the experiments.

A strong preparation of ammonia mixed with oil, so as to keep it from burning the patient's throat, has been used for snake-bites.

The writer was once informed by a clever young medical man that he had been called upon to treat a girl who was bitten on the hand by an enraged cat. The hand was greatly swollen, and presented the appearance of being a serious case. He said he melted some luna caustic on a needle and placed it in the wound, the result being almost magical in its completeness and rapidity. This treatment was not for a snake-bite, but it is mentioned here as possibly worthy of adoption in the case of any poisonous bite.

SPINAL POISONS.

These poisons do not act on the brain, but on the spinal marrow, producing violent convulsions and rigidity of the muscles, resembling tetanus. The most remarkable among them is *nux vomica*, and the alkaloid strychnine which is contained in the berries.

Nux vomica.—The symptoms and treatment of poisoning with *nux vomica*, are the same as in the poisoning with strychnine.

Fatal dose.—Of the powder, 30 grains equal to $\frac{1}{3}$ grain strychnia, of the alcoholic extract, three grains.

Fatal period.—Shortest, fifteen minutes. Average, one to two hours.

Strychnine.—The taste of this substance is intensely bitter, and at an interval of time varying from a few minutes to one hour or more, the person who has taken it is seized with a feeling of suffocation and great difficulty of breathing. The head and limbs are jerked; the whole frame shudders and trembles; tetanic convulsions then suddenly commence; the limbs are stretched out, the hands clenched, the head is bent backwards, and the body assumes a bow-like form, supported on the head and feet (opisthotonos); the soles of the feet are curved; the abdo-

men hard and tense; the chest spasmodically fixed, so that respiration seems arrested; the eye-balls prominent and staring; the lips livid; a peculiar sardonic grin is noticed on the features. Between the paroxysms the intellect is perfectly clear; but there may be loss of consciousness before death. The fits are intermittent, whereby poisoning by strychnine is distinguished from tetanus; moreover, the symptoms come on suddenly, almost without warning. The attacks subside after a few minutes, but return again rapidly, and may be induced by very slight causes. The rigidity of the body and arched position of the feet often remain after death.

There was a case of suspected poisoning by strychnine at Toronto in 1899, and the medical men in attendance applied the usual remedies for that poison, but the patient died, and the surgeon who made a post-mortem examination of the body, pronounced the cause of death to be cerebral meningitis, the outward symptoms of which disease, he said, were almost identical shortly before death with those of strychnine poisoning.

Upon the trial of Dr. Palmer for the murder of John Parsons Cook, the most eminent men among the English physicians and analysts gave the most contradictory evidence as to the possibility of detecting strychnia.[1]

In strychnia cases the tissues should always be sent for analysis at the same time as the stomach, but in separate jars.[2]

Fatal dose.—Half a grain to a grain for an adult. One-sixteenth of a grain has proved fatal to a child between two and three years old.

Upon the *White* murder trial in Oct., 1901, a well known authority was reported to have said he considered half a grain a fatal dose. And a case occurred in Ottawa

[1] For a valuable report of this trial see Browne & Stewart's *Reports of Trials for Murder by Poisoning.*

[2] Browne & Stewart, p. 291.

in the same month and year, where a student took by mistake for a 24th of one grain of a solution of strychnine, about three grains of crude strychnine. He was soon seized with severe convulsions. Emetics were administered and morphine and chloral, when the convulsions ceased and the young man apparently recovered.

Fatal period.—This varies. Deaths are recorded in five, ten, fifteen, eighteen and thirty minutes, and up to several hours. The patient generally dies within two hours, and often in less than an hour. The action of strychnine in the form of powder, and in solution, differs considerably. As powder it is much slower, and in pills, if hard, slower still. By hypodermic injection the most intense effect is produced.[3]

But few of the other spinal poisons have been used for felonious purposes, but accidents have not unfrequently happened from the accidental use of the roots or leaves of certain plants. The following may be mentioned as occurring in this country:

Cicuta maculata, musquash root, beaver poison. The roots of this plant are sometimes mistaken for parsnips. The symptoms are giddiness; dimness of sight; headache, and difficulty of breathing; burning pain in the stomach, with vomiting, and often convulsions preceding death.

CEREBRO-SPINAL.

Conium maculatum (spotted hemlock) varies in its effects, producing sometimes stupor, tingling sensation along the muscles, dilated pupils, headache, coma and slight convulsions: at others paralysis of the muscular system. The first effects are like intoxication.

Fatal dose.—One drop of conine is considered a poisonous dose.

Fatal period.—Usually from one to three hours.

[3] Browne & Stewart, p. 287.

Æthusa cynapium (naturalized).—The roots may be mistaken for turnips, and produce symptoms resembling those of conium.

Sium lineare is a common plant in this country, and would probably produce similar symptoms.

Aconitum napellus (monkshood or wolfsbane), being often grown as a garden plant, may occasionally give rise to accidents. Numbness and tingling of the mouth and throat; the same feeling, "pins and needles," in the limbs, hands and feet; giddiness; loss of power; frothing and sense of swelling at the back of the throat, severe pain in the abdomen, followed by vomiting and purging and numbness, are the most common symptoms. Sometimes the patient is completely paralyzed, at others there is dimness of sight and cerebral symptoms. The root is sometimes mistaken for horse radish, and the medicinal tincture may be taken by accident.

The characters and physiological action of commercial aconitia vary greatly.

The tingling and numbness quickly produced in and around the parts to which the alkaloidal extract of aconite is applied, with the salivation and sense of swelling at the back of the throat which frequently follow, and which effects, or some of them, usually last from three to six hours or longer, are peculiar to aconite, and consequently the taste test is of the utmost value and should never be omitted.

Stewart states that a substance previously proved to be an alkaloid by its yielding precipitates with most of the general re-agents for alkaloids, and which when applied to the tongue and injected under the skin of a small animal, produces the effects already described, is absolutely certain to be aconitia.[4]

[4] Browne & Stewart, p. 576.

In cases of poisoning by aconite, death may result from asphyxia, shock or syncope.

Fatal dose.—Variable, according to the strength of the preparations; one twenty-first of a grain and one-thirteenth of a grain have produced death. In a newspaper report of an inquest in England on the body of one William Wight, one twenty-fourth of a grain is said to have caused death within three hours, notwithstanding the prompt efforts of a medical man to save his life.

Fatal period.—Generally within three or four hours. The first symptoms usually occur in from a few minutes to one or two hours.

Belladonna (deadly nightshade).—The leaves, berries and roots of Atropa Belladonna are very poisonous. Symptoms:—Heat and dryness in the mouth and throat, difficulty of swallowing, nausea, giddiness, great dilatation of the pupil, loss of vision, flushed face, sparkling eyes, delirium, convulsions followed by stupor and coma. The patient is inclined to sleep, but not quietly, as in the case of opium poisoning; he is violent and delirious.

Fatal dose.—Of atropine, the active principle of belladonna, one-half to three-quarters of a grain is considered a minimum fatal dose for an adult.

Fatal period.—Within twenty-four hours.

Datura stramonium (thorn apple, Jamestown weed).—The seeds of this common plant are exceedingly poisonous and often produce furious delirium, difficulty in swallowing, dilated pupils, vomiting, and, after a time, insensibility, which may terminate in death.

Cocculus Indicus (Levant nut).—The berries possess a powerful bitter, poisonous principle, which is said to exist principally, if not only, in the kernel. Dr. Christison recommends the medical jurist to make himself well acquainted with the external characters of the berries, because, besides being occasionally used externally in medicine, they are a familiar poison for destroying fish, and have

also been used in porter, ale, and beer, as a substitute for hops. The poison seems to act by exhausting the irritability of the heart, and if the dose be considerable its fatal effects are speedily displayed. In the practice of medicine the powdered berries are made into an ointment for the treatment of some cutaneous diseases, but its employment requires great care.

Upon a charge of attempting to poison, before the police magistrate at Ottawa, it was stated that Cocculus Indicus was used to adulterate some inferior teas, the berries being often found in such teas.

To give a child two Cocculus Indicus berries in the husk with intent to poison, was held to be an administering of poison with intent to murder, although the poison did not act from the husk of the berries being inert, and causing them to pass through the body without doing any injury—the kernel of the nut alone being poisonous. [Taylor, vol. I., p. 183.]

Symptoms.—Cocculus Indicus produces nausea, vomiting, griping pain, nervous excitement followed by insensibility. Prof. Reese states the symptoms indicate an action on the cerebro-spinal centres. And in a case where six persons in one hospital in the United States had taken this poison, two died in about half an hour. The others were seized with violent symptoms within half an hour, and recovered in several hours. The symptoms were:—faintness, confusion of mind, giddiness, dimness of vision, nausea, excessive thirst, severe abdominal pain, and in one case, insensibility. The pulse much weakened and respiration slow, but he thought not loss of consciousness. Reese further states that the poisonous principle—picrotoxin—is very bitter, and may be separated from the contents of the stomach by acidulating with hydrochloric acid, and then shaking up with ether, which holds the poison in solution, and deposits it in crystals. He also states that the external application of this poison has produced violent and even fatal effects. [Reese, p. 459.]

CHAPTER V.

OF ANTIDOTES.

As coroners and medical witnesses may be called upon to consider the effect of the treatment adopted prior to the death of the person on whose body the inquest is being held, this chapter on antidotes and proper treatment in cases of poisoning, may be found useful in emergencies when more complete works on the subject are not at hand.

General Remarks.—In many cases no antidotes are known, and in other cases when available, they must be employed as soon after the administration of the poison as possible. In the case of mechanically corrosive poisons, little advantage can be expected. The use of demulcent drinks may in almost all cases be recommended, and also the administration of emetics, such as a tablespoonful of salt, or of mustard, in luke-warm water, or clearing out the stomach by means of appropriate apparatus, unless vomiting has already taken place. The chemical action of antidotes is either in neutralizing acids or by forming substances more or less insoluble in the juices of the stomach, whereby they become wholly or partly inert, and may be gradually removed.

Sulphuric acid (oil of vitriol).—Any substance that will neutralize the acid may be used, as the sulphates are mostly inert. Chalk, calcined magnesia beaten up in water or milk, or if not handy, a little whiting. [See *Chambers's Journal* of March 9th, 1895, p. 156.] Bicarbonate of soda (baking powder), carbonate of soda (washing soda), soap suds, ammonia, or even pounded mortar may be used, copious diluents such as barley water, flaxseed tea, oil, etc. The action of the strong acid on the passages is, however,

so violent, that little benefit can be expected, and the same cause generally prevents the use of the stomach pump. Reese says the stomach pump should not be used from the risk of perforating the softened oesophagus. It is said that the carbonate of magnesia aggravates the effect, as it generates too much carbonic acid.

Nitric acid (aqua fortis).—The above remarks apply equally to this corrosive poison.

Hydrochloric acid, known also as *Muriatic acid* and *Spirit of Salt*.—The same treatment as for *Sulphuric* and *Nitric* acid should be adopted.

In a case of poisoning by a dose of about two ounces of muriatic acid taken to commit suicide, it was reported in the press in November, 1901, that the groans of the man attracted attention, and he was given some soda as an antidote, and was expected to recover.

Oxalic acid (known also in the arts as acid of sugar).—Finely pounded chalk or whitening is probably the best antidote; calcined magnesia in water or milk; any substance containing carbonate of lime, such as mortar, scrapings of whitewashed walls, may be used, mixed with milk or lime-water and oil. Opium relieves the severity of the symptoms, but the alkalies and their carbonates, potash, soda or ammonia would be of no avail, as the oxalates of their bases are soluble and poisonous. In cases of poisoning by any of these salts, the most efficacious antidote would probably be chalk *partly* dissolved in vinegar.

Phosphorus.—No direct antidote is known. Probably the administration of emetics is all that could be of any service, with subsequent use of weak soda or lime water.

Albuminous and mucilaginous drinks, holding hydrate of magnesia in suspension, may be used. Oil is objectionable as it tends to diffuse the poison. Oil of turpentine, if given early, is said to be a reliable antidote—the old oil

and not the fresh hydrocarbon. Oxygenated water introduced through a tube—the inhalation of free oxygen into the lungs—animal charcoal and nitrate of silver, are recommended.

Alkalies.—Weak acids, such as dilute vinegar, tartaric or citric acid (lemon juice) may be freely used. Mucilaginous drinks and sweet oil may be added. The stomach pump should not be used. Opium will relieve the pain, and stimulants may be given to counteract the depression.

Arsenic (*Arsenious acid*).—Hydrated peroxide of iron is undoubtedly a good antidote, administered by spoonfuls in milk every half hour. It cannot be said that the oxide will neutralize solid pieces of white arsenic, but it will act upon it as fast as it dissolves, and will thus give time for its removal from the bowels.

Reese states that vomiting should be induced, if not active, by a quick emetic (sulphate of zinc and ipecac), or a draft of mustard water, a tablespoonful of mustard, and that warm diluent drinks or demulcents, such as arrowroot, mucilage, raw eggs beaten up in milk, charcoal, etc., and chalk, are useful, followed by the use of hydrated susquioxide of iron in large doses, frequently repeated, and afterwards by a dose of castor oil.

The effects of arsenic are modified by the simultaneous use of alcohol or opium.

When the poison has been a salt of arsenious acid, a solution of acetate of the peroxide of iron must be used at the same time, as when an overdose of Fowler's solution has been taken.

Hydrated oxide of magnesium, obtained by adding liquor potassae to a solution of Epsom salts, may be used instead of the iron preparation; also, as above, the acetate of magnesia may be required, which is easily obtained by dissolving the carbonate in vinegar.

Chloride of Mercury or Corrosive Sublimate.—The white of two or three eggs beaten up in milk is perhaps the best remedy; it is not advisable to use a larger quantity. Finely divided metallic iron has been recommended as reducing the salt to the form of metallic mercury, which is comparatively inert. Vomiting should be induced by the free use of warm diluent drinks; gluten or wheat flour in a paste and milk, should be used.

A weak solution of liver of potash (sulphide of potassium) might form the insoluble sulphide of mercury, but this potash salt is not altogether harmless itself.

Lead.—Dilute sulphuric acid, when white lead has been swallowed, or a solution of Epsom salts or Glauber's salts, when any salt such as sugar of lead has been taken. For persons exposed to the dust of white lead, a lemonade made with sulphuric acid is a tolerably sure preventive of ill effects.

The free drinking of milk has been recommended as an antidote to lead poisoning. Reese recommends the soluble alkaline and earthy sulphates, especially the sulphate of magnesium, and vomiting should be early promoted by zinc sulphate, followed by opium and castor oil if necessary. After the salts have acted a quarter of a grain of belladonna may be given to relieve pain. The salts must be continued in small doses, while full doses of iodide of potassium should be given to try to remove all the lead in the system. The muscles should be treated by electricity and massage. It was stated in a newspaper that lead colic had been treated most successfully in Paris by large doses of olive oil. In chronic cases sixty grammes of oil a day were given with excellent results.

Copper.—Sugar, or rather honey, has been recommended as an antidote to salts of this metal, as the oxide may thereby be reduced to the form of suboxide; its action, however, is somewhat doubtful. Fine iron filings have also

been proposed, by which the metal may be separated. Probably white of egg and milk are the best substances that can be administered. Vomiting should be assisted by large draughts of warm water, containing tannic acid; yellow prussiate (ferrocyanide) of potassium may be used.

Antimony.—Probably strong green tea, coffee, galls or any vegetable astringent substance containing tannin, would be efficacious, if the vomiting caused by antimonial preparations did not prevent their retention. Hydrated peroxide of iron has been recommended. The stomach pump may be used; washing soda in not too strong solution may do good. Follow with opium and stimulants.

Zinc.—There does not seem to be any direct chemical antidote for this poison, beyond ordinary medical treatment. Use mucilaginous drinks and milk freely. Albumen is said to be the best antidote. Opium will allay the irritation.

Cantharides.—No chemical antidote is known. Evacuate by emetics and cathartics (castor oil), opium and stimulants.

Tin.—White of egg may counteract the irritant effects of chloride of tin, dyers' salt.

Nitrobenzole (essence of mirbane).—No antidote is known.

Aniline.—No antidote is known.

Carbolic Acid.—The speedy use of the stomach pump and washing out with water is probably the most effectual treatment. Emetics of mustard water and sulphate of zinc, albumin, oil and demulcents, or a solution of soap, may be tried. Sulphate of sodium and saccharate of lime are said to be antidotes. Oil should be applied to the skin and stimulants freely given to prevent collapse.

A recent report from London, England, which appeared in the Canadian press, stated a Dublin veterinary surgeon had discovered by accident that ordinary turpentine is an antidote to carbolic acid. The veterinary had some horses to attend to which were suffering from carbolic poisoning, and he asked for oil to be used as an antidote. What was given him proved quite successful, but it turned out that instead of oil it was turpentine. A few days after a blacksmith who was unconscious from the effects of carbolic poisoning, was treated with turpentine, with satisfactory results. A test was also tried on a dog poisoned with carbolic acid, and it recovered in a short time.

Prussic or Hydrocyanic acid.—For the organic poisons few, if any, antidotes are known. The action of prussic acid is so rapid that there would seldom be time to administer any. Possibly salts of iron with magnesia might be of service. When only a small quantity has been taken, or the vapour inhaled, dousing with cold water may be recommended, followed by cautious inhalation of diluted ammonia and chlorine vapours, with stimulants applied internally and externally, and hydrated oxide of iron may be used.

Cyanide of Potassium.—This poison is much used in photography and by persons engaged in electrotyping. It is powerful, and produces very similar symptoms as prussic acid, and should be treated in a similar manner.

Colchicum.—There is no known antidote.

Opium, Laudanum.—Use the stomach pump or emetics (sulphate of zinc or mustard water). The injection hypodermically of a two per cent. solution of apomorphine is recommended if the patient cannot swallow. Rouse the patient by dashing cold water over the face and chest, and by making him walk about and give him strong black

coffee. Prof. Reese says atropine should then be carefully administered hypodermically, every half hour watching its effects upon the pupils, and that electro-magnetism should be employed, also artificial respiration, if the other remedies fail. Alcohol is supposed to postpone the symptoms, and it is said that atropine and picrotoxin are antidotes.

Morphine.—See treatment under *opium*.

Alcohol.—Use the stomach pump or an emetic, cold water to the head. Plenty of fresh air, galvanism, ammonia and coffee. And see the confession of Holmes as to the effect of chloroform upon traces of drunkenness, ante p. 210.

Chloroform.—If taken in liquid form, the stomach pump should be used, or a prompt emetic, followed by stimulants. If inhaled, fresh air should be admitted and cold water applied to the face and chest. Suspending the body by the feet has proved successful. The tongue should be drawn out of the mouth to facilitate respiration. Artificial respiration and a direct galvanic current should be used. In a newspaper report under date of 17th April, 1894, it was stated, in a case of poisoning by chloroform, one-twentieth of a grain of strychnine injected hypodermically, with the aid of artificial respiration, caused immediate improvement, and after another injection of one-sixtieth of a grain, the patient recovered, suffering no evil effects beyond a severe attack of gastritis.

Chloral Hydrate.—Picrotoxin has been used successfully.

Strychnine.—The most equally poisonous alkaloid, curarine, has been recommended as overcoming the effects of strychnine in a remarkable manner. Strong coffee or other astringents may be used, and chloroform has been employed with success in some cases, enabling the system

to get rid of the poison in a few hours. Give large draughts of warm mustard water, a tablespoonful in lukewarm water, or a dose of ipecac and sulphate of zinc. If possible use the stomach pump. Chloroform by inhalation, Prof. Reese states, appears to have been attended with the happiest results, the patient being kept under its influence, carefully watching its effects. He strongly advises its early administration. Potassium bromide, hydrate of chloral, nitrate of amyl and atropine, are recommended. Paraldehyde, uretham and lutidine, have been given as antidotes. Reese deems tobacco, tincture of iron, tincture of iodine and aconite of no value. Stewart says chloroform is the direct antidote to strychnine, and he considers that most cases could be saved if, on the approach of the convulsions, the patients could be put vigourously under the action of chloroform. He also thinks tannin may be useful as an adjunct, as it precipitates strychnia as well as most other alkaloids.

Powdered charcoal in a little water is said to be the best antidote. See *Chambers's Journal* of March 9th, 1895, p. 156.

The outward symptoms of cerebral meningitis shortly before death, are said to be almost identical with those of strychnia poisoning.

A case occurred at Ottawa in November, 1901, of a young man who took about three grains of crude strychnine by mistake for a twenty-fourth of one grain of a solution of the poison. He was soon seized with severe convulsions. It was too late to use a stomach pump, but he was given emetics, and morphine and chloral were also given to counteract the effects of the strychnine, and after a considerable time the convulsions ceased, and the danger point was reported as passed.

And see the case of Dr. Palmer already mentioned.

Nux Vomica.—The antidote is the same as for strychnine.

Aconite, Aconitine (the active alkaloid principle of aconite) *Monkshood Wolfsbane.*—There is no chemical antidote. The stomach should be emptied by the stomach pump or an active emetic—a tablespoon of salt or mustard. Animal charcoal, tannin or astringent infusions, a cup of strong tea or coffee—the tea to be boiled a minute or two to extract the tannin—are recommended, and slight galvanic shocks passed through the heart, and artificial respiration. The inhalation of oxygen might be of some advantage. Strychnine being antagonistic to aconitine, might be used with caution. Prof. Reese states that the cases reported warrant the use of digitalis as an antidote.

Belladonna, atropine (the active principle of belladonna).—There is no chemical antidote. Evacuate the stomach. The physiological antidote is *morphine*, which should be carefully and repeatedly administered. The subcutaneous injection of *pilocarpine* has been found effectual. Give an emetic at once and do not let the patient sleep. Use the battery if possible, and give strong black coffee.

Datura stramonium.—The treatment should be the same as for belladonna.

Conium maculatum (spotted hemlock).—Emetics or stomach pump, followed by castor oil and stimulants.

Poison of Snakes.—For treatment, see the index under this heading.

THE WOURALI POISON.

A poison of a most deadly nature, but not very much known in the civilized world, has recently been noticed in an English magazine and the daily press of Toronto, but which is difficult to class from its composition being made

up, or is supposed to be made up, of various ingredients, such as the gummy resin of the Upas tree, and the fermented venom secured from serpents and other deadly reptiles, or prepared from a vine called *Wourali*, from which the poison takes its name. With this is said to be mixed two species of ants, one very large and black, and so venomous that its sting produces fever; the other is a little red ant which stings like a nettle; further ingredients being the strongest Indian pepper, and pounded fangs of the *Sabarri* snake and those of the *Counacouchi*, with some vegetable additions—altogether forming a venomous composition that would challenge the skill of any witch even a Shakespeare could produce.

This poison is used by the Indians of South America between the Amazons and the Oroonoque, and by the natives of Borneo, to poison the arrows or darts they blow through their blow-pipes, or blow-guns, as they are called, and which are used in their hunting, whether for animals, birds or "heads."

In the article in *Longman's Magazine*, as partly copied in a Toronto daily newspaper, the writer appears to spell the name of this poison thus—*Woorali*. In another article in the same newspaper, but of a previous date, the writer notices a poison which is evidently the same one, but gives it no name. The fact is, the name of it appears to be variable, probably according to the section of country in which it is used. Some writers spell it wourali, others woorali, wooraly, urari, etc., and in English it is called the Poison Plant of Guyana. The present writer will call it *Wourali* poison, being the name and spelling given it in *Wanderings in South America*, by Waterton, the erratic, but clever naturalist. He states all the Indians in the settlements of South American savages between the Amazon and the Oroonoque, use the Wourali poison, and that it is supposed to affect the nervous system, and thus destroy the vital

functions. And it is said to be perfectly harmless provided it does not touch the blood. However, it is certain that when a sufficient quantity of it enters the blood death is the inevitable consequence. There is no alteration in the colour of the blood, and both the flesh and blood may be eaten with safety. It destroys life's action so gently, that the victim appears to be in no pain whatever, and probably were the truth known, it feels none, saving the momentary smart at the time the arrow enters. These arrows or darts are blown by the breath of the Indians through a tube made of a reed which is hollow and straight, with the bore perfectly smooth. With them the natives can shoot from one hundred and fifty to two hundred yards, with wonderful force and accuracy.

The time in which the poison from the dart takes effect seems to vary according to the size and strength of the bird or animal or human being which is wounded. Waterton states that sometimes a wounded bird remains in the same tree where it is shot, and in three minutes falls down dead. Should the bird take wing, his flight is of short duration. Though three minutes generally elapse before the convulsions came on in the wounded bird, still a stupor evidently takes place sooner, and this stupor manifests itself by an apparent unwillingness in the bird to move. A fowl wounded in the thigh with a poisoned arrow from a blow-pipe, for a minute walked about, but very slowly, and did not appear the least agitated. During the second minute it stood still, and began to peck the ground, and ere half another minute had elapsed, it frequently opened and shut its mouth. The tail had now dropped, and the wings almost touched the ground. By the termination of the third minute it had sat down, scarce able to support its head, which nodded and then recovered itself, and then nodded again lower and lower every time. The eyes alternately opened and shut. The fourth minute brought on convulsions, and life and the fifth terminated together.

The flesh of the game is not the least injured by the poison, nor does it appear to corrupt sooner than that killed by the gun or knife.

An Ai, or three-toed sloth, when poisoned with the *Wourali* poison, Waterton states, sank in death without the least apparent contention, without a cry, without a struggle and without a groan. Of all animals, not even the toad or tortoise excepted, this poor ill-formed creature is the most tenacious of life. It exists long after it has received wounds which would have destroyed any other animal; and it may be said on seeing a mortally wounded sloth, that life disputes with death every inch of flesh in its body. The Ai was wounded in the leg, and put down on the floor, about two feet from the table; it contrived to reach the leg of the table, and fastened itself on it as if wishful to ascend. But this was its last advancing step; life was ebbing fast, though imperceptibly; nor could this singular production of nature, which has been formed of a texture to resist death in a thousand shapes, make any stand against the *Wourali* poison. First one fore-leg let go its hold, and dropped down motionless by its side; the other gradually did the same. The fore-legs having now lost their strength, the sloth slowly doubled its body, and placed its head betwixt its hind legs, which still adhered to the table; but when the poison had affected these also, it sank to the ground, but sank so gently that you could not distinguish the movement from an ordinary motion; and had you been ignorant that it was wounded with a poisoned arrow, you would never have suspected that it was dying. Its mouth was shut, nor had any froth or saliva collected there. There was no subsultus tendinum, or any visible alteration in its breathing. During the tenth minute from the time it was wounded, it stirred, that was all, and the minute after, life's last spark went out. From the time the poison began to operate, you would have conjectured that sleep was overpowering it.

Another experiment with this poison was also described by Waterton as follows:—A large well-fed ox, from 900 to 1000 pounds weight, was tied to a stake by a rope sufficiently long to allow him to move to and fro. Three wild-hog arrows were put in him—one into each thigh just above the hock, in order to avoid wounding a vital part, and the third was shot transversely into the extremity of the nostril. The poison seemed to take effect in four minutes. Conscious as though he would fall, the ox set himself firmly on his legs, and remained quite still in the same place till about the fourteenth minute, when he smelled the ground, and appeared as if inclined to walk. He advanced a pace or two, staggered and fell, and remained extended on his side with his head on the ground. His eyes a few minutes ago so bright and lively, now became fixed and dim, and though you put your hand close to him as if to give him a blow there, he never closed his eyelid. His legs were convulsed, and his head from time to time started involuntarily; but he never showed the least desire to raise from the ground. He breathed hard and emitted foam from his mouth. The startings, or subsultus tendinum, now became gradually weaker and weaker; his hinder parts were fixed in death; and in a minute or two more his head and fore-legs ceased to stir. Nothing now remained to show that life was still within him, except that his heart faintly beat and fluttered at intervals. In five and twenty minutes from the time of his being wounded he was quite dead.

Waterton, with characteristic courage, must have partaken of the poisoned animal, for he adds:—"His flesh was very sweet and savoury at dinner!"

The author concludes from these cases that the quantity of poison must be proportioned to the animal, and that those probably labour under an error who imagine that the smallest particle of the poison introduced into the blood has almost instantaneous effects.

In London an ass was inoculated with the poison and died in twelve minutes. And the poison was inserted into the leg of another, round which a bandage had been previously tied a little above the place where the *Wourali* was introduced. He walked about as usual, and ate his food as though all were right. After an hour had elapsed the bandage was untied and in ten minutes after death overtook him.

A she ass received the *Wourali* poison in the shoulder and died apparently in ten minutes. An incision was then made in its windpipe, and through it the lungs were regularly inflated for two hours with a pair of bellows. Suspended animation returned. The ass held up her head, and looked around, but the inflating being discontinued, she sunk once more in apparent death. The artificial breathing was immediately recommenced and continued without intermission for two hours. This saved the ass from final dissolution; she rose up and walked about; she seemed neither in agitation nor in pain. The wound through which the poison entered was healed without difficulty. Her constitution, however, was so severely affected that it was long doubtful if ever she would be well again. She looked lean and sickly for about a year, but began to mend the spring after, and by midsummer became fat and frisky. She survived the operation for nearly five and twenty years.

The strength of this poison was tried on a middle-sized dog. He was wounded in the thigh in order that there might be no possibility of touching a vital part. In three or four minutes he began to be affected, smelt at every little thing on the ground around him, and looked wistfully at the wounded part. Soon after this he staggered, laid himself down and never rose more. He barked once, though not as if in pain. His voice was low and weak, and in a second attempt it quite failed him. He now put his head between his fore-legs, and raising it slowly again, he

fell over on his side. His eye immediately became fixed, and though his extremities every now and then shot convulsively, he never showed the least desire to raise up his head. His heart fluttered much from the time he lay down, and at intervals beat very strong; then stopped for a minute or two, and then beat again; and continued faintly beating several minutes after every other part of his body seemed dead. In a quarter of an hour after he had received the poison he was quite motionless.

Waterton further states that the Indians in the settlement, *i.e.*, between the Amazon and Oroonoque rivers, seemed to depend more upon the *Wourali* poison for killing their game than upon anything else.

No antidote appears to be known for this poison. A ligature tied round the wounded part between the wound and the heart, when possible, and immediate recourse to the knife, has been suggested as the only chance of saving life. But the history of the she ass given above seems to suggest inflation of the lungs, long continued, as affording the most promising means of recovery. And possibly a similar treatment might prove successful in cases arising from some other poisons proving obstinate under the ordinary remedies. It has been stated as pretty certain that the principal ingredient of this poison is the juice of the *Strychnos Toxifera*, a tree or shrub of the same genus with that which yields *nux vomica*. De la Constance killed a bear with an arrow poisoned with *Wourali* in less than five minutes, and it is said nearly killed himself and a small boy while evaporating an aqueous solution of this poison, but both recovered under fresh air, a pint of wine and a quantity of sugar. Artificial respiration is recommended as the most efficacious means of preventing its effects. The poison has been suggested as a remedy for lockjaw and hydrophobia. From experiments it has been stated to be very beneficial in cases of lockjaw. It has been said that like snake poison, the *Wourali* poison is comparatively inert when taken into the stomach.

CHAPTER VI.

OF WOUNDS AND BRUISES.

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SEC. 1.—EXAMINATION OF WOUNDS.

The wounds on a dead body should be examined as to their situation, form, extent, length, breadth, depth and direction. And the presence or absence of effused blood, either liquid or coagulated, and of ecchymosis in the skin, should be noticed. The surrounding parts and edges of wounds should also be carefully examined, care being taken not to destroy the external appearances more than can possibly be helped, as these often afford valuable evidence in identifying the weapons used.[1] The dissection, too, should not be confined to the injured part, particularly when the death would not apparently be caused by the wounds found on the body. All the organs and cavities should be carefully inspected to see if any natural cause of death existed.[2] Deaths apparently caused by violence have sometimes been really caused by poison. This was the case in an instance mentioned by Dr. Taylor. A girl died apparently from a severe chastisement inflicted by her father for stealing, but the death being rather more sudden than would be expected from the nature of the injuries, the surgeon examined the stomach, in which he

[1] Taylor, Vol. I., p. 485.
[2] Taylor, Vol. I., p. 485.

found arsenic. The girl, to avoid her father's anger, had poisoned herself.[3] Such cases shew the necessity of examining the stomach, no matter how unconnected with that cavity the apparent cause of death may be. By an examination of the stomach important evidence relating to the time of death is sometimes discovered from the absence or presence of food therein, and when present, from its nature and degree of digestion.

A medical witness who has examined the body should not only be able to prove he found wounds or injuries sufficient to account for death, but he should be able to go further, and prove that no other cause of death could be found. To do this he must examine all the organs and cavities.

In cases of exhumation, injuries or fractures by pick or shovel of the grave-digger, may sometimes be mistaken for violence inflicted during life.[4]

The effects of vermin on a body may resemble, and should not be mistaken for wounds.[5]

Sec. 2.—Characters of a Wound Inflicted During Life.

Dr. Taylor says the principal characters of a wound inflicted during life are:—1. Eversion of the edges, owing to vital elasticity of the skin. 2. Abundant hemorrhage, often of an arterial character, with general sanguineous infiltration of the surrounding parts. 3. The presence of coagula.

There may be no appearance of bleeding, but the edges will be everted and the muscles and skin retracted.[6]

[3] Taylor, Vol. I., p. 485.
[4] Tidy, Vol. I., p. 85.
[5] Tidy, Vol. I., p. 92.
[6] Taylor, Vol. I., p. 487.

It seems wounds which prove immediately fatal do not always present any characters by which to distinguish them from wounds made upon the dead body. Wounds which prove fatal within ten or twelve hours present throughout much the same characters.[7]

The presence of gangrene, the effusion of adhesive or purulent matter, or swollen and enlarged edges, and the commencement of cicatrization, prove the wound was made sometime before death.[8] A burn which has occurred during life will, *in general*, leave marks of vesication with serous effusion, or a line of redness, or both, about the burnt part.[9]

A bruise produced during life, may not be apparent in a dead body when first recovered after some days submersion in water, but after a very few hours' exposure to air it will probably show itself with even exaggerated severity.[10]

SEC. 3.—CHARACTERS OF A WOUND MADE AFTER DEATH.

The following are the chief characters of a wound made after death, as given by Dr. Taylor:—1. Absence of copious hemorrhage. 2. If there be hemorrhage, it is exclusively venous. 3. The edges of the wound are close, not everted. 4. There is no sanguineous infiltration in the cellular tissue. 5. There is an absence of coagula.

When wounds are inflicted soon after death, it becomes more difficult to distinguish them from those made during life, according to the length of time that has elapsed since the breath left the body. The characters of a wound upon the dead body, made twelve or fourteen hours after death, are distinctly marked, but if inflicted before twelve or

[7] Taylor, Vol. I., p. 487.
[8] Taylor, Vol. I., p. 487.
[9] Taylor, Vol. I., p. 709.
[10] Tidy, Vol. I., p. 81.

fourteen hours have elapsed, they become less and less distinct, until medical testimony can prove no more than that the wound was made during life, or very shortly after death.[1]

Cuts and stabs, if made during life, bleed profusely, but much less, if at all, when made after death, so that the quantity of blood lost is something to judge from in these cases. Lacerated and contused wounds, however, do not always cause much hemorrhage.[2]

Sec. 4.—PRACTICAL REMARKS.

The discolouration of the skin (called ecchymosis) which usually follows contusions and contused wounds, does not always take place around or even near the seat of injury. Sometimes it is found at some distance, and leads to mistakes as to the exact place of the injury, or to the number of injuries received. These discoloured parts are generally recognized as not being the immediate seat of the violence from the skin over them being smooth and unabraded.[3]

This discolouration often proceeds from natural causes. Aged persons sometimes have it on their legs and feet.[4] Persons severely afflicted with scurvy will get it on the slightest pressure.[5] After death cadaveric ecchymosis or lividities repeatedly occur both externally and internally, particularly if the person died suddenly, in diffused patches, in stripes, traversing and intersecting each other in all directions, and in spots varying in size.

They do not occur on those portions of the body that are subjected to pressure, such as by actual contact with a bed, hence the surface on which a body rests may pro-

[1] Taylor, Vol. I., p. 487.
[2] Taylor, Vol. I., pp. 488, 489.
[3] Taylor, Vol. I., p. 490.
[4] Taylor, Vol. I., p. 494.
[5] Taylor, Vol. I., p. 495.

duce stripes which to the unprofessional observer would present the appearance of being the effect of blows from a stick or other violence,[6] or a line round the neck having the appearance of the mark of a cord, may be produced. But whether proceeding from infirmity or disease in the living, or from congestion or gravitation in the dead, a surgeon can pretty readily distinguish this kind of discolouration from that produced by blows. Almost invariably the cutis alone is found discoloured when the skin is cut into, and the extravasation of blood, compared to the size of the marks, is slight.[7]

Post-mortem lividities appear only on dependent parts of the body, are irregular in shape, with well defined edges, are not elevated above the skin, the colour is uniformly dark, and remains tolerably constant until putrefaction sets in. No zones of colour form round the edges. In life bruises the position depends on the seat of the injury; they often have the shape of the inflicting instrument, effused blood flows upon incision, the colour is not generally uniform, the bruised parts often elevated above the surrounding skin, the dark purple colour after eighteen to twenty hours, or sometimes as late as two or three days, becomes highly tinted at the edges, and more or less violet coloured, and is succeeded by various shades of green, yellow and lemon, the centre always being the darkest part. During these changes the spot enlarges. There is effused blood into the true skin. Internal lividities may sometimes resemble the effect of diseases or injuries, such as congestive apoplexy of the head or lungs, meningitis, injury to the back during life, inflammation of the intestines.[8]

Putrefaction will also produce suspicious-looking marks on dead bodies, but their general characters are well dis-

[6] Taylor, Vol. I., p. 495; Tidy, Vol. I., p. 65.
[7] Taylor, Vol. I., p. 495.
[8] Tidy, Vol. I., p. 66.

tinguished, and cannot easily be confounded with marks of violence.[9]

While we bear in mind that apparent marks of violence found on dead bodies are often the result of natural causes, we must at the same time remember that severe internal ruptures and lacerations may occur from violence, without there being any external discolouration to indicate their cause.[10] These ruptures can be distinguished from those occurring from natural causes by the absence of disease in the organ injured. The presence of ecchymosis is commonly presumptive evidence of the infliction of violence, but its absence does not negative violence.[1]

Wounds made with a cutting or stabbing instrument can generally be recognized by their appearance. The edges are clean and regular. The wound produced by a stab is apparently smaller than the instrument used, owing to the elasticity of the skin; but sometimes, from its mode of infliction, it is larger. When the weapon passes through the body, the exit wound is usually smaller than the entrance aperture.[2]

Wounds are often accounted for by stating the party injured fell upon stones, glass, crockery, or other sharp substance, and wounded himself. A careful examination of the wounds will generally expose any pretence of the kind. Accidental injuries of this nature present marks of laceration and irregularity.

Contused wounds are the most difficult to deal with. They can seldom be positively ascribed either to criminal violence or to mere accident, from an examination alone. The number, extent and position of the injuries may help to explain their origin. An accidental fall will seldom produce a *number* of wounds, nor will there be a very copious

[9] Taylor, Vol. I., p. 496.
[10] Taylor, Vol. I., p. 496.
[1] Taylor, Vol. I., p. 494.
[2] Taylor, Vol. I., p. 499.

effusion of blood beneath the skin, nor will such a fall usually wound the top of the head. Contused wounds on bony surfaces sometimes look as though made with a cutting instrument.[3]

An examination of the dress worn over the parts wounded may assist in discovering the nature of the injury. A cutting weapon will divide the dress with clean edges, but a dull instrument will seldom divide it at all, and if it does, the edges will generally be ragged. Any dirt or other substance near the injury to the dress should be noted, and the instrument by which the wound is supposed to be made examined for similar substances.

Evidence as to whether a wound is the result of suicide, homicide or accident, can sometimes be gathered from a close examination of its situation, direction, shape and extent. Coroners cannot be too particular in gathering the *minutiæ* of wounds from a medical witness, for if anything important is omitted at the inquest, any further examination of the body is seldom practicable.

The weapon with which a wound is produced is not always covered with blood, particularly if the wound is a stab. Sometimes no blood is found on the weapon, or there is only a slight film, which, on drying, gives to the surface a yellowish-brown colour.[4] When blood is found, the manner in which it is diffused over the weapon should be carefully noticed.[5] Any hair or fibres adhering to the weapon, or imbedded in blood on the weapon, should be examined with a microscope or powerful lens, and its nature—whether human hair or not, or cotton, woollen or other fibres—ascertained.[6] Foreign substances, such as wadding, paper, hayseeds, etc., found in wounds, may

[3] Taylor, Vol. I., p. 502.
[4] Taylor, Vol. I., p. 536.
[5] Taylor, Vol. I., p. 536.
[6] Taylor, Vol. I., p. 537.

afford strong evidence of their origin if carefully examined.[7] Mud found on clothing may serve to connect the accused with an act of murder, if there is anything peculiar in the soil where the murder is committed. The mud should be examined microscopically.[8]

Scorched hairs away from the actual seat of a burn are suggestive of its origin having been a flame.[9]

In all cases of death from violence or maltreatment, the mortal injury is not necessarily specific and well-defined, for death may result from shock, without there being any visible internal or external lesion. The shock may be occasioned by a single blow, or by many injuries each comparatively slight.[10] In such cases the age, constitution, and the previous state of health or disease may accelerate or retard the fatal consequences.[1]

It is sufficient to constitute murder that the party dies of the wound given by the prisoner, although the wound was not originally mortal, but became so in consequence of negligence or unskilful treatment; but it is otherwise when death arises not from the wound, but from the unskilful applications or operations used for the purpose of curing it.[2] In the one case death results from the wound by improper treatment, in the other from improper treatment irrespective of the wound. When death is owing to the wound, it matters not if more skilful treatment or more favourable circumstances would have prevented the fatal result.

It is sufficient to prove that the death of the party was accelerated by the malicious act of the prisoner, although the former laboured under a mortal disease at the time of the act.[3] A man is not bound to have his body always in

[7] Taylor, Vol. I., pp. 538, 543.
[8] Taylor, Vol. I., p. 538.
[9] Tidy, Vol. II., p. 95.
[10] Taylor, Vol. I., p. 586.
[1] Taylor, Vol. I., p. 586.
[2] 1 Hale, 428.
[3] 1 Hale, 428; *Regina* v. *Paine*, C. C. C. 1880.

so sound and healthy a state as to warrant an unauthorized assault upon him.

A case occurred at the assizes held in London, Ontario, in September, 1902, where the accused was on trial for murder. The dead man was an Indian and was supposed to have been killed by the prisoner in a row that took place between them, but the medical men who made the *post-mortem*, stated the Indian's heart was two and a half times heavier than normal weight, and was in such a condition that the Indian might have died at any moment—that any undue excitement, excessive drinking, fear, fright or a blow, might bring on the fatal issue—which it was could not be told. The Judge at once directed the jury to return a verdict of acquittal.

Severe wounds of the head, heart, great blood-vessels of the neck, ruptures of the diaphragm and of the bladder, generally prove rapidly fatal, and immediately deprive the injured person of the power of volition and locomotion: but cases are on record of persons surviving for some time after receiving such injuries, and retaining the power of volition and locomotion, almost to the time of death.

A difficulty may also occur from persons who were near the scene of a murder at the time of its committal, not having heard any cries or noise, which can be explained in cases where the trachea is found divided. An injury of this kind produces a loss of voice.[4]

Although, in cases of severe wounds persons may survive long enough to perform various acts of volition and locomotion, yet the infliction of a mortal wound, particularly when accompanied with much hemorrhage, will generally prevent all *struggling*.[5] This is important to know in some cases, in order to fix the time of wounding. As long as the injured party was struggling with his antagonist, it is pretty certain he was not thus wounded.

[4] Taylor, Vol. I., p. 632.
[5] Taylor, Vol. I., p. 634.

If the injured person has been stupid or insensible previous to death, strict enquiries should be made as to whether he was intoxicated or not. And in some cases where the direct cause of death is asphyxia, the asphyxia may be caused by criminal violence, and the medical witness should prepare himself, if he sees the body, to speak as to this.

When death ensues from rupture caused by unauthorized violence, care should be taken to ascertain if the part ruptured was in a diseased condition or not, for if previous disease is established, it may mitigate the offence of the assailant in some cases. Severe ruptures of the various organs may take place without there being any external signs of injury to account for them.[6]

There has been some discussion as to whether people in trouble ever really die of an actual "broken heart." The London *Daily News* once stated that the late Sir George Pagot mentions an actual case of broken heart cited by Dr. J. Mitchell, of the Jefferson College, Philadelphia. The captain of a packet, on which Dr. Mitchell was surgeon, frequently conversed with him respecting a lady who had promised to become his bride on his return from the voyage they were then making, and he evinced great warmth of feeling towards her. On reaching port the captain was abruptly informed the lady had married some one else. Instantly the captain was observed to clasp his hand to his breast and fall to the ground, and almost immediately expire. A post-mortem revealed that his heart was literally torn in twain. The tremendous propulsion of blood, consequent upon such a violent shock, forced the powerful muscular tissues asunder and life was at an end.

Another suspected case was reported in March, 1903. A gentleman walked from a room where he had been engaged in conversation with his son, and not returning, a

[6] Taylor, Vol. I., p. 665.

search was made and he was found lying dead on the floor. Six hours later his wife also died, and the attending physician stated it was clearly a case of death from a broken heart. The physician appears to have arrived at his conclusion from the lady having been apparently in excellent health, and on hearing of the sudden death of her husband, she sat for some time quietly and without giving way to tears, and then began to breathe heavily and died in a few moments. Both husband and wife were elderly people, and as far as the report stated it would appear there was no *post-mortem*, and it seems possible the lady may have died from shock without any actual rupture of the heart.

As regards the effects of apparently mortal, or very severe wounds, witnesses should be extremely cautious in giving their evidence so as not to be too positive in their assertions. No matter how severe wounds, whether from gun-shots, or other causes, may be, it seems impossible to say in many, if any, cases, what will be their immediate or ultimate results as regards recovery from them; or the power of the wounded person moving, or speaking, after their infliction. The case of Captain Nolan, as related by Kinglake in his work on the Crimean War, is here in point. A Russian shell burst near the captain as he was conveying the message to the commander of the Light Cavalry at Balaclava which resulted in the "blunder" that ordered the "charge of the Light Brigade." A fragment of the shell struck Captain Nolan full in the chest and passed into his heart. He was on horse-back with sword in hand and arm uplifted, apparently trying to stay the advancing brigade, and so avert the mistake that had been made. The sword dropped from his hand, "but the arm with which he was waving it the moment before, still remained high uplifted in the air, and the grip of the practised horseman, remaining as yet unrelaxed, still held him firm in the saddle." The horse finding the reins loosened, wheeled about, and began to gallop back towards the brigade.

Then from Nolan with "his form still erect in the saddle, his sword-arm still high in the air—there burst forth a cry so strange and appalling that the hearer who rode the nearest horse called it 'unearthly' . . The dead horseman rode on till he passed through the interval of the Thirteenth Light Dragoons. Then at last he dropped out of the saddle."

If this was not a well-known historical event, the "skilled witness" would most like pronounce such a wound as immediately fatal, and of a character that would prevent a horseman remaining in the saddle a single moment, particularly when the horse wheeled about; and would also prevent any screaming, or holding up of the arm for so long a time. Possibly the witness would be correct in saying death would be immediate, but he would be wrong in his other conclusions.

At the Spion Kop disaster one of the Lancaster Fusiliers while lying prone on the ground firing, was cleanly decapitated by a shell, but the headless body rose, stood upright for a few seconds and then fell.

And in the Connor case at St. John, New Brunswick, the body of deceased was found with two bullet holes in it—one in the head, and one in the heart—from a bulldog revolver found beside it. Both wounds were described as almost immediately fatal, and the doctors expressed surprise that Connor could have fired the second shot.

A still more remarkable case occurred in Germany. At a congress of the German Chirurgical Association held in April, 1902, at Berlin, the well known Prof. Bergman introduced a patient who had attempted to commit suicide with a small calibre gun. The bullet penetrated the heart, but the wound healed quickly. Subsequently "X" rays revealed the bullet lying in the right ventricle, bounding with each beat. Eventually it became encased, and moved rhythmically with the heart, not causing the least inconvenience.

And in March, 1902, another remarkable case occurred in France. The particulars were related by Dr. Fontan before the Academy of Medicine, and were as follows:—A young soldier received a knife stab which penetrated the left ventricle of the heart. The wound was stitched up and after a few days pleurisy and phlebitis of the right leg supervened, but this condition passed away, and the man was cured. Another account of this case stated the knife pierced the pericardium, causing a lesion of the heart, and that Dr. Fontan opened the cavity and applied three stitches in the heart.

Many other instances of remaining powers in the desperately wounded, and of remarkable recoveries from apparently mortal wounds, have been recorded during the progress of the Boer War. These cases should warn persons called to give evidence as skilled witnesses or experts, not to speak with too great assurance unless they are quite certain of their ground. It is better to merely state what they would expect to follow, rather than to say they know what will follow, in particular cases.

By bearing such cases in mind, difficulties arising from the body being found at a distance from where the injury could have been received, etc., may be removed.[7]

In cases of death from gunshot wounds it is sometimes very material to ascertain whether the piece was fired near to or at a distance from the injured person. Dr. McKay of the Nova Scotia Medical Board and a graduate of the University of Halifax and Royal College of Surgeons, England, in his testimony on the trial of *William Preeper* and *Jane Doyle* for the murder of *Peter Doyle*, stated "there are *indicia* in Medical Science from which it can be said at what distance small shot were fired at the body.[8]

[7] See Taylor, Vol. I., p. 634.

[8] *Preeper* v. *The Queen*, 15 S. C. 401, an instructive case on the admission of evidence.

If the muzzle of the piece is near the body the edges of the aperture of entrance will be torn and lacerated, and will appear blackened. The clothes will also be found blackened, and sometimes burnt. If the muzzle is not in immediate contact with the body, the wound will be found rounded, or if the bullet strikes obliquely, oval. When the piece is fired at some little distance, the aperture of entrance will be round or oval, the skin slightly depressed, the edges appearing a little bruised, but no mark of burning will be found.[9]

Prof. Tidy points out that it should not now be regarded as certain proof that a shot was not fired close to the person because of the absence of tattoo marks, since the improvements in making powder obtain almost complete combustion of the carbon particles.[10]

The depth of the wound and the internal effects of it generally, will give some evidence of the force of the projectile, and from this some opinion may be formed of the distance from which the shot was fired, particularly if the capacity of the weapon, its condition of cleanliness, and the nature of the charge, can be ascertained.

In the case of the suspected murder of James W. Freeman at St. Thomas, reported in a Toronto newspaper of 15th September, 1902, where it was at first supposed the gun had been discharged accidentally, but from the shot having spread over an area of six inches of the boy's face, and there being no marks of powder thereon, a strong suspicion arose that it was a case of murder and not an accident. The body was exhumed at the instance of Inspector Murray and it was found to be a case of murder by the confession of the suspected person.

If possible, the projectile in cases of gunshot wounds should be carefully examined, and means adopted to pre-

[9] Taylor, Vol. I., p. 685.
[10] Tidy, Vol. I., p. 164.

serve its identity, should a trial be at all likely to follow the inquest.

The gun or pistol should also be preserved and proof of its identity secured, for its carrying capacity and condition as regards cleanliness, as well as its ownership, may become important.

Several wounds may be produced on the same body by a single bullet, by its splitting on angular surfaces or projecting ridges of bone. A case once occurred in which a ball, after entering a man's body, divided into two pieces, which, passing through one leg, lodged in the opposite one, thus making *five wounds!* three of entrance and two of exit.

And Stanley in his work "Through the Dark Continent," mentions an accident which occurred to young Kalulu, one of his followers, from the discharge of a Snider rifle, by which he was wounded in *eight* places.[1]

The ball may also divide, and one portion pass out of the body and the other lodge in it, leading a careless observer to suppose the whole ball had made its exit.[2]

A number of wounds may also be due to the piece having been loaded with two or more bullets.

In cases of suicide by pistol shots, the marks indicating a near discharge of the pistol are usually found and the marks of gunpowder on one of the hands.

A gun fired close to a person may cause death, although merely loaded with wadding or even gunpowder.[3]

It seems an assailant may occasionally be identified from the flash of a gun on a dark night if the distance is moderate and the smoke not great, but Dr. Taylor appears to consider that the man who declared he recognized a robber through the light produced by a blow on his eye in the dark (!) pulled the long bow.

[1] Vol. II., p. 115.
[2] Taylor, Vol. I., p. 687.
[3] Taylor, Vol. I., pp. 689, 701.

And Prof. Tidy states that the subjective sensation of flashes of light, called "seeing sparks," produced by a blow on the eye-ball, is not worth serious discussion in this connection.[4]

In the clearest moonlight a person cannot be recognized at a greater distance than sixteen to seventeen yards, or by star-light, further off than ten to thirteen feet.[5]

It is possible that a chemical analysis of the projectiles found in gunshot wounds may be of service. Such an analysis may connect the projectiles with metal of a similar nature found on the accused or in his use.

Should it be material to ascertain whether a gunshot wound was received while retreating from or approaching towards a person who fired the shot, an examination of the wound itself will generally afford evidence on the point. If the bullet has entered the front of the body, the person must have been facing his antagonist, unless he was struck by a glancing or rebounding ball; and if it has entered the back part, the contrary must have been the case. When the projectile passes through the body, of course there may be a wound in front and behind also; it will then be necessary to find out which is the aperture of entrance and which the aperture of exit. The former is generally three or four times smaller than the latter, the skin is slightly depressed, and, if the muzzle of the piece was close to it, may be blackened or burnt. On the other hand, the orifice of exit is not only larger but more irregular and is never discoloured by the powder or flame, its edges are somewhat everted, and if there is any bleeding, it will most likely be from this aperture.[6]

Prof. Reese states that the entrance orifice of the ball is livid and depressed, and is larger than the point of exit

[4] Tidy, Vol. I., p. 214.
[5] Tidy, Vol. I., p. 212.
[6] Taylor, Vol. I., p. 685; Tidy, Vol. I., p. 160.

when the explosion occurs in close contact with the body, but when the piece is fired from a distance the aperture of entrance is always smaller than that of exit; and that after some days the contused margins of the entrance wound slough away, thereby enlarging the orifice, while those of the exit partially adhere, causing the latter wounds to appear smaller than the former.[7]

To determine the direction a ball came from with regard to the person struck, is occasionally more difficult. If the piece was fired upwards, the course of the ball through the body may still be downwards, owing to its striking a bone or other hard substance, and *vice versa*. And if fired on a level with the orifice of entrance, the course of the ball may also be deceptive from similar reasons.

The fact of the aperture of exit being immediately opposite that of entrance, does not necessarily prove the shot passed directly through the part struck, for balls have been known to enter the front of the head and come out at the back, without penetrating the bone, their course having been round the skull under the skin merely.[8] In one case on record the ball struck the upper part of the *abdomen*, and passed out at the back nearly opposite, without traversing the abdominal cavity. It had deflected beneath the skin. This deflection of balls is most often met with when they strike obliquely a curved surface.[9]

[7] Reese, pp. 114, 115.

[8] A case of the nature referred to in the text was reported in a Toronto paper as follows: "ANOTHER SHOOTING ACCIDENT. A few days ago, a boy, who refused to give his name, or that of any of the parties concerned, came to Dr. Fisher's office to have a pistol bullet taken out of his head. It was found on examining the wound that the bullet had cut the skin on the left side of the head just above the ear, and that, failing to penetrate the skull, it had traversed the scalp and lodged between the skull and the skin, nearly opposite the place where the skin was first broken. The bullet was removed without any difficulty. On being asked how the shooting took place, the boy refused to give any particulars further than that it was accidental." Tidy, Vol. I., p. 162.

[9] Taylor, Vol. I., p. 689.

It seems impossible in some cases to state with any certainty what would be the course of a ball after entering a body. In one reported case the ball had entered near the left nipple, one inch to the right, and three-eighths of an inch below it, penetrating the skin and tissues, passing through the fifth rib at the junction of the rib with the fifth costal cartilage. The heart, one and three-eighth inches above the apex, was found to have a wound penetrating the wall of the right ventricle and the septum between. From the heart the bullet took a most unusual course, for, after a momentary stop in the heart, it was forced by the pulsations into the femoral, or main artery, and in the few seconds that vitality remained, was carried as far as the thigh of the right leg, where it was found.

A case reported from the Boer war was not one of a deflected ball, but is instructive as showing how cautious experts should be in stating what will be the result of wounds. A cavalry "non-com." was shot through the head. The bullet entered his forehead and came out at the back of his head. The doctors took a part of his skull away and he was doing very well when the report of the case was received in England. The reporter of the case näively said in closing: "but he won't be any use for soldiering again." In another case a man had a bullet go straight through his head from side to side, just above the ears. The wound entirely healed and he became apparently as well as ever.

The experience also gained by the Boer war should make experts very cautious in giving opinions upon wounds whether they are certainly fatal ones or not. Take for instance the case of Private O'Leary, who was shot in the head at Colenso. The bullet lodged in the brain, rendering him speechless, sightless and paralyzed. His life was despaired of, but Sir William MacCormac, President of the Royal College of Surgeons, who was acting as volunteer

surgeon with the British army in South Africa, removed a portion of the man's brain, extracted the bullet, and O'Leary afterwards arrived at Southampton and having practically recovered his lost senses.

The Mauser bullet appears to be one of the most humane, as those persons wounded by it agree that it causes a very small amount of shock and a very slight amount of pain. This is confirmed by Sir William MacCormac. He told Reuter's representative that:—"Speaking generally, the wounds inflicted by Mauser and Lee-Metford bullets are very similar in character, and both are certainly much less fatal than were the larger projectiles used in former wars. In a great many instances the body seems capable of being traversed in almost any direction without receiving mortal injury. Barring exceptional cases, the chief characteristics of the wounds I have seen, has been the very small entrance and exit, and the intervening soft parts have been damaged to the least possible extent. So much was this the case that wounds in the chest and abdomen have been recovered from in a way I have never known before."

Sir William also stated that:—"Even outside the range of killing by explosion, lyddite has the effect of turning its victim yellow, and producing extreme sickness of long duration. It is said to cause jaundice." And he added: "It certainly is not possible to mistake Mauser or Snider bullet wounds for those caused by explosive bullets."

A correspondent of the *Lancet* has stated that:—"Not only are Mauser bullet wounds frequently almost painless at the time of infliction, but that a large number of them had rapidly healed by first intention, a course which was rare by the wounds from bullets of larger calibre." The correspondent also stated the difference between wounds from Mauser bullets and Martini-Henry bullets was extremely marked. He said the Mauser does not inflict so

severe a wound, and the crushing power is distinctly less. That in most cases it was difficult to determine the aperture of entry, and that of exit, from the appearance of the wound, both apertures in nearly all cases being identical in size where the bullet traverses the muscular structures only. That in the case of perforation, grooving or tunnelling of bones, the aperture of exit is much enlarged. He added it was simply surprising how quickly and readily these wounds heal—the tissue being so little disturbed that they closed immediately after the missile had passed, and the healing began at once. Another correspondent stated the wounds caused by Mauser bullets were humane in the extreme. The wounds, both of entrance and exit, were small, and presented a clean punched-out appearance, being almost entirely free from contusion or laceration. Among the cases brought to hospital, hemorrhage was conspicuous by its absence.

The cicatrix of a wound in the case of a person who has done growing is smaller than the wound that caused it, but in the case of a wound on a child, it increases in size as the body grows.[10]

When the body of an individual who is suspected to have died from external violence, is not seen until some time after dissolution, the injuries will appear to be of a much more aggravated nature than they ought to be considered by the medical jurist.[1]

[10] Tidy, Vol. I., p. 162.

[1] Taylor: Devergie: Beck.

CHAPTER VII.

OF THE HYDROSTATIC TEST.

This test, although now exploded as a reliable one, for the purpose of proving the complete live *birth* of infants, is still one which may afford important corroborative evidence on the subject, and its use therefore should not be neglected.

The mode of performing the hydrostatic test is as follows:

The lungs are removed from the chest in connection with the trachea and bronchi, and placed on the surface of water, free from salt or other ingredient which would increase its specific gravity—pure distilled or river water is recommended.[1] If they sink, notice whether rapidly or slowly. Then try if each lung will sink separately; cut them into several small pieces, and see if these pieces float

[1] Prof. Tidy says use a *large* vessel filled (by preference) with *rain* water. And his directions are: "Remove the lungs and heart entire, securing all the larger vessels to prevent loss of blood." And he gives a further test after making the ones mentioned in the text, namely: Each piece of lung is to be wrapped in a cloth, the cloth then to be placed on the floor, and covered with a piece of board and pressure applied by a person standing on the board for a few minutes. The several pieces, after this treatment, are again to be tested whether they sink or float. If the lungs float by all these tests there is strong presumptive evidence in favour of respiration, and conversely if they sink there is strong presumptive evidence in favour of non-respiration. He also says: Note whether any morbid products (tubercle, etc.), or foreign substances (meconium, mucous, etc.), are present in the air-cells, and passages—(Tidy, Vol. I., pp. 264, 265). Taylor thinks there is no good reason for placing the lungs in the water with the heart and thymus gland attached, as, he says, some have recommended. Taylor, Vol. II., p. 331.

or sink. If the lungs float, note if they float high above the surface, or at or below the level of the water, and see if the buoyancy is due to the lungs generally, or only to the state of particular parts. By considering the general result of these experiments, an inference may be drawn as to whether respiration has taken place at all, or partially, or perfectly.[2]

While performing this test, the remarks regarding it in Chapter III., s. 3, should not be lost sight of.

[2] Taylor, Vol. II., p. 330.

CHAPTER VIII.

BLOOD TESTS.

Examination of blood stains should always be left to experienced professional men, if possible, but where such assistance cannot be obtained, the following tests of blood may be found useful.

The colouring matter of blood readily dissolves in *cold distilled* water, forming, if recent, a bright red solution.[1] The red colour of this solution is not changed to a crimson, blue or green tint by a few drops of a weak solution of *ammonia*. If the ammonia is concentrated or added in large quantity, the red colour turns brownish.[2]

Blood being heavier than water, will sink when placed in that liquid, descending in streaks. After ascertaining that the specific gravity of the suspected substance is greater than water,[3] heat the solution to about 170° Fahr., when, if the substance is blood it will coagulate, and the red colour be destroyed, and a muddy brown flocculent precipitate formed. Heat seems to be a good test of blood, as other red colouring matters do not lose their colour by its application. Nitric acid and a solution of corrosive sublimate will both produce a precipitate in the red solution of blood.

The red colouring matter of blood is always more or less mixed with albumen, which gives to a dried blood-stain on linen, or cloth, a well-marked stiffness.

[1] Taylor, Vol. 1., p. 555.

[2] Taylor, Vol. 1, p. 556.

[3] If the stains have been subjected to heat before being placed in water, this test will fail, as heat when applied to dry blood, whether on clothing or weapons, renders it insoluble in water.

A solution of the red-colouring matter of blood in water produces with tincture of guaiacum a reddish-white precipitate of the resin. On adding to this a solution of *peroxide of hydrogen*, a beautiful blue colour is more or less rapidly brought out. If a sufficient quantity of alcohol or ether is added, the precipitate will be dissolved and a deep sapphire blue solution will result. Other red colouring matters, when thus treated, will give a reddish colour to the resin, but undergo no change on the addition of peroxide of hydrogen, and are thus well marked and distinguished from blood. Whether the blood is new or old, concentrated or exceedingly diluted, the test produces the blue colouration. It produces the change better in a diluted, than in a concentrated, state. A drop of blood diffused in six ounces of water may be thus detected in one or two drachms of the mixture.[4]

These tests, it must be remembered, can merely prove the matter to be *blood*. Whether *human blood* or not must be otherwise ascertained.

When the blood is on clothing endeavour to ascertain whether the articles examined were worn by the deceased or accused, as the case may be. And try to form a reliable opinion of the direction in which the blood fell—whether it indicates the deceased was standing, or in any particular position, when the blood flowed upon the clothing. Blood that has run straight down a man's face, would indicate that he was standing or sitting in an upright position when wounded.

As a rule blood spots have well-defined and somewhat raised edges. Their *general appearance* should be noted. Examine them with a large magnifying glass. If they are on a coloured substance they can be seen best by artificial light.[5]

[4] Taylor, Vol. I., pp. 555, 556.
[5] Tidy, Vol. I., p. 184.

After the lapse of a week, Dr. Taylor states, it is extremely difficult to give an opinion as to the actual date of a blood stain on white or nearly colourless linen and other stuffs. And on coloured clothing no changes are observable in the stains from which to form an opinion as to their date of origin. Spots of blood on white stuffs, when recent, are of a red colour, which changes to a reddish brown or a deep red-brown after a few hours.[6]

If the colour of a blood stain is bright-red, it is a proof that the stain is recent, but if it is brown it is no proof that it is old.[7]

If coagulated fibrin be found in the blood-stain, the most that can be stated is that there is a clear presumption that the blood was recently shed.[8]

A blood stain on the *handle* of a knife or axe may present a very different colour or appearance to one on the *blade*, owing to the rapid change in the colouring matter of blood from the soluble to the insoluble form, by the action of oxide of iron.[9]

When the suspected stain is on clothing, dip pieces of the stained part in a small quantity of distilled water, until it is charged with sufficient of the colouring matter to apply the tests above given. If the solution is too small in quantity to obtain coagula by heat, the chemical tests must be abandoned, and the microscope resorted to. If possible, it should be ascertained on which side of the clothing the blood fell, as this may be of importance. Generally, the side which first comes in contact with blood, will be more stained than the other.

If the stain is on plaster or wood, cut or scrape off a portion and soak it in water, and proceed in like manner.

[6] Taylor. Vol. I., p. 556.
[7] Tidy. Vol. I., p. 189.
[8] Tidy. Vol. I., p. 201.
[9] Tidy. Vol. I., p. 190.

It is recommended in these cases to first of all examine a portion of the plaster or wood which is unstained.

Suspected spots on weapons may be tested by exposure to a heat of 77° to 86° Fahr. If of blood they will come off in scales, but not so if they arise from rust.[10]

Blood-stains which cannot be removed intact for purposes of evidence, should be carefully moistened by means of a soft broad brush, with a mixture of one part glycerine to ten parts of water, and an impression taken on thick unsized paper of rather rough texture.[1]

To apply the tests above given to such stains, the following method is recommended:—Pour a stratum of water upon a piece of plate-glass, and lay the stained part of the weapon upon the surface. By this means the colouring matter of blood will be dissolved and a solution obtained to experiment upon.

The stains of blood on a weapon if scraped off and heated, will give off a smell of burnt horn and evolve ammonia, which may be detected by its turning *red* litmus-paper, *blue*.

Prof. Tidy says: "That to the question 'was the blood human' it is better, in the present state of science, at once to confess our inability to give a definite reply."[2] Prof. Reese in the second edition of his work stated as the result of investigations: "That given a skilled and careful microscopist with a good instrument of proper amplification, it will generally be possible to diagnosticate a human blood stain from that of any of the lower animals, with the possible exception of the guinea-pig and opossum (excluding, of course, those few animals more rarely met with, whose corpuscles are larger than the human, viz., the elephant, great ant-eater, walrus, whale, sloth and capybara), and it will always be possible absolutely to distinguish between

[10] 2 Beck, 146.
[1] Tidy, Vol. I., p. 155.
[2] Tidy, Vol. I., p. 200.

human blood and that of the ordinary domestic animals." But in the third edition (1891) of his book, he withdraws this statement and states that "The opinion of the best informed and most experienced experts is that it is impossible, in the present state of science, to say of a given specimen of blood fresh or dry, more than that it is the blood of a mammal."[3]

Taylor in the third edition of his Medical Jurisprudence published in London in 1883, states it is impossible in the present state of science, to affirm that the corpuscles extracted from blood stains dried on clothing or weapons, are not those of some domestic animal belonging to the class mammalia.

In the daily *Mail and Empire* newspaper of Oct. 5th, 1901, there was an article headed:—"The Laboratory as a Detective," in which was given the substance of an interview with an unnamed person styled "a well known medical expert in crime," wherein the expert in comparing the relative importance of the work of detectives with that done in the laboratory of scientific men in the exposure of crime, was stated to have informed the writer of the article that assuming a dark stain on clothing was blood, all the detectives in the world could not say whether it was the blood of a human being or of an animal. But that this stain was all the medical analyst wanted to enable him to know that the blood in the stain was that of a human being. A few days before this statement appeared, the same newspaper in the issue of Oct. 1st, 1901, stated that——, naming a well known medical man of Toronto, had testified at the Sifton trial that some blood he had found in connection with the murder was mammalian blood, but there was no way of telling whether it was human blood. The following day, Oct. 2nd, 1901, the same paper in a further

[3] Reese, p. 140.

report of the same trial stated Prof. W. H. Ellis had said there was some blood found on an axe, but it was impossible to say whether or not it was human blood. If, therefore, Dr. Ellis and other medical and scientific men knew of no method of distinguishing the blood of man from that of other mammalia on the 1st and 2nd of Oct., 1901, the *Mail and Empire's* "well known medical expert in crime" must have been acquainted with a very recent discovery in this connection, to be able to say on Oct. the 4th, 1901, that such a distinction can now be made. No later than Feb., 1901, it was announced in *The Clinical Weekly* that Professors Wasserman and Schnetze of the Physiological Institute, Berlin, and Chief Director Koch, had discovered a method of distinguishing human blood, whether old or fresh, from that of all animals save the monkey—the test being based on the employment of hemolysine and praecipitine. As far as the writer is aware, nothing further has appeared confirming this important alleged discovery beyond the statement above mentioned as made to the *Mail and Empire* newspaper.

In a discussion before the medico-legal society of New York, May 2nd, 1892, by the leading American microscopists, the following consensus of opinion was reached: 1. That there was no difficulty in distinguishing between human blood and that of birds, fishes and amphibia generally. 2. That a reliable discrimination could be made by competent observers between human blood and the blood of animals, when the size of the red corpuscles was much smaller than that of man, notably the ox, the horse, the goat, the sheep, the pig and most mammals. 3. That the blood of a dog, the rabbit and the guinea-pig, so nearly resembles human blood in the size or diameter of the red corpuscles, that it was more difficult, and divided opinions exist among observers. Professors Reese, Formad, Reyburn and others, claim the difference is apparent under instruments of very high power, except in the blood of the

guinea-pig and the opossum. Prof. Ewell and others denied that the results were such as to make it certain and absolute when in doubtful cases human life is at stake. 4. All concurred in the safety of the careful microscopist asserting "that the blood examined is consistent with human blood," or that "the microscope may enable us to determine with great certainty, that a blood is not that of a certain animal and is consistent with the blood of man."[4]

The better opinion seems to be that the blood of a man cannot be distinguished from that of a woman, or the blood of a child from that of an adult. Nor can *menstrual* blood be distinguished from that of the body generally.[5]

The optical method or spectral analysis applied by a competent person for the discovery of blood, is valuable as a corroborative process, since by it the minutest trace of blood can be discovered, and there is no case in which blood admits of a chemical examination, in which spectral analysis does not admit of application previous to the chemical tests without interfering with them; but this process indicates no distinction between the blood of man and animals.[6]

In the daily *Mail and Empire* newspaper of Jan. 20th, 1904, it was stated that a new test for human blood had been discovered, and was used in Kishineff at one of the trials growing out of the massacres there, and more recently in the United States upon the trial of the Bechtel family for the murder of Mabel Bechtel. The discovery of this test is attributed to Dr. Lear and the method was given as follows:—"Into the body of a rabbit is injected a small quantity of the serum of human blood, properly sterilized. After repeated injections the blood of the rab-

[4] See Taylor's Manual of Med. Jur., eleventh American edition, p. 279.

[5] Taylor, Vol. I., p. 566; Tidy, Vol. I., p. 20.

[6] Taylor, Vol. I., pp. 569-570.

bit becomes 'humanized.' The animal is then killed and its blood is drained and allowed to coagulate. Into the serum thus obtained from the rabbit, is placed a dilute solution of the suspected stain. If human blood is present in the solution a chemical reaction takes place, and a precipitate is obtained. This does not occur if the stain was made by the blood of any other animal." The writer, not being a scientific man, can only give this test for what the reader may think it is worth.

Before closing this chapter, it is proper to repeat that the examination of blood stains should be entrusted to experienced professional men alone, where practicable, and in cases not requiring immediate investigation, the assistance of a chemist or surgeon possessing Provincial reputation should be obtained. The tests are all of them of a delicate nature, requiring judgment and experience to produce reliable results, and should not be left to inexperienced persons to deal with.

CHAPTER IX.

OF DEODANDS.

One species of homicide *per infortunium*, which does not arise from the killing of man by man, is occasioned by pure accident, without the default, concurrence or procurement of any human creature. This takes place when the death is occasioned by some beast or inanimate thing. By the common law the instrument which caused death in such cases was forfeited to the Sovereign for pious uses, under the name of a *deodand*. This singular custom appears to have had its origin in the early days in England, and was designed as an expiation for the souls of such as were snatched away by sudden death. These forfeitures being founded rather in superstition and ignorance than in the principles of sound reason and policy, did not meet with much countenance from the courts in modern days, and at last, by 9 & 10 V. c. 62, were entirely abolished in England, and in Canada by 32-33 V. c. 29, s. 54, and see R. S. C. c. 181, s. 35; 55-56 V. c. 29, s. 964 (D.).

CHAPTER X.

OF FLIGHT AND FORFEITURE.

Formerly it was the duty of coroners to inquire what goods a person found guilty of murder had, and to cause them to be valued and delivered to the township. This part of their duty was abolished by 1 Rich. III. c. 3, except, perhaps, in cases where the accused fled, when it was said the coroner might, as formerly, seize the goods of the fugitive. Now by 55-56 V. c. 29, s. 965, all forfeitures are abolished throughout Canada.

In England the goods and chattels of a *felo de se* were forfeited to the Crown, until the Act 33-34 V. c. 23, was passed, which abolished the forfeitures except on outlawry, and by sec. 44 of the English Coroners' Act of 1887,[1] coroners were forbidden to inquire of the goods of such persons who were found guilty of murder or manslaughter. In Canada section 965 of the Criminal Code (55-56 Vic. c. 29), states:—"From and after the passing of this Act no confession, verdict, inquest, conviction or judgment of or for any treason or indictable offence, or *felo de se*, shall cause any attainder or corruption of blood, or any forfeiture or escheat:—Provided that nothing in this section shall affect any fine or penalty imposed on any person by virtue of his sentence, or any forfeiture in relation to which special provision is made by any act of the Parliament of Canada."

[1] 50-51 V. c. 71.

CHAPTER XI.

OF EVIDENCE.[1]

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SEC. 1.—COMPETENCY OF WITNESSES.

All persons of sound mind and of sufficient intelligence to understand the nature of an oath, and who believe in its religious obligation, not being the prisoner or the wife or husband of the prisoner, are competent and compellable to give evidence in every court of justice concerning the matters in issue.[2]

[1] It will be necessary to remind the professional reader that this work is intended for the practical use of *coroners* alone, and consequently when it treats of any branch of the general law, no pretence is made to do more than give such portions of that branch as may be found useful to coroners in the discharge of their duties.

[2] The prisoner and the wife or husband of the prisoner are now competent but not compellable to give evidence. See the Canada Evidence Act 1893, s. 4, Dom.

The persons not competent to be witnesses pointed out by this rule are—

1. Idiots.
2. Lunatics.
3. Children.
4. Infidels.
5. Prisoner.
6. Husband or wife of prisoner in some cases.

Each of these classes requires to be noticed separately; but it may be here stated that the question of competency of the witness is one to be decided solely by the coroner on a preliminary examination. This preliminary examination is called the examination on the *voire dire*,[3] and formerly it was held that no objection to the competency of witnesses could be made except upon the *voire dire;* but it appears that now a witness may be declared incompetent, and his evidence rejected at any time during the examination.[4]

There are various circumstances which may affect the *credibility* of a witness, but a blemish of this kind must not exclude the witness, and of the amount of credit due to his testimony the jury will be the judges.

1. *Idiots*, or those who never have had any understanding from their birth, are incompetent to give evidence. Persons born deaf, dumb and blind, are looked upon in law as idiots. But this is a legal presumption which may be done away with by proof of understanding and sufficient religious belief. Deaf and dumb persons, if found competent, may give evidence by signs, or through an interpreter, or in writing, or in any other manner in which they can make themselves intelligible.[5]

[3] See form No. 35.

[4] Jarvis O. C. 261.

[5] 1 H. P. C. 34; 1 Leach. C. C. 455; 3 Car. & P. 127; The Canada Evidence Act, 1893, 56 V. c. 31, s. 6.

2. *Lunatics* are those who, having had understanding, have lost their reason, by disease, grief or other accident. They are only competent witnesses during lucid intervals.

3. *Children.*—The age of the child is immaterial, when judging whether or not he is competent of being a witness. The criterion in cases under the jurisdiction of coroners is his religious belief. If he has such a knowledge of the obligation of an oath, as to understand the religious and secular penalties of perjury, he is competent—otherwise not. Where there is any doubt as to a child's competency, the practice is for the coroner to examine him as to his knowledge of the effect in this world and in the next of taking a false oath, and for the coroner on such examination to decide whether the child is competent or not.

Where a child is not competent and cannot be sworn, of course what he has said to others about the matter of inquiry is inadmissible.

Since the passing of the Canada Evidence Act, 1893, when a child of tender years is tendered as a witness, and such child does not in the opinion of the coroner understand the nature of an oath, the evidence of such child may still be received though not given upon oath if in the opinion of the coroner such child is possessed of sufficient intelligence to justify the reception of the evidence and understands the duty of speaking the truth. But no case is to be decided upon such evidence alone, as it must be corroborated by some other material evidence.[6]

4. *Infidels.*—Infidels who do not believe in God, or if they do believe in God do not think that He will either reward or punish them in this world or in the next, cannot be witnesses, as an oath is no tie or obligation upon them, but persons who do believe in God and that He will so

[6] 56-57 V. c. 31, s. 25, Dom.

reward or punish them, they are competent as witnesses.[7] The only means at disposal of the coroner for determining whether a proposed witness is such an infidel as to be incompetent to give evidence, is to question him upon the *voire dire*,[8] as to whether he believes in God, a future state of rewards and punishments, and the sanctity of an oath. If his answers are orthodox, he must be admitted. Infidels such as Gentoos, who believe in a God the avenger of falsehood, can be received as witnesses.[9]

If any person called or desiring to give evidence objects on grounds of conscientious scruples, to take an oath, or is objected to as competent to take an oath, such person may make the following affirmation:—"I solemnly affirm that the evidence to be given by me shall be the truth, the whole truth and nothing but the truth."[10]

5. *Prisoners.*—The prisoner and the wife or husband of the prisoner are now competent, but not compellable to give evidence,[1] and accomplices are admissible to give their evidence for what it is worth; but if the witness or accomplice objects to answer any question upon the ground that his answer may tend to criminate him or may tend to establish his liability to a civil proceeding at the instance of the Crown, or of any person, and if but for the amendment of the law, the witness would therefore have been excused from answering such question, then, although the witness shall be compelled to answer, yet the answer so given shall not be used or received in evidence against him in any criminal trial or other criminal proceeding against him thereafter other than a prosecution for perjury in giving

[7] *Omichund* v. *Barker*, Willes, 538; 1 Sm. L. C. 194; Powell on Evidence, p. 22.

[8] See Form No. 35.

[9] *Omichund* v. *Barker*, Willes, 538; but see section 23 of the Canada Evidence Act, 1893, which may have the effect of admitting infidels to affirm.

[10] 56 V. c. 31, s. 23.

[1] The Canada Evidence Act, 1893, s. 4.

such evidence. And this applies to the answer of such witness to any question which, pursuant to an enactment of the Legislature of a Province, a witness is compelled to answer after having objected so to do.[2] A settled principle with regard to the evidence of accomplices is, that a prisoner ought not to be convicted upon the evidence of any number of accomplices, if unconfirmed or uncorroborated by other testimony.[3] The testimony of the wife of an accomplice is not a proper confirmation of his statement.[4] The confirmation need not be in every particular, as long as it is sufficient to satisfy the jury that the evidence is worthy of credit.[5] The accomplice's evidence ought, however, to be corroborated with regard to the identity of the prisoner, so as to satisfy a jury that the prisoner is *the person* who committed the crime which is charged against him by the accomplice.[6]

A confession made by a prisoner to be admissible as evidence against him, must be proved by the prosecution affirmatively to have been free and voluntary, and not caused by inducement proceeding from a person in authority. If it flows from hope or fear, excited by a person in authority, it is inadmissible.[7]

To render a confession admissible, it is not so much material to prove to whom or when it is made, as it is to ascertain the mind of the person making it, and to see whether or not it is probable that it was made voluntarily.[8]

A very slight inducement to confess will prevent the confession being considered free and voluntary. For instance, at the trial of a servant for attempting to poison her mistress, a medical man having denied that he had

[2] 61 V. c. 53; 1 Ed. VII. c. 36; *Rex* v. *Clark*, 3 O. L. R. 176.
[3] 5 C. & P. 236.
[4] 7 C. & P. 168.
[5] Jervis, O. C. 260.
[6] 8 C. & P. 107.
[7] *The Queen* v. *Thompson*, L. R. C. C. R. Weekly Notes, 1893, p. 86.
[8] *Reg.* v. *Rice*, 34 L. T. 400; 13 Cox. C. C. 209.

held out any inducement to the prisoner to confess, gave evidence of a confession without which the prisoner could not have been convicted. Evidence was then given that before she made her confession he had said to her in the presence of her mistress:—"It will be better for you to tell the truth." The medical man was recalled but did not admit this, and the judge left the evidence, including the confession, to the jury, but reported that if the evidence had been given in the first instance he should have excluded the confession. It was held that the confession ought to have been struck out, and that the conviction was wrong.[9]

In a Quebec case it was held that a coroner who proceeds to an enquête, has no right, before the verdict, to demand a declaration from a person whom he may have accused or suspected of a crime, and whom he has caused to be arrested in his capacity of a justice of the peace.[10]

6. *Husband or wife of prisoner.*—Husbands and wives of persons charged are now competent, but not compellable, to give evidence, whether the person so charged is charged solely or jointly with any other person. Provided, however, that no husband shall be competent to disclose any communication made to him by his wife during their marriage, and no wife shall be competent to disclose any communication made to her by her husband, during their marriage.[1] But the failure of the person charged or of the wife or husband of such person to testify, is not to be made the subject of comment by the coroner or by counsel for the prosecution in addressing the jury,[2] and in the case of a wife mortally injured by her husband, her dying declarations, if not otherwise inadmissible, are evidence against him;[3] as are also the dying declarations of

[9] *Reg.* v. *Garner*, 3 Cox C. C. 175; 3 New Sess. Cases, 329; *Reg.* v. *Boswell*, Car. & M. 584.

[10] *The Queen* v. *Lalonde*, Que. R. 7 Q. B. 204.

[1] 61 V. c. 53; 1 Ed. VII. c. 36; 56 V. c. 31.

[2] The Canada Evidence Act, 1893, s. 4 (56 V. c. 31).

[3] 1 East. P. C. 357.

the husband against the wife under similar circumstances.[4] And after a divorce *a vinculo matrimonii*, either husband or wife can give evidence for or against the other.[5]

7. *Coroners.*—The better opinion seems to be that a judge cannot be a witness and a presiding judge at the same trial, and the same objections which are applicable to a judge would naturally apply to a coroner. The cases are reviewed by *Armour, C.J.*, in his instructive judgment in *Reg.* v. *Petrie*, 20 Ont. R. 317. And see also *Haney* v. *Mead*, 34 C. L. J. 330, in which it was held a coroner could not hold an inquest in which he himself was a witness. Where there is any chance of a coroner being required as a witness, he should decline holding the inquest.

8. *Jurors.*—Members of the coroner's jury can be called as witnesses on the inquest, but they must be sworn as other witnesses. It is better, however, to avoid calling jurors who may be wanted as witnesses, since *Armour*, C.J. pointed out in *Reg.* v. *Petrie*, 20 Ont. R. at p. 320, there are grave objections to a juror being sworn as a witness.[6]

9. *Constables.*—Coroners' constables can be sworn as witnesses, or as jurors, or as both together.[7] But see the previous paragraph.

SEC. 2.—PRIMARY EVIDENCE.

It is an inflexible rule that the best evidence of which the nature of the thing is capable must be given. Hence a copy of a deed or will is inadmissible as evidence, so long as the original exists and is producible, no matter however indisputably authenticated the copy may be.

[4] 1 East. P. C. 455.
[5] Peake's Evid. App., p. 39.
[6] 1 Salk. 405; Roscoe 135; *Reg.* v. *Winegarner*, 17 Ont. R. 208.
[7] *Reg.* v. *Winegarner*, 17 O. R. 208.

On the same principle, so long as a written document can be produced, oral evidence of its contents is inadmissible, except when it is in the possession of an adverse party, who refuses or neglects to produce it after a reasonable notice to do so; or when it is in the possession of a party who is privileged to withhold it, and who insists on his privilege; or when the production of the document would be, on physical grounds, impossible, or very inconvenient; or when the document is of a public nature, and some other mode of proof has been specially substituted for reasons of convenience.[8] The preliminary question as to whether secondary evidence of a document should be admitted or not, is one for the coroner to decide alone, after hearing all the evidence and arguments tendered on the point.

And a written statement of a witness is not to be admitted as equal to the oral evidence of the witness himself. Any evidence which has testimony of a more original kind behind it must not be received until the better evidence is shewn to be unprocurable. But if the original evidence cannot be produced, the next best is not to be required, for there are no degrees in secondary evidence, and consequently any secondary evidence can then be accepted.

Sec. 3.—PRESUMPTIVE EVIDENCE.

On many invstigations no *direct* proof as to the perpetrator of the crime can be obtained; but circumstances point so strongly in one direction, that it would be contrary to reason not to call upon the suspected person to contradict or explain this *evidence* against him. Evidence of this kind is called *presumptive*, and care must be taken not to draw too hasty conclusions from it.

[8] Roscoe's Cr. Ev. 2.

A case may here be mentioned which will serve to illustrate the subject, and also, from its unfortunate result, to shew the danger of placing too much reliance upon presumptive evidence. A man was apprehended with a horse in his possession which had recently been stolen, and as he could give no satisfactory explanation of how he came by the animal, and the thief was unknown, the law presumed he was the man who had stolen it. Horse-stealing was then a hanging matter, and the poor man was executed. Afterwards it came out that the real thief, being closely pursued, had overtaken the man and asked him to hold the horse for a few minutes, and in this way the thief escaped and the innocent man was found with the horse.

In this connection the following presumptions may be mentioned:

The law presumes innocence.

The law presumes in criminal matters that every person intends the probable consequence of an act which may be highly injurious.

Every one is presumed to be sane at the time of doing or omitting to do any act, until the contrary is proved.[9]

The law presumes that a person acting in a public capacity is duly authorized to do so.

If a man by his own wrongful act withhold the evidence by which the facts of the case would be manifested, every presumption to his disadvantage will be adopted.[10]

A presumption may be rebutted by a contrary and stronger presumption.[1]

There is no presumption that a married woman committing an offence does so *under* compulsion, because she commits it in the presence of her husband.[2]

[9] 55-56 V. c. 29, s. 11, Dom.
[10] Powell's Ev. 56.
[1] 5 Taunt. 326.
[2] 55-56 V. c. 29, s. 13, Dom.

Upon a case of infanticide it was stated a few years ago that a report was put in at an inquest as evidence that fourteen derelict infants had been found in Toronto within a period of eight months. Such a document should not be allowed in as evidence by a coroner, as it would in itself raise no presumption in law of the guilt of the accused.

In the case of *Reg.* v. *Sternaman*, 29 O. R. 33, upon the trial of the prisoner for the murder of her husband, who was living with and attended by her in his last illness, it was proved that his death was due to arsenical poisoning. In order to show that the poisoning was designed and not accidental, the Crown offered evidence to prove that a former husband of the prisoner had been taken suddenly ill after eating food prepared by her, and that the circumstances and symptoms attending his illness and death were similar to those attending the illness and death of the second husband, and that such symptoms were those of arsenical poisoning. This evidence was held at the trial by *Armour, C.J.*, to be admissible, but his lordship reserved for the Court of Appeal, being a Divisional Court of the High Court of Justice, the question whether evidence of that character was admissible. The appeal was heard by *Boyd, C.*, *Rose* and *Falconbridge, JJ.*, and it was decided the evidence was admissible as going to show intent and design on the part of the accused. The cases of *Reg.* v. *Geering*, (1849) 18 L. J. N. S. M. C. 215; *Reg.* v. *Heeson*, (1879) 14 Cox C. C. 40, and *Makin* v. *Attorney-General for New South Wales*, [1894] A. C. 57 and others were referred to in the judgment.

The decision in the above case depends upon a very fine distinction which is drawn in the law of evidence, for as was said by the Lord Chancellor in giving the judgment of the Privy Council in *Makin* v. *Attorney-General of New South Wales*, it is undoubtedly not competent for the prosecution to adduce evidence tending to shew that the

accused has been guilty of criminal acts other than those covered by the indictment, for the purpose of leading to the conclusion that the accused is a person likely from his criminal conduct or character to have committed the offence for which he is being tried. While, on the other hand, the mere fact that the evidence adduced tends to shew the commission of other crimes does not render it inadmissible if it is relevant to an issue before the jury, and it may be so relevant if it bears upon the question whether the acts alleged to constitute the crime charged in the indictment were designed or accidental, or to rebut a defence which would otherwise be open to the accused.

And upon an indictment for the murder of A. by poison, and there was evidence that three others in the same family died of similar poison, the prisoner being at all these deaths, and administered something to two of these patients, it was held the evidence was not admissible—*Reg.* v. *Winslow*, 8 Cox C. C. 397, but this case was commented upon and disapproved in *Reg.* v. *Flannagan*, [1884] 15 Cox C. C. 403. In that case evidence was given that the deceased had died from arsenic, and had been attended by the prisoners, and it was held that it was competent for the prosecution to tender evidence of other cases of persons who had died from arsenic, and to whom the prisoners had access, exhibiting exactly similar symptoms before death to those of the case under consideration, for the purpose of shewing that this particular death arose from arsenical poisoning, not accidentally taken, but designedly administered by some one. Such evidence, however, is not admissible for the purpose of establishing motives; though the fact that the evidence offered may tend indirectly to that end, is no ground for its exclusion. The true principle on which the admissibility of all such evidence rests is that laid down in *Reg.* v. *Geering*, 18 L. J. U. C. 215. In that case it was held that this evidence was admissible

for the purpose of proving:—First, that the deceased actually died of arsenic. Secondly, that his death was not accidental; and that it was not inadmissible by reason of its tendency to prove or create a suspicion of a subsequent felony.

Upon the trial of a woman for the murder of her infant by suffocation in bed, evidence to prove the previous death of her other children at early ages, was admissible, although such evidence does not shew the causes from which those children died. And where a woman was charged with the murder of her son by poison, and the defence was that his death resulted from an accidental taking of such poison, evidence to prove that two other children of hers, and a lodger in her house, had died previously to the present charge from the same poison, was held to be admissible.[3]

Evidence of various applications for insurance by the accused, on the life of the supposed murdered person, though in some cases resulting in rejection of the risk, is admissible as part of the *res gestæ*.[4] All such relevant acts of the party accused as may reasonably be considered explanatory of his motives and purposes are admissible.[5]

Upon a trial for arson with intent to defraud an insurance company, evidence that the prisoner had made claims on two other insurance companies in respect of fires which had occurred previously, and in succession, was admitted for the purpose of shewing that the fire which formed the subject of the trial, was the result of design and not of accident.[6] And where it was proved that a motive for the death of one S. might exist by the fact of the prisoner having insured the life of S. in a benefit insurance society, it was held that evidence may also be given upon the same

[3] *Reg.* v. *Cotton*, 12 Cox C. C. 440.
[4] *The Queen* v. *Hammond*, 29 O. R. 211.
[5] *The Queen* v. *Hammond*, 29 O. R. 222.
[6] *Reg.* v. *Gray*, 4 F. & F. 1102.

indictment, that there might be an equal motive for the deaths of J. and L., by shewing that they also were each of them insured by the prisoner in the same or kindred societies. And upon the indictment for murder by poison of S., evidence was held admissible of the previous and subsequent deaths of J. and L. under like circumstances and from similar symptoms, to shew that the poisoning was not accidental.[7]

Upon the trial of a husband and wife for the murder of the mother of the former by administering arsenic to her, for the purpose of rebutting the inference that the arsenic had been taken by accident, evidence was admitted that the male prisoner's first wife had been poisoned nine months previously; that the woman who waited upon her and occasionally tasted her food, shewed symptoms of having taken poison; that the food was always prepared by the female prisoner, and that the two prisoners, the only persons in the house, were not affected with any symptoms of poison.[8]

On an indictment for manslaughter, where death is occasioned by the application of a lotion to the skin, evidence may be given of the effect of the lotion when applied to other patients.

Upon a charge of murder by means of explosive grenades, evidence of the death and wounds suffered by others at the same time, is admissible, to shew the character of the grenades.[9]

SEC. 4.—MATTERS OF OPINION.

Ordinary witnesses must only state facts, and leave the judge or jury to draw all inferences from them. Their own opinions regarding the facts to which they testify

[7] *Reg.* v. *Heeson*, 14 Cox C. C. 40.
[8] *Reg.* v. *Garner*, 4 F. & F. 346.
[9] *Reg.* v. *Bernard*, 1 F. & F. 240.

should not be received. But the opinions of skilled or scientific witnesses are admissible to elucidate matters which are of a strictly professional or scientific character,[19] whether their knowledge is obtained by actual experience or merely from books. In the case of *Preeper et al. and the Queen*, 15 S. C. R. 401, a medical man was called as a witness and he stated there were *indicia* in medical science from which it can be said at what distance small shot were fired at a human body. That he had studied this—not from personal experience but from books—and from what he saw from the nature of the wound in question, and from its appearance, he would say that the muzzle of the gun in the case before him was not nearer than twenty inches, and not further away than three feet, when it was discharged, but that the carrying capacity of the gun, and the nature of the charge, and the condition of the gun as regarded cleanliness, and the shape of the hole, would modify the distance as given by him. That independently of marks of burning altogether, he could say that the muzzle of the gun could not have been nearer than twenty inches, and that he based his opinion not so much upon the absence of burning, as from the size of the wound, and the jagged nature of the edges. The majority of the court held that in the absence of cross-examination or other testimony that there was no such *indicia* as stated by the witness, his evidence as to the distance at which the shot was fired, was properly received.

In the case above referred to of *Preeper et al. and the Queen*, 15 S. C. R. 401, *Ritchie, C.J.*, S. C., said he agreed with the learned judge who tried the case, that the presiding judge must form his opinion of the capacity of the

[19] Powell's Ev. 93. *Wharton*, in his work on Criminal Evidence, lays it down as a general rule in the justice and propriety of which Mr. Justice Gwynne, of the Supreme Court of Canada, says in *Preeper v. The Queen*, 15 S. C. Rep. at p. 418, he entirely concurs, that it is not necessary for a witness to be an expert to enable him to give an opinion as to matter depending upon special knowledge, when he states the facts upon which he bases his opinion.

witness to speak as an expert, from the testimony before him. And *Strong J.*, stated that this was in the first instance, but that the ruling of the trial judge, though on a question of fact, is open to review on appeal.

When skilled witnesses are called to state their opinions on scientific questions, they may refresh their memory by referring to professional treatises. Medical books are not directly admissible in evidence, but a physician may be allowed to strengthen his recollection by referring to such as he considers to be works of authority, and he may, while explaining the grounds of his opinion, state that his judgment is founded in part on the writings of his professional brethren.[1] But while medical books may be used by medical witnesses in this way, the books themselves, on mere production, cannot be read to the jury as evidence. An attempt to so use them was made by the prisoner's counsel upon the trial of Dr. Lamson for the murder of his brother-in-law, Percy Malcolm John, by administering to him aconitine, a deadly poisonous vegetable alkaloid containing the active principles of aconite distilled from the root of monk's-hood. Mr. Montagu Williams, who defended the prisoner, states what took place in his book—*Leaves of a Life*—that in addressing the jury he said:—"I shall read to you an extract from Dr. Christison's book on poisons wherein it was stated—'Evidence of experiments on"—Here Mr. Justice Hawkins asked him:—"Is that not rather a matter of cross-examination? If you read that, it will, of course, be open for the Solicitor-General to read extracts from any book he may think fit." Mr. Williams then said:—"Dr. Christison is dead, and I cannot call him." Mr. Justice Hawkins:—"No, no; you do not understand me. When Dr. Stevenson was in the witness box, you should have asked if that book was an acknowledged authority by men of science. He might then have explained or qualified it." Mr. Williams:—"Well, I

[1] Taylor on Evidence, Vol. II., s. 1214.

do not know, but it appears very hard upon me if I am not allowed to read it." Mr. Justice Hawkins:—"As far as I am concerned, I have only to rule as to what is legal evidence and what is not. I have no discretion in the matter if the Solicitor-General objects." . . "If you read it, you will open the whole field of writings by dead authors." Mr. Williams:—"Oh, well, if there is the slightest discussion about it, I will not insist upon it." The prisoner was convicted and executed, and there does not appear to have been any application for a new trial on the ground of the reading of the book having been stopped, so we may conclude that the judge's ruling was found to be correct, and in accordance with decided cases.[2]

Sec. 5.—MATTERS OF PRIVILEGE.

A witness may be *asked* any question, but there are many he need not *answer*.

A witness is not now excused from answering any question tending to criminate himself, or which may tend to establish his liability to a civil proceeding at the instance of the Crown, or of any person; but if with respect to any question, the witness objects to answer upon the ground that his answer may tend to criminate him, and if but for the change in the law the witness would therefore have been excused from answering such question, then although the witness may be compelled to answer, yet the answer so given must not be used, or receivable in evidence, against him on the trial of any proceeding under any act of the Legislature of Ontario.[3] And the Canada Evidence Act, 1893, 61 Vict. c. 53, Dom., states, that no evidence so given can be used against him in any criminal proceeding thereafter instituted aganst him, other than a prosecution for perjury in giving such evidence. And by 1 Ed. VII. c. 36, Dom., the answers of any witness

[2] See *Reg.* v. *Crouch*, 1 Cox C. C. 94; *Reg.* v. *Taylor*, 13 Cox C. C. 77.

[3] See 4 Ed. VII., c. 10, s. 21.

to any question which pursuant to an enactment of the Legislature of a Province, a witness is compelled under a provincial enactment to answer, after having objected so to do upon any ground mentioned in sub-section 1 of section 5 of the Canada Evidence Act of 1893, are not to entail criminal liability except for perjury.

Counsel, solicitors and attorneys cannot be compelled to disclose communications which have been made to them in professional confidence by their clients. This, however, is the privilege of the client, not of the legal advisers.

Clergymen and medical men do not possess the same privilege with regard to confidential communications made to them in the performance of their professional duties; but the judges have shewn a disinclination to receive such communications made to clergymen.

A witness is not allowed to state facts, the disclosure of which may be prejudicial to any public interest.

In criminal cases no evidence can be excluded on the ground of indecency.[4]

At a coroner's inquest evidence can be given that a witness at the inquest has made at other times a statement inconsistent with his present statement.

Sec. 6.—HEARSAY EVIDENCE.

Hearsay evidence, or the rehearsal of an oral or of a written statement of a party who is not produced in court is, as a general rule, not admissible. The principal exceptions to this rule requiring notice are—

(*a*) When offered in corroboration of a witness' testimony, to shew that he affirmed the same thing before on other occasions.[5]

(*b*) When it is essentially connected with a transaction and forms part of it.

[4] Powell's Ev. 83.
[5] Powell's Ev. 87.

(*c*) When given as popular reputation or opinion or as the declarations of deceased witnesses of competent knowledge, if made before the litigated point has become the subject of controversy, and without reasonable suspicion of undue partiality or collusion.[6]

(*d*) When the evidence consists of dying declarations in cases of homicide. The death of the deceased must be the subject of the investigation, and the circumstances of the death the subject of the dying declarations, and to make these declarations admissible the declarant must not only have been dying, but must have known that he was dying, and the onus is on the prosecution of showing this knowledge when a trial takes place.[7] Here the feeling of responsibility on the approach of death is looked upon as equal to the effect of an oath upon the conscience. The sense or conviction of *approaching* death must be perfect and certain, although the declarant need not be in *articulo mortis*, or even *think* he is, provided he thinks there is no hope of a continuance of life, and is under an impression of almost immediate dissolution.[8] Any hope of recovery, however slight, will make the statement inadmissible.[9] The declarations must have been made by a person who, if alive, would have been a competent witness.[10]

Dying declarations will still be admissible although the attendant surgeon has given some hope of living to the dying person before the declarations are made, and such declarations may be taken in evidence if the deceased be-

[6] Powell's Ev. 94.

[7] *Reg.* v. *Mackay*, (1868) 11 Cox C. C. 148.

[8] *Rex* v. *Van Butchell*, 3 C. & P. 629; Roscoe's Cr. Ev. 3; *Reg.* v. *Forrester*, 4 F. & F. 857; 10 Cox C. C. 368; *Reg.* v. *Gloster*, 16 Cox C. C. 471; and see *Regina* v. *Howell*, Law Times, Jan. 25, 1845, 317; *Regina* v. *Barret*, Leeds Lent Assizes, 1869; *Jenkins' case*, C. C. reserved April, 1869, L. R. 1 C. C. 187; *Regina* v. *Harvey*, Exeter Sum. Assizes, 1854; *Regina* v. *Wanstall*, Leeds Au. Assizes, 1869; *Regina* v. *Pettingill*, C. C. C. April, 1872.

[9] *Rex* v. *Hayward*, 6 C. & P. 157; *Rex* v. *Wellbourn*, 1 East. P. C. 358; 1 Leach C. C. 503*n*.

[10] Powell's Ev. 124; *Reg.* v. *Howell*, 1 Den. C. C. 1; 1 Car. & K. 689.

lieved he should not recover in spite of the hope expressed by the surgeon.[1] And if the declarant believes himself past recovery his declaration will be none the less admissible although at the time it was made he thought himself better,[2] or although the surgeon attending him may believe him to be progressing favourably.[3]

A declaration in *articulo mortis* made by a child only four years old, is not admissible on the trial of an indictment for the murder of such child, because a child of such tender years cannot have that idea of a future state which is necessary to make such a declaration admissible.[4] But in *Reg.* v. *Perkins*, 9 Car. & P. 395, it was held that such a declaration made by a boy between ten and eleven years of age, after being told by a surgeon that he could not recover, to which he made no reply, but appeared dejected, and it appeared from his answers to questions put to him, that he was aware that he would be punished hereafter if he said what was untrue, was admissible as made in *articulo mortis*.

It is not sufficient that the person making the declarations was dying, to constitute those declarations evidence unless the deceased was clearly and expressly warned that he could not live, or unless he had expressed his knowledge that he was dying.[5] A dying declaration cannot be received without direct, and not merely inferential, proof that the deceased was then aware of his danger.[6]

With respect to dying declarations it should be remembered that while they are equal in point of sanction to an examination on oath, the opportunity of investigating the truth is very different.[7]

A statement made by a deceased person under circumstances which would not render it as admissible as a dying

[1] *Regina* v. *Bayley*, Ex. Cham. Jan. 1857.
[2] *Reg.* v. *Tinkler*, 1 East. P. C. 354.
[3] *Reg.* v. *Peel*, 2 F. & F. 21.
[4] *Rex* v. *Pilee*, 3 Car. & P. 598.
[5] *Reg.* v. *Mooney*, 5 Cox C. C. 318.
[6] *Reg.* v. *Dalmas*, 1 Cox C. C. 95.
[7] *Rex* v. *Sellers*, Car. C. L. 233.

declaration, becomes admissible as such if repeated in his presence, and at his request, by the person to whom it was previously made, and assented to by the deceased, who had then abandoned all hope.[8]

It is no objection to a declaration in *articulo mortis* that it was made in answer to questions put to the accused by the surgeon and not a continuous statement made by the deceased.[9] Nor is it inadmissible because made in answer to leading questions.[10]

The declaration of a convict at the moment of execution could not be given in evidence as the declaration of a dying man, for, being attainted, his testimony could not have been received on oath.[1] But since attainder was abolished in Canada by section 965 of the Criminal Code, it is now doubtful whether this is the law in the Dominion of Canada. If such a case should occur in Canada before a coroner the writer would recommend the evidence should be received and then left to the higher Courts to determine its value.

Before receiving dying declarations as evidence, the coroner should inquire into the circumstances under which they were made, and exclude them if there is any reasonable doubt as to the veracity, sanity, consciousness or sense of religious responsibility and impending dissolution in the mind of the deceased.[2] It is safer to write down the questions and answers in full if the dying person is able to answer, but if not able to answer, the answers may be given by a nod of the head, a squeeze of the hand of the interrogator, or in any way that is clearly intelligible. The statement should not be brought to the party ready written out and merely read to him.[3]

[8] *Reg.* v. *Steele*, 12 Cox C. C. 168.
[9] *Rex* v. *Fagent*, 7 Car. & P. 238.
[10] *Reg.* v. *Smith*, L. & C. 607; 10 Cox C. C. 82.
[1] *Rex* v. *Drummond*, 1 Leach C. C. 337; 1 East. P. C. 353*n*.
[2] Powell's Ev. 124; *Rex* v. *John*, 1 East. P. C. 357; *Rex* v. *Wellbourne*, 1 East. P. C. 358; *Reg.* v. *Hucks*, 1 Stark 523; 1 Leach 503 *n*.
[3] *Kirking* v. *Louie*, 7 Can. Crim. Cases, p. 347, an instructive case on the admissibility of dying declarations, and containing a digest of cases on the question.

Dying declarations may be given in evidence in favour of, as well as against, the accused.[a]

Prof. Tidy states:—

It may fall to the lot of a medical man to be present when dying declarations are made which may become of great importance. In such cases, if a magistrate is present, he should not interfere beyond calling the attention of the magistrate to what is said if he is not attending to it, and by giving professional opinions as to the dying person's state—whether it is hopeless, whether the person is capable of understanding what he is saying, etc. But if no magistrate is present, the medical attendant is the most proper person to receive the dying declaration. He should first ascertain the views of the party as to his chances of recovery and record what is said in the actual words, and then take down, also in his actual words, his dying declaration, and have the statement signed by the party if possible. If there is no possibility of taking down the words at the time of utterance, they should be recalled, and put in writing, as soon as and as accurately as possible. And if they have been heard by others, they should be read to them, and signed by the physician and all the parties. No additions should be made to these notes. Any afterthoughts or recollections may be the subject of separate notes and be kept for what they may be worth.[b]

(*e*) When a prisoner makes a statement of the circumstances of the crime with which he is charged, it is evidence against him, unless elicited by a person who had at the time actually or presumably power to forgive, or who in that capacity induced the prisoner to confess by holding out to him an offer or prospect of forgiveness.

If the prosecutor or his wife has obtained the confession by any threat or promise, it is inadmissible, or if the

[a] *Rex* v. *Scaife*, 1 M. & Rob. 551.

[b] Tidy, Vol. I., p. 12; and see Taylor, Vol. I., p. 481; Reese, p. 25.

confession was made under similar circumstances to the master or mistress of the prisoner when the crime has been committed against either of them, or to the attorney of the person in authority, or to a constable or any one acting under a constable, or to a magistrate. But the inducement must be held out by a person who has presumably power to shield the criminal. If the inducement be made in the presence of such a person who stands by and does not object, his silence will exclude the confession. But inducements held out by persons who have no authority in the matter will not make the confession inadmissible.

If a party accused wishes to make any statement at the inquest, the evidence against him should be first read over, and then he should be cautioned according to the form No. 52, in appendix.[5] He may then make his statement, which should be read over to him, and be signed by the coroner. He is not to be sworn, unless he is called as a witness, when see c. xi., s. 1, s.s. 5.

(*f*) Statements having reference to the health or sufferings of the person who makes them, form another exception to the general rule rejecting hearsay evidence. If it becomes necessary to inquire into the state of health at a particular time of a person who is deceased, a witness may detail what the deceased person said on that subject at the time.[6]

Sec. 7.—Relevancy of Evidence.

The evidence must be confined to the matter in issue, and must tend directly to the proof or disproof thereof.[7] Evidence of good character is admissible in criminal trials, but as coroners' juries have no power to try the party suspected, such evidence need not be taken at inquests.

[5] This caution the writer has applied to coroners' inquests by analogy, a similar caution being requisite at investigations before magistrates. See 55-56 V. c. 29, s. 591, Dom.

[6] Roscoe's Cr. Ev. 30.

[7] Powell on Evidence, 225.

SEC. 8.—LEADING QUESTIONS.

On an examination *in chief* a witness must not be asked leading questions; or, in other words, a witness must not be asked by the person calling him, questions so shaped as to suggest the answers he is expected to make. When he is cross-examined, that is, examined by the opposite party to the one who called him, he may be asked leading questions. Generally, questions which may be answered by "Yes" or "No" are leading questions. If, however, the witness proves hostile to the party calling him, the coroner may, in his discretion, allow leading questions to be asked, or if a question from its nature cannot be put except in a leading manner, the coroner should allow it to be asked;[8] or if the witness has forgotten a circumstance, and it cannot otherwise be recalled to his mind, it may be asked him in a leading form.

SEC. 9.—PROOF OF HANDWRITING.

If it becomes necessary to prove handwriting, the following methods are admissible:

(*a*) By a witness who saw the party write or sign the document.

(*b*) By a witness who knows the party's handwriting. Such knowledge may have been obtained merely by having seen him write once (provided it was not for the purpose of making the witness competent to give evidence), or by having seen documents purporting to be written by him, and which, by subsequent communications with him, he has reason to believe are the authentic writings of such party.

(*c*) By the comparison by witnesses of a disputed writing with any writing proved to the satisfaction of the coro-

[8] Powell's Ev. 439.

ner to be genuine. Such writing and the evidence of witnesses respecting the same, may be submitted to the coroner and jury, as evidence of the genuineness or otherwise of the writing in dispute.[9]

SEC. 10.—PROOF OF DOCUMENTS.

The necessity for calling an attesting witness to instruments, the validity of which does not require attestation, has been done away with, and such instruments may now be proved by admission or otherwise as if there had been no attesting witness thereto.[10]

Inquests taken *ex officio* as by coroners acting under general commissions or appointment, seem to be admissible in principle without further evidence of authority than that they were acting as such officers.[1]

SEC. 11.—ADMISSIBILITY OF INQUISITIONS, &c., TAKEN BEFORE CORONERS.

When a coroner takes down a statement of a witness and reads it over to him and procures his signature to it, the depositions are admissible; but a coroner's note of the evidence which has not been read over to the witness, is not evidence.[2]

An inquisition pronouncing one guilty is not even *prima facie* evidence against him on his trial.[3]

Where there is a variance between the testimony given by a witness on the trial of the accused, and that elicited on the inquest, his deposition after a caution by the coro-

[9] 55-56 V. c. 29, s. 698.
[10] 55-56 V. c. 29, s. 696, Dom.
[1] Roscoe's N. P. pp. 110, 111, Lond. Law Monthly, Ed. 1890.
[2] *Russell* on Crimes, Vol. 3, pp. 477, 480, 9th Amer. edition.
[3] 2 Hawk. P. C. c. 9, s. 33; Bacon's Ab.: Coroner (*D*).

ner, and taken by the coroner, may be admitted in evidence to discredit him.[4]

As to the admissibility of inquisitions and depositions and statements taken before coroners, the legal reader is referred to *The Prince of Wales Ass. Co.* v. *Palmer*, 25 Beav. 605; *R.* v. *Gregory*, 8 Q. B. 508; *Brookes* v. *Floyd*, 13 L. T. N. S. 79; *Reg.* v. *Mooney*, 9 Cox, C. C. 411; *Reg.* v. *Colmer*, 9 Cox, C. C. 506; *Rex* v. *Mills*, 4 N. & M. 6, and the Canada Evidence Act, 1893, s. 10. *Reg.* v. *Coote*, L. R. 4 P. C. 599; *Reg.* v. *Connolly*, 25 O. R. 151; *Reg.* v. *Hendershot et al.*, 26 O. R. 678; Russell on Crimes, Vol. III., p. 477, 9th Amer. edition.

In England it has been held that a coroner's inquisition is an indictment within the English statute, 24 & 25 V. c. 100, s. 6.[5] But in Canada no one can be tried on a coroner's inquisition. See Criminal Code, s. 642.[6]

In the *United States*, it has been held that the finding of a coroner's jury is admissible as bearing upon the manner and cause of the death of the insured, in an action on a life, or accident, policy of insurance; but the evidence taken before the coroner is inadmissible.[7]

[4] *Reg.* v. *Colmer*, 9 Cox C. C. 506; *Rex* v. *Oldroyd*, 1 R. & R. c. c. 87.

[5] *Reg.* v. *Ingham*, 5 B. & S. 257; 9 Cox C. C. 508.

[6] A mere outline of the rules of evidence which coroners will most commonly have to consider, has been attempted in the text. Further information on the subject of evidence can be found in the works of Taylor, Roscoe, Starkie, Powell, Phillips and others.

[7] A. & E. En. of Law, 2nd ed., vol. 16, p. 969.

CHAPTER XII.

THE CORONER'S COURT.[1]

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[1] For the forms connected with this chapter see the Appendix.

SEC. 1.—WHEN AND WHERE HOLDEN.

In any case in which the death of a person is reported to a coroner and he has in consequence of information received by him made the declaration mentioned in Chapter II., s. 2.

(See form No. 10), and after viewing the body and having made such enquiries as he deems necessary, he comes to the conclusion that an inquest is unnecessary, he has the right to issue a warrant to bury the body in the same manner as he would have had power to do in case an inquest had been actually held, and to withdraw the warrant for holding an inquest in case he has issued such warrant, and in every such case the coroner must forthwith make and file with the County Crown Attorney a declaration in writing under oath, taken before a justice of the peace, commissioner for taking affidavits in the High Court of Justice, or a notary public, setting forth briefly the results of such inquiry, and the grounds on which the warrant for burial has been issued, and for such investigation and services the coroner is entitled to a fee of five dollars besides mileage, in each case in which the County Crown Attorney certifies that there were sufficient grounds to warrant such investigation being made,—such fee being in lieu of all fees to which the coroner would be entitled in respect of any proceedings taken by him towards holding an inquest. This provision of the statute does not apply to or affect the case of a prisoner dying in any penitentiary, gaol, prison, house of correction, lock-up house or house of industry, nor release any coroner from the performance of the duties imposed upon him in the case of any such prisoner.[2]

In giving judgment in the case of *Davidson* v. *Garrett*, 30 O. R. at p. 657, *Meredith*, *C.J.*, said he was unable to find anything which makes it essential to the constitution of the coroner's court, or to the exercise by him of his

[2] R. S. O. 1897 c. 97, ss. 3, 4, 6.

judicial functions with regard to a dead body, or the holding of an inquest, that he should issue his warrant for the summoning of a jury for the purpose of the inquest. That is, no doubt, the usual course taken, but his lordship could see no reason why the coroner, if he chooses to do so, could not himself impanel the jury, summoning them to attend by a verbal direction for that purpose given by himself, and that indeed a case might arise in which such a course might be not only convenient but almost necessary. Still, however legal this mode of procedure may be, except in cases of emergency, it is better that the usual course should be followed by issuing a precept to a constable to summon the jury. Such a course would, at least, be more in keeping with the importance and dignity of the judge of a Court of Record, which a coroner is both in England and Canada.[3] In Nova Scotia and Prince Edward Island acts have been passed providing that coroners may themselves impanel the jury.

In other cases when the coroner receives proper notice of a death having taken place within his jurisdiction under such circumstances as require investigation,[4] he should procure the necessary information on oath,[5] make the declaration according to form No. 14, proceed to hold his inquest forthwith, by issuing a precept or warrant[6] to summon a jury to appear at a particular time and place named. The inquest must be taken within a reasonable time after the death. Seven months has been held too late.[7] But the time ought in each case to be governed by the state of the body.[8]

[3] See *Thomas* v. *Churton*, 2 B. & S. 475; Jervis on Coroners, 6th ed., p. 63; *Davidson* v. *Garrett*, 30 O. R. 653.

[4] See c. II., s. 2.

[5] See c. II., s. 2, and form No. 10.

[6] See form No. 16, and see remarks upon the case of *In re Berry*, 9 Ir. R. 123, c. III., s. 2.

[7] 1 Stra. 22; 1 Salk. 377 and 235.

[8] An amusing case was reported from England in December, 1901, which may serve as a warning to coroners not to be too anxious to hold inquests. A coroner was notified that a corpse had been found.

It has been held that a coroner is not justified in delaying the inquest upon a body in a state of decomposition for so long a period as five days, in order that the body may be identified and buried and registered under the right name; and the mere fact that it has been placed in a mortuary can make no difference.[9]

If it is so far decomposed as to afford no information on view, the inquiry should be left to the justices of the peace. Still it is difficult to say when the body will afford no information, for in some instances the bones alone might point out the cause of death; and in some cases of poisoning, traces of the poison might be found long after the body was decomposed; yet, it is said, the whole of the body should be inspected.[10] However, in the comparatively few instances when a coroner is called upon to hold inquests long after the death has happened, he must govern his decision in this respect by a judicious consideration of all the facts he can learn with regard to each case.

When judgment of death is executed on a prisoner the inquest is to be held within twenty-four hours after the execution, and the jury at the inquest shall inquire into, and ascertain the identity of the body, and whether judg-

He ordered an inquest, which resulted in the following verdict:—"That the woman was found dead at the railway goods station, Sun Street, on April 15th, and did die on some date unknown, in some foreign country, probably South America, from some cause unknown. No proofs of a violent death are found, and the body has been dried and buried in some foreign manner, probably sun dried, and cave buried. And the jurors are satisfied that the body does not show signs of any recent crime in this country, and that the deceased was unknown, and about twenty-five years of age." After the verdict the deceased was allowed to continue her journey, but on arriving at her destination she again got into difficulties. The officials at Belgium ordered the immediate interment of the body. On being exhumed it was found that the exciting experience of the human relic had broken it into fragments, and it had become valueless. "It was a mummy of one of the Incas or Royal Family of Peru. As the Empire of the Incas came to an end in 1533, the body must have been nearly 400 years old at least, and might well have been allowed to pass, undisturbed, into the museum which no doubt it was intended for."

[9] *In re Hull*, 9 L. R. Q. B. D. 689.

[10] *R.* v. *Bond*, 1 Stra. 22, and see pp

ment of death was duly executed on the offender. And the inquisition in such cases must be in duplicate, and one of the originals must be delivered to the sheriff.[1]

When a prisoner dies in prison, otherwise than by hanging in pursuance of a legal sentence, the coroner, when notified of the death by the proper officer of the prison, must proceed *forthwith* to hold an inquest upon the body,[2] except in the case of a death taking place in any county house of industry, in which case an inquest is not necessary unless after notification the County Crown Attorney believes that such death took place under circumstances requiring investigation.

If the body has been buried, the coroner may lawfully take it up for the purpose of holding an inquest.[3] It is a misdemeanor to bury a body, on which an inquest should be held, before or without sending for the coroner; and, if possible, the body ought not to be moved in any way until viewed by the coroner and jury.[4]

It is a misdemeanor to burn or otherwise so dispose of a body upon which an inquest ought to be held, as to prevent the coroner from holding the inquest.[5]

In March, 1903, at a trial for murder in England, the prisoner was convicted of poisoning three women, and the trial judge commented on the fact that if cremation had been the law of the land, it would have been impossible to bring the crime home to the prisoner, as nothing would have remained of his victims to show that they had been poisoned; and he hoped that the people who favoured cremation would take that case as a warning.

[1] 55-56 V. c. 29, s. 944, Dom.
[2] R. S. O. c. 8, s. 3.
[3] 2 Haw. c. 9, s. 23; 4 M. S. Sum. 333.
[4] 1 Salk. 377.
[5] *The Queen* v. *Price*, L. R. 12 Q. B. D. 247; *The Queen* v. *Stephenson*, L. R. 13 Q. B. D. 331.

The proceedings by inquisition, being judicial, must not be conducted on a Sunday in Canada.[6]

It is not absolutely requisite that the inquest should be held at the same place where the body is viewed, provided it is taken within the same jurisdiction.[7]

In cases where a coroner has authority to act, the proceedings are in substance the same as before a grand jury.[8]

In olden days the impanelling of the coroner's inquest and the view of the body was commonly in the street, in an open place, and in *corona populi*;[9] but in modern times it has become usual to hold the inquest in any convenient building.

In *Nova Scotia*, coroners are authorized to hold inquests on Sunday when in their opinion it is necessary to do so.[10]

And in Nova Scotia, in the city of Halifax and the town of Dartmouth, notwithstanding the medical examiner has failed to state in his report that in his opinion an inquest is expedient, the mayor of the city of Halifax, if the dead body is found in such city, or the mayor of Dartmouth, if such body is found in such town, or in either of such cases, the Attorney-General of Nova Scotia may direct an inquest to be held by the stipendiary magistrate of such city or town. And after hearing any testimony, including that of the medical examiner, he must make in writing under his hand a report setting forth where, when and by what means the person came to his death, giving his name if known, and all the circumstances attending the

[6] 9 Co. 666; Dakins' case, 2 Saund. 290*a*; Jer. O. C., 6th ed., 10; *In re Cooper et al.*, 5 P. R. 256; it is submitted that section 729 of 55 & 56 V. c. 29, Dom., may not apply to coroners' inquests. And see *The Atty.-Genl. for Ontario* v. *The Hamilton Street Railway Co.*, L. R. App. Cas. 1903, p. 524.

[7] 2 Hawk. c. 9, s. 25; Latch. 166; Poph. 209, and see *ante*, c. III., s. 1.

[8] *Regina* v. *Golding*, 39 U. C. Q. B. 259; *R.* v. *Ingham*, 5 B. & S. 275; *Agnew* v. *Stewart*, 21 U. C. Q. B. 396.

[9] Hist. of the Commonwealth, by Sir T. Smith, p. 96.

[10] R. S. N. S. 1900, c. 36, s. 5, s.s. (5).

death, and if the death resulted in whole or in part from any unlawful act or culpable negligence of any person or persons, he shall forthwith state the name or names of such persons, if known, and file the statement with the clerk of the Crown for the county of Halifax.[1] And in British Columbia the Supreme Court of that province may, under certain circumstances, order an inquest to be held.[2]

Sec. 2.—WHO MAY ATTEND.

Much discussion has taken place as to whether the public have a right to attend inquests. It seems from the best authorities that they have not.[3] The power of deciding who shall be present and who not, rests with the coroner, who, together with all persons who administer a public duty, has a right to preserve order in the place where it is administered, and to turn out whom he thinks fit, without rendering himself liable to an action of trespass.[4]

If any one is accused, or is likely to be accused, of crime in connection with the death of the person upon whose body an inquest is being held, or is to be held, that party, so long as he behaves himself properly, should be allowed to attend the inquest, and to be represented by counsel. Indeed an accused party, when there is one, should be present if possible in all cases, as his presence or absence, when depositions are taken, may be material, and his evidence may be desirable or his presence required for his identification. If the jurymen express a wish for

[1] R. S. N. S. 1900, c. 37, s. 16.

[2] 61 V. c. 50, s. 9, s.s. (4) B. Col.

[3] Only those summoned, or who are suspected or interested in the result of the inquiry, or live in the neighbourhood where the body is found dead, at most have such a right. Jer. O. C. 241.

[4] *Garnett* v. *Ferrand*, 6 B. & C. 611; and see 10 B. & C. 237; and see judgment of Lord Abinger in *Jewison* v. *Dyson*, 9 M. & W. 585; *Mellor* v. *Thompson*, L. R. Ch. D. 55. And see *Andrew* v. *Raeburn*, L. R. 9 Ch. 522; *Nagle-Gillman* v. *Christopher*, 4 Ch. D. 173; *Agnew* v. *Stewart*, U. C. Q. B. 396; *Garner* v. *Coleman*, U. C. C. P. 106.

the accused to be present, this should be gratified unless under very exceptional circumstances.

Any members of the family of the deceased who desire to be present, or to be represented by counsel, at the inquest, should have such desire complied with. But they have no right to address the jury or put questions to the witnesses except by permission of the coroner. Still in all cases, as above stated, a coroner had better err on the side of publicity than on that of secrecy.

The foregoing remarks are made, of course, subject to there being no circumstances suggesting secrecy as the most prudent course to avoid a suspected person secreting himself, or tampering with witnesses; or where decency or reasonable consideration for the family of the deceased, or want of sufficient accommodation, would suggest a private investigation as being more desirable.

And the coroners' court being a court of record[5] of which the coroner is a judge, this is in accordance with the ancient rule that no action will lie against a judge of record for any matter done by him in the exercise of his judicial functions.[6]

But however clear the power to exclude the public from inquests may be, and however proper for the sake of decency, or out of consideration for the family of the deceased, or for the want of sufficient accommodation, the exercise of that power in some instances may be, yet it should not be used in an arbitrary manner, nor for the mere sake of showing a little authority. A coroner had far better err on the side of publicity, than in conducting

[5] Some doubt is thrown upon this by Lord Abinger in his judgment just cited. But see also the judgment of *Hagarty, C.J.*, in *Garner* v. *Coleman*, 19 C. P. 106, and of *Meredith, C.J.*, in *Reg.* v. *Hendershott et al.*, 26 O. R. 678, and *Davidson* v. *Garrett*, 30 Ont. R. 656; *Thomas* v. *Churton*, 2 B. & S. 475, *Jervis* on Coroners, 6th edition, 63.

[6] B. & C. 625, and c. V., s. 1.

his proceedings too secretly. When any one is excluded, it should be for a just cause, and after due consideration.

Should it become necessary, or proper, to exclude any one, the coroner should first request the party to leave the room, and on his refusal to do so, the constable should then be instructed to expel him, using no unnecessary violence.[8]

As to the right of counsel on behalf of the accused or suspected person to be present at an inquest, see Part II., c. xii., s. 5. supra p. 327

In *Nova Scotia*, when the inquest is held on the body of a person who has been killed by an explosion or accident in a mine, and the majority of the jury think it necessary, the coroner must adjourn the inquest to enable the inspector or some other person properly qualified, appointed by the commissioner, to be present to watch the proceedings. At least four days notice in writing of the time and place of holding the adjourned inquest must be given to the commissioner.[9]

And in *Nova Scotia*, any person claiming to be interested in any inquest may, by permission of the stipendiary magistrate, attend an inquest, and by his solicitor or counsel cross-examine any witness.[10] And any counsel appointed by the Attorney-General for Nova Scotia to act for the Crown at any inquest, may attend and examine, or cross-examine, any witness; and the stipendiary magistrate must issue summonses for any witness required on behalf of the Crown.[1]

In *New Brunswick*, 63 V. c. 5, s. 13, provides that the place where an inquest is being held shall be deemed a public court of justice, and as such open to the public, but the coroner may at any time during the proceedings, if he shall think fit, exclude the public from such place and proceed with closed doors.

[8] *Agnew* v. *Stewart*, 21 U. C. Q. B. 396.
[9] R. S. N. S. c. 8, s. 24.
[10] R. S. N. S. 1900, c. 37, s. 13.
[1] R. S. N. S. c. 37, s. 13.

SEC. 3.—THE JURY, AND HOW SUMMONED.

Inquests held by coroners are expressly excepted from the operation of the Jurors Act,[2] and by the Ontario Statute, 60 V. c. 14, s. 23, the persons summoned to serve as jurors upon any coroner's inquest, and attending thereon, must be selected from such persons as are named in the voters' list of the municipality in which the inquest is to be held, and are marked therein as qualified to serve as jurors. Otherwise no qualification by estate is necessary for jurors on inquests, but they should be "lawful and honest men."[3] Aliens, convicts and outlaws are not such, and if impanelled on the inquest, it seems the inquest may be avoided.[4] They should be rejected by the coroner, although, strictly speaking, jurors upon inquests are not challengeable,[5] except as to the qualification just mentioned.

Each juror should be able to write his own name sufficiently well to enable him to sign the inquisition, and any one summoned as a juror who cannot do so had better be rejected if it is possible to do without him. If, however, a marksman is on the jury his signature to the inquest should be verified by a witness who can write.[6]

Jurors ought to be persons indifferent to the subject matter of the inquiry, and residents of the municipality or district where the body is found. And in Ontario, as previously stated, they must be selected from such persons as are named in the voters' list of the municipality in which the inquest is to be held, and are marked therein as qualified to serve as jurors. Householders should be preferred.[7]

[2] R. S. O. c. 61, s. 140, and see *Reg.* v. *Wintgarner*, 70 Ont. R. 208.

[3] Lord Raymond, 1305.

[4] 2 H. P. C. 60, 155; Lamb Just. 391.

[5] Mir. c. 1, s. 13; Brit. 6*a*.

[6] See *Rex* v. *Bowen*, 3 C. & P. 602; *Reg.* v. *Stockdale*, 8 D. P. C. 517.

[7] Fort de Laud. c. 25.

The jury upon inquests on prisoners ought to be a party jury, as it is called, that is, one-half prisoners (if so many there be), and the other half persons not prisoners,[8] except when the prisoner was executed under sentence of law, in which case the jury must not be composed partly or wholly of prisoners confined in the gaol, or of officers of the prison.[9]

And in inquests upon fires, they are to be impanelled from among the householders resident in the vicinity of the fire; and they can be fined for non-attendance.[10]

In *Quebec* the coroner holding a fire investigation may in his discretion, or in conformity with the written requisition of any agent of any insurance company, or of any three householders in the vicinity of any fire, impanel a jury chosen from among the householders resident in the vicinity of the fire, to hear the evidence and to render a verdict under oath thereupon.[1]

In *Nova Scotia* there are special provisions for investigations as to the origin of fires to be made without juries by certain officials other than coroners, and consequently these provisions do not come within the scope of this work.

No person qualified to serve appears to be exempted from serving on coroners' juries, yet those who are exempted from serving on other juries had better not be summoned.[2]

The following are the persons absolutely freed and exempted from being returned and from serving as either grand or petit jurors in any of the courts of Ontario:[3]

1. Every person upwards of sixty years of age.

[8] Umfrev. 212, 213.
[9] 55-56 V. c. 29, s. 944, Dom.
[10] R. S. O. c. 275, ss. 3, 4.
[1] R. S. Que. Art. 2992.
[2] See *In re Dutton*, [1892] 1 Q. B. 486; R. S. O. 1897, c. 61, s. 140.
[3] R. S. O. c. 61, ss. 6, 7, 8, 9, 10, and c. 12, s. 51.

2. Every member of the Executive Council of Canada and of the Province of Ontario.

3. The secretaries of the Governor-General and the Lieutenant-Governor; and

4. Every officer and other person in the service of the Governor-General or Lieutenant-Governor for the time being.

5. Every clerk and servant belonging to the Senate and House of Commons and the Legislative Assembly, or to the public departments of Canada or of the Province of Ontario.

6. Every officer of the Dominion or Provincial Government; and

7. Every officer of the post office, customs and excise.

8. Every inspector of prisons.

9. The wardens of the Provincial Penitentiary, the Central Prison and Reformatory.

10. Every officer and servant in the said Penitentiary, Central Prison and Reformatory.

11. Every judge of a court having general jurisdiction throughout Ontario.

12. Every judge of any county or other court (except the General Sessions of the Peace) having jurisdiction throughout any county in Ontario.

13. Every sheriff, coroner, gaoler and keeper of a house of correction or lock-up-house.

14. Every sheriff's officer and constable.

15. Every priest, clergyman and minister of the gospel recognized by law, to whatever denomination of Christians he may belong.

16. Every member of the Law Society of Upper Canada, actually engaged in the pursuit or practice of his profession, whether as a barrister or student.

17. Every solicitor of the Supreme Court of Judicature for Ontario actually practising.

18. Every officer of any court of justice, whether of general, county, or other local jurisdiction, actually exercising the duties of his office.

19. Every physician, surgeon and pharmaceutical chemist, duly qualified to practise and being in actual practice.

20. Every officer in Her Majesty's army or navy on full pay.

21. The officers, non-commission officers and men of every corps of volunteers, while they continue such, and a certificate under the hand of the officer commanding any such corps, shall be sufficient evidence of the service in his corps of any officer, non-commissioned officer or man for the then current year, and of his exemption as aforesaid.

22. Every pilot and seaman actually engaged in the pursuit of his calling.

23. Every county, township, city, town and village treasurer and clerk.

24. Every collector and assessor.

25. Every professor, master and teacher of any university college, collegiate institute, high school, public school or other school or seminary of learning, actually engaged in performing the duties of such appointment.

26. Every officer and servant of any university, college, school or seminary of learning, actually exercising the duty of his office or employment.

27. Every editor, reporter and printer of any public newspaper or journal actually engaged in such employment or occupation.

28. Every person actually employed in the management and working of any railway.

29. Every telegraph operator.

30. Every miller.

31. Every fireman belonging to any regular fire company who has procured the certificate authorized by section 2 of the Act to exempt firemen from certain local services during the period of his enrolment, and continuance in actual duty as such fireman; and every fireman who is entitled to, and who has received the certificate authorized by sections 5 and 6 of the said Act, but no fireman shall be exempt from serving as a juror, unless the captain or other officer of the fire company, at least five days before the time appointed for the selection of jurors, notifies the clerk of the municipality of the names of firemen belonging to his company residing within the municipality, who are exempt as aforesaid, and claims exemption for them.

Every member of the Senate and House of Commons, and of the Legislative Assembly of the Province of Ontario, and all witnesses summoned to attend before the same or a committee thereof,—every warden and every member of any county council,—every mayor, reeve or deputy reeve of any city, town, township or village,—every justice of the peace, and every other member and officer of any municipal corporation,—is also absolutely freed and exempted from being selected to serve as a grand or petit juror in His Majesty's inferior Courts.

By c. 12, s. 51, R. S. O. 1897, it is enacted that during a Session of the Ontario Legislature, and during twenty days preceding and twenty days following, a session, all members, officers and employees of the Assembly, and all witnesses summoned to attend before the same or a committee thereof, shall be exempt from serving or attending as jurors before any court of justice in the Province. As a coroner's court is a criminal court and a court of record these exemptions should be allowed.

No man not being a natural-born or naturalized subject of His Majesty is qualified to serve as a grand or

petit juror in any of the courts aforesaid, on any occasion whatever, and should not be accepted as jurors on a coroner's inquest.

No man convicted of any treason, felony or infamous crime, unless he has obtained a free pardon, and no man who is under outlawry, is qualified to serve as a grand or petit juror in any of the said courts on any occasion whatever.

It has been held in England that the jurors need not be sworn *super visum corporis*, or that they need all be sworn at one time, but in Canada they should all be sworn before formally reviewing the body of the dead person, as the dead body is part of the evidence to be laid before them. There is no objection to the jury being sworn in the presence of the dead body, but after they are all sworn there should be a formal viewing of the body by the jury and coroner all being together, at which the coroner should make such observations as he may consider proper. It is said the jury need not all view the body formally at the same time,[4] but this had better be avoided to prevent the necessity of the coroner making his observations on the view of the body more than once, and to insure all the jurors having all the evidence given to them in the same words. Besides as the dead body is part of the evidence to be given before the jury, it would seem proper that it should be formally brought before them all by the coroner at one and the same time.

After the jury had viewed the body and heard part of the evidence, another person was sworn, viewed the body, and took part in the proceedings, on hearing that portion of the evidence which had been previously taken, read over to him, and it was held a sufficient ground for bringing up the inquisition.[5]

[4] *Reg.* v. *Ingham*, 5 B. & S. 257; 9 Cox C. C. 508.
[5] *Reg.* v. *Yorkshire Coroner*, 9 L. T. 426.

The coroner's jury in Ontario may consist of any number of persons not less than twelve. If twelve out of the number summoned do not attend, by-standers, who are called *tales de circumstantibus*, may be summoned to make up the number of twelve, and these by-standers should not be men who are exempt from serving, if they object to serve. Upon the prayer and award of a *tales de circumstantibus* at *nisi prius*, it is not compulsory on the coroner, or sheriff, to select the talesmen from among the by-standers accidentally in court; they may be selected out of persons previously appointed by the coroner, or sheriff, to be in attendance in the expectation that a tales would become necessary,[6] and the verdict must be the opinion of the majority, provided that majority be composed of twelve jurymen at least.[7] After a verdict there is a presumption that the inquisition was found by the proper number of jurors.[8]

The oath of the foreman and the oath of the jurors will be found in the appendix of forms of Nos. 25 and 26, and if the foreman, or any of the jurors affirm, form No. 26 can be used, and see remarks upon swearing witnesses and jurors in section 4, *post*.

The old rule was that if twelve could not agree, the jury should be kept without meat, drink or fire, until they returned their verdict; and if this was ineffectual no verdict could be taken by the coroner, nor could he discharge the jury and call another, but he had to adjourn them to the next assizes for the county, when they might have the benefit of the opinion and direction of the judge. In modern practice this harsh law has usually been departed from and the jurors allowed reasonable accommodation and comforts while making up their decision. If

[6] *Rex* v. *Dolby*, 1 Dowl. & Ry. 145; 3 Dowl. & Ry. 311, 321; S. C. 2 B. & C. 104.
[7] *Regina* v. *Golding*, 39 Q. B. 259.
[8] *Taylor* v. *Lamb*, 6 D. & R. 188; 4 B. & C. 138.

after some delay there is no chance of a verdict, the coroner should adjourn the jury to the next assizes for the county. And if they cannot then agree the judge of the assize will discharge them.[9]

On an inquest in 1897 the coroner was reported to have bound the jury, who could not agree upon a verdict, to appear at the next assizes, and that the presiding judge at such assizes directed that the same coroner should have the evidence again given in the presence of the same jury. This was done, and a verdict arrived at, when the jurors were released from their duties.

In *British Columbia*, by the Coroners' Act of that Province (61 V. c. 50, s. 7, s.s. (5)), it is provided that in case the jury do not agree on a verdict, the coroner may adjourn the inquest to the next court of assize, oyer and terminer, and general gaol delivery, held for the district or place in which the inquest is held, and if after the jury have heard the charge of the judge or commissioner holding such court, the jury fail to agree on a verdict, the jury may be discharged by such judge or commissioner without giving a verdict.

Now, under the provisions of the Criminal Code, 1892, jurors are allowed by law at any time before giving their verdict, the use of fire and light when out of court, and also reasonable refreshment.[10]

In a case at Winchester, April, 1880, Mr. Justice Hawkins is reported to have said that if the coroner had himself discharged the jury when he found they could not agree, he would not have found fault with him. But this cannot be looked upon as a decided authority, since the

[9] *Regina* v. *Reinheatz*, 4 F. & F. 1094.

[10] 55-56 V. c. 29, s. 674, Dom. There may be some doubt whether this provision applies to coroner's juries, but that can be left to the lawyers to decide, and coroners are recommended to follow the modern practice whenever it is reasonable that jurors should be allowed fire, light and refreshment by permission of the coroner, and see section 675 of 55-56 V. c. 29.

point was not before the learned judge for consideration. In the fifth and sixth editions of Jervis on Coroners, the editor suggests a way out of the difficulty arising from a disagreement of the jury, by the coroner inviting the jury to find as much as they can agree upon, as for instance the identity of the deceased, when, where and how the death happened, and then the jury could leave the question open whether the killing was felonious, or such other questions as they could not agree upon. The coroner might then accept their finding, and after the inquisition was drawn up and completed, discharge them.[1] But in all cases when juries cannot agree coroners had better adopt what may be considered the established practice and adjourn them over to the next assizes for the county and have them there dealt with by the presiding judge.

In a late case in England, a jury disagreed and were bound over by the coroner to attend the next assizes, and on the matter coming before Mr. Justice *Day* at the Hereford Assizes, all the jury were in attendance except one, who was absent through illness. Mr. Justice *Day*, under the circumstances, discharged the jury, and the coroner held another inquest.[2]

In New Brunswick, at any inquest in case the jury, after having been out for four hours, are unable to agree upon a verdict, the coroner may discharge them after taking their findings upon such facts (if any), as they are able to agree upon. And the coroner must thereupon submit the evidence taken at the inquest, together with the findings of the jury upon such facts (if any), as they may have agreed upon, to the Attorney-General, who may order the coroner to summon another jury, and hold a second inquest, either with a view of the body or without one, as to the Attorney-General may seem proper.[3]

[1] See *Coleman* v. *City of Toronto*, 23 Ont. R. 345, and the authorities there referred to.

[2] *Attorney-General* v. *Moore*, 1893, 1 Ch. 676.

[3] C. S. N. B. 1903, c. 124, s. 25.

The jury may at any time during the investigation call back witnesses and ask them further questions. After retiring to make up their verdict, if the jurymen return and express a desire for further evidence, this had better be given them if available, either instanter, or on an adjourned hearing. This was the course taken in England on the inquest upon the body of Harold Frederick.

If a juryman has any evidence to give at the inquest he should be sworn as any other witness, but if possible a person who may be required as a witness, should not be called as a juror.[4]

It is the province of the jury to investigate and determine the *facts* of the case, but they should take the *law* from the coroner.

In a case at Toronto, during the month of February, 1904, a coroner's jury had been selected and sworn, when the foreman of the jury, it was reported, was arrested on a charge of accepting a bribe to "fix" the jury, and was committed for trial. The inquest was adjourned in the hope that consent could be obtained to have the same jury go on with the inquest, the foreman's place to be taken by an extra juror who had been sworn in over the twelve required. But this the authorities would not consent to, and under the circumstances it would seem they very properly refused their consent. Another inquest commenced *de novo* was the safest course to adopt.

The jury are summoned by the coroner issuing his precept or warrant to the constables of the county to summon at least twelve[5] able and sufficient men to appear before him at an hour and place named. This warrant, with a summons for each juryman,[6] is given to a constable,

[4] I Salk. 405; Roscoe, 130; *R.* v. *Winegarner*, 17 O. R. 208; and see *R.* v. *Petrie*, 20 O. R. at p. 320.

[5] Any number thought advisable, but not less than twelve, may be summoned. See Form No. 16.

[6] See Form No. 18.

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.[7] Where a party jury is required, a warrant must also be issued to the gaoler of the prison.[8]

If a person duly summoned to serve as a juror or as a witness to give evidence, does not, after being openly called three times, appear and serve as such juror, or appear and give evidence as such witness, the coroner may fine the delinquent person any sum he may deem proper, not exceeding four dollars.[4] And he must thereupon make out and sign a certificate[5] containing the christian and surname, residence and trade, or calling of such person, the amount of the fine imposed, and the cause of the fine, and transmit such certificate to the clerk of the peace of the county in which the person resides, on or before the first day of the General Sessions of the Peace then next ensuing, and cause a copy of such certificate to be served upon such delinquent either personally or by leaving it at his residence within a reasonable time after the inquest. And the fine so certified is estreated, levied and applied in like manner, and subject to the like powers, provisions and penalties in all respects as if it had been a fine imposed at the General Sessions.[6] If sufficient jurors attend the inquest, it is unusual to fine those who do not obey the summons.

Jurors are sometimes summoned verbally, but a warrant to summon the jury, with a summons for each of at least twelve jurors, had better be given to the constable, and if it becomes necessary in order to make up a jury, to select any persons from the audience, or who may be near

[7] See Form No. 19.
[8] See Form No. 17. Jervis O. C. 322.
[4] R. S. O. c. 97, s. 9, and see 2 Hale, 59; R. S. Que. Art. 2994.
[5] See Form No. 23.
[6] R. S. O. c. 97, ss. 9, 10; R. S. Que. Art. 2994.

at hand, they also had better be served with a regular summons, care being taken to choose only residents of the municipality or district where the body is found,[7] and who as far as possible are named in the voters' list of the municipality in which the inquest is to be held, and are marked therein as qualified to serve as jurors.

In the case of *Davidson* v. *Garrett*, 30 O. R. at p. 657, Chief Justice Meredith said he was "unable to find anything which makes it essential to the constitution of the Coroners' Court, or to the exercising by him of his judicial functions with regard to a dead body, or the holding of an inquest, that he should issue his warrant for the summoning of a jury for the purpose of the inquest; that is no doubt the usual course taken, but there is no reason that I can see why the coroner, if he chooses to do so, may not himself impanel the jury—summoning them to attend by a verbal direction for that purpose given by himself; and indeed a case might arise in which such a course might be not only convenient, but almost necessary." This was not, as the writer understands the report of the case, intended by the Chief Justice as an absolute decision on the point, but falling as it did from so eminent a jurist, it is entitled to all the consideration that can be given to a question short of an absolute decision of the Court; but the writer would suggest to coroners that to follow such a course, where it could be avoided, would scarcely be desirable. A coroner is a judge of a criminal court of record, and for a judge to go round summoning jurymen

[7] *In re Dutton*, 1892, 1 Q. B. 486. In the case of *Reg.* v. *Ingham*, 5 B. & S. 257; 9 Cox C. C. 508, it was held not necessary that the jurors should be sworn *super visum corporis*, or that they should be all sworn at one time, or that they should all view the body at the same time, but see the remarks as to this in Chap. XV. It has been held that after a jury had viewed the body and heard part of the evidence, another person was sworn as a juryman and viewed the body and took part in the proceedings on hearing that portion of the evidence which had been previously taken, read over to him, it was a sufficient ground for bringing up the inquisition to be quashed. *Reg.* v. *Yorkshire* (Coroner), 9 L. T. 424; 9 Cox C. C. 373.

to attend an inquest he was about to hold, when such a proceeding could be avoided, would not tend to the upholding the dignity of his office. In this connection it may be noted that in *Nova Scotia* coroners were authorized by statute—"to personally, or by a constable to summon the jury," but the statute was amended so as to read: "Coroners are directed to issue a warrant to a constable to summon the jury."

When a precept is issued and a jury summoned to attend an inquest, the coroner should proceed with the inquiry, and must not dismiss the jury without doing so. A refusal to proceed with an inquest under such circumstances has been held in England to amount to a misbehavior.[8]

In Canada it is safer to swear the jurymen all at one time and in presence of the body, first getting them to choose their foreman, the dead body being part of the evidence to be submitted to them.

In *Quebec* the coroner in his discretion, or upon the written requisition of any agent of an insurance company, or of any three householders in the vicinity of any certain fires, may impanel a jury chosen from among the householders resident in the vicinity of the fire, to hear the evidence that may be adduced touching or concerning the fire; and to render a verdict under oath thereupon in accordance with the facts.[9] And in such fire investigations the coroner in Quebec has the same power of fining a juror who does not obey the summons as a coroner in Ontario, and the same means of collecting such fines exist as in Ontario.[10]

The case of *Brisebois and the Queen*, 15 S. C. R. 421, although not relating directly to a coroner's jury, may here be noted. In that case one of the jurors who

[8] *In re Ward*, 3 De G. F. & F. 700; 7 Jur. (N. S.) 853.
[9] R. S. Que. Article 2992.
[10] R. S. Que. Article 2994.

tried the case had not been returned as a juror. His name was Moise Lamoureux, and the sheriff had served Joseph Lamoureux's summons upon Moise, and had returned Joseph Lamoureux as the party summoned. Moise appeared in court and answered to the name of Joseph Lamoureux and was sworn as a juror without challenge. It was held, affirming the judgment of the Court of Queen's Bench, Lower Canada, that assuming the point could be reserved, section 246, chapter 174, R. S. C., clearly covered the irregularity complained of. This decision, however, was before the Criminal Code was passed.

If a constable refuse or neglect to make a return of the service of jurors he can be fined before the judge of assize.[1]

When the coroner is notified that the jury have arrived at a verdict the jury should be brought into the open court. The coroner must not go into their room and take the verdict there before they return to the open court, as it was held in the *Michelstown Inquisition*, 22 L. R. Ir. 279, that his doing so was misconduct for which the inquisition would be quashed.

In *Nova Scotia*, coroners are by statute to issue a warrant to a constable to summon the jury,[a] and where the inquest is held upon the body of any person who has died in gaol or prison, an officer of such gaol or prison, or a prisoner therein, or a person engaged in any sort of trade or dealing with the gaol or prison, must not be a juror on such inquest.[2] When the inquest is on the body of a person killed by an explosion or accident in a mine in Nova Scotia, no person having a personal interest in, or employed in, or in the management of, the mine in which the explosion or accident occurs, or any relative of the deceased person upon whose body the inquest is to be held,

[1] 2 Hale, 59.
[a] R. S. N. S. 1900, c. 36, s. 3, s.s. (1).
[2] R. S. N. S. 1900, c. 36, s. 12, s.s. 2.

can serve as a juror or as coroner [3] on the inquest, and it is the duty of the constable or other officer not to summon any person so disqualified. And it is the duty of the coroner not to allow any such person to be sworn or to sit on the jury; and if in the opinion of the inspector it will lead in such cases to a more thorough investigation, and will be more conducive to the ends of justice, he may require the constable, or other officer, to summon as jurymen, not more than three working men employed at any other mine than that at which the accident occurred, who shall form part of the jury sworn in such inquests.[4]

And in *Nova Scotia*, where an inquest is held upon the body of any person who has died in gaol or prison, an officer of such gaol or prison, or a prisoner therein, or a person engaged in any sort of trade or dealing with the gaol or prison, shall not be a juror on such inquest.[5] Also in Nova Scotia the jury may consist of any number not exceeding twenty-three and not less than twelve of good and lawful men.[6] And the jury must be sworn by or before the coroner diligently to inquire touching the death of the person on whose body the inquest is about to be held, and a true verdict to give according to the evidence.[7] And any person duly summoned as a juror who does not appear and serve may be fined by the coroner a sum not exceeding four dollars, and the coroner must thereupon make out and sign a certificate giving the name, residence and occupation of the delinquent, the amount of the fine imposed, and the cause. The coroner must transmit this certificate to the clerk of the Crown for the county in which the delinquent resides, on or before the first day of the next sittings of the Superior Court in such county, and cause a copy of such certificate to be served

[3] R. S. N. S. 1900, c. 19, s. 43.
[4] R. S. N. S. c. 19, s. 43.
[5] R. S. N. S. 1900, c. 36, s. 3, s.s. 2.
[6] R. S. N. S. 1900, c. 36, s. 3, s.s. 1.
[7] R. S. N. S. 1900, c. 36, s. 3, s.s. 3.

upon such delinquent, either personally, or by leaving the same at his residence, within a reasonable time after the inquest. And any fine so certified shall be estreated, levied and applied in like manner, and by the same officers and subject to the like powers, provisions and penalties in all respects as if it had been a fine imposed by a judge of the Superior Court at a sitting held in the county in which such delinquent resides. Every person who fails to comply with the provisions of s. 43, c. 19, of R. S. N. S., as above mentioned, will be guilty of an offence against the said chapter.[8]

In *New Brunswick* the coroner's warrant to the constable requires that he should forthwith summon the number of jurors named therein by delivering to each a summons in the form No. (D), in the schedule to c. 124, s. 9, of C. S. N. B. 1903. And when a person duly served as a juror at an inquest does not, after being openly called three times, appear to such summons, or appearing, refuses without reasonable excuse to serve as a juror, the coroner may impose on such person a fine not exceeding five dollars.[9] And any power by c. 124, C. S. N. B. 1903, vested in a coroner of imposing a fine on a juror or witness, or of causing a witness to be apprehended, shall be deemed to be in addition to and not in derogation of any power the coroner may possess independently of the said chapter over the matters mentioned, with this qualification, that a person shall not be fined by the coroner under that chapter, and also punished by the power of the coroner independently of that Act.[10]

And in *New Brunswick*, when any fine imposed by a coroner, either on a juror or a witness, shall not be paid forthwith, or within such time as may be allowed by the coroner when imposing the same, the coroner may commit

[8] R. S. N. S. 1900, c. 36, s. 12.
[9] C. S. N. B. c. 124, s. 12.
[10] C. S. N. B. 1903, c. 124, s. 14.

the delinquent to the gaol of the county for which he is a coroner for such time, not in any case to exceed fourteen days, as the coroner shall think fit, or until such fine and the costs of the commitment be paid. Every such commitment may be in form N of the statute (see the schedule of forms hereto), or as near thereto as the facts will permit. All fines imposed under the authority of the Act, c. 124, C. S. N. B. 1903, when collected, must be paid over by the coroner to the chamberlain or treasurer of the city, town or county in which the inquest is held, to be by him credited to the miscellaneous funds of such city, town or county.

Also, in *New Brunswick*, jurors and witnesses are to be sworn in the same manner as they are sworn in that Province at *nisi prius*, and the forms of oath to be used must be those in the appendix hereto.[1] And the jurors in New Brunswick are to be served by and before the coroner diligently to inquire touching the death of the person on whose body the inquest is about to be held, and a true verdict given according to the evidence.[2]

In *Prince Edward Island*, a coroner's jury consists of seven in number only, and the jurors must be summoned personally by the coroner, or by a constable furnished with a precept for the purpose.[3] They are to be selected from the nearest inhabitants.[4]

In *British Columbia*, a jury must consist of six persons,[5] who must agree to find a valid verdict. If a person duly summoned as a juror at an inquest does not appear and serve after being duly summoned and openly called three times, or appearing refuses without reasonable excuse to serve as a juror, the coroner may impose a fine upon him not exceeding twenty-five dollars, and by war-

[1] C. S. N. B. 1903, c. 124, s. 16.
[2] C. S. N. B. 1903, c. 124, s. 17.
[3] See Form No. 16.
[4] 39 V. c. 17, s. 2, P. E. I.
[5] 61 V. c. 50, ss. 6, 12 (1), (3).

rant in writing under his hand, may by such person as he shall appoint, levy the amount with costs from the person upon whom such fine shall be imposed, by distress of the goods and chattels of the delinquent, the cost not to exceed those lawfully chargeable under distress for rent.[6] This power to fine delinquent jurors, and also the power to fine delinquent witnesses as stated in the following section, is in addition to any power the coroner has independently of the Act, 61 V. c. 50, s. 12, B. Col., for punishing any person for contempt of court in not appearing and giving evidence or serving as a juror, with the qualification that a person may not be fined by a coroner under that Act, and also be punished under the power of a coroner independently of the Act.

In *The North-West Territories*, a coroner's jury need not exceed six persons, but six jurors at least must agree to render the verdict valid.[7] Whatever number are sworn on the jury the verdict must be that of the majority, but the majority must be composed of at least six persons.

In *Newfoundland*, inquests are held by stipendiary magistrates sitting alone without a jury, and there the office of coroner is abolished.[8]

SEC. 4.—THE WITNESSES, AND HOW SUMMONED.

Who are competent witnesses has already been considered in the chapter on Evidence, No. XI. And medical witnesses are referred to in section nine, *post*.

All persons competent to give evidence who are acquainted with the circumstances connected with the subject matter of inquiry, should offer their evidence to the coroner, and if they do not, he has authority to issue a

[6] R. S. B. C. c. 24, s. 13.
[7] R. S. C. c. 50, s. 85.
[8] 38 V. c. 8, N. F.

summons[9] to compel their attendance, and to commit them should they refuse to appear,[10] or, after appearing refuse to give evidence upon the subject of inquiry;[1] or he may in Ontario fine them up to four dollars, which fine is enforced, &c., in the same manner as fines imposed upon jurors for non-attendance, as to which see the previous section.[2]

The witnesses are summoned by issuing a supœna directed to all the witnesses by name who are required to attend the inquest, and giving a constable a copy for each witness to be served. The constable must keep a memorandum of each service, in order to be able to prove it. See form No. 29. Each copy so served need only contain the name of that witness upon whom it is to be served. The summons may be served in any county without being backed.

When the attendance of any person confined in any prison or gaol in Canada, or upon the limits of any gaol, is required, the coroner must make an order upon the warden, or upon the sheriff, gaoler, or other person having the custody of such prisoner, to deliver him to the person named in the order to receive him.[3]

On the appearance of each witness the coroner should take down his name, abode and occupation, and then administer the oath that he shall speak the truth, &c.[4] The witnesses should be sworn according to the peculiar ceremonies of their own religion, or in such manner as they think most binding upon their consciences.[5] A Jew is sworn upon the Pentateuch, a Turk upon the Koran, &c. And Quakers, Mennonists, Tunkers and United

[9] See Form No. 29.
[10] See Form No. 31.
[1] See Form No. 38; 1 Chitty Cr. L. 164.
[2] R. S. O. c. 97, s. 9, p. 217; and see Form No. 23.
[3] See 55-56 V. c. 29, ss. 675, 680, Dom.
[4] See Form No. 36; Umf. 177.
[5] *Mildrone's Case*, Leach Cr. Ca. 412; *Walker's Case*, Leach Cr. Ca. 498.

Brethren or Moravians and other witnesses who object on grounds of conscientious scruples to take an oath or are objected to as incompetent to take an oath are allowed to affirm[6] as follows: "I solemnly affirm that the evidence to be given by me shall be the truth, the whole truth, and nothing but the truth." This right of affirming is given under the Canada Evidence Act, 1893, 56 V. c. 31, s. 23, and only applies to *witnesses*. With regard to coroners *jurors* the former practice must govern.[7] A juror must be sworn according to the usual form[8] unless it is not binding on his conscience, in which case the oath should be administered in such form and with such ceremonies as he may declare to be binding upon him.[9]

It was held in the case of *Rex* v. *Tolfield*, 2 D. P. C. 469, that if an inquisition states it to have been taken on the affirmation of a man, it should state that man to be either a Quaker or a Moravian. When therefore any juror or witness affirms it had better be stated in the inquisition why he affirms instead of taking an oath.

A witness who declines swearing on the New Testament, though he professes Christianity, may be allowed to swear on the Old Testament, if he considers that more binding on his conscience.[10]

The manner of administering the different oaths and their forms will be found mentioned in the appendix of forms, No. 36.

If any witness is unable to understand English, he must be examined through the medium of an interpreter, who must be sworn well and truly to interpret as well the oath to the witness, as the questions put to him by the court and jury, and his answers thereto.[1]

[6] See Form No. 36, and Can. Ev. Act, 1893.
[7] 55-56 V. c. 29, s. 675.
[8] See Forms 25, 26, 36.
[9] *Walker's Case*, Leach Cr. Ca. 498.
[10] *Edmunds* v. *Rowe*, R. & M. 77.
[1] See Form No. 37.

The coroner on an inquisition *super visum corporis*, must hear evidence on oath, not only on the part of the Crown, but for and against the suspected person, and "on all hands" if it is offered.[2]

After each witness is sworn, his evidence must be reduced into writing by the coroner, and read over to him.[3] Then ask him if it be the whole of the evidence he can give, and any additions or corrections he mentions should be noted. Request him to sign the depositions at the end and to the right hand of the paper. His doing so is not absolutely necessary,[4] but to refuse is a contempt for which it is said the witness may be committed.[5] It is the duty of the coroner to bind over all those witnesses who prove any material fact against the party accused, and not those who are called for the purpose of exculpating him.[6]

Each deposition should be certified and subscribed by the coroner. He should do so to the left hand in the following words:

"I certify that the above information was taken and acknowledged, the day, year and place above mentioned, before me, A. B., coroner."[7]

If all the witnesses do not attend, or if there be any good reason, the coroner may adjourn the inquest to another day, to the same or another place, first taking the jurors in a recognizance for their appearance at the adjourned time and place.[8]

[2] 2 Hale, 62, 157; *Rex* v. *Scorey*, 1 Leach C. L. 43; *R.* v. *Colmer*, 9 Cox C. C. 506.

[3] *R.* v. *Plummer*, 1 C. & K. 600.

[4] L. C. L. 996.

[5] See Form, No. 39; Chitty C. L. 164, s. 1, C. & K. 600.

[6] *Reg.* v. *Taylor*, 9 C. & P. 672.

[7] Powell, Ev. 307.

[8] See Form, No. 43.

An adjournment should be to a day and hour certain on each adjournment, if one or more, and not to reassemble at the call of the coroner, or any other person.

If the coroner after an adjournment, and before the day appointed to reassemble, dies or becomes disqualified, or if any of the jurors die or become disqualified, it would seem that the only remedy is to let the inquest lapse, and have another taken *de novo*.

An adjournment to obtain the evidence of a sick or absent witness, must be to a day certain and so on, and not to a day "unless it shall be found that the witness can come before that date." And see *post*, sec. 8 of this chapter.

In the case of the inquest regarding the death of Harold Frederick (a correspondent of the New York *Times*), the jury, after considering their verdict for some time, returned to court and said it had been decided that further evidence was desirable before a verdict was rendered, and the inquest was adjourned to obtain such evidence.

Preeper et al. and the Queen, 15 S. C. 401, was not a case before a coroner, but it may be referred to as a warning to all people not to interfere in any way with a jury while the trial or other legal proceeding they are engaged in is not finally disposed of. That case was a trial for murder. An adjournment took place over a Sunday, and the jury attended church in charge of the Deputy Sheriff. During the sermon the clergyman addressed the jury, urging that if they had the slightest doubt of the guilt of the prisoners they were trying, to temper justice with equity. The prisoners were convicted, and on appeal the judges severely censured the clergyman for his remarks to the jury. The chief justice stated "the clergyman entirely mistook his duty and laid himself open to the very grave charge of interfering with the administration of justice."

On fire inquests witnesses can be fined for non-attendance as on other inquests.[9]

In *Nova Scotia* the coroner is by statute required to examine on oath, to be administered by the coroner, touching the death, any person who tenders his evidence respecting the fact, and any person having knowledge of the facts, whom the coroner thinks fit to examine.[10]

And in *Nova Scotia*, under the Medical Examiner (Halifax and Dartmouth) Act, the stipendiary magistrate may issue summonses requiring the attendance of witnesses at an inquest, and any person served must attend. And the stipendiary magistrate may direct the witnesses at an inquest to be kept separated.[1]

In *Quebec*, on fire investigations, if a witness summoned to appear neglects or refuses to appear, or appears, but refuses to be examined, or to answer any questions put to him in the course of his examination, the coroner may enforce the attendance of such person, or compel him to answer, by the same means as the coroner might use in like cases at ordinary inquests before him.[2]

In *Nova Scotia* the fine for non-attendance as a witness, is the same as a fine for non-attendance as a juror, and is recoverable in the same manner as a fine placed on a delinquent juror. See the previous section.[3] But this does not abridge any power otherwise by law vested in a coroner for compelling any person to appear and give evidence at any inquest,[4] or punishing any person for contempt in not so appearing and giving evidence;[5] or for preserving and enforcing order at any inquest; or abridge any other power vested in a coroner in that Province.[6]

[9] R. S. O. 1897, c. 275, s. 4.
[10] R. S. N. S. c. 36, s. 5, s.s. 1.
[1] R. S. N. S. 1900, c. 37, s. 14.
[2] R. S. Que. Art. 2993.
[3] R. N. S. 1900, c. 36, s. 12.
[4] R. S. N. S. 1900, c. 36, s. 15, s.s. (a).
[5] R. S. N. S. 1900, c. 36, s. 15, s.s. (b) (c).
[6] R. S. N. S. 1900, c. 36, s. 15, s.s. (c).

In *New Brunswick*, if a witness neglects or refuses to appear at the time and place mentioned in the summons, or appearing refuses, without lawful excuse, to answer a question put to him, the coroner after such service has been proved to him under oath, if the witness has not appeared, or upon such refusal to answer, may issue a warrant in the Form given in the Appendix, commanding such witness to be apprehended and brought before him to be dealt with according to law. Such warrant may be executed by any constable in any county in New Brunswick without being backed.[7] And if the witness appears but refuses without lawful excuse to answer a question put to him, the coroner may impose on him a fine not exceeding $5, or the coroner may commit such person to the gaol of the county in which the inquest is being held, for such period not exceeding fourteen days as to the coroner may seem right, or until he shall purge his contempt and pay the costs of the issuing of the commitment, and of the execution thereof, and of his conveyance to gaol.[8]

In *British Columbia*, a witness duly summoned, who, after being openly called three times, fails to appear, or appearing refuses, without lawful excuse, to answer a question put to him, may be fined by the coroner a sum not exceeding ten dollars.

And where a coroner in British Columbia imposes a fine upon any person, he may, by warrant in writing under his hand, by such person as he shall appoint, levy the amount of such fine with costs, from the person upon whom such fine shall be imposed, by distress of his goods and chattels, and the costs chargeable shall not exceed those lawfully chargeable under distress for rent.[9] This power to impose fines is in addition to all other powers of the coroner.[10]

[7] C. S. N. B. 1903, c. 124, ss. 10, 11.
[8] C. S. N. B. 1903, c. 124, s. 13.
[9] 61 V. c. 50, s. 12, s.s. 23, B. Col.
[10] 61 V. c. 50, s. 12, s.s. (4).

In *The North-west Territories*, coroners, by R. S. C. c. 50, s. 86, have the same powers to summon witnesses and to punish them for disobeying a summons to appear, or for refusing to be sworn, or to give evidence, as are enjoyed by justices of the peace. And by turning to the Criminal Code, 1892,[1] we find these powers stated as follows: "If it appears to the justice that any person being or residing within the province, is likely to give material evidence either for the prosecution or for the accused on such inquiry, he may issue a summons under his hand[2] requiring such person to appear before him at a time and place mentioned therein, to give evidence respecting the charge, and to bring with him any documents in his possession or under his control, relating thereto.[3] The summons must be served by a constable, or other peace officer, upon the person either personally, or if he cannot be conveniently met with, by leaving it for him at his last or most usual place of abode, with some inmate thereof apparently not under sixteen years of age.[4] If the party does not appear at the time and place appointed, and no just excuse is offered, then (after proof upon oath that such summons has been served as aforesaid, or that the person is keeping out of the way to avoid service) the justice, being satisfied by proof on oath that he is likely to give material evidence, may issue a warrant under his hand to bring such person at a time and place, to be therein mentioned, before him or any other justice, in order to testify as aforesaid.[5] If the party is brought before a justice on such warrant he may be detained before the justice, . . or in the common gaol, or any other place of confinement, or in the custody of the person having him in charge, with a view to secure his presence as a witness

[1] 55-56 V. c. 29, Dom.
[2] See Form in the Appendix.
[3] See 55-56 V. c. 29, ss. 580, 843, Dom.
[4] See 55-56 V. c. 29, s. 581, Dom.
[5] See Form in the Appendix.

on the day appointed, or he may be released on recognizance with or without sureties, to give evidence as therein mentioned, and to answer for his default in not attending upon the summons as for a contempt, and the justice may, in a summary manner, examine into and dispose of the charge of contempt against such person, who, if found guilty thereof, may be fined or imprisoned, or both, such fine not to exceed $20.00, and such imprisonment to be in the common gaol without hard labour, and not exceeding the term of one month, and he may also be ordered to pay the costs incident to the service and execution of the summons and warrant, and of his detention in custody.[6] If the justice is satisfied by evidence upon oath that any person within the province likely to give material evidence either for the prosecution or for the accused, will not attend to give evidence without being compelled so to do, then, instead of issuing a summons, he may issue a warrant in the first instance[7] which may be executed anywhere within the jurisdiction of such justice.[8] Any witness who refuses to be sworn after appearing, or having been sworn refuses to answer such questions as are put to him, or refuses, or neglects to produce any documents which he is required to produce, or refuses to sign his depositions, without, in any such case, offering any just excuse for such refusal, the justice may adjourn the proceedings for any period not exceeding eight clear days, and may, in the meantime, by warrant,[9] commit the person so refusing to gaol, unless he sooner consents to do what is required of him. And if such person, upon being brought up upon such adjourned hearing, again refuses to do what is so required of him, the justice, if he sees fit, may again adjourn the proceedings, and commit him for the like period, and so again, from time to time, until such

[6] See Form in the Appendix.
[7] See Form in the Appendix.
[8] 55-56 V. c. 29, s. 583, Dom.
[9] See Form in the Appendix.

person consents to do what is required of him. But this shall not prevent the justice from sending any case for trial, or otherwise disposing of the same in the meantime, according to any other sufficient evidence taken by him."[10]

SEC. 5.—COUNSEL.

Counsel appear to be on the same footing as the general public[1] with regard to having a right to attend the inquiry. The coroner can exclude them if he thinks proper, and counsel, whether for an accused or suspected person,[2] cannot insist upon being present, and upon examining and cross-examining witnesses, or upon addressing the jury,[3] and can maintain no action against a coroner for excluding them from the room. Counsel being employed by clients to attend on their behalf makes no difference. But if any of the family of the deceased, or any persons likely to be accused by the verdict, desire to be present, or to be represented by counsel, such desire should be gratified except under very special circumstances.[4]

This power of exclusion should be cautiously used, as few cases can occur in which its exercise can result in any good. As to the propriety of allowing persons to be present at a *post-mortem*, see the note referring to Dr. Palmer's case in section nine of this chapter.

Robinson, C.J., recommended that a sound and reasonable discretion, as well as due moderation, should be exercised by all persons discharging judicial duties, and he says counsel have no more right to insist on taking part in the proceedings at an inquest, than they would have to go

[10] 55-56 V. c. 29, s. 585, Dom.
[1] See Chap. XII., s. 2.
[2] *Cox* v. *Coleridge*, 1 B. & C. 37; 8 E. C. L. 17.
[3] *Barclee's Case*, 2 Sid. 90. 101.
[4] *Barclees' Case*, 2 Sid. 90. 101; Jervis O. C. 241.

into a grand jury room, and insist on examining witnesses called before them.[5]

Should the ends of justice or the feelings of the family of the deceased really require the inquest to be conducted privately, the coroner may, in his discretion, exclude counsel for or against the suspected person. A barrister cannot insist upon being present at a coroner's inquest, and upon examining, and cross-examining, the witnesses; and can maintain no action against a coroner for excluding him from the room where an inquest is being held.[6]

If it should become necessary for a coroner to exercise his power of exclusion, or if counsel or any of the public should be persistent in questioning witnesses against the wish of the coroner, the offender should first be requested to desist, and then if necessary to leave the room. On refusal the coroner should cause the constable to remove him, using no unnecessary violence.

If counsel for the accused, suspected, or other person, is allowed to be present, and desires to address the jury before they retire to make up their verdict, and the coroner permits this to be done, the counsel's address should be before that of the coroner.

In *Nova Scotia*, when an inquest is held on the body of a person killed in a mine accident, the workmen of the colliery at which the accident occurred are at liberty to appoint a person to represent them at the inquest, and examine the witnesses, but subject to the order of the coroner. At such inquest the person so appointed, whether a legal gentleman or not, is entitled to be present.[7] And in *Nova Scotia* any counsel appointed by the Attorney-General to act for the Crown at any inquest, may attend

[5] *Agnew* v. *Stewart*, 21 U. C. Q. B. 396.

[6] *Agnew* v. *Stewart*, 21 U. C. R. 396; *Garnet* v. *Ferrand*, 1 B. & C. 611; *Cox* v. *Coleridge*, 1 B. & C. 37; 25 R. R. 298; *Garner* v. *Coleman*, 19 U. C. C. P. 106.

[7] R. S. N. S. c. 8. s. 24.

thereat, and may examine, or cross-examine, any witness called at the inquest, and the coroner must summon any witness required on behalf of the Crown. And any person, or corporation, claiming to be interested in any inquest, may, by permission of the coroner, attend the inquest in person and by solicitor or counsel, and may cross-examine any witness thereat.[8]

SEC. 6.—OPENING THE COURT.

On the day appointed, the coroner, constable, jurors and witnesses must all attend. The coroner having received the return of the jurors and warrant from the constable, endorses a return on the back thereof, which is signed by the summoning constable, thus:

"The execution of this precept or warrant appears in the schedule annexed.

"The answer of A. B., constable."

Annex a schedule containing the names of the jurors summoned, and shewing when and where each juryman was served.[9]

The warrant should be preserved and returned with the other papers by the coroner.

A sufficient number of jurors being present (that is not less than twelve in Ontario), the coroner now directs the constable to open the court by proclamation, and afterwards proceeds to call over the names of the jury, making a dash against the name of each as he appears. They are not challengeable, but a reasonable objection made, may be admitted (*a*). When the court is opened no other persons should be allowed to act as jurymen than those already selected or summoned, (*b*) nor should any of those selected

[8] R. S. N. S. 1900, c. 36, s. 6, s.ss. (1) and (2).
[9] See Form No. 19.
[10] See Form No. 21.
a Umf. 185.
b See Cox's Cr. Law Cases, Vol. IX., Part VI

be allowed to retire from the jury notwithstanding twelve or more may be left. If twelve of those summoned do not appear, a sufficient number to make up twelve can be summoned from the persons present or in the neighbourhood being residents of the city or county in which the coroner has jurisdiction.

The jury being brought in view of the body, are requested to choose their foreman. After the foreman is chosen he is called to the book and sworn, the coroner first saying to the other jurors, "Gentlemen, hearken to your foreman's oath; for the oath he is to take on his part is the oath you are severally to observe and keep on your part."

After this the foreman is sworn by the coroner,[1] and then his fellows, by three or four at a time,[2] in their order upon the panel, and it is safer with the body still before them.[3] The coroner then takes down on his papers the names in full of the foreman and jurors, and proceeds to call them over one by one, first saying, "Gentlemen of the jury, you will answer to your names, and say 'sworn' if you are sworn." The coroner now charges the jury, acquainting them with the purpose of the meeting.[4] The jury should then formally view and examine the body, the coroner drawing their attention to, and making observations upon, such appearances as call for notice.

Sec. 7.—VIEWING THE BODY.

This generally is an *indispensable* proceeding, as all inquests must be taken *super visum corporis*—that is, upon

[1] See Form No. 25.
[2] See Form No. 26.
[3] But see *R.* v. *Ferrand*, 3 B. & Ald. 260; *R.* v. *Ingham*, 5 B. & S. 257. In the first case here quoted, it was held an inquest in which the jury were not sworn by the coroner himself, and *super visum corporis*, was absolutely void; and the court would not therefore, after an adjournment by the coroner of such an inquest, grant a *mandamus* to compel him to proceed in it.
[4] See Form No. 27.

view of the body—the dead body itself being the first evidence offered to the jury. If, therefore, the body cannot be found, or is in such a state as to afford no evidence on inspection, an inquest is not to be held by the coroner, unless under a special commission for the purpose.[5]

As far as possible, the whole of the body should be available for inspection by the jury. If it has been buried, it should be entirely exhumed, to permit of a complete examination, if thought necessary, but it is not necessary that the jury should view the complete body, nor that the body should be entirely stripped for the view; but they should see some portion of it, and should have the opportunity of seeing the whole body if they so desire. In the Princeton murder case, the body of Benwell had been buried before being viewed by the coroner's jury, and the face only (it was reported) was uncovered, and the jury viewed that alone. If this report was true, such a proceeding, which precluded the possibility of the jury viewing the whole body, if they so desired, was hardly correct unless a more complete view was dispensed with by the jury.

The view must be taken at the *first sitting* of the inquest, and the coroner *and* jury must be all present together. The jury are not to view the body one by one, or the coroner at one time and the jury at another,[6] but

[5] 2 Hawk. P. C. 9.

[6] In England, by statutes 6 & 7 V. c. 83, s. 2, the coroner and the jury need not all view the body at the same time, but in Canada we must still go by the old law as stated in the text. The *British Columbia Coroners' Act* (61 V. c. 5, s. 7) states:—The coroner and jury shall at the first sittings of the inquest view the body.

And the *New Brunswick* Act, C. S. N. B. 1903, c. 124, s. 19, states the coroner and jury shall at the first sittings of the inquest, view the body, and the coroner shall examine upon oath, or, in cases where affirmation is allowed, on affirmation, touching the death, all persons who tender their evidence respecting the facts, and all persons whom he thinks expedient to examine, as being likely to have knowledge of relevant facts. And in New Brunswick in any case where the body of any person upon whom it is necessary to hold an inquiry has been buried, and it is known to the coroner that no good purpose will be effected by exhuming the same for the purposes of such inquiry,

all must be present at one and the same time, in order that the observations of the coroner may be heard by all.[7]

The view, too, must be taken *after* the jury are sworn, otherwise a material part of the evidence will be given when the jury are not upon oath. It is safer to swear all the jury at the same time and in view of the body.[8] When viewing the body, its position and appearance, its dress and marks of violence, blood spots and marks of mud thereon, and the appearance of the surrounding earth or objects, should all be most minutely noticed. The skill and intelligence of the coroner and jury can here be shewn more than in the performance of any other part of their duties.

It is most important that the identification of the body should be clearly established, and the evidence as to this fully preserved; and if it is a case which will come before the criminal courts, it should be borne in mind that the identification of the body of the deceased must extend to its being that of the person with whose death the accused will be charged.[9] The case of the identity of Hiram McCarthy—who had left his home for about a month, and his wife identified a body of a man found dead in the Detroit river, as that of her husband, and buried it at Toronto; her brother and some friends also identified the body as that of Hiram McCarthy—shews how important it is to clearly identify the body on which an inquest is being held, for the wife, her brother and friends were all mistaken, for Hiram McCarthy, having heard of his supposed death and burial, returned home and satisfied his relatives and friends that he was still alive and above

the Attorney-General may, either on application being made to him or on his own mere motion, under his hand give permission to the coroner who is about to hold such inquiry, to proceed therewith, without exhuming the body or having a view thereof. C. S. N. B. 1903, c. 124, s. 24.

[7] 1 Chit. Rep. 745 S. C.; 3 B. & A. 260.

[8] *R.* v. *Ingham*, 5 B. & S. 257.

[9] See *In re Berry*, 9 Ir. R. 123.

ground. Another remarkable case was reported in 1899. A man from Ottawa was supposed to have been murdered at Forest, and the body of the murdered man was shewn to his sister, who identified it as that of her brother, but it turned out it was not. In that case each of the men had a burn on the right wrist, a tattoo on the left arm, and a cataract in his left eye.

Where judgment of death is executed on any offender, the law requires that the jury inquire into and ascertain the identity of the body, and whether judgment of death was executed on the offender.[10]

Before making some general remarks upon the appearances to be noticed, it will be proper to caution persons who may be required to take part in inquests not to permit sudden prejudice to influence their minds. If there is anything unusual in the death, nothing is more common than for a *suspicion* of murder to arise at once, which, from repetition, easily becomes a *belief* in many minds.[1] Popular inclination of this kind should be guarded against by the jurymen in particular.

The general appearances to be noticed when viewing the body may be considered under the following heads:[2]

1. The place where the body is found.
2. The position of the body.
3. The marks and spots upon the body and clothing.
4. The surrounding objects: their position and indications.
5. The bearing and conduct of the parties in attendance.

1. *The place where the body is found.*—When inspecting the place where the body is found, care should be

[10] 55-56 V. c. 29, s. 944, Dom.
[1] 2 Beck, p. 3.
[2] Much of the information given under these heads is taken from the *Upper Canada Law Journal* for February, 1856.

taken to ascertain, if possible, whether or not the person *died* in that place, for most of the information to be obtained from an inspection depends entirely upon the death having taken place in the spot examined. A hasty conclusion, therefore, regarding the place of death being the same as the place where the body is found, is to be avoided. In cases of very severe wounds, particularly of the head, jurors and even medical men are too apt to think that the injured person must have been instantly deprived of the power of volition and locomotion, and have died immediately. This is not always the case, for persons have been known to live for days after the most severe wounds of important organs, and to have retained their power of willing and moving to the last. Instances of this kind have already been noticed in Chapter VI., and others can readily be found in works on medical jurisprudence. Even when the wounded person is too much injured to walk, he may have sufficient power to turn upon his face or back, and thus change the relative positions of the murderer and the murdered, so as to render valueless any inference to be drawn therefrom. If a severe wound of an important organ is accompanied by great hemorrhage, *in general* there can be no *struggling or violent exertion after* the wound is inflicted.

A careful examination of the place where the body is found and the place where the person died will often supply evidence to distinguish between homicidal, suicidal and accidental death, and the examination should be made bearing in mind these three kinds of death. Any peculiarity in the soil should be carefully noticed, and compared with any mud that may be found on the body or clothes of a suspected person. Foot-prints near the body should be guarded from obliteration. The method usually recommended for ascertaining if a foot-print was made with a particular boot is to make an impression with the boot *near* the one found, and compare the two. Placing

the boot *into* the impression is not advisable, as doing so may destroy the print without giving any satisfactory evidence, and will not afford any means of comparing the nails, patches, etc., on the sole with the original impression. Some writers assert that the foot-print on the ground is generally smaller than the foot which made it, owing to the consistence of the soil, the shape of the foot, or the boot or shoe covering it, or the manner in which the foot was placed in walking. Sometimes it is said to be larger if on a light soil.[3]

But Prof. Tidy, who seems to have given this matter his usually close and careful attention, states foot-prints in sand or other material of fine and freely moveable particles, are usually smaller than the foot, and in clay, or other material not composed of fine and free particles, the impress is larger than the foot. An impress made by a person running is always smaller than that of the same person walking, and of the same person standing still will be larger than either.[4]

The direction of stains, position of weapons, etc., compared with the foot-prints, should be recorded.

If a *decomposed* body is found in ice, or snow, the chances are that the person did not die from cold, but that after putrefaction commenced, the body was by some means brought from a warm place to where it was found.[5]

Dead bodies will remain in very cold water, or ice, for indefinite periods, without shewing signs of decay. The body of a man drowned on December 2nd, 1895, in Kempenfeldt Bay, Lake Simcoe, before the ice formed, was not found until April 26th, 1896, after the ice had left, and was in good preservation, except that the hair of the head had been washed off. And Arctic explorers inform us that dead animals are found in those regions

[3] 2 Beck. 149.
[4] Tidy, Vol. I., pp. 153, 154.
[5] Tidy, Vol. II., p. 737.

with the flesh and hair in a perfect state, and which must have been dead for hundreds, if not thousands, of years.

Suicides rarely choose a long, lingering and painful mode of death.

2. *The position of the body.*—The position of the body will sometimes indicate the mode of death, and will often afford evidence strongly corroborative of or adverse to its supposed or ascertained cause. For instance, a body found in an upright or sitting posture with a severe wound on the head would lead to the supposition that it had been placed in that position after death. But murderers have been known to purposely place their victims in positions calculated to indicate accidental or suicidal death. And, on the other side, persons dying from accident or by their own hands have been found in positions strongly suggestive of murder. An extraordinary case of this kind is on record. A prisoner hung himself by means of his cravat tied to the bars of his window, which was so low that he was almost in a sitting posture, and when found *his hands were tied by a handkerchief*. This was undoubtedly a case of suicide. It was supposed he had tied his hands with his teeth. In cases of death by hanging, the posture of the body may be of considerable importance in distinguishing suicidal from homicidal hanging, but in the former it is not necessary that the body should have been totally suspended. Cases frequently occur where the bodies are found with the feet on the ground, kneeling, sitting, or even in a recumbent posture.[6] The convict Greenwood, who hung himself in the Toronto gaol, some years ago, when found was hanging by a long towel from the bars of his cell window, and so close to the floor that he had to crouch in order to throw his weight on the towel.

A convict named Switzer committed suicide by strangling himself with a small rope attached to the grating of

[6] Taylor, Vol. II., pp. 55, 57.

his cell. He was found *on his feet*, but leaning forward far enough to produce the pressure sufficient to cause strangulation.

A curious case connected with this subject occurred within the writer's own knowledge during the month of January, 1864. A woman of dissipated habits was found dead on the floor in her own house in a sitting posture. She appeared to have slipped from her chair while intoxicated, and in doing so caught the string of her cap over the back part of the chair, and being alone and unable to extricate herself, was strangled.

In March, 1901, a woman in gaol was reported to have committed suicide by sitting on a stool and taking a sheet from her bed, wrapping it twice around her neck and pulling it tight in a knot. When found she was still sitting on the stool, but dead, with her arms stiff and extended, as if trying to pull the knot tighter. She had been dead about three hours when found, the body being quite cold.

As a rule a *horizontal* mark of a cord, the knot being on the same level as the cord, more especially if it be a complete mark and *below the larynx*, suggests strangulation rather than suspension. And if there are *several marks* of the cord, strangulation is always rather suggested than hanging.[7]

When the last attitude of life is maintained after death, important evidence may be gathered from the position and posture of the body. It should be noted whether the body fits itself to the surface on which it rests or not. It should also be noted whether the eyes are open and jaw dropped.[8] What was in the hands, if anything, and if a

[7] Tidy, Vol. III., p. 264.

[8] Prof. Tidy says if a dead body be discovered, evenly extended and filling accurately the surface on which it rests, having the eyes and jaw closed, it is practically certain there must have been some interference with the corpse after death, and before *post-mortem* rigidity commenced. (Vol. I., p. 56). Old nurses and other exper-

weapon, whether it could, from its position, be a case of suicide or not. Whatever is found should be carefully preserved and means taken to identify it. The force with which the articles are grasped should also be noted before removal from the hands. A firm grasp would rather indicate suicide than homicide, but if the weapon be found loosely held, no conclusion of value can be deduced as to the question of suicide or homicide.[9]

If possible, the body should be first viewed exactly in the position in which it was found.

3. *The Marks and Spots upon the Body and Clothing.*—These may be examined by the coroner and jury, but if the coroner is not a physician a medical witness will be more competent to draw conclusions from them, should the suspicious nature of the death render the production of such testimony proper. The body should be inspected for swellings, coloured spots, tattoo marks, wounds, ulcers, contusions, fractures or luxations, and any fluid flowing from the nose, mouth, ears, sexual organs, etc., should be carefully noted.

Tattoo marks rarely become obliterated, and when they do, only after at least ten years. They can be artificially obliterated, but the means adopted will leave scars, as actual destruction of the skin must be effected.[10]

Before making this examination of the body, the clothes should be looked at, and mud or blood-stains thereon noticed. Also, any cuts or rents, their size, shape

ienced persons close the eyes and bind up the lower jaw as soon as possible after the person is dead in anticipation of the rigidity which may set in very soon. Tennyson alludes to this custom in *The Death of the Old Year*:—

> "His face is growing sharp and thin,
> Alack! our friend is gone.
> *Close up his eyes; tie up his chin;*
> Step from the corpse, and let him in
> That standeth there alone,
> And waiteth at the door."

[9] Tidy, Vol. I., p. 56.
[10] Tidy, Vol. I., p. 167.

and direction, and whether they correspond with cuts or marks on the body. And, as the clothes are removed, notice what compresses or bandages, if any, are applied to particular parts.

The effects of lightning may simulate those of violence, and lead to a suspicion of foul play.[1] Putrefaction often sets in very rapidly after death from lightning.[2]

The existence of *goose-skin* or *cutis anserina* proves that a body found in water was thrown into the water when the skin possessed the power of contractility.[3]

Dr. Taylor states, in regard to drowning, that:—"In consequence of the uncertainty attendant on the appearances of drowning, it is sometimes assumed that the deceased must have died from some other cause. . . . A medical inference of drowning is founded upon a certain series of facts, to each of which, individually, it may be easy to oppose plausible objections; but taken together they furnish evidence as strong as is commonly required for the proof of any other kind of death."[4] In the case of a suffocated body, without marks of external violence, it would be impossible to determine whether death had actually taken place within the water or not; since persons may die in water, or at the moment of immersion, under circumstances in which the appearance of drowning would be either obscure or entirely wanting.[5] When a body is not examined for several weeks after death, water that had been swallowed during life may have disappeared by transudation through the coats of the stomach and substance of the lungs.[6] The only character on which reliance can be placed, as medical proofs of death from drowning, are:—1st. The appearance of a mucous froth

[1] Tidy, Vol. II., p. 133.
[2] Tidy, Vol. II., p. 141.
[3] Tidy, Vol. III., p. 220.
[4] Taylor, Vol. II., p. 23.
[5] Taylor, Vol. II., p. 22.
[6] Taylor, Vol. II., p. 22.

in the windpipe and air tubes; 2nd. Of water and froth in the tir tubes and air cells of the lungs; and 3rd. Of water in the stomach. The longer inspection is delayed, the more ambiguous the evidence becomes, since the froth rapidly disappears from the air tubes, while water may not be found in the lungs and stomach.[7] The presence of a frothy fluid would undoubtedly show that liquid, from some cause, had penetrated into the air passages; and when taken in conjunction with the presence of water in the substance of the lungs, it may be considered to furnish conclusive evidence of death from drowning. On the other hand, its absence does not necessarily prove that a person has not died from this cause. The absence of water from the stomach or lungs, or both, is no proof that the person was not drowned.[8] The absence of water from the stomach of a person drowned may indicate a rapid death, as there could have been no power to swallow. And Dr. Taylor gives some instances showing the variable nature of the appearances met with in the drowned.[9]

Dr. Reese states, in his third edition, p. 179, speaking of the internal signs of death by drowning, that along with the usual evidences of death from asphyxia (in an early examination) the following signs will be observed: The lungs are distended, overlapping the heart, and are in a flabby condition; this latter is owing to the water taken in by aspiration during the struggles for breath, which penetrates even the air vesicles, and renders them sodden and doughy. *The presence of this froth in the smaller tubes and air cells, together with the sodden condition of the lungs*, is regarded as one of the most positive signs of death by drowning. Nevertheless, its absence should not be accepted as a proof against drowning, since it has not been found in the bodies of persons who have sunk at once in the water and never risen to the surface to breathe.

[7] Taylor, Vol. II., pp. 21, 22.
[8] Taylor, Vol. II., p. 19.
[9] Taylor, Vol. II., pp. 14, 15.

And Dr. Reese quotes a statement of Dr. Ogston, that in 48.7 per cent. of cases, no water was found in the lungs.

The features should be carefully scrutinized, since the cause of death has much to do with the features after death, but the countenance may alter rapidly after life ceases. It is said the features indicate repose after death by sword wounds, and pain after death by the bullet.[10]

The natural warmth of the body usually disappears, in from fifteen to twenty hours, and Prof. Tidy states that the rapid cooling of a body after death may suggest the cause of death, but that no conclusion can be drawn from the *slow* cooling of a body.[1]

It is considered a general rule that if the muscles are flexible and contract under the influence of the interrupted current, the (experiment being conducted by preference on the trunk muscles, or the flexor muscles of the limbs) death probably occurred within three hours, but most certainly within twenty-four hours of the time of the experiment.[2]

Late experiments, it is said, prove that nervous excitability may exist for hours after death.[3]

Rigor mortis lasts as a rule until putrefaction commences. It sets in *usually* in three or four hours after death, and is complete about the fifth or sixth hour; but the period may be greatly extended or greatly shortened. In muscular and well-developed subjects, and death is sudden without previous fatigue or weakening by pain or disease, it may be delayed for twelve or even more hours. Exposure of the body to cold delays its appearance, but there is no well-authenticated case where it has been delayed beyond twenty-four hours. On the other hand, *rigor mortis* may appear very soon. It has been known to commence within five minutes of death, and while the

[10] Tidy. Vol. I., p. 34.
[1] Tidy. Vol. I., p. 44.
[2] Tidy. Vol. I., p. 49.
[3] Taylor. Vol. I., p. 52.

body was warm and the heart still beating. In cases of sudden death, after muscular exhaustion, it has set in instantaneously, causing the body to retain the attitude it was in when death occurred. This has also occurred in deaths from apoplexy and drowning. Where the person has been exhausted by suffering, *rigor mortis* may appear immediately at death.[4]

Rigor mortis has lasted so short a time as to be reported as not occurring at all, and in special cases it has continued for several weeks. Still-born children may exhibit well marked rigidity.[5]

It would be impossible to mention all the things to be noticed when examining the body and clothes. Indeed, little more can be done than suggest the sort of inquiries which should be made. Each case will present its own peculiar features, which the medical man must observe in such manner as his own judgment and foresight may prompt him. He should not, however, confine himself to mere inspection of what actually presents itself to his eyes. He should search for objects which are not obvious at the first glance, and conduct his search with great caution, if not scepticism, always remembering that hasty conclusions or thoughtless omissions may both endanger his own reputation and the lives of his fellow creatures.

4. *The Surrounding Objects.*—After concluding the examination of the body and clothes, the surrounding objects next demand attention. Ascertain the direction of footsteps near the body, and search for marks, etc., on the objects around. If blood is found, note whether it apparently fell with force, and in what direction; whether it is venous or arterial, fresh or old, etc. If the death has been a violent one, search for the instrument, and if found, see that its identity is preserved. Note the presence or absence of blood, hairs, etc., on it, its form con-

[4] Tidy, Vol. I. pp. 51, 55.
[5] Tidy, Vol. I., p. 59.

sidered in connection with the character of the wounds. The hand in which it is found; its position in the hand, viewed in relation to the direction of the wounds.[6] In cases of suspected poisoning every vessel in which food has recently been prepared should be examined, and the contents reserved for analysis.

The number, size, and shape of stains should be noted, and whether they are of the nature of *spots* or *smears*. Also their exact position; and if on a fabric, the side on which they occur.[7]

The surrounding objects cannot be too carefully noticed, as the following case will illustrate:—The perpetrators of the murder, in 1751, of Mr. Jeffries, by his niece and a servant, were discovered from the dew on the grass surrounding the house not having been disturbed on the morning of the murder. This led to the suspicion that the murderer was a domestic, and had not left the premises.

In cases of suicide by hanging, the drop is seldom considerable.[8]

5. *The Bearing and Conduct of the Parties in Attendance.*—Crime is rarely self-possessed; and when most on his guard, the culprit is apt to betray himself by an excess of caution, or by numerous and improbable suggestions as to the cause of death. An intelligent observation of the surrounding persons, then, may sometimes be of use.

The *Nova Scotia* Coroners' Act, R. S. N. S. 1900, c. 36, s. 5, s.s. 1, states positively that the coroner and jury *shall*, at the first sitting of the inquest, view the body.

And the Coroners' Act of *New Brunswick*, 63 V. c. 5, s. 14, is to the same effect, but in that Province, if in any case where the body of any person upon whom it is necessary to hold an inquiry has been buried, and it is shewn

[6] Tidy, Vol. I., pp. 57, 58.
[7] Tidy, Vol. I., p. 184.
[8] Tidy, Vol. III., p. 243.

to the coroner that no good purpose will be effected by exhuming the same for the purpose of such inquiry, the Attorney-General may, either on application being made to him, or on his own mere motion, under his hand, give permission to the coroner who is about to hold such inquiry, to proceed therewith without exhuming the body, or having a view thereof. And also under section twenty of the same statute, when the coroner's jury have been out for four hours without being able to agree upon a verdict, the coroner may discharge the jury, and a second inquest may be ordered by the Attorney-General to be held by the same coroner, either with or without a view of the body, as the Attorney-General may deem proper.

Also in the cases mentioned in Chap. II., s. 2, of this work, and also by section 8 of 63 V. c. 5, N. B., inquests may be held without a view of the body.

SEC. 8.—CONTINUING AND ADJOURNING THE COURT.

The body having been viewed, it may be removed, if necessary or proper, to some convenient place, and the coroner and jury can proceed with the inquiry. They need not sit in the same room with the body, nor at the place where it was found, nor where it was viewed.[9]

The coroner first calls over the names of the jury, to see they are all present; and having ascertained they are satisfied with the view, he then adds to his former charge any observations suggested by viewing the body, and informs them briefly of the object of their inquiry—viz., the cause of death, adding:

"I shall proceed to hear and take down the evidence respecting the fact, to which I must crave your particular attention."

[9] Jervis O. C. 323.

The officer in attendance now calls silence, and repeats the following proclamation for the attendance of witnesses:

"If any one can give evidence on behalf of our Sovereign Lord the King, when, how, and by what means *A. B.* came to *his* death, let him come forth and *he* shall be heard."

If the inquiry is to be conducted privately, the room must be cleared, and the witnesses called in one by one. When a witness comes forward to give evidence, the coroner takes down his names in full, place of abode and occupation; swears him either in English[10] or through the medium of an interpreter, if necessary, who must also be sworn,[1] and then takes down his evidence, having previously prepared his examination papers or book by intituling the informations.[2] So long as the fair and obvious meaning of the words of the witness is taken down[3] in the presence of the party accused, if there is one and he can be apprehended, the requirements of the law will be fulfilled, but it is frequently desirable at trials following inquests that the exact words of the witness as uttered before the coroner should be on record; and coroners are strongly recommended to take down the depositions in the exact natural language and peculiar expressions used by the witnesses, following their language in the first person.

[10] See Form No. 36.
[1] See Form No. 37.
[2] See Form No. 40.
[3] In cases of manslaughter or murder, or of accessories to murder before the fact, coroners were required by R. S. C. c. 174, s. 92, to put in writing the evidence, or so much thereof as was material, in presence of the party accused, if he could be apprehended, but this provision has been omitted from the Criminal Code, 1892, which repeals chapter 174 of R. S. C.; the text, however, is left as it was, since, if any one is accused, it is reasonable that he should be brought before the inquest as soon as possible, and be allowed to hear the evidence; although this is not of the same importance as it was when the accused could be tried on the inquisition found against him.

Before the witness signs his examination, it must be read over to him, and then he should be asked if it be the whole of the evidence he can give: he signs it to the right hand of the paper. Before he does so, ask the jurors if they have any further questions to be put to the witness. The coroner then subscribes the examination himself to the left hand.[4]

All the evidence offered, whether for or against the accused, must be received.[5]

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 the inquest to a future day, to the same or another place, first taking the recognizances[6] of the jurors to attend at the time and place appointed, and notifying to the witnesses when and where the inquest will be proceeded in.[7] The coroner then dismisses them.[8]

Adjournments should not be for a time named "unless it should be found the party could attend before that date." It should be for a time certain, and if the person is not then able to attend, a further adjournment can be made, and so on until he is well enough to be present. This will prevent anyone who ought, or who has any right, to attend from claiming he did not know when the inquest would be continued.

If on the day appointed for continuing the inquest the court is not formally opened and further adjourned or concluded, the proceedings drop and the court is dissolved, and everything else done in the matter of the

[4] See Form No. 40.
[5] 2 Hale, 157, 60, 61.
[6] See Form, No. 43.
[7] In case a witness is too sick to attend the court, or if he is a prisoner, this power of adjournment may be used in order to take the court to the witness.
[8] See Form No. 44.

inquest is *coram non judice*, and this is so even where the adjournment takes place only for the purpose of drawing up a formal inquisition after the jury has in substance agreed upon their verdict.

The coroner should therefore be particular in seeing where an adjournment has been made, that his court is formally opened according to the adjournment, and so on from time to time if further adjournments are had, no matter whether anything else is done at the adjourned meeting or not. The court can only be kept alive by a formal opening after each adjournment as if further business was to be done.[9]

If any temporary delay occurs during the inquest, for instance, in procuring a witness near at hand, or for making out a summons, or for drawing up the finding of the jury, etc., there need be no formal adjournment in the meantime, or if there is it must be an adjournment to a precise time and place duly recorded, and the inquest formally opened again at the place and time mentioned, no matter for how short a time the adjournment is for. If the delay is merely for a few minutes or an hour or two, and no formal adjournment is made, the jurymen must be kept together during the interval. Or if any necessity requires any juryman to retire, a constable should be sent with him, first taking the oath given, form No. 50.[10]

And whether a coroner does or does not hold an inquest on a body found publicly exposed, to which his attention has been called, and which is not claimed by a known relative, or a person who obtains from a police magistrate having jurisdiction in the locality, an order authorizing the delivery of such body, to such person, he must give notice to the Inspector of Anatomy of the locality, if there is one, failing which, he must cause the body to be interred as has been customary.[1]

[9] *R.* v. *Payn*, 34 L. J. Q. B. 59; 10 Jur. N. S. 1150.
[10] *Reg.* v. *Payn*, 34 L. J. Q. B. 59; 10 Jur. N. S. 1150.
[1] R. S. O. 1897, c. 177, s. 9.

Subject to the other provisions of the Ontario Anatomy Act (being chapter 177 of R. S. O. 1897), any unclaimed human body found dead within the limits of a city, town, incorporated village, or township, shall be buried at the expense of the corporation of such city, town, village or township, but such corporation may recover such expense from the estate of the deceased.[2]

Any coroner who neglects to discharge the duties required of him by the Ontario Anatomy Act or infringes any of its provisions, is liable to a fine of not more than $20.00 for every such offence.[3]

A warrant may now, in the discretion of the coroner, be granted for burying the body,[4] if not required for a post-mortem, or the body may be kept unburied until the completion of the inquest, if no inconvenience is likely to arise. In Ontario, if a body is found publicly exposed, or is sent to a public morgue, or if the dead person immediately before death had been supported in and by any public institution, in Ontario, and upon which body a coroner shall (after having viewed it) deem an inquest unnecessary, it must immediately be placed under the control of the Inspector of Anatomy for the locality, and must be by him delivered to persons qualified to receive such bodies, unless such bodies are within 24 hours after death claimed by relations or *bona fide* friends, or are the bodies of lunatics who have died in any Provincial Asylum for the insane in Ontario,[5] and the persons so qualified are teachers of anatomy or surgery in recognized medical schools; and if there is a medical school in the locality where there is a body liable to be delivered to persons qualified to receive it, such school has the first claim to the body. (*a*) Any county councillor is deemed to be a *bona fide* friend for the purposes of this section of the Act when

[2] R. S. O. 1897, c. 177, s. 19.
[3] R. S. O. 1897, c. 177, s. 16.
[4] See Forms Nos. 46, 47.
[5] R. S. O. c. 177, s. 2.
(*a*) R. S. O. 1897, c. 177, ss. 2, 4.

members of the county council are so declared by by-law in that behalf. (*a*)

Inspectors of Anatomy are appointed by the Lieutenant-Governor, and lists of them can be obtained, no doubt, from the Local Government.

The body of every convict who dies in the penitentiary, if claimed by relatives, must be delivered over to them; but if not claimed, it may be delivered to an Inspector of Anatomy, or to the Professor of Anatomy in any college wherein medical science is taught; and if not so delivered, it must be decently interred at the expense of the institution.[6]

The adjournment of the court is done by the officer making proclamation.[7]

If an adjournment is made and at the time appointed for continuing the inquest one or more jurymen should be absent, the inquiry cannot continue unless there are still twelve jurors present at least. The recognizance of a juryman who is absent should be forwarded to the Crown attorney to have it estreated and the juryman fined. If there are still twelve present there would seem to be no objection to the inquest continuing, but if not, the writer, in the absence of any established practice known to him, can only suggest that the inquest should be commenced over again before a full jury of twelve members at least.

Formerly the jury had to inquire as to deodands, flight, forfeiture and escape, but now they need only consider the cause of death.[8]

It has been held not to be improper for the Crown attorney, acting for the prosecution at the inquest, to enter the jury room with the consent of the coroner, *after* the jury had agreed upon their verdict, to advise the jury

(*a*) R. S. O. c. 1897, ss. 2, 4; 4 Ed. VII., c. 19, s. 41.
[6] R. S. C. c. 182, s. 66.
[7] See Form No. 45.
[8] See Chapters IX. and X.

as to the proper language to be employed in drawing up their decision.[9]

The jury must not now return a verdict from their own knowledge of the fact, without any evidence being adduced before them. If a juryman can give evidence, he should be sworn in the ordinary manner.[10]

In consequence of a report that at the close of an inquest a coroner stated it was customary for coroners to treat the jury after an inquest, the author desires to say that he does not know of any such custom, and that he trusts if such an announcement was really made, the coroner was mistaken in supposing it was a common practice. The office of coroner is an ancient and honourable one, to say nothing of its being a judicial position, and coroners should uphold as much as possible the dignity of their office. To encourage the practice of such a custom as the one alleged to exist would be lowering the position.

In the present edition of this work several of the proceedings of the coroner's court, which were given in the former editions, have been withdrawn from this section to avoid repetition, as they will all be found in the programme of proceedings now given in Chapter XV.

In *Quebec* any human body found within the limits of a city, or incorporated village, parish or township, shall, unless it be disposed of under the Revised Statutes respecting anatomy of that province, be buried at the expense of the corporation of such city, town, village, parish or township, but the corporation may recover such expense from the estate of the deceased. And if the human body is found upon the beach of, or floating in the River St. Lawrence, opposite the parish of Beaumont and the parish of St. Joseph de Levis, and is not claimed, as pro-

[9] *R.* v. *Sanderson*, 15 Ont. R. 106.

[10] 1 Salk. 405; *R.* v. *Wingarner et al.*, 17 Ont. R. 208. In this case the constable at the inquest was sworn both as a juryman and a witness, and another juryman was also sworn as a witness, and the court held there was no objection to the evidence of either of them.

vided by law, the coroner must see to its burial, and shall be reimbursed his necessary and reasonable expenses incurred thereby, as for costs forming part of those of his office.[1]

In *Nova Scotia*, when the inquest is held on the body of a person who has been killed by an explosion or accident in a mine, and the majority of the jury think it necessary, the coroner must adjourn the inquest to enable the inspector or some other properly qualified person appointed by the commissioner, to be present to watch the proceedings; and in these cases the adjournment must be long enough to allow of four days' notice in writing of the time and place of holding the adjourned inquest, to be given to the commissioner. Nothing should be done at the inquest in such cases beyond taking evidence to identify the body and to order its interment if thought proper, until the adjourned meeting.[2]

In *New Brunswick*, after the inquest the coroner must grant a permissive warrant[3] for burial of the deceased, and the body must be delivered to any of his relatives or friends who wish to take charge of the burial, and if no one undertakes the duty, and the body is within the city of St. John, or within five miles of any city, town or parish with an established alms house, it must be sent to such alms house in charge of the constable attending the inquest, and be delivered to the keeper thereof, together with such warrant; or if there be no alms house within five miles of such dead body, the coroner may require such constable to deliver the body, together with the warrant, to the overseers of the poor, or other officers charged with the duty of caring for the poor of the parish wherein the body was found, or any one of them, and in either case aforesaid, the deceased shall be buried in the same manner as if he had died a pauper, entitled to poor relief in such alms house, or from such overseers or other officers,

[1] R. S. Que. Art. 2691.
[2] R. S. N. S. c. 8, s. 24.
[3] See Form No. 46. Or for New Brunswick see Form No. 46½.

as the case may be, unless otherwise directed by the coroner. Should the coroner deem it expedient, to avoid the expense of sending such body a greater distance than five miles for burial, he must direct the constable to bury the body in a decent manner, using proper economy, and to render an account of the expense thereof to the coroner, which, with constable's fees for burying the body, shall be paid to the constable by the overseers of the poor of the parish where the body was found, on the order of the coroner, stating that the charge is reasonable and proper. The warrant for burial may be in the form L in the schedule of forms at the end of this work. When the overseers of the poor of any parish are so compelled to bury, or pay for burying the body of any person having a settlement in some parish other than that in which he is so buried, they may demand from the overseers of the poor of the parish in which the deceased last had a settlement, the amount of the expenses to which they were necessarily and reasonably put by reason of this fulfilment of the duties by this provision imposed upon them; and if the same are not paid within a month from the time of such demand, they may recover the amount with costs by action in any court of competent jurisdiction.[4] The warrant for burial may be in the form 46 1-2 in the appendix of Forms.

In *British Columbia*, a coroner upon holding an inquest upon any body, may, if he thinks fit, after he and the jury have viewed the body, by order under his hand, authorize the body to be buried before verdict and before registry of the death, and shall deliver such order to the relative or other person to whom the same is required by the said act to be delivered; but except upon holding an inquest, no order, warrant, or other document for the burial of a body may be given by the coroner.[5]

[4] R. S. N. B. 1903, c. 124, s. 33.

[5] 61 V. c. 50, s. 11, s.s. (5), B. Col. By the expression—"the said Act" here used no doubt the act referred to is the one relating to the registration of births, deaths and marriages, B. Col.

SEC. 9.—THE MEDICAL TESTIMONY.

If in Ontario or New Brunswick or British Columbia the coroner finds that the deceased was attended during his last illness or at his death by any legally qualified[6] medical practitioner, he may issue his order for the attendance of such practitioner as a witness at such inquest.[7] Or if the coroner finds that the deceased was not so attended, he may issue his order for the attendance of any legally qualified[8] medical practitioner, being at the time in actual practice, in or near the place where the death happened; and the coroner, after having decided an inquest is called for, and having begun his proceedings, may at any time before, or after, impanelling the jury, and before the termination of the inquest, direct a *post-mortem* examination, with or without an analysis of the contents of the stomach or intestines, by the medical witness summoned to attend at such inquest.[9]

In the case of *Davidson* v. *Garrett et al.*, 30 Ont. R., just cited, it was held by a Divisional Court in Ontario, that the coroner, having authority to hold an inquest upon the body, and having determined that it should be held, and having begun his proceedings, had power to summon medical witnesses to attend the inquest and to direct them to hold a *post-mortem*, and that no rule of law forbade the making of the *post-mortem* before the impanelling of the jury; that was a matter of procedure in the discretion of the coroner. And further it was held that the meaning of section 12 (2) of R. S. O. c. 97 was that the coroner should

[6] Legally qualified practitioners are persons duly licensed and registered. If there be any doubt whether a medical man is licensed or not, he should be asked at a convenient time to produce his license. Some coroners adopt the plan of examining the medical witness upon oath as to his being licensed.

[7] See Form No. 33, and R. S. O. c. 97, s. 11; C. S. N. B. 1903, c. 124, s. 26; 61 V. c. 50, s. 15, B. Col.

[8] See Form N. 33, and R. S. O. c. 97, s. 12.

[9] *Davidson* v. *Garrett et al.*, 30 Ont. R. 653.

not, without the consent of the Crown-Attorney, direct a *post-mortem* examination for the purpose of determining whether an inquest should be held, but only where the coroner had determined to hold an inquest, and gave the direction as part of the proceedings incident to it; but if the provision should be read differently, it was at all events merely directory, and did not render an act done by a surgeon in good faith, under the direction of a coroner, unlawful because the coroner had neglected to obtain the prescribed consent, where the act would be lawful if the consent had been obtained.

It was said in the case of *Reg.* v. *Quinch*, 4 C. & P. 571, that in all cases of death by violence, *post-mortem* examinations should be made, and a physician or surgeon should be exmined as to the cause of death.

The law in the United States appears to be that physicians cannot be compelled to perform an autopsy, but in Ontario a medical practitioner who has been summoned to attend an inquest, and who does not attend, or refuses to perform a *post-mortem* when directed to do so by the coroner, can be fined $40.[10]

And Prof. Tidy states that if the medical attendant of the deceased is in any way inculpated, or his treatment called in question, or if any accusation regarding the death or treatment of the deceased has been made by a medical man, he should not perform the *post-mortem*, and that it is not advisable that he should even be present at it, but he should be represented by a medical friend if he so desires.[1]

In a case of death occurring in a pugilistic encounter, it was held to be the duty of the coroner to examine a surgeon as to the cause of death.[2]

[10] R. S. O. c. 97, ss. 12, 13, 14, 15.
[1] Tidy, Vol. I., p. 4.
[2] *R.* v. *Quinch*, 4 C. & P. 571.

It is usual, and coroners are most strongly recommended, to have the analysis made by an experienced chemist.[3]

If in Ontario, New Brunswick and British Columbia any person states upon oath before the coroner that in his belief the death was caused partly or entirely by the improper or negligent treatment of a medical practitioner or other person, such medical practitioner or other person must not be allowed to make or assist at the *post-mortem* examination.[4]

Whenever it appears to the majority of the jurymen sitting at any coroner's inquest in Ontario, New Brunswick and British Columbia that the cause of death has not been satisfactorily explained by the evidence of the medical practitioner, or other witnesses examined in the first instance, such majority may name to the coroner *in writing* any other legally qualified medical practitioner *or practitioners*, and require the coroner to issue his order[5] for the attendance of such medical practitioner *or practitioners*[6] as a witness or witnesses, and for the performance of a *post-mortem* examination as above mentioned, and whether before performed or not.

In all cases of death by violence, *post-mortem* examinations should be made, and a physician or surgeon should be examined as to the cause of death. (*a*)

A second medical practitioner cannot properly be called by the coroner alone. The *majority* of the jury must ask for his attendance, and name him to the coroner *in writing*. If the request is not in writing his fees need not be paid by the County Treasurer. If in a proper case the fees are not paid by the County Treasurer, the remedy

[3] See remarks as to analysis, *post*.

[4] R. S. O. c. 97, s. 12; 61 Vic. c. 50, s. 16, B. Col.; C. S. N. B. 1903, c. 124, s. 27.

[5] See Form No. 33.

[6] The words "in writing," and "or practitioners" are omitted in C. S. N. B. 1903, c. 124, s. 28.

(*a*) *Rex* v. *Quinch*, 4 C. & P. 571.

is by *mandamus*, and the County Treasurer as well as the coroner must be called upon to answer.[7]

This request should be attached by the coroner to the certificate given by him for the payment of such medical witness.

When in Ontario any such order for the attendance of a medical practitioner is personally served, or if not so served, but is received by him, or left at his residence in sufficient time for him to obey such order, and he does not obey the same, he forfeits the sum of forty dollars upon complaint by the coroner who held the inquest, or by any two of the jurymen thereof, made before any two justices of the peace of the county where the inquest was held, or of the county where such medical practitioner resides. And if such medical practitioner does not shew a sufficient reason for not having obeyed such order, the justices must enforce the penalty by distress and sale of the offender's goods, in the same manner as they are empowered to do under their summary jurisdiction.[8]

The medical witness should be given an order on the County Treasurer for his fees, and if the fees are not paid, or the coroner refuses an order for them, the remedy is by mandamus, and when it is applied for on the ground of refusal by the coroner to give the order, the county treasurer as well as the coroner should be called upon.[9]

[7] *In re Harbottle and Wilson*, 30 U. C. Q. B. 314. And see Form No. 42.

[8] R. S. O. c. 97, s. 15. The coroner alone is the proper person to say first of all whether medical testimony is called for or not; but when he does order such evidence to be procured, the jury have then the right above mentioned, to have more medical evidence if they think it requisite. When considering if they shall summon a medical man, in the first instance, coroners should not be influenced by the jurymen desiring to find out the precise cause of death in cases where there can be no doubt of the deceased having died from natural causes. Juries very commonly think they ought to discover, in all cases, what occasioned the death; but this is a mistake, for if no one is to blame in the matter, no practical benefit can arise from finding the deceased died from any particular disease. The expense of medical testimony, therefore, in these cases should be avoided, and for this purpose the desire of the jury resisted.

[9] *In re Harbottle and Wilson*, 30 U. C. Q. B. 314. If a second medical witness has been called as mentioned above, the request therefor of the jury should be attached to the order of the coroner.

When no *post-mortem* examination is made a medical witness is only entitled to be paid for each day he attends on inquests, and not for each body, where the inquest or inquests is or are held on more than one body.[10]

The practitioner chosen to make a *post-mortem* examination should be the best qualified the neighbourhood affords; and when he is giving his evidence the coroner should get as much information from him as possible, for he will generally prove the most important witness at the inquest.[1] The medical witness had better be examined after the principal unprofessional witnesses, in order that he may have their testimony to aid his conclusions, and to avoid having to recall him for the purpose of asking additional questions suggested by the other evidence.[2]

In *Nova Scotia*, if the majority of the jury are of opinion that it is expedient that a medical practitioner should be examined as a witness, such practitioner may be required to attend and be examined as a witness.[3]

Medical men in giving their evidence have no special privilege with respect to secrets of a professional nature.

The medical testimony should be as free from technical terms as possible, and be taken down in full.

Neither the coroner nor jury should attempt to curtail the *post-mortem* examination, or the testimony of the medical witness, but he should be allowed to make a thorough examination, and to give as full evidence as he may think proper. Indeed, the coroner ought to insist upon his examining the separate viscera, as a little additional trouble taken at the inquest may save a vast amount of annoyance afterwards.[4]

[10] *In re Askin & Charterist*, 13 U. C. Q. B. 498.
[1] U. C. Law Journal, Vol. I., p. 80.
[2] U. C. Law Journal, Vol. I., p. 84.
[3] R. S. N. S. 1900, c. 36, s. 9, s.s. (1).
[4] U. C. Law Journal, Vol. I., p. 86.

Completeness of work and method are considered by Prof. Tidy absolutely essential, if the medical witness desires to further the ends of justice and avoid personal censure. He should not allow the out-of-the-way place where the inquest is held, or the homeliness of the jury, or surroundings, to throw him off his guard so as to be led into any want of care or completeness of his work. Nor should he be hurried no matter at what inconvenience to himself or others.

Prof. Tidy advises that in a case of grave suspicion, and where important issues are at stake, a *post-mortem* should be performed by at least two independent experts.[5]

A medical man is never justified in refusing to perform a *post-mortem* on the mere ground of the advanced stage of decomposition of a corpse, or the length of time that has elapsed since death. Sex, age, pregnancy and even the mode of death, may be made out, if nothing more, or the discovery of false or peculiar teeth, malformations, old injuries or trinkets may be of great value as means of identification, etc. A careless, or superficial or hurried examination, in such cases, has been pronounced a palpable dereliction of duty.[6]

Where recognition is important, but is rendered impossible from the bloated condition of the body when recovered, the features may sometimes be restored to a remarkable extent by immersing the body in a saturated solution of alum and nitre in alcohol.[7]

The following preparation of Dr. Richardson is given by Prof. Tidy as a good disinfectant where a *post-mortem* has to be performed on an offensive corpse:—

Iodine	1 drm.
Methylated ether (sp. gr. 0.720)	10 ozs.
Absolute alcohol	1 oz.
Sulphuric acid	4 drms.

[5] Tidy, Vol. I., p. 4.
[6] Tidy, Vol. I., pp. 92, 93.
[7] Tidy, Vol. I., p. 93.

Dissolve the iodine in the mixed ether and alcohol, and slowly drop the sulphuric acid into the mixture. Pour the liquid over the body and it will be rapidly absorbed and the body effectually deodorized.[8]

In cases of suspected poisoning the use of all disinfectants at the *post-mortem* should be avoided, but if one is used its composition should be exactly known.

Upon all articles examined and likely to be of service in evidence, a private mark should be placed; and, if possible, the places where stains were found should be similarly marked.[9]

Where the observation of colours may become necessary a *post-mortem* should not be conducted by artificial light, if avoidable. The yellow colour produced by some poisons might escape notice by such light.[10]

When there has been a struggle between the deceased and an assailant, the nails of the dead man should be carefully examined for fibre of cloth, skin, hair or flesh; for if any are found they may serve to identify the assailant.

Where death may have occurred from suffocation, look for foreign bodies in the air passages, and for scratches the result of foreign bodies. Also for any indications of disease to which suffocation may be traced.[1] And where the direct cause of death is asphyxia care should be taken to see if the asphyxia was caused by criminal violence.

Prof. Tidy states at p. 31, Vol. I., "To commit suicide by holding one's breath is a practical impossibility," but at p. 285, Vol. III., he states, "it is scarcely possible for an adult to kill himself by simply holding his breath."

The remarks already made under s. 7, above, apply as much to medical men called to see a body as to coroners

[8] Tidy, Vol. I., p. 93.
[9] Tidy, Vol. I., p. 184.
[10] Tidy, Vol. I., p. 255.
[1] Tidy, Vol. III., p. 285.

and juries when viewing one; but in this place a few additional hints may be given for the guidance of medical witnesses in particular. Observe the dress, and compare it with the marks of violence on the body. The kind of soil and the nature of dried spots of mud on the corpse or its clothing. The marks of blood on the person of the deceased, what shape they assume; if that of a hand or some fingers, of what hand, and whether the front or back; and could the deceased have made the marks himself. What appearances around the corpse deserve notice, and how have they been changed since the death. Do marks of blood found near the body indicate anything from their form, direction or colour? These and numerous other points will suggest themselves by a little consideration, and some, if not all, may lead to material results.

Do wounds or anything else, such as the state of the clothing, etc., indicate whether the person who made them was right or left handed, or whether more than one person must have made them?

Neither the accused, nor the accuser, nor any actually suspected person, should be present during the *post-mortem* for fear of any tampering with the viscera, etc. Nor should any one else be present except the medical witnesses, coroner, constable and such other medical man as the accused, or accuser, or suspected person, may desire to have present.[2]

In the case of *Davidson* v. *Garrett et al.*, 30 O. R. 653, as above stated, where the wife of the plaintiff having died suddenly, the defendants, three practising physicians and surgeons, acting under a verbal direction from a coroner, entered the house of the plaintiff for the purpose of making, and made there, a *post-mortem* examination of the dead

[2] In the celebrated case of Dr. Palmer, who was afterwards convicted of the murder of John Parsons Cook, the accused was allowed to be present at the *post-mortem*, and even to handle the jar containing the viscera, which was found with the bladders closing it cut through. See report of the case by Browne & Stewart, at p. 107.

body, the coroner having issued a warrant to impanel a jury for the purpose of holding an inquest on the body, but afterwards withdrew the warrant—without the knowledge of the defendants, and there was no consent in writing of the County Crown Attorney—it was held that the coroner having authority to hold an inquest upon the body, and having determined it should be held, and having begun his proceedings, had power to summon medical witnesses to attend the inquest, and to direct the defendants to hold a *post-mortem*—that no rule of law forbade the making of the *post-mortem* before the impanelling of the jury, which was a matter of procedure in the discretion of the coroner, and that section 12 (2) of R. S. O. c. 97, is in form directory, and does not render acts done by a surgeon in good faith under the direction of the coroner unlawful, because the coroner has neglected to obtain the prescribed consent, where those acts would be lawful had the consent been obtained.

In Broom's Legal Maxims, at p. 88, it is also stated: "Where a court has jurisdiction of the cause, and proceeds *inverso ordine* or erroneously, then the party who sues, or the officer or minister of the court who executes according to its tenor the precept, or process, of the court, will not be liable to an action. But when the court has not jurisdiction of the cause, then the whole proceeding is *coram non judice*, and actions will lie against the above mentioned parties without any regard to the precept, or process, for in this case it is not necessary to obey one who is not judge of the cause, any more than it is to obey a mere stranger."

Before dissection is begun the age of the deceased should be accurately ascertained and noted. This can generally be accomplished from the evidence of relations or friends, but failing this source of information the medical witness should record what he considers the age to be, previous to causing any alteration in the appearance of the

face or figure by dissection. And in coming to any conclusion regarding the age, when there is no evidence upon the point except the corpse, it should be borne in mind how very deceptive outward appearances in this connection may be. For instance in April, 1903, a case was reported from the United States of a young man of twenty-four years who did not look older than a boy of four or five. He was three feet high and weighed but thirty-five pounds. At his birth he weighed 10 pounds, and in no way differed from other children. After growing rapidly in a normal way until he was five years old, his development, both mental and physical, was suddenly arrested, and he developed thereafter at only one-sixth the natural rate. Some medical men in the United States have been reported as saying he may live to be three hundred years old! If this is not a "yarn," it proves the necessity of extreme caution in judging the age by appearance only, where age is of importance.

The coroner or a medical witness, if more than one be present, should take down all the facts communicated by the dissector, from the commencement of the examination to its close, to prevent circumstances of importance escaping the memory.

And before dissection is begun, a general external examination of the body should be made. Dr. Beck says: "*If there be any external lesion present*, it should first be examined and its nature described: its length, breadth and depth; also whether it has been inflicted with a cutting, pointed or round instrument; whether it is accompanied with inflammation or gangrene; and whether any foreign bodies are found in it, such as balls or pieces of cloth. The scalpel should then be employed to trace its extent, but with judgment, so as not to render the researches useless, and prevent a comparison of the external wound with the internal injury. The nerves and blood-vessels, and particularly the arteries that are wounded,

should be named, as should also the viscera, if any are in that state. *If there be a contusion without a solution of continuity*, the injury found in the internal parts should be particularly noticed, such as extravasation, rupture of vessels, etc. *If the cause of death is a burn*, its degree and extent should be examined, together with the state of the parts affected, whether inflamed merely or covered with blisters, the fluid contained in these blisters, and the condition of the neighbouring parts, whether sphacelated or gangrenous. *If a luxation or fracture be present*, notice the surrounding soft parts; the nature of the injury, whether simple or complicated, and the phenomena indicating the progress of disease or recovery.[3]

After stating these circumstances, the dissection may be proceeded with in a systematic manner, taking care not "*to make wounds while examining for them.*" The examination of the abdomen had better be left to the last, as putrefaction is there first developed, and the offensive odour by this means may be partly avoided. If chloride of lime, or other disinfectant, has to be used during the examination, it must not be sprinkled *on* the body, but merely around it or about the room. The dissector should not desist because he supposes the cause of death is perfectly discovered in one or the other cavity; all of them should be inspected.[4]

It is recommended to commence the dissection at the head.[5] Remove the hair, and then lay bare the bones of the cranium, by making an incision from one ear to the other over the top of the head, and then another trans-

[3] 2 Beck, pp. 6, 7.

[4] 2 Beck, p. 7.

[5] Prof. Tidy considers that it is scarcely possible to judge correctly the condition of the right side of the heart when the head has been previously opened, and he recommends that in cases of asphyxia, the examination of the heart should be made first, and in new born children he says it is advisable to open the abdomen before the thorax, in order to better determine accurately the position of the diaphragm, a matter of importance in deciding whether the child has, or has not, breathed. Tidy, Vol. 1, pp. 252, 261, 262.

verse to it, from the top of the nose to the occiput. Take care not to mistake irregular sutures for fractures: for this purpose, they should be rubbed over with ink. Notice the strength of the bones of the head, whether they are unusually thin or soft.[6] Now remove the skull cap, taking care not to wound the dura mater, and inspect the membranes and substance of the brain. The base of the brain requires especial notice. View the vertebral column through its whole extent. In examining the neck, make an incision from the chin to the sternum; then from the upper point cut along the margin of the lower jaw to its angle, and from the lower point towards the clavicle. The great blood vessels, the larynx, trachea, pharynx and oesophagus and their contents must be noticed. To inspect the thorax satisfactorily, an incision should be made through the integuments, from the top of the sternum to the pit of the stomach. Then dissect the flaps down to the ribs, and backwards about an inch and a half beyond the junction of the cartilages with the osseous substance of the ribs. Cut through these cartilages close to their joining, beginning with the second rib and ending with the seventh. Pull forward the lower part of the sternum a little, introduce a scalpel behind it and detach the diaphragm and mediastinum, then saw through it immediately below the connection of the first rib.[7]

The viscera, the lungs, the pericardium and its contents, the heart and its great vessels, the thoracic duct, should be carefully examined. Remove the blood with a sponge, so as to ascertain the exact degree of colour that is present in the various parts, and notice the consistence or fluidity of the blood.[8]

The abdominal cavity will now remain. It is examined by making a crucial incision, and, if necessary, by

[6] 2 Beck, p. 8.
[7] 2 Beck, p. 10.
[8] 2 Beck, p. 10.

removing the pubal bone. Each part must be carefully examined: the intestines with a blunt-pointed bistoury, to avoid injuring them.[9]

If there is any suspicion of poisoning, Dr. Beck says the whole of the alimentary canal, from the oesophagus to the rectum, should be carefully removed for further inspection; and he recommends Dr. Gordon's directions to be followed for this purpose. Apply a double ligature at the very commencement of the jejunum, and divide the intestine between the two threads; a similar ligature is then to be applied to the ileum, close to its termination in the colon, and the tube divided in the same manner. The root of the mesentery being now cut through, the whole jejunum and ileum are removed together. A double ligature is next to be applied to the rectum, as low down as possible, and being divided between the cords, it is to be removed with the whole of the colon. The oesophagus, stomach and duodenum are then to be extracted together, taking care previously to tie a ligature round the top of the oesophagus.[10]

The examination being completed, the notes should be taken and reduced to order. Arrange the facts methodically and as far as possible chronologically. Give measurements in the terms of the English standards, and when speaking of size, give well known objects as comparisons, which the jury can easily comprehend. Sometimes a drawing, even if rudely executed, so long as it is correct, is of much service in evidence.[1]

If possible, have some one present to take down the notes. They should merely state the facts as found without opinions. They should be carefully read over and corrected if necessary before sewing up the body. A report should then be drawn up which should be as plain as possible, so that the court and jury may understand it.

[9] 2 Beck, p. 11.
[10] 2 Beck, 11.
[1] Tidy, Vol. I., p. 19.

Should there be any question about the identity of the dead person, the age, sex, trade (as shown by the hands, stains on fingers, etc.), complexion, type of face, race (as shown by the colour of the skin, etc.), colour of hair, nails, teeth, stature and girth, scars and injuries and marks left by disease, deformities, pregnancy, clothes, rings, etc., smears of tar, paint, etc., on the person or clothes, should all be recorded.[2]

And the medical witness, in drawing up his report or in giving his testimony, should remember that whatever he states before the coroner's court will be seen by the prisoner's counsel, should a trial follow, who will cross-examine and sift him to the utmost of his ability.

Give clearly and succinctly the reasons for your opinions, but avoid theorizing.[3]

The very common report of the medical witness that the death was occasioned by heart-failure, should be avoided unless clearly indicated; and giving no cause of death should not be adopted to save trouble. If no certain cause of death can be found it should be so stated rather than left blank, or attributed to heart failure. At a meeting of the Ontario Board of Health held in Toronto in April, 1902, a discussion followed the reading of a paper upon "The causes of mortality which are difficult of explanation in autopsy," by the President, Dr. J. J. Cassidy, and Dr. Bryce, in the discussion which followed, was reported to have said: "There were a great number of returns to the department in which no causes were given." This he attributed to carelessness in some cases on the part of the doctors, and he said he was convinced that the term "heart failure" in many returns covered up ignorance.

[2] Tidy, Vol. I., pp. 126-128.

[3] For a copy of a Medico-legal Report taken from Prof. Tidy's work, see Form No. 63.

A few practical remarks may now appropriately close this section.

The examination should be complete enough to enable the operator to say what was the condition of each part and viscus, and what was not the cause of death as well as what was.[4]

Take particular notice during the dissection, of any peculiar odour on opening the body, brain or stomach; and if poisoning is suspected, mention the nature of the odour to the chemist who makes the analysis.

Wounds should not be probed, but if necessary carefully dissected, to see what parts are implicated.[5]

Where the body is frozen, it should be thawed by being placed in a warm room for some hours before the *post-mortem*. It should not be immersed in warm water.[6]

The importance of thawing a frozen body is well illustrated by a case that occurred in Ontario in December, 1901. An Indian was found dead on a road, the body being frozen, and there being no suspicion of foul play the jury brought in a verdict that death was due to exposure. The day after the inquest the body had thawed out, and it was discovered that the neck and jaw of the deceased were broken, pointing almost conclusively to an accident, or to foul play on the part of some other person.

All vessels used in the examination should be thoroughly cleansed, and the whole examination should be conducted with a scrupulous regard to cleanliness. The necessity for this was once strongly illustrated. The stomach was negligently laid on some fine white sand, which gave rise to an idea of poisoning by means of powdered glass.

When an analysis is to follow,[7] if it is thought advisable during the *post-mortem* to examine the inner coats of

[4] Tidy, Vol. I., p. 255.
[5] Tidy, Vol. I., p. 259.
[6] Tidy, Vol. I., p. 255.
[7] As to an analysis in Quebec, see Chap. XIV., s. 5.

the stomach, the contents of the stomach should be poured into a clean vessel, and after the examination (during which no water should be used for washing the stomach, or if used should be added to its contents), the stomach itself should be placed in the same vessel, and forwarded to the chemist, and a small bottle of similar water to that used in washing the stomach, should also be sent to the chemist in case its composition should become of importance, and to enable the chemist to state its composition if a trial follows the inquest. The stomach should be tied above and below; and a portion of the intestines, tied in the same way, should be sent. Also, a portion of the liver and a kidney. And if severe vomiting has attended the death, some of the vomited matter must be sent. Any suspected food, coffee, soup, etc., should also be sent; and in cases of poisoning by arsenic, some of the urine.

Should the death have occurred within a few seconds or minutes of the administration of the suspected poison, the stomach, tied, should be put into a bottle with a tight cork or glass stopper, sealed all over, and sent off at once for immediate analysis.

But the vapour of prussic acid will traverse paper, wet or dry bladder, etc., in a few minutes, and few stoppers are close enough to retain it. Care should be taken to shut up the suspected matter at once in glass bottles *accurately stoppered;* bad stoppers are worse than corks.[8]

The greatest care should be taken to preserve the identity of the vomited or other matter taken from the body, or the most correct analysis afterwards made will be inadmissible as evidence.

For packing the viscera to be sent for analysis, glass vessels should be used, or stoneware; not common earthenware, as lead is used in its manufacture and might interfere with the tests.

[8] Browne & Stewart, p. 61.

No extraneous substance should be introduced into or placed over the mouth of the vessel. Chloride of lime is sometimes introduced in this way to remove the smell; but such a proceeding is highly objectionable, and may vitiate the whole analysis.

Except in the cases above mentioned and in which greater security is called for, the vessel may be covered with bladder (tied) or cork, and sealed in several places with a seal having a peculiar crest or device. A wafer-stamp, coin, thimble, or other common article, of which a duplicate might be found, should not be used for this purpose. The sealing up should be done by the coroner or examiner in presence of witnesses, and impressions of the seal used should be transmitted to the person who is to make the chemical analysis, together with an account of the symptoms attending the death.

Each vessel should be labelled, stating the date of the death and of the autopsy, and the names of the deceased person; and the labels signed by the medical man who conducted the *post-mortem*.

If the vessel or vessels containing the viscera are packed in a box, they should be surrounded with plenty of hay or other soft substance, and the lid of the box *screwed*, not hammered down, otherwise the bottles are apt to be broken, and much if not all of the liquid lost, thus rendering the analysis useless, or at least unsatisfactory to the jury, on account of the small quantity of poison found. The packages should never be out of the person's charge to whose care they are committed, until handed over to the chemist in person, who should be required to give a receipt for them.

Evidence of their identity and preservation intact, should be preserved through the whole chain of persons who have ever had charge of them.

The time required to complete an analysis varies according to the occupation of the chemist. If he has nothing else to do, perhaps two or three days; but it is safer to allow him a clear week or ten days. As no provision is made by law for defraying the expense of an analysis by a professor of chemistry, the coroner should obtain the authority of the Attorney-General for incurring it.

The unfortunate position which the celebrated Dr. Taylor, and Dr. Odling also, got into on the trial of Dr. Smethurst for murder, should be a warning to all analysts, no matter how skilled or experienced they may be, to use their utmost care against being led into mistakes. Both Dr. Taylor and Dr. Odling stated at the inquest before the coroner that a certain mixture contained arsenic, but on the trial had to confess they were mistaken.[9]

It is hoped that a few practical remarks upon giving medical testimony will not be considered out of place. They are mainly taken from the works of Prof. Taylor and Prof. Reese.

Of course a thorough medico-legal training is the best assurance the medical witness can have that he will cut a respectable figure in the witness box, but in addition to his general knowledge there should be a thorough preparation upon all the points bearing upon the case in hand. Weights, measures, distances, size, relationship of objects, colours, etc., should be stated with precision, and if not known should not be guessed at, but candidly stated to be unknown. The replies of the medical witness to counsel should be clear and precise, and given in the same manner to the counsel on either side, with the demeanour of an educated gentleman, and suited to the serious occasion on which he appears. He should not attempt to argue or recriminate, or exhibit any temper or over-sensitive-

[9] Browne & Stewart, p. 463.

ness, no matter how provoked by counsel. And all display of arrogance or assumption of manner, stubbornness, or testiness of behaviour, should be avoided. His answers should be in a clear and audible tone, and given in the simplest language, avoiding all technical terms, bearing in mind he is in court to inform the jury and not to display his own learning, pomposity or pedantry. Voluntary remarks should rarely, if ever, be made. If made they should be for the enlightenment of the court and upon vital facts not brought out by the examination. He should never be afraid to confess his ignorance if he cannot answer the question put to him. No attempt to hide a want of knowledge should be made by guessing. It is a fatal error in an expert to attempt to know too much. What has been termed the "war of experts" should be avoided as much as possible. The medical witness when called simply as an expert, if he has no experience, or has formed no opinion of his own regarding the subject he is questioned upon, should at once say so, and not attempt to pass off as his own the experience or opinions of some other medical witness who has preceded him on the trial. All rivalry between individual medical experts when giving testimony should be laid aside, and also all medical school *esprit de corps*.[10]

[10] Apparently an instance of this occurred at an inquest at which a number of leading medical men gave expert testimony on the same point, and it was found about one-half of them contradicted the rest, and that those on one side all belonged to the same medical school, and those on the other side all belonged to a rival medical school. However willing we may be to consider they all stated what they believed to be true, it is almost impossible to believe each one gave an independent opinion of his own. Probably one or two of the first witnesses called from each school governed the opinions of all the rest of that school, and instead of the court obtaining testimony on the one point with all the weight of a number of expert witnesses, its real weight was merely that of one or two experts. "Such professional tilting," to adopt the language of Prof. Reese, "is sometimes sneeringly designated as the 'war of experts,' and is certainly deeply to be regretted, as it tends greatly to prejudice both the court and the public against expert testimony in general; and this, of course, to the detriment of justice!"

The controversy upon the question of whether chloroform or ether is the safer anæsthetic, is somewhat of another instance of the "war

Any experiments that the expert may be called upon to perform at the inquest, or at the trial of an accused person, should be well rehearsed beforehand, for it has been justly said that "of all failures, the court-room experiment which declines to 'go off,' is, perhaps, the most dismal."

Prof. Tidy says any evidence offered by the expert should be as honestly and truly his scientific belief influenced by reasons as definite and as accurate as if he was arguing the points in dispute before a scientific tribunal, competent to weigh his arguments, and pronounce on his opinions with accuracy and precision. The publicity of the performance of an autopsy is in the discretion of the coroner, who determines what persons besides the surgeon may be present, the *post-mortem* not being a part of the inquest in the sense that every person has the right to attend. Consideration of delicacy, or respect for the feelings of relatives, may often require that the public should not be admitted. Indeed coroners had better be very cautious in allowing anyone to be present beyond those actually required for the performance of the *post-mortem*, and professional men. Idle curiosity in such matters should not be indulged.

The expert need not be a resident of the city or county.

In *Quebec*, no coroner can direct a *post-mortem* examination of any body upon which an inquest is being held, except upon a requisition of a majority of the jury, unless the coroner makes a declaration in writing (to be returned and filed with the inquisition) that in his opinion the holding of the *post-mortem* is necessary in order to ascertain whether or not the death occurred from violence or unfair means.[1]

of experts" and in this case is said to extend to international proportions, since chloroform seems to be generally supported by English experts and ether by the American experts.

[1] R. S. Q. 1888, Art. 2689.

In cases in Quebec where the services of a physician are required at an inquest, they are to be rendered by a physician of the locality where the inquest is held, or of the nearest locality.[2]

In *Nova Scotia*, if on any such inquiry as mentioned in Chapter II., s. 2, the medical examiner deems a *post-mortem* necessary to determine the cause of death, he may perform the same, but in all cases in which he performs a *post-mortem*, he must before making the same, or immediately thereafter, make a statement on oath in which he must state that in his opinion such examination was requisite, with his reasons as fully as circumstances admit, and must file the oath as part of his report. In performing such examination he may, if he deems the same requisite, obtain the assistance of another medical practitioner, but in no case can the medical examiner employ such assistance without making a statement on oath that it is requisite in order to ascertain the cause of death, giving his reasons fully. Such statement may be embodied in his oath required to be taken before performing a *post-mortem* examination, and it must form part of his report filed with the clerk of the Crown.[3]

And in *Nova Scotia* the medical examiner, where he deems it requisite to do so, and he obtains the approval of the Attorney-General, may employ a chemist or analyst to aid in the examination of the dead body, or any portion thereof, and of any substance supposed to have caused, or contributed to the death.[4] And if on his inspection, perusal, inquiry or *post-mortem* examination, the medical examiner is of the opinion that the death was caused by violence, undue means or culpable negligence, or that there is reasonable ground for suspecting the same, he must, if the dead body is found in the city of Halifax,

[2] R. S. Q. 1888, Art. 2692.
[3] R. S. N. S. 1900, c. 37, s. 8.
[4] R. S. N. S. c. 37, s. 8.

transmit to the stipendiary magistrate for such city, a copy of his report filed with the clerk of the Crown, together with a notice stating that in his opinion an inquest should be held. And if the dead body is found in the town of Dartmouth the copy of the report of the medical examiner must be sent to the stipendiary magistrate of that town.[5]

In *New Brunswick*, if a medical practitioner without sufficient cause, refuses to attend on any summons, he forfeits $20, which can be recovered before a justice on complaint of the coroner or any two of the jurors, if made within two months from the holding of the inquest. And the fine when recovered is to be paid to the county treasurer.[6]

In *British Columbia*, where any coroner's order issued for the attendance of any medical practitioner at an inquest, or for the attendance of such medical practitioner at an inquest, and the making or assisting in making a *post-mortem* examination, has been personally served on, or, if not personally served on, has been received by, such medical practitioner, or has been left at his residence or office in sufficient time for him to have obeyed such order, and he does not obey the same, he is, upon complaint made by the coroner who held the inquest in such order referred to, or by one of the jurors who sat on the said inquest, upon summary conviction before any two justices of the peace, or any stipendiary or police magistrate, be liable to a penalty of not less than twenty dollars and not more than one hundred dollars: Provided always, that if upon hearing what is alleged by such medical practitioner, such justices or magistrates shall consider that such disobedience was caused by circumstances amounting to a reasonable excuse therefor, it is lawful for such justices

[5] R. S. N. S. 1900, c. 37, s. 9.
[6] 63 V. c. 5, s. 25, N. B.

or magistrates to dismiss such information upon such terms, as to costs or otherwise, as may seem just.[7]

In an address delivered before the Ontario Medical Association in 1902, His Honour, the late Judge McDougall, pointed out why the evidence of medical experts was often conflicting, and confusing to the jury. He said it arose chiefly out of the method of securing and employing such witnesses—that experts were obtained by the parties to the suit who, before subpoenaing an expert, took care to find that his opinions were in their favour. The fees came out of the pockets of the man who was to benefit by the testimony, and taking these two things together they were apt to produce, perhaps wholly unconsciously in the mind of the expert, along with the natural desire to see his side win, a disposition to view the facts with a view to their result. It had in fact a tendency to corrupt the witness, not in the strict sense amounting to moral turpitude, but giving him a bias in favour of that side, and that a man had to have strong mental honesty not to be swayed under these circumstances. Then, the experts being witnesses for one side or the other, the cross-examination by the counsel was not conducted for the purpose of getting at the facts, but for the purpose of shewing that the evidence adduced by the opposite side was upon a wrong foundation, and therefore absurd. The judge suggested that a better way would be to make the expert an assistant or adviser to the court. The court or the state should be the party to designate who the two or three experts should be, and their reward should not depend upon the parties, but should be paid by the state somewhat on the plan successfully adopted in the Admiralty Court, where the judge was assisted by two experienced nautical assessors who gave the judge assistance in all technical points.

[7] 61 V. c. 50, s. 20, B. Col.

A prominent medical man who was present and heard the judge's address, stated he knew all medical men would welcome any such change in the law as that suggested by Judge McDougall; and in the report of the meeting it was stated that the association evidently endorsed the judge's views.

Sec. 10.—THE DEPOSITIONS.

The depositions or evidence must be taken down in writing and on oath or affirmation in cases where affirmations are allowed, and in the presence of the party accused, if any such party there be and he can be apprehended, and must be certified and subscribed by the coroner, and in Ontario caused to be delivered without delay,[8] together with the written information, if any, the recognizances, the statement of the accused, if any, and the inquisition, to the Crown Attorney for the county. Except when any person is charged with manslaughter or murder in any part of Canada, and the person or persons, or either of them affected by such verdict or finding, be not already charged with the offence before a magistrate or justice, then the coroner must 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 the 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; and 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. And upon any such person being brought or appearing before any such magistrate or justice, he must proceed in all respects as though such

[8] R. S. O. c. 96, s. 10, say "forthwith."

person had been brought or had appeared before him upon a warrant or summons.[9]

Of course in these cases of manslaughter and murder, it will be impossible for the coroner to transmit the depositions to both the Crown Attorney (as required by the Ontario statute) and also to a magistrate (as required by the Dominion Act), but as criminal matters come more specially under the jurisdiction of the Dominion Parliament, it is proper for coroners in these cases to follow the Dominion statute, and send the depositions, etc., to a magistrate. The reason for the Dominion enactment appears to arise from a further provision of the Criminal Code, 1892, whereby the old law under which a coroner's inquisition was considered equal to an indictment upon which the accused party could be tried, is changed. No one can now be tried upon a coroner's inquisition.[10]

At the fall sittings in 1900 of the assizes in Toronto, it was reported the presiding judge, when addressing the grand jury, took occasion to refer to what he considered an ill-advised change in the law by which the evidence taken before a coroner's jury in cases of manslaughter and murder, had to be heard all over again before a magistrate, and then a third time before the grand jury, and finally before the petit jury, to the great inconvenience of witnesses, a considerable expense to the country, and altogether, as his lordship said, a useless and ridiculous procedure. The coroner, he said, should have the power to send a case to the grand jury. These remarks of the learned judge seem to be fully justified, as no inconvenience appears to have arisen under the old practice, and

[9] 55-56 V. c. 29, s. 568, Dom. Mr. Justice Taschereau in his work on the criminal law, at p. 638, states in reference to this section of the code:—"This virtually gives an appeal from the coroner's jury to a single magistrate, who, consequently, though heretofore he had not even the right to bail any one charged by a verdict of the coroner's jury, will now have the right to set him free altogether."

[10] 55-56 V. c. 29, 642, Dom.

much inconvenience and expense must certainly result from the change which was probably suggested by the case of *Reg.* v. *Spoor*, 11 Cox C. C. 550, where it was held that when a prisoner is committed for trial on a coroner's inquisition for manslaughter, the case ought properly to be investigated by the magistrates in order that the prisoner may have the opportunity of calling witnesses, and having them bound over to appear at the trial. But there seems to be no sufficient reason why the prisoner should not have this advantage before the coroner, without the extra trouble and expense of the repeated investigation before a magistrate.

In the case of *The King* v. *Laurin*, Nos. (2) and (3), 5 Can. Crim. Cases, 545, it was held the depositions of a witness taken at a coroner's inquest and signed by the witness, may be used at the cross-examination of that witness at a trial that followed, for the purpose of contradicting his testimony, or of testing his memory, although they were irregularly returned by the coroner to the clerk of the Crown, instead of to the magistrate, as now required by the Criminal Code, section 568.

With regard to the power a coroner has in these cases of manslaughter and murder, to direct the accused to enter into a *recognizance* to appear before the magistrate, it is not intended that such an option should be exercised in any very serious case. It should be used with great caution, and only where the inducement for the accused to escape is small. Still greater caution should be exercised in taking a recognizance without sureties.

If a coroner who has taken an inquest happens to die, having the record in his custody, it seems that a *certiorari* may be directed to his executors or adminstrators to certify it.[3]

[3] 2 Keb. 750; Dyer, 163; 2 Rol. Abr. 629; 2 Inst. 424; Hawk. b. 2, c. 27, s. 39; Bro. Abr. *Certiorari;* 9 Bac Abr. *Certiorari.*

The better opinion now seems to be that the depositions taken before a coroner when the prisoner is not present, cannot be used as evidence against him.[4]

The depositions, if properly taken, will be sufficient evidence in case the witnesses are dead, unable to travel beyond sea, or kept out of the way by the contrivance of the party to whom their testimony is adverse.[5] But they cannot be received, though the witnesses are dead, unless it is proved that they were signed by the coroner.[6] And before they can be received, evidence must be given that they are the identical papers taken before the coroner without alteration.[7] And if possible it would be prudent to prove the depositions before the coroner by the coroner who took them.[8]

It is the duty of a coroner to read over to every witness examined on the inquest, the evidence which he has given, and to desire the witness to sign it.[9]

At a trial at Brantford, Ontario, in 1901, the prisoner was charged with murdering her husband by means of poison, and a Crown witness on the case when it came up at the Police Court, could not be found to give evidence at the trial, and the Crown Prosecutor asked that her evidence before the Police Court should be admitted, and after argument by the counsel it was reported that Chief Justice Meredith admitted the evidence.[10]

[4] *R.* v. *Rigg*, 4 F. & F. 1085; *R.* v. *Wall*, 2 Russ. C. & M. 893 *n.* (*e*); Wells Cr. Pr. 210; 2 Phill. 109; Bull, N. P. 248.

[5] 1 Kel. 55; 1 Lev. 180; Phil. Ev. 166; *R.* v. *Gutteridge*, 9 C. & P. 471; *R.* v. *Scaife*, 1 M. & R. 551; *Reg.* v. *Mooney*, 9 Cox C. C. 411.

[6] *R.* v. *England*, 2 Leach, 770, 771.

[7] Kel. 55; Fost. 337; Hawk. b. 2, c. 46, s. 15; Phill. Ev. 162-5. But the whole of this paragraph must be considered by the legal profession in connection with Part 51, of 55-56 V. c. 29, Dom. What the precise effect of this part of the Criminal Code, 1892, may be upon the depositions taken before coroners seems doubtful.

[8] *The Queen* v. *John Hamilton et al.*, 16 C. P. 341; Taylor on Evi. s. 494.

[9] *Reg.* v. *Plummer*, 1 C. & K. 600; 8 Jur. 924.

[10] See Criminal Code, s. 687, and the Canada Evidence Act, 56 V. c. 31, s. 10.

Depositions of a prisoner at a coroner's inquest after a caution by the coroner, it was held could be read in *Reg.* v. *Calmer*, 9 Cox C. C. 506.[1]

Where several persons die from the same accident or crime, but not at the same time, the depositions taken at an inquest on the body of the person who first died, it is submitted, should not be allowed as evidence on any subsequent inquest on the other bodies of persons who died thereafter.

In the case of George H. Lewis, who was accused of manslaughter by allowing his son, five years old, to die of diphtheria without calling in medical advice, he being a Christian Scientist, his depositions at the coroner's inquest were read after objection by his counsel, Chief Justice Falconbridge being the presiding judge.

In *Quebec* it was held a deposition to be admissible under the Criminal Code, section 687, must be a *verbatim* record of the evidence of the witness.[2]

And in that Province it was held that unless the depositions at a coroner's inquest are taken with the formalities prescribed for the taking of depositions at a preliminary inquiry, they cannot be used at the subsequent trial on an indictment.[3] And Mr. Justice Ouimet held that in *Quebec* a coroner is not a justice of the peace within the meaning of section 687 of the Criminal Code.

In *New Brunswick*, it is the duty of all coroners and justices of the peace, to take down in writing the evidence at any inquest held by or before them, and the same, with the inquisition, and the declaration under oath of the coroner, before issuing the warrant for summoning the jury, must in all cases, except where a verdict of murder or manslaughter, or of aiding or abetting of murder

[1] See Form No. 52.

[2] 8 Q. B., Quebec (Crown side) 1898. 167; 2 Can. Crim. Cases, 388.

[3] *The Queen* v. *Ciarlo*. Que. Rep. 6 Q. B. 142.

or manslaughter, shall be rendered against any person, be immediately thereafter transmitted by such justice or coroner to the clerk of the peace for the county in which the inquest is taken, and the clerk of the peace is to file the same in his office. No fees for the inquest will be paid until after the coroner shall have filed the depositions except in the cases excepted. The depositions must be signed by the witness and also by the coroner. In the cases of *murder* and *manslaughter*, the depositions must be sent to the magistrate as required by *The Criminal Code*, 1892, ss. 568, 642.[4]

In cases of murder or manslaughter, when the person charged has not already been charged with the offence before a magistrate, the coroner must send him before a magistrate as previously stated.[5]

In *Prince Edward Island*, by statute passed in 1836, coroners upon any inquisition taken before them whereby any person is accused of murder or manslaughter, or as an accessory to murder before the fact, are to put in writing the evidence given to the jury before them, or as much as shall be material, and they must certify and subscribe the evidence and all recognizances of the witnesses to appear at the trial, and also the inquisition.

In cases of murder or manslaughter when the person charged has not already been charged with the offence before a magistrate, the coroner must send him before a magistrate as previously stated.[6]

In *British Columbia*, the Coroners' Act of that Province (61 V. c. 50, s. 7, B. C.) states: The coroner and jury shall, at the first sitting of the inquest, view the body, and 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

[4] C. S. N. B. 1903, ss. 20, 21.
[5] See p. 269, and 55-56 V. c. 29, s. 568, Dom.
[6] 55-56 V. c. 29, s. 568, Dom.

thinks it expedient to examine. And it is the duty of the coroner to put into writing the statements on oath of those who know the facts and circumstances of the case, or so much of such statements as is material; and such depositions shall be signed by the witness and also by the coroner. And under the Dominion Criminal Code, 55-56 V. c. 29, s. 568, where the coroner's inquisition charges a person with murder or manslaughter, the coroner shall (if the person or persons or either of them affected by such 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 the 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 is the duty of the coroner to transmit to such magistrate or justice the depositions taken before him in the matter, and the magistrate or justice must proceed in all respects as though such person had been brought, or had appeared, before him upon a warrant or summons.

And in *British Columbia* a person charged by an inquisition with murder or manslaughter is entitled by statute from the person having for the time being the custody of the inquisition, or the depositions of the witnesses at the inquest, to copies thereof, on payment of a reasonable sum for the same, not exceeding the rate of ten cents per folio of one hundred words.[7]

In *Newfoundland*, the proceedings on the enquiry and all depositions connected therewith must be transmitted to the Attorney or Solicitor-General for such further action as may be required.

[7] 61 V. c. 50, s. 11, s.s. (4).

SEC. 11.—OBSTRUCTIONS—HOW PUNISHED.

It is a misdemeanour to interrupt or obstruct the coroner or his jury in the view or inquiry.[8] And the coroner has also authority forcibly to remove any person offering obstruction to the due administration of his duties, without being liable to an action;[9] or he may commit any person for a contempt, the effects of which tend to obstruct and impede him in the performance of his office.[10] It is better, however, for coroners not to make use of this power to commit, but to have the offending party punished for the misdemeanour.

SEC. 12.—THE INQUISITION.

The inquisition or written statement of the verdict or finding of the jury, when it contains the subject matter of accusation, is not now equivalent to the finding of a grand jury, and the parties charged cannot be tried upon it.[1] Formerly the inquisition was required to be on parchment, but this is not now necessary.[2]

The coroner should not go into the room where the jurymen are and take their verdict there, but should let the jury return, with the constable in charge of them, into the open court, and there receive their verdict. In the case of *In re Mitchelltown Inquisition*, 22 L. R. Ir. 279, it was held that for the coroner to go into the jury room to receive the verdict was misconduct for which the inquisition would be quashed.

The inquisition should be pleaded with the same strictness and legal precision as indictments.[3]

[8] Umf. 123.
[9] 6 B. & C. 611; 1 Ld. Raym. 454; 1 Mod. 184; 2 Mod. 218.
[10] Jer. O. C. 268.
[1] 55-56 V. c. 29, s. 642, Dom.
[2] *Reg.* v. *Golding*, 39 Q. B. 259; 55-56 V. c. 29, s. 608, Dom. And see *Rex* v. *Beavers*, 1 East. P. C. 383; *Reg.* v. *Whalley*, 7 D. & L. 317; 19 L. J. Q. B. 14.
[3] Jer. O. C. 271.

It does not appear when this formal inquisition should be drawn up, but it had better in all cases be completed before the jury are dispersed,[4] that is, allowed to leave the room. They must all sign it with their names in full before separating.

An inquisition on the body of a criminal who has been executed under a legal sentence must be in duplicate, and one of the originals is to be given to the sheriff.[5]

The inquisition consists of three general parts: the caption or incipitur,[6] being all that part which begins the inquisition, and immediately precedes what is called the verdict or finding of the jury; the verdict or finding of the jury[7] being that part which immediately follows the caption and precedes the attestation; and the attestation or conclusion.[8]

The contents of each of these parts may be particularly noticed, a familiar knowledge of them being requisite in drawing up inquisitions, although many defects of a technical character in inquisitions which formerly would have rendered them bad, may now be amended either by the superior courts or a judge thereof, or by a judge of assize or gaol delivery.[a]

They are—

The caption.

1. The venue.
2. The place where holden.
3. The time when holden.
4. Before whom holden.
5. The view.
6. The description of the deceased.
7. Where the body lies.
8. The jurors, and their finding upon oath.
9. The charge to inquire.

[4] Impey O. C. 879.
[5] 55-56 V. c. 29, s. 944, Dom.
[6] See Form No. 74.
[7] See Forms Nos. 76 to 113.
[8] See Form No. 75.

[a] R. S. O. 1877, c. 79, s. 12. This section is not consolidated in the revision of the Ontario statutes of 1887, nor is it repealed.

The verdict.
- 10. The verdict.
- 11. The party charged.
- 12. The addition.
- 13. The allegation of time and place.
- 14. The description of the act.

The conclusion.
- 15. The attestation.

1. *The Venue*, or name of the county where the body lies dead and the inquisition is holden, should be inserted in the margin of the caption, thus:

"*County of Simcoe*, TO WIT: } An inquisition," etc.

The name of the county or city must be either in the margin or in the body of the caption, but the usual and better practice is to insert it in both.[9]

2. *The place where holden.*—The place at which the inquisition is holden must appear on the face of the inquisition.[10] If no place is stated,[1] or if the place stated is not shewn with sufficient certainty to be within the jurisdiction of the coroner,[2] it is insufficient.[3]

3. *The time when holden.*—The inquisition must specify the day upon which it was holden, in order to show that the inquiry was recent, and was not held upon a Sunday, in which case it would be void.[4] The taking of the verdict of the jury, or other proceedings of the court, the Criminal Code states, shall not be invalid by reason of its happening on Sunday. And 63-64 V. c. 46 adds to

[9] 2 Hale, P. C. 166.

[10] 2 H. P. C. 166; 2 Ld. Raymond, 1305; 9 Rep. 66 (*b*); s. 729 of 55-56 V. c. 29, Dom., does not appear to apply to inquests.

[1] Dyer, 69.

[2] Cro. Jac. 276, 277.

[3] 2 Hawk. P. C. c. 25; and see *Reg.* v. *Winegarner*, 17 O. R. 208.

[4] 2 Saund. 291 (Dakin's Case); Jervis O. C. 279; *In re Cooper et al.*, 5 Pr. R. 256, and see Chap. II., s. 2.

this—"or any other holiday." These provisions, it is submitted, may not apply to a coroner's inquest. But it is also submitted they do not in any event cover the *commencing* to hold an inquest on a Sunday, and only apply where an inquest having been commenced on a week day, is prolonged into a Sunday. Still, in the absence of any decided authority for this statement, the writer would recommend coroners to adjourn the inquest over until the following week rather than even take the verdict of a jury on a Sunday after they have retired to make up their verdict on a Saturday night.

In *Nova Scotia* there is a provision by statute, R. S. N. S. 1900, c. 36, s. 5, s.s. 5, stating an inquest can be held on Sunday when it is necessary to do so, but as the Criminal law is solely under the jurisdiction of the Dominion Parliament, this enactment in Nova Scotia may be *ultra vires*. See *Atty.-General for Ontario* v. *The Hamilton Street Railway Co.*, L. R. App. Cas. 1903, p. 524. The day only need be stated without the hour. If the day stated be an impossible one, as the 30th of February, for instance, the inquisition is bad.[5]

If there are adjournments it is better to set them all out in the caption, although it is sufficient to describe the inquisition as being held on the first day of the sitting, since in law the inquisition is considered as holden on one day when actually held on different days.[6]

The time should be treated in the present tense.[7]

The year of the sovereign's reign, without adding the year of our Lord, is sufficient; or the year of our Lord, without adding the year of the sovereign's reign, will suffice. Numbers should not be expressed by figures, but by words at length,[8] or at least in Roman numerals.[9]

[5] 1 T. R. 316.
[6] Jervis, O. C. 246; *Reg.* v. *Winegarner*, 17 O. R. 208.
[7] 2 Hawk. P. C. c. 25, s. 127.
[8] 2 Hawk. P. C. 170.
[9] 1 Str. 26.

4. *Before whom holden.*—The name and office of the coroner must be stated, in order that it may appear that the inquisition was taken before a court of competent jurisdiction. Also the place for which he is coroner.[10]

The names in the body of the inquisition in full (not by initials), of all the jurymen, should also be stated, and that they were sworn and are good and lawful men of the county or city.

5. *The view.*—The rule is that the inquisition must state that the inquiry was taken on *view* of the body, or it will be bad.[1] It has been said the jurors need not be sworn in view of the body, but need only view the body after being sworn, as the body itself is part of the evidence to be laid before them.[2] But before the case referred to, it was held in *Rex* v. *Ferrand*, 3 B. & Ald. 260, 22 R. R. 373, by the unanimous decision of a very strong court composed of Abbott, C. J., Bayley, J., Holroyd, J., and Best, J., that there can be no good inquest unless the coroner and the jurors are both present at the same time and the oath is administered by the coroner to the latter *super visum corporis*. In Canada the usual practice of swearing the jury all together in presence of the dead person, had better be followed until some further authority for a change is established, and after the jurors are all sworn, the coroner had better as a matter of precaution, direct them in a body to view the corpse again.

In *New Brunswick* there are exceptions to this rule by statute, for which see Chap. XII., s. 7.

6. *The description of the deceased.*—Both Christian and surname of the deceased, either his real name or that by which he was usually known, should be stated accurately, if known.[3]

[10] 22 Ed. IV., 13, 16, Sum. 207; S. P. C. 96; 2 Ld. Raymond, 1305.
[1] Jer. O. C. 277, and see Chap. II., s. 2, and Chap. XII., s. 7.
[2] *Reg.* v. *Ingham*, 5 B. & S. 257.
[3] 2 Hawk. P. C. c. 25, ss. 71, 72.

If the name be unknown, he may be described as a person to the jurors unknown; but such a description would it seems be bad if he were known.[4]

No addition or occupation of the deceased is necessary,[5] nor need the deceased be distinguished from another person of the same name by the addition of "the younger."[6] A name of dignity, however, as baronet or knight, which is actually a part of the name and not merely an addition, should be stated. But an imperfect addition where none is necessary, would not render the inquisition defective.[7]

The courts in Ontario it seems may have certain powers of amending inquisitions, as to which see R. S. O. 1877, c. 79, s. 12; which section was not consolidated or repealed by R. S. O. 1887.

7. *Where the body lies.*—The place where the body lies must be stated to show the jurisdiction of the coroner, and that he has power to take the view.[8] And the place where the death happened or where the body was found should also be stated. The omission of these statements has been held to amount to defects in substance and could not be amended, and the inquest was quashed.[9]

8. *The Jurors, and their finding upon oath.*—The inquisition must show that all the jurors took the oath, and who they are, by name; and therefore it is insufficient to allege that it was taken by the oaths of the several persons underwritten,[10] or of so and so (naming one or two) and others.[1] So it must expressly appear that

[4] 3 Camp. 264; Holt. C. N. P. 595; 2 H. P. C. 281.
[5] 2 H. P. C. 182.
[6] 3 B. & A. 579.
[7] 2 C. & P. 230.
[8] Jer. O. C. 279.
[9] *Reg.* v. *Evett*, 6 B. & C. 247; 30 R. R. 319; and see Chapters II. and III.
[10] *Rex* v. *Evett*, 6 B. & C. 247.
[1] 2 H. P. C. 168.

the jurors are from the county or jurisdiction within which the inquisition is holden; that they are at least twelve in number in Ontario, and present the inquisition upon their oaths.[2] If their Christian names and surnames are given in the body of the inquisition, it is not necessary that the jurors should sign their names in full.[3] Before attempting to insert the names of the jurors in the inquisition, it should be accurately ascertained what they are, and how spelt, in order that there may be no variance between the names in the caption and those in the attestation.[4]

9. *The charge to inquire.*—It is usual to state in the inquisition that the jury were charged to inquire, but this is not in strictness necessary.[5]

10. *The verdict.*—The finding of the coroner's jury should be stated with legal precision and certainty, and must not be repugnant or inconsistent, and the charge should be direct and positive.[6] The coroner should accept such presentment or verdict as the jurymen see fit to make on the merits of the case before them.

If the jury in their verdict think proper to comment on the conduct of parties towards one under their subjection who has committed suicide, the superior courts will not alter the finding on that account.[7] But all statements not amounting to an accusation of crime, had better be avoided, as they sometimes lead to further litiga-

[2] 2 Hawk. P. C. c. 25. s. 126.

[3] *Reg.* v. *Golding*, 39 Q. B. 259; In the case *Rex* v. *Evett*, 6 B. & C. 297; 30 R. R. 319, it was held that where the names of the jurors were not inserted in full in the body of the inquisition, and it was subscribed by them with the initials only of their Christian names, these were defects in substance, and not only in form, and could not be cured by amendment.

[4] 3 C. & P. 414.

[5] Ld. Raym. 710; 2 Hawk. P. C. c. 25. s. 126.

[6] Jer. O. C. 281; *Reg.* v. *Breden et al.*, 16 U. C. Q. B. 487; *Reg.* v. *Golding*, 39 U. C. Q. B. 259.

[7] *In re Millar et al.*; 15 U. C. Q. B. 244; *Ex parte Scratchley*, 2 D. & L. 29.

tion. It may here be stated that the finding of a jury on a coroner's inquisition, throws the burden of proof in a civil case on the party alleging the contrary.[8]

Where a jury found the cause of death to have been disease, adding that it was accelerated by an overdose of certain drugs taken in excess, and improperly compounded, prescribed and administered by one F., as a cholera preventive, and that F. was deserving of severe censure for the gross carelessness displayed by him in such compounding and prescribing; the inquisition was brought up by *certiorari* by F., but the court refused to quash it, holding that the imputation which it contained, not amounting to any indictable offence, gave F. no right to have it quashed, and that under the circumstances public justice did not require the interference of the court.[9]

The verdict of the jury does not prevent the accused being tried for a higher or lesser offence.

A coroner should not refuse the verdict of the jury because it does not comply with his own view of the evidence.

The principal parts requiring attention in the verdict will be treated of under the next three heads.

11. *The party charged.*—If the inquisition contain matter of accusation against a party, such party should, if known, be described by his Christian and surname. The Christian name should be such as he acquired at his baptism or confirmation, or at both.[10] A second Christian name cannot be added after an *alias dictus*;[1] but a person may, if he has acquired two Christian names, be indicted by both; and if they are misplaced, it is as much a misnomer as if other and different names were stated.[2] The

[8] *Prince of Wales Insurance Company* v. *Palmer*, 25 Beaven 605.
[9] *Reg.* v. *Farley*, 24 Q. B. 384; and see Chap. XIII., s. 5.
[10] Co. Lit. 3; 6 Mod. 115, 116; Jer. O. C. 281.
[1] Ld. Raym., 562; Willes, 554, 2 East, 111.
[2] 5 T. R. 195.

surname should be the one usually given to or acknowledged by the party; and if there is a doubt which one of two surnames is his real surname, the second may be added after an *alias*, adding the Christian name to each.[3]

When the party is unknown, he may be described as a "certain person to the jurors aforesaid unknown," adding, if possible, some description by which he may be designated, for no proceedings can be taken upon an inquisition charging a person unknown, without something by which to ascertain who the jury meant.[4]

If the name sounds the same it is no objection if it is misspelt.[5] And the objection of one defendant, where several are named in the inquisition, will not abate the inquisition as to all, as it is several against each.[6]

An inquisition finding that the directors of a railway or other company, did "kill and slay," etc., without designating the directors by name, will be quashed.[7]

The Coroners' Act of Nova Scotia provides that after viewing the body and hearing the evidence, the jury shall give their verdict and certify it by an inquisition in writing setting forth so far as such particulars have been proved to them, who the deceased was, and how, when and where the deceased came to his death, and the persons, if any, whom the jury find to have been in whole or in part responsible for the death.[8]

12. *The addition.*—The party charged should also be described by his addition or occupation; although the want of an addition or the stating a wrong one may be amended.[9]

[3] Bro. Misn. 47; Jer. O. C. 282.
[4] R. & R. 409.
[5] 10 East. 84; 16 East, 110.
[6] 2 H. P. C. 177; but see 32-33 V. c. 29, s. 71, and R. S. O. 1877, c. 79, s. 12, as to power of judge to amend.
[7] *The Queen* v. *The Directors of the G. W. Railway Co.*, L. R. 20 Q. B. D. 410.
[8] R. S. N. S. 1900, c. 36, s. 5, s.s. (3).
[9] R. S. O. 1877, c. 79, s. 12.

13. *The allegation of time and place.*—The time and place when and where the party is charged with having committed the offence should be stated accurately if possible. The hour of the day need not be stated. But defects in stating the time and place may be amended. And it seems mention of the place is not absolutely necessary where the venue is stated in the margin of the inquisition, except perhaps in cases where local description is required.[10]

It was held no objection to an inquisition for murder, that the offence was stated to have been committed on "the 26th day June," omitting the word "of."[1]

If the offence is charged to have been committed on an impossible day, the inquisition is bad.[2]

The jury should point out the precise time at which the accident or other injury happened that caused the death of the deceased, and also the precise time at which the death took place,[3] if known. If not known it should be stated that the precise time of the death is to the jurors unknown.

14. *The description of the act.*—The inquisition ought to contain a complete description of such facts and circumstances as constitute the crime without inconsistency or repugnancy.[4] The charge must be distinct and substantive, and every fact and necessary ingredient must be stated, for it is not sufficient (in general) to charge the defendant generally with having committed the offence.[5] There are, however, exceptions to this rule, amongst which are the principal crimes which come under the notice of coroners. For instance, in the case of offenders formerly

[10] R. S. O. 1877, c. 79, s. 12.
[1] *Rex* v. *Higgins*, 3 C. & P. 414.
[2] *Reg.* v. *Mitchell*, 7 C. & P. 800.
[3] *Reg.* v. *Brownlow*, 3 P. & D. 52.
[4] *Reg.* v. *Breden*, 16 U. C. Q. B. 487; 5 East. 244.
[5] Jer. O. C. 286.

called accessories before the fact,[6] and aiders and abettors, it is not necessary to state the particulars of the incitement and solicitation, or of the aid and assistance. And in cases of murder or manslaughter, it is sufficient (if murder) to charge that the accused person "did feloniously, wilfully and of his malice aforethought, kill and murder;" and (if manslaughter) "did feloniously and unlawfully kill and slay" the deceased. Impertinent and unnecessary allegations and useless circumstances of aggravation ought to be avoided.

The allegations must be made with certainty, and be stated *positively*, and not by way of recital,[7] inference or argument,[8] or the like. Statements should not be made in the *disjunctive*, or the inquisitions will be bad for uncertainty. For instance, "murdered *or* caused to be murdered," "wounded *or* murdered," "conveyed *or* caused to be conveyed," etc., would be bad.[9] And the same if the party is charged in two different characters in the disjunctive.[10]

The charge must also be single. For a party cannot in general be charged with two or more offences in the same inquisition. So neither can two persons be charged with different and distinct offences. Offences of different degrees, but dependent one upon the other, may be charged in the same inquisition.[1]

[6] 2 East, 4.

[7] 2 Ld. Raym. 1363. It need hardly be stated that the following verdict of a coroner's jury was not sufficiently accurate in stating the cause of death. The jury returned a verdict that the deceased came to his death from exposure. "What do you mean by that" asked a relative of the dead man, "when there were two bullet holes in his head?" The coroner replied, with a wave of his hand, "Just so, he died from exposure to bullets."

[8] 2 Hawk. P. C. c. 25, s. 58.

[9] Jer. O. C. 289.

[10] 2 Ro. Rep. 263.

[1] Jer. O. C. 299. An instance of a double charge is found in a certificate given by a Welsh coroner that a woman "Fell into the Glamorganshire canal, whereby she died, and being of unsound mind, did kill herself." And another instance occurred in the United States, where the finding was—"Died from intemperance, chronic asthma and the visitation of God."

If the jury find the cause of death was the act of any person, and there is something which excuses that person, the matter excusing him should be found also. For example, that the person was insane when he did the act.

Coroners' juries sometimes desire to insert in their verdicts censures upon the treatment of the deceased by parents, guardians, masters or others, with whom the dead person lived; and unless they follow up such censures by finding the treatment they refer to, in some way caused, or led to, the death, they had better be discouraged in their desire, as their statement may cause the verdict to be set aside, or lead to litigation; and may in some cases prove unjust if all interested parties are not heard.

In particular cases, certain words of a technical character must be used, or else the inquisition will be bad. These words are reduced to few in number by the present law. When drawing up an inquisition for any felony, the word "*feloniously*" must be inserted; for instance, in describing the offence of manslaughter, it is necessary to state "did *feloniously* kill and slay." Again, in charging a person with murder, in addition to the word feloniously, the actual word *murder* must be used.[2] The word *kill*, or any other of the same meaning will not suffice. Also, in this case and that of *felo de se*, the words *malice aforethought* must be inserted—"*feloniously* and of his *malice aforethought*." As the offence of *felo de se* admits of no degrees, it is not necessary to state the party *murdered* himself, but a word of similar meaning may be employed.[3] Formerly there were several more words, and there were even sentences essential to the validity of coroners' inquisitions, such as "with force and arms," "against the peace of our Lady the Queen," etc., etc.; but these have been got rid of, either by the express provisions of 32-33

[2] Fost. C. L. 424; 2 H. P. C. 184.
[3] Plowd. 255; 1 Saund. 356; 1 Keb. 66; 1 Salk. 377; 7 Mod. 16.

V. c. 29, or by the powers of amendment now vested in the courts.[4]

15. *The attestation.*—This is an essential part of the inquisition.[5] Underneath it the coroner and jurors sign their names opposite seals, and the coroner adds his office, thus:

"A. B., Coroner, County of ——"

The coroner and all the jurors should sign their names with ink and in full, and not by initials,[6] although if their names are stated in full in the caption it has been held unnecessary for their names to be in full at the end.[7]

Unless all the jurors sign the inquisition there may be trouble in obtaining payment for the inquest, since it was held in England that a coroner was not entitled to be paid under 25 Geo. II. c. 29, unless the inquisition was signed by all the jurors.[8]

A person who cannot write his name should not be sworn as a juror if it can be avoided.

If it is necessary to accept jurors who sign with their marks, such marks ought to be verified by an attestation.[9] But a juror who has put his mark must be taken *prima facie* to have done so in the presence of the other jurors.[10]

[4] Much of this whole section is left as it stood in the second edition of this work, which was published long before the Criminal Code, 1892, was passed. By the Criminal Code, c. 174, R. S. C. (which was a consolidation of 32-33 V. c. 29) is repealed, and a consolidation of c. 174, enacted, but this consolidation does not apply to inquisitions, as will be seen by reference to s. 3, s.s. *(j)* and s.s. *(l)* on page 33 of the Code, and the result seems to be, there is no corresponding act now in force in the Dominion of Canada. In this view of the law, it has been thought better to leave the section as it originally stood, for it seems safer for coroners to follow the old law for the present.

[5] See Form No. 75.

[6] *Rex* v. *Evett*, 6 B. C. 247; 30 R. R. 319; *Rex* v. *Bowen*, 3 C. & P. 602.

[7] Jer. O. C. 297; *Reg.* v. *Golding*, 39 Q. B. 259; *Rex* v. *Bennett*, 6 C. & P. 179.

[8] *Rex* v. *Norfolk (Justices)*, 1 Nolan, 141; 1 East. P. C. 383.

[9] *Rex* v. *Bowen*, 3 C. & P. 602; *Reg.* v. *Stockdale*, 8 D. P. C. 517.

[10] *Lewin's Case*, 2 Lewin C. C. 125.

There is now an express authority that the inquisition need not be sealed, but the practice of sealing is universal, and had better not be departed from.[1] Affix a separate seal for the coroner and for each of the jurymen.

If several persons on an inquest have the same Christian and surname it is *not necessary* in the caption, or the inquisition, to distinguish them by abode or addition.[2] But *it is proper* to give the addition or occupation of each juror in the caption.

If an inquisition states it to have been taken on the affirmation of a man, it should state that man objected to be sworn because he was a Quaker or Moravian, etc., or was incompetent to take an oath, or was objected to as incompetent to take an oath, in order to show he is a person entitled to affirm.[3]

In a case in which the depositions of the witnesses, the finding of the jury and the signatures of the coroner and jury, were all written in pencil, *MacMahon, J.*, remarked that this was "unexcusable carelessness on the part of one clothed with the important functions devolving upon a coroner."[4]

After a verdict it will be presumed that the coroner's inquisition was found by the required number of jurors, that is, of at least twelve, and composing a majority of the whole number of the jurymen sworn on the inquest.[5]

Coroners should keep copies of all inquisitions, in order to be able to make their returns to the proper officers.[6]

In *Nova Scotia*, if twelve of the jury do not agree upon a verdict, the coroner must discharge the jury, and

[1] *Reg.* v. *Winegarner*, 17 O. R. 208.
[2] *Rex* v. *Nicholas*, 7 C. & P. 538.
[3] *Rex* v. *Polfield*, 2 D. P. C. 469; The Canada Evidence Act, 1893, s. 23.
[4] *Reg.* v. *Winegarner*, 17 O. R. 208.
[5] *Taylor* v. *Lambe*, 6 D. & R. 188; 4 B. & C. 138; *Reg.* v. *Golding*, 39 U. C. Q. B. 259.
[6] See Chap. II., s. 4.

forthwith cause a fresh jury to be summoned, who shall hold the inquest.[7]

In *New Brunswick*, the Coroners' Act states "after viewing the body and hearing the evidence, and the summing up of the coroner, the jury shall give their verdict, and certify it by an inquisition in writing under the hand and seal of the coroner, and under the hands of the jury, setting forth so far as such particulars have been proved to them, who the deceased was and how and when he came to his death." The inquisition must be in the form given in the appendix of forms, post.[8]

In *British Columbia*, there is provision by statute that the inquisition need not be on parchment, and it may be written or printed, or partly written or partly printed, and may be in such form as the Lieut.-Governor in Council may from time to time prescribe, or to the like effect; the statements therein may be made in concise or ordinary language.[9]

And the *British Columbia* Coroners' Act (61 V. c. 50, s. 7, s.s. (3), states that after viewing the body and hearing the evidence, the jury shall give their verdict, and certify it by an inquisition in writing, setting forth, so far as such particulars have been proved to them, who the deceased was, and how, when and where the deceased came by his death, and if he came by his death by murder or manslaughter, 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. And they must also inquire of and find the particulars for the time being required by the Births, Deaths and Marriages Act to be registered concerning the death.

Also in *British Columbia*, there is an express provision that the inquisition shall be under the hands (seals

[7] R. S. N. S. 1900, c. 36, s. 5, s.s. (4).
[8] C. S. N. B. 1903, c. 124, s. 22.
[9] 61 V. c. 50, s. 11, s.s. (2) B. Col.

being by the act dispensed with) of the jurors who concur in the verdict and of the coroner.[10]

Sec. 13.—PUBLICATION OF PROCEEDINGS.

Strictly speaking, it is unlawful to publish a statement of the evidence before a coroner's jury, as long as the proceedings are pending at least;[1] and one who is aggrieved by the publication may obtain redress by civil action for the injury sustained,[2] or the publishers may be punished by indictment or criminal information.[3] But with the present "liberty of the press," a fair and honest publication of the proceedings, without being accompanied by unfounded or unjust comments, would hardly meet with much discountenance from the courts.

Sec. 14.—DEFRAYING EXPENSES.

For list of fees see Chap. XIV.

In Ontario the expenses of an inquest are supposed to be paid by the coroner, who afterwards can present his account to the county treasurer for payment. In practice, however, each person having a claim for services rendered in connection with an inquest, makes out his own account, and after getting it certified as correct by the coroner,[4] and attaching an oath as to its correctness, leaves it with the clerk of the peace, in duplicate.[5]

The accounts should be rendered on or before the first days of January, April, July and October, in every year.[6]

There is no provision in Ontario for defraying the expense of an analysis when not made by a medical wit-

[10] 61 V. c. 50, s. 11.

[1] *Rex* v. *Fleet*, 1 B. & Ald. 379; *Rex* v. *Fisher*, 2 Camp. 563; *R.* v. *Lee*, 5 Esp. 123; *Duncan* v. *Thwaites*, 3 B. & C. 556.

[2] 3 B. & C. 556; 4 B. & A. 218; 5 D. & R. 447, s. c.

[3] Jer. O. C. 269.

[4] See Form No. 73.

[5] See Form No. 70.

[6] R. S. O. c. 84, s. 6.

ness; and, as previously stated (see section 9), it is necessary for the coroner to obtain the sanction of the Attorney-General, in order to have the amount paid by Government. When, therefore, a coroner finds an analysis will be necessary, he should at once apply to the Attorney-General for such sanction, and he should state that he has done so to the chemist, in order to prevent any delay on his part.

Every coroner, whether he does or does not hold an inquest on a body found publicly exposed, to which his attention has been called, and which is not claimed under the provisions of the Act respecting the study of anatomy (see R. S. O. 1897, c. 177), should give notice to the inspector of anatomy of the locality, if there is one, failing which he must cause the body to be interred "as has been customary."[7] And section 19 of the Anatomy Act states that subject to the provisions of the Act, any unclaimed human body found dead within the limits of a city, town, incorporated village or township, shall be buried at the expense of the corporation of such city, town, village or township, but such corporation may recover such expense from the estate of the deceased. Beyond this charge for burial of the body there does not appear to be power to charge the estate of the deceased with the expenses of the inquest. By section 2 of the Ontario Anatomy Act, R. S. O. c. 177, it is provided that in all localities coming under the provisions of this Act, the body of any person found dead, publicly exposed or sent to a public morgue, upon which a coroner shall (after having viewed it) deem an inquest necessary, or who immediately before death had been supported in and by any public institution, shall be immediately placed under the control of the inspector of anatomy for that locality, and shall be by him delivered to persons qualified as hereinafter mentioned, unless such body is within twenty-four hours after death claimed by

[7] R. S. O. 1897, c. 177, s. 9.

relations or *bona fide* friends, or is the body of a lunatic who has died in any provincial asylum for the insane; provided nevertheless, that the authorities in whose care any body may be, shall not deliver the same to any person other than a known relative, unless such person shall obtain from a police magistrate having jurisdiction in the locality, an order authorizing the delivery of such body to such person, and shall produce such order to the said authorities, and shall also pay to the said authorities the sum of $5 to defray the funeral expenses of the body so claimed, which sum is to be paid over to the undertaker by the said authorities when satisfied that the body has been properly interred. And by 4 Ed. VII. c. 19, s. 41, it is provided that any county councillor shall be deemed to be a *bona fide* friend for the purposes of the above section No. 2, when members of the county council are so declared by by-law in that behalf. As to what should be done with money or property found on or near the body, if any one can prove a title thereto by ownership or inheritance or otherwise, such title should be recognized, but failing any legal claim being made it would seem proper to hand over the money or articles found to the city or county treasurer to reimburse the expenses paid in connection with the inquest. This, however, is only a suggestion by the writer, who can find no legal authority upon the subject.

By the Ontario statute 4 Edw. VII. c. 10, s. 79, it is enacted that where an inquest is held upon the body of any person who has died in a city or separated town, and the jury find that the death was caused by violence, accident or unfair means, which arose or took place outside of such city or town, the coroner shall make an order for the payment of the fees and expenses in connection with such inquest, on the treasurer of the city or town in which the inquest is held, who shall thereupon pay the same; and the amount so paid, shall on demand be repaid

by the treasurer of any city or separated town in which the matter causing the death is found to have arisen or taken place, and in other cases, by the treasurer of the county in which such violence, accident or unfair means arose or took place as aforesaid. It will therefore be necessary for coroners holding inquests on the bodies of persons who have died in a city or separated town, and the death has been caused by violence, accident or unfair means, which arose outside of such city or town, to see that the jury in their verdict find these facts definitely.

A caution may not here be out of place in respect to searches of clothing found on dead bodies.

Such searches, if made by coroners, should be made in presence of one or more witnesses, and a list should be kept of all articles found and signed by the coroner before a subscribing witness who has been present at the search. Failing this precaution any coroner may find himself in the trouble an American coroner got into by being charged with robbing the body of a sum of money the deceased had, or was supposed to have had, upon him at the time of his death. It is not an uncommon occurrence for dissipated persons to be found dead who were known to be carrying money and valuables, and if a coroner reports that he found neither on such bodies after making a private search, friends of the deceased may make unpleasant remarks, to meet which the precaution mentioned should be taken.

In *Nova Scotia*, under the Medical Examiners' Act, which relates to the city of Halifax and the town of Dartmouth only, the medical examiner must take charge of any money or other personal property found on, or near, the body, and deliver the same with an inventory thereof to the Provincial Secretary, to be by him delivered to the person entitled thereto.[8]

[8] R. S. N. S. 1900, c. 37, s. 19.

When a body has been exhumed under a coroner's warrant, there is a sum of $2 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.

Each coroner's account must have attached thereto a declaration in writing under oath, and sworn to before his warrant summoning the jury was issued, stating that from information received by the coroner, he was of opinion that there was reason to believe that the deceased did not come to his death from natural causes, or from mere accident or mischance, but came to his death from violence or unfair means, or by culpable or negligent conduct of others, under circumstances requiring investigation by a coroner's inquest;[9] and also a certificate of the Crown Attorney[10] that the inquisition and papers have been filed with him, and that he considered there were sufficient grounds to warrant the holding of an inquest within the meaning of the Act respecting coroners,[1] and there must be a statement of the verdict under the following heads: murder, manslaughter, justifiable homicide, suicide, accidental death (specifying the cause), injuries (cause unknown), found dead, natural death.[2] And when mileage is claimed, the places from and to must be mentioned. Unless this requisition is complied with the accounts should not be passed. When two or more inquests

[9] See Form No. 14. The oath can be sworn before a J. P.; a commissioner, or a notary public. See R. S. O. 1897, c. 97, s. 4.

These provisions of the statute do not apply to an inquest held upon the written request of the County Crown Attorney, or to an inquest held in the Districts of Muskoka, Parry Sound, Rainy River and Nipissing, upon the written request of a stipendiary magistrate; or to an inquest held on the body of any deceased person when it has been made to appear to the coroner that there is reason to believe the deceased died from violence or unfair means, or by culpable or negligent conduct of others, under such circumstances as require investigation, and not through mere accident or mischance. R. S. O. 1897, c. 97, ss. 2, 4.

[10] See Form No. 73½.

[1] For this certificate the Crown Attorney is entitled to be paid $1 by the Government. See circular, No. 18, from the Treasury Department of Ontario.

[2] See circular of the Deputy Inspector-General of Jan. 26, 1864.

are held at the same place on the same day, mileage can only be charged once, and if the coroner goes from one inquest to another, at another place, he can only charge mileage from the last place to the second, and not from his home.[3]

All accounts must have the proper dates placed opposite the respective charges, and must be verified by the oath of the party making the claim,[4] and must be rendered in duplicate to the treasurer of the county quarterly, corresponding as nearly as possible with the quarters ending with the months of March, June, September and December, care being taken that one quarter's accounts does not run into another, and such account should include all demands of the party rendering the same up to the time of such rendering.

The coroner should give the medical witness an order[5] on the treasurer of the city or county for the payment of his fees.[6]

The court in England, under the provisions of 25 Geo. II. c. 29, refused to compel the allowance of an item in a coroner's account, because the justices were of the opinion that there was no ground for holding the inquisition.[7] But it is submitted that if the account is presented under the law in Ontario with the necessary declaration of the coroner and 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.

Under the regulations issued from the Inspector-General's office, January 26th, 1864, coroners are required to

[3] *Rex* v. *Warrick*, J. J., 5 B. & C. 430; 29 R. R. 281.
[4] See Form No. 70.
[5] See Form No. 62.
[6] R. S. O. 1897, c. 80, s. 14.
[7] *Rex* v. *Kent* (*Justices*), 14 East, 229; *Reg.* v. *Gloucestershire* (*Justices*), 7 El. & Bl. 845.

state in their accounts the verdict of the jury under the following heads:—

Murder.
Manslaughter.
Justifiable Homicide.
Suicide.
Accidental Death (specifying cause).
Injuries (cause unknown).
Found Dead.
Natural Death.

And unless this regulation is complied with, the accounts will not be passed.

Coroners, for services rendered by them in the execution and return of civil process, are allowed the same fees as would be allowed to a sheriff for the same services.[8]

For schedule of sheriff's fees, see Consolidated Rules, Tariff C.

The constables' accounts in connection with inquests must be sent in separately from their claims for other services, and have the certificate of the coroner attached that the services were performed.[9]

In Quebec.—Within fifteen days following an inquest, the coroner must send a detailed statement of the costs attending the same to the Attorney-General, together with a certified copy of the declaration or demand made for a *post-mortem* by a majority of the jury, or of his declaration as to the necessity for a *post-mortem*, in order to ascertain whether or not the deceased came to his death from violence or unfair means.[10] Any human body found within the limits of a city, town, incorporated village, parish or township, unless disposed of under the provisions of section 1, chapter 4, title 10 of the Revised Stat-

[8] See C. R. 1232.
[9] See Form No. 73, and see circular from Inspector-General's Office of Jan. 26th, 1864.
[10] R. S. Q. 1888, Art. 2690.

utes of Quebec, respecting anatomy, shall be buried at the expense of the corporation in which it is found, but the corporation may recover such expense from the estate of the deceased.[1] And if the body is found upon the beach of, or floating in, the River St. Lawrence opposite the parish of Beaumont and the parish of St. Joseph de Levis, and is not claimed as provided by law, the coroner must see to its burial, and he will be re-imbursed his necessary expenses as for costs forming part of those of his office. And the coroner must swear to the amount of his fees and disbursements for each inquest held by him, and must swear the disbursements charged have been actually incurred by him, and that he had made use of the least expensive of the ordinary means of transport. This provision also applies to the accounts of a coroner in case of inquiries not followed by an inquest.[2] And in Quebec the Lieut.-Governor in Council may assign to the coroner of the district of Montreal a fixed salary not exceeding $2,400 per annum, payable out of the Consolidated Revenue Fund of that Province; and every such coroner shall thereafter cease to have a right to the ordinary fees set forth in article 2692 of the Revised Statutes of Quebec.[3]

In *Nova Scotia*, any further charges necessarily incurred by a coroner in connection with any inquest, or with the burial of the dead body, the subject of the inquest, beyond the coroner's own fees and those of a medical witness, and of ordinary witnesses and constables, are paid by the municipal treasurer upon presentation to him of a statement by the coroner under oath, that such charges are reasonable, and were necessarily incurred in connection with the inquest.[4]

And on an inquest held under the Medical Examiners' (Halifax and Dartmouth) Act of *Nova Scotia*, if a chem-

[1] R. S. Q. 1888, Art. 2691.
[2] 58 V. c. 33, Que.
[3] 58 V. c. 33, Que.
[4] R. S. N. S. 1900, c. 36, s. 10.

ist or analyst is employed by the medical examiner, he is to be paid reasonable compensation for his services by the Provincial Treasurer, on the certificate of the Attorney-General.[5]

And in *Nova Scotia*, where not otherwise provided for, the expenses incurred under the Medical Examiners' (Halifax and Dartmouth) Act, are to be paid by the treasurer of the city of Halifax, if the dead body is found in that city; or by the treasurer of the town of Dartmouth, if the dead body is found in that town. And these treasurers are to have access to the report of the medical examiner filed with the clerk of the Crown for the county of Halifax.[6]

LEGAL POINTS.

The following decisions of the courts may be found of use to the legal reader:

The finding of a jury on a coroner's inquest throws the burden of proof in a civil case on the party alleging the contrary.[7]

Depositions of a prisoner at a coroner's inquisition, after caution by the coroner, may be read.[8]

An attachment against the sheriff must issue to elisors in the first instance, if the coroner is the defendant in the cause.[9]

In *British Columbia*, the costs of and incidental to the inquest upon a dead body found within the limits of a municipality must be paid by the municipality in which the inquest is held, and any unclaimed human body found dead within the limits of a municipality must be buried at the expense of the corporation of such municipality, but such expense may be recovered from the estate of the deceased.[10]

[5] R. S. N. S. 1900, c. 37, s. 21.
[6] R. S. N. S. 1900, c. 37, ss. 25, 26.
[7] *Prince of Wales Assurance Co.* v. *Palmer*, 25 Beav. 605.
[8] *Reg.* v. *Colmer*, 9 C. C. 506.
[9] *Reg.* v. *Glamorganshire Sheriff*, 1 D. (N. S.) 308; 5 Jur. 1010.
[10] R. S. B. C. 1888, c. 24, s. 15, 16.

CHAPTER XIII.

PROCEEDINGS SUBSEQUENT TO THE INQUISITION.[1]

SEC. 1.—WITH REFERENCE TO THE TRIAL 407
" 2.—OF BAIL 408
" 3.—OF AMENDING AND TAKING NEW INQUISITIONS 409
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SEC. 1.—PROCEEDINGS WITH REFERENCE TO THE TRIAL.

If the verdict or finding be *manslaughter* or *murder*, and if the person or persons, or either of them, affected by such verdict or finding, be not already charged with the offence before a magistrate or justice, the coroner must, by his warrant[2] under his hand, direct that such person be taken into custody, and conveyed with all convenient speed before a magistrate or justice; or the coroner may direct such person to enter into a recognizance[3] before him, with or without a surety or sureties,[4] to appear before a magistrate or justice. And in either case the coroner must transmit to the magistrate the depositions taken before him.[5] The mode of taking the depositions and returning them to the proper officer in these and in other cases has already been mentioned.[6]

The witnesses called before a coroner for the purpose of exculpating a party accused should not be bound over

[1] The notice to the inspector required to be given after certain inquests on the bodies of persons killed by accidents in mines in Nova Scotia is mentioned in Chapter II., s. 2.
[2] See Form No. 56.
[3] See Form No. 57.
[4] See remarks in Chapter XII., s. 10.
[5] 55-56 V. c. 29, s. 568, Dom.
[6] See Chap. XII., s. 10.

by the coroner to appear.[7] In cases of manslaughter or murder, as the depositions are now sent with the accused before a magistrate, where the accused will have an opportunity of calling witnesses, he can then have them bound over to appear at the trial.

If a wife is a witness, and her husband is not present to enter into a recognizance, the wife is not to be bound in any penal sum, but *on pain* of imprisonment.[8] If the husband is present, he must be bound for the appearance of his wife.[9] And if an apprentice or minor is a witness, the master or parent is bound for his appearance.[10]

The coroner should be present at the assizes, when any case is tried in which an inquisition was taken before him; for if he is not present, the court may fine him.[1]

A legal reader may be reminded that it was held in *Rex* v. *Mills*, 4 N. & M. 6, that the court will not grant a rule *nisi* to remove the depositions taken before a coroner, and to bail a party charged upon the inquest with manslaughter, without an affidavit of what took place before the coroner.

In *Prince Edward Island*, the recognizances of the witnesses under the statute of 1836, must be to appear at the next Supreme Court or Court of Oyer or Terminer and Jail Delivery at which the trial is to take place.

Sec. 2.—OF BAIL.

Except in the cases of murder and manslaughter mentioned in the last section and in those cases only to the extent there stated, coroners must not accept of bail, but if the party accused is advised that he is entitled to be bailed, his remedy is by application to one of the courts.

[7] *Reg.* v. *Taylor*, 9 C. & P. 672.
[8] See Form No. 59, and note thereto.
[9] See Form No. 59; Impey O. C. 265.
[10] See Form No. 59; Impey O. C. 566.
[1] *In re Urwin*, O. B. 1827; Car. C. L. 17.

SEC. 3.—OF AMENDING AND TAKING NEW INQUISITIONS.

Criminal prosecutions do not come within the benefit of the Statute of Jeofails, yet in furtherance of justice the courts in their discretion have always allowed amendments in inquisitions which, though good in substance, were defective in form.[2] And now ample powers of amendment are expressly given to the courts by legislative enactments.[3]

Though the court will sometimes quash an inquisition on motion, for palpable defects, the most convenient course is to put the party contesting it to demur.[4] In the case of *The King* v. *Evett*, 30 R. R. 319, where an inquisition found that the death was occasioned by a coach and horses, the property of A. & B. & Co., it was held that this finding could not be altered upon affidavits that the property was in A. & B. alone.

If the inquisition is quashed, a new inquiry *super visum corporis* may, by leave of the court,[5] be instituted by the coroner,[6] the body being disinterred by order of the court for that purpose, if it has not been a long time buried.[7]

When an inquisition is quashed by the court and sent down to the coroner to hold a fresh inquest before another jury, such fresh inquiry must be held *super visum corporis*.[8]

But if there is any imputation upon the coroner, he will not be allowed again to make an inquiry, but a writ of *melius inquirendum* will be awarded to take a new

[2] 1 Sid. 225, 259; 3 Mod. 101; 1 Saund. 356; 1 Keb. 907; 1 Hawk. P. C. c. 27, s. 15; Jer. O. C. 307.

[3] See R. S. O. 1877, c. 79, s. 12. This section was not consolidated or repealed by R. S. O. 1887. But no one can now be tried in Canada upon a coroner's inquisition. See 55-56 V. c. 29, s. 642, Dom.

[4] *Reg.* v. *Brownlow*, 11 A. & E. 119; 3 P. & D. 52; 9 L. J. M. C. 15.

[5] Str. 167.

[6] 3 Mod. 80; *Reg.* v. *Carter*, 45 L. J. Q. B. 711; 13 Cox C. C. 220.

[7] Salk. 377; 1 Str. 22, 533, and see Chapter II., s 2.

[8] *Reg.* v. *Carter*, 45 L. J. Q. B. 711; 13 Cox C. C. 220.

inquisition by special commissioners, who proceed without viewing the body, by the testimony of witnesses only;[9] or if the body can still be viewed, a new inquiry may be ordered to be taken by another coroner, as was done in the case of the disaster on the Solent, arising from the Queen's yacht having run down the private yacht *Mistletoe*.

In the Balham inquiry as to the cause of Mr. Bravo's death, the first inquest not being considered satisfactory, the Attorney-General obtained an order from the Court of Queen's Bench, requiring the coroner to show cause why a fresh inquiry should not be made, upon which a final order was made quashing the first inquisition, and ordering the coroner to hold a second inquiry before another jury, but on view of the body. This was not done from any defect on the face of the first inquisition, but because circumstances had arisen, subsequent to the first inquest, which caused a suspicion that Mr. Bravo had been poisoned, and had not committed suicide as was at first supposed. *Cockburn, C.J.*, in giving judgment, stated that the court wished it to be distinctly understood that it is not in every case of an incomplete finding of the jury that the court will interfere to quash the inquisition and send the case to a fresh inquiry. It is only where the court sees that there has been a miscarriage, by evidence which might have thrown light upon the subject having been excluded, that they will interfere. The court must take care not uselessly to keep up the excitement in the public mind unless the way seems clear to some practical advantage.[10]

If the inquisition is quashed for a defect in form only, the coroner may and ought to take a new inquisition, in like manner as if he had taken none before.[1] But a coroner has no power after holding an inquest *super*

[9] 2 Hawk. P. C. c. 9, 556; 1 Salk. 190.
[10] *The Queen* v. *Carter*, Q. B. D. *Weekly Reporter*, July 8th, 1876.
[1] 2 Roll. Abr. 32; 2 H. P. C. 59; 2 Str. 69; Jer. O. C. 91.

visum corporis and recording the verdict, to hold a second like inquest *mero motu*, on the same body, the first not having been quashed, and no writ of *melius inquirendum* having been awarded.[2]

Where, as in *In re Askin and Charteris*, 13 U. C. Q. B. 498, an inquest is held, but the body buried before verdict of the jury, and they disagree, the proper course would seem to be to adjourn the inquest to the next assizes, to be then dealt with by the presiding judge. See Chapter XII., s. 3.

In *British Columbia*, if in the opinion of the court having cognizance of the case, an inquisition finds sufficiently the matters required to be found thereby, and where it charges a person with murder or manslaughter, sufficiently designates that person, and the offence, charged, the inquisition shall not be quashed for any defects, and the court may order any proper officer of the court to amend any defect in the inquisition, and any variance occurring between the inquisition and the evidence offered in proof thereof; if the court shall be of opinion that such defect or variance is not material to the merits of the case, and that the defendant, or person traversing the inquisition, cannot be prejudiced by the amendment in his defence or traverse on the merits, and the court may order the amendment on such terms as to postponing the trial to be had before the same or another jury as to the court may seem reasonable, and after the amendment the trial shall proceed in like manner, and the inquisition, verdict and judgment shall be of the same effect, and the record shall be drawn up in the same form in all respects as if the inquisition had originally been in the form in which it stands when so amended. And for the purpose of any such amendment the court may respite any of the recognizances taken before the coroner, and the person bound by such recognizances shall be bound without entering

[2] *Reg.* v. *White*, 3 El. & El. 137.

into any fresh recognizances, to appear and prosecute or give evidence at the time and place to which the trial is postponed, as if they were originally bound by their recognizances to appear and prosecute or give evidence at that time.[3]

Chief Justice Harrison held, the proper course for a party disputing the validity of an inquisition for defects on its face was to demur thereto, but that the practice, however, of quashing a coroner's inquisition for defects on its face had prevailed for more than a century. But the court will not in general entertain an application to quash a coroner's inquisition except for defects on its face. The insufficiency of the evidence to support the finding is no proper ground for an application to quash a coroner's inquisition. Nor is it any ground that evidence not upon oath was received, or that the direction of the coroner to the jury was improper. But where the facts are stated on the face of the inquisition, and the finding is not in law warranted by the facts so stated, the inquisition may be quashed.[4] And where a coroner's inquest omitted to state the place where the death happened, or where the body was found, and the names of the jurors were not inserted in the body of the inquisition, and it was subscribed by them with the initials only of their Christian names, it was held these were defects in substance and could not be amended, and the inquisition was quashed.[5]

Sec. 4.—OF TRAVERSING INQUISITIONS.

It seems that inquests of coroners are in no case conclusive, but any one affected by them, either collaterally or otherwise, may deny their authority and put them in issue.[6]

[3] 61 V. c. 5, s. 13, B. Col.
[4] *Reg.* v. *Golding*, 39 U. C. Q. B. 259.
[5] *The King* v. *Evett*, 30 P. R. 319.
[6] 3 Keb. 489; 6 B. & C. 247, 615, 627; Jer. O. C. 312.

It has been doubted whether inquiries of *felo de se* were traversable, but the law appears to be now settled that they are.[7]

An inquisition cannot be traversed to make a man *felo de se* who is found not to be so, unless the verdict be obtained by improper conduct of the coroner, when a *melius inquirendum* may be obtained before special commissioners.[8]

Sec. 5.—Of Quashing Inquisitions.

We have seen[9] that no inquisition found upon or by any coroner's inquest, will be quashed for want of the averment therein of any matter unnecessary to be proved, nor for the omission of any technical words of mere form, nor for any technical defect; but if an inquisition is so defective that no judgment can be given upon it, it will in general be quashed.

Inquisitions which do not contain the subject-matter of accusation, may be quashed by application to one of the superior courts, the record being first removed there by *certiorari*. Inquisitions will be quashed if the facts are imperfectly stated, or, as stated, do not amount to a punishable offence,[10] or if the accused parties are designated as the directors of a railway or other company without naming them,[1] or if the inquisitions are uncertain in their language,[2] or if the finding of the jury is not legally

[7] See Jer. O. C. 312, 313, 314; 2 Lev. 152.

[8] 3 Mod. 80; 1 Salk. 190; Jer. O. C. 315; but see Impey O. C. 489.

[9] See Chap. XIII., s. 3; R. S. O. 1877, c. 79, s. 12.

[10] In the case of *Reg.* v. *Johnston*, before the C. P. Division at Toronto, and known as "The Christian Scientist Case," the coroner's jury found the scientists guilty of "culpable ignorance in treating the deceased," and they were arrested, but the inquisition was quashed by the court on the ground that "culpable ignorance" was not a criminal offence. See *The Daily Empire*, June 6th, 1892. And see *Reg.* v. *Farley*, 24 Q. B. 384.

[1] *The Queen* v. *The Directors of the G. W. Railway Co.*, L. R. 20 Q. B. D. 410.

[2] 12 Mod. 112; *Reg.* v. *Bredenstal*, 16 U. C. Q. B. 487.

warranted by the facts set forth,[3] or if twelve jurors did not agree in the finding, even if the finding was in other respects good,[4] or if the finding states manslaughter to have been committed on an impossible day, for instance on the 5th of January, 1837, and that the offence was committed on the 28th December in the year aforesaid.[5]

When an inquisition contains two or more substantial findings, it may be good in part, though void as to the residue.[6]

When material evidence has been refused and the jury has brought in an inconclusive verdict, and fresh evidence which will throw light upon the inquiry is forthcoming, the court will quash the inquisition, and send it down to the coroner to hold a fresh inquiry before a fresh jury. Such fresh inquiry must be held *super visum corporis*.[7]

The court refused to quash an inquisition on the ground that evidence was received not upon oath, there being no *mala praxis*, and no mischief having resulted,

[3] *Cully, In re*, 5 B. & Ad. 230; and see *Reg.* v. *Goulding*, 39 Q. B 259; *Reg.* v. *Farley*, 24 Q. B. 384. In this latter case of *Reg.* v. *Farley*, the coroner's jury found that one F. caused the death of a person suffering from disease, by prescribing for him certain drugs improperly compounded as a cholera preventive, and that F. was deserving of severe censure for the gross carelessness displayed by him in such compounding and prescribing. The inquisition having been brought up by certiorari, the court refused to quash it, holding that the imputation which it contained not amounting to any indictable offence, gave him no right to have it quashed, and that under the circumstances, public justice did not require their interference—adding a quære whether the affidavits filed were properly entitled thus—*The Queen*, plaintiff, v. *Robert Farley*, defendant. In this case no less than nineteen objections to the inquisition were submitted to the court by the rule calling upon the Attorney-General to shew cause. Mr. Robert Harrison (afterwards Chief Justice Harrison), obtained the rule, and with his usual industry submitted to the court a number of points which appear to embrace almost everything that can be raised against an inquisition, but unfortunately the decision of the court turned upon only one or two of them; still to the legal reader they may be found useful in future cases. And see *Reg.* v. *Clerk of Assize of Oxford Circuit*, L. R. Div. Ch. [1897] 1 Q. B. 370.

[4] *Cabat's Case*, 2 Hale P. C. 161 n; Jer. 253.

[5] *Reg.* v. *Mitchell*, 7 Car. & P. 800.

[6] Jer. O. C. 318; *ex parte Carruthers*, 2 M. & R. 397.

[7] *Reg.* v. *Carter*, 45 L. J. Q. B. D. 711; 13 Cox C. C. 220.

and the jury having found their verdict upon the other evidence only.[8]

The court will not in general entertain an application to quash a coroner's inquisition except for defects on its face, or fraud is shown.[9]

The insufficiency of evidence to support the finding is no proper ground for an application to quash an inquisition. Nor that the direction of the coroner to the jury was improper, but not wilfully so,[10] nor that the County Crown Attorney acting for the prosecution, on being desired by the foreman of the jury to enter the jury room to inform the jury as to the proper language to be employed in order to render a verdict of manslaughter, after the jury had reached a conclusion, and were prepared to deliver their verdict, did so in presence of the coroner.[1] And at a coroner's inquest evidence is properly receivable under R. S. C. c. 174, s. 234, that a witness at the inquest has made at other times a statement inconsistent with his then testimony, and independently of that enactment the improper reception of evidence is no ground for a *certiorari* to bring up the coroner's inquisition to be quashed.[2]

An inquisition will be quashed if after a jury has viewed the body and heard part of the evidence another person is sworn of the jury and views the body and takes part in the proceedings on hearing that part of the evidence which had been previously taken, read over to him.[3]

After a verdict, the court will presume that a coroner's inquisition was found by twelve jurors, if twelve were necessary.[4]

[8] *Reg.* v. *Staffordshire (coroner)*, 10 L. T. N. S. 650 Q. B.; *Reg.* v. *Ingham*, 5 B. & S. 257.

[9] *Re Casey et al.*, 3 Ir. C. L. R. 22; *Reg.* v. *McIntosh*, 7 W. R. 52, s. c. 32 L. T. 146.

[10] *Re Casey et al.*, 3 Ir. C. L. R. 22; *Re Müller*, 15 U. C. Rep. 244; *Reg.* v. *Ingham*, 5 B. & S. 257.

[1] *Reg.* v. *Sanderson*, 15 Ont. 106.

[2] *Reg.* v. *Ingham*, 5 B. & S. 257; *Reg.* v. *Sanderson*, 15 Ont. 106.

[3] *Reg.* v. *Yorkshire (coroner)*, 9 Cox C. C. 373.

[4] *Taylor* v. *Lambe*, 6 D. & R. 188; 4 B. & C. 138.

Where a jury found that a deceased person committed suicide "while suffering under the cruel conduct of a Mr. S.," a clergyman, and the coroner had taken this down as the finding of the jury, it was held that the court would not grant a *certiorari* to bring up the inquisition for the purpose of quashing so much of the finding as was irrelevant.[5]

Where the names of the jurors were not set out in the caption, and the inquisition was not signed by the jurors with their names at length, the inquisition was held bad.[6]

During an affray in which shots were fired by certain constables, A. was killed, and B. and C. were mortally wounded by gun shots. A jury was summoned by a coroner and sworn upon the body of A. After viewing the body the inquest was adjourned to a subsequent day. B. died before the day, and the jury sworn upon A.'s inquest were, by direction of the coroner, summoned to hold an inquest upon B.; and upon C.'s death, which occurred two days later, the same jury proceeded to investigate into the circumstances attending the deaths of the three deceased persons, notwithstanding a protest of counsel who appeared for the constables, and it was held on motion to quash the inquisition that the proceedings were irregular and the motion was granted.[7] A separate inquest should have been held on each of the bodies of A., B. and C. But where several deaths occur at the same time, from the same cause, it would seem one inquest only should be held, if all the bodies can be obtained for the same inquest.[8]

After the jury had retired to make up their decision the coroner, upon being informed that they had agreed, but before their verdict was declared, entered the room

[5] *Scratchley, ex parte*, 2 D. & L. 29.

[6] *Rex* v. *Bowen*, 3 Car. & P. 602; *Rex* v. *Bennett*, 4 Car. & P. 179.

[7] *In re The Mitchelstown Inquisition*, 22 L. R. (Ir.) 279.

[8] *Reg.* v. *West*, 1 G. & D. 481; 5 Jur. 485; 1 Q. B. 826.

where they were in consultation and took their verdict in the room before returning into open court. It was held that this was misconduct of the coroner, and the inquisition was quashed.[9]

On an application to quash an inquisition, it was held in Ireland that the Queen's Bench Division will not examine the depositions returned by the coroner on *certiorari*, for the purpose of inquiring whether the evidence was sufficient to support the verdict of the coroner's jury.[10]

On an application to discharge a prisoner from custody under a coroner's warrant on a charge of murder, on the ground that the inquisition did not sufficiently identify the body of the deceased as being that of the person with whose death the prisoner was charged, it was held the prisoner was entitled to be discharged from custody under the coroner's warrant; but as the depositions showed a felony had been committed, an order was made re-committing the prisoner to his former custody.[1]

Misconduct of the coroner or jury will also be a good reason to quash the inquisition.[2] For instance, if the coroner wilfully misdirects the jury,[3] or if he withdraw some of the jurymen in order to induce the others to find a particular verdict.[4]

Also an inquisition will be quashed if taken without a view of the body, or if taken on view of a body which is so decomposed as to afford no information,[5] or if the inquisition omits to state where the death happened, or where the body was found.[6]

[9] *In re The Mitchelstown Inquisition*, 22 L. R. (Ir.) 279.
[10] *In re The Mitchelstown Inquisition*, 22 L. R. (Ir.) 279.
[1] *R.* v. *Berry*, 9 Pr. Rep. 123.
[2] 3 Mod. 80.
[3] *R.* v. *Wakefield*, 1 Str. 69.
[4] *R.* v. *Stukely*, 12 Mod. 493; Holt. 167.
[5] *R.* v. *Bond*, 1 Str. 22; 2 Hawk. P. C. c. 9, s. 24, but see *ante*, Chapter II., s. 2, and Chapter V., s. 1.
[6] *Rex* v. *Evett*, 6 B. & C. 247; 9 D. & R. 237.

If an inquisition be insensible as it stands, and there are no words the rejection of which would make it clearly intelligible, it must be quashed.[7]

"Did feloniously and maliciously kill and slay one P. M., against the peace, etc., without malice or intent to kill," is not a sufficient finding, and the inquisition was quashed as not disclosing with certainty any criminal offence.[8]

An inquisition may be quashed where a verdict has been found against a person confessedly innocent, but the court will not quash it where there has been any evidence, even though it may be insufficient to warrant the finding of the jury.[9]

An inquisition in which the thing causing the death was described as "the goods and chattels of the proprietors of the H. & S. railway," without mentioning their corporate name, was held bad in *Reg.* v. *West*, 10 L. J. M. C. 133.

The court will quash an inquisition in which the facts of the case are stated and the verdict found is not warranted by such facts.[10]

A rule to quash an inquisition upon an objection relating only to the finding as to one of two persons named therein need not be served upon the other persons named.[1]

The Christian and surnames of the jurors should be given in full either in the body of the inquisition, or signed thereto.[2]

An inquisition taken before an unauthorized person, being a nullity, will not be quashed.[3]

[7] *Reg.* v. *Midland Railway*, 2 Cox C. C. 1.
[8] *Reg.* v. *Golding*, 39 U. C. Q. B. 259, and in this case it was also held to be a fatal objection to the inquisition that twelve persons did not concur in the finding.
[9] *In re Six Mile Bridge Inquisition*, 6 Cox C. C. 122.
[10] *Cully, In re*, 2 N. & M. 61; 5 B. & Ad. 230; 2 L. J. M. C. 102.
[1] *Reg.* v. *Mallet*, 1 Cox C. C. 336.
[2] *Rex* v. *Evett*, 30 R. R. 319; *Reg.* v. *Golding*, 39 U. C. Q. B. 259.
[3] 8 A. & E. 936; 1 P. & D. 146.

If an inquisition is quashed, a new inquiry may, by leave of the court, be instituted by the coroner, unless he has been guilty of any corrupt practice, when the new inquiry will be taken by special commission, as stated above.[4] The affidavits, in moving for a *certiorari*, should be entitled *The King* v. *A. B.* (naming the coroner who held the inquest.)[5]

The whole question of quashing inquisitions must now be considered by the legal profession in connection with the effect of the Criminal Code, 1892, ss. 568, 642; and also s. 3, s.-ss. (*j*) and (*l*), which do not mention *inquisitions* which were formerly included in the corresponding sub-sections of R. S. C. c. 174, s. 2.

SEC. 6.—OF PLEADING TO INQUISITIONS.

When the inquisition contained the subject-matter of accusation of any person, it was equivalent to the finding of a grand jury, and such person might be tried and convicted upon it.[6] And it seems if an indictment was found for the same offence, and the prisoner was acquitted on the one, he ought to be arraigned on the other, to which he might, however, plead his former acquittal.[7] In practice, an indictment was always preferred to the grand jury, and the party *supposed* to be tried upon both proceedings at the same time so as to avoid a second trial, and when a prisoner was arraigned upon the inquisition it was done in the same form as upon an indictment, and the subsequent proceedings were in effect the same.[8] Now under section 642 of the Dominion Criminal Code, 1892, no one can be tried upon a coroner's inquisition.

[4] See Chap. XIII., s. 3.

[5] *The Queen* v. *Carter*, *Weekly Reporter*, July 8, 1876; *The Queen* v. *Farley*, 24 Q. B. 384.

[6] 2 Hale, 61; see also 2 & 3 Ed. VI., c. 24, s. 2; 1 & 2 Will. & Mary, c. 13, s. 5; *Reg.* v. *G. W. Railway Co.*, 3 Q. B. 333; *Reg.* v. *King*, 2 Cox C. C. 95.

[7] 2 Hale, 61; 1 Salk. 382.

[8] Arch. Cr. Pl.

CHAPTER XIV.

SCHEDULE OF FEES.

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Having referred to the coroner's right to fees in sec. 2, Chap. IV., Part I., and having stated the manner in which the expenses of inquests are defrayed, and in what shape, and to whom the accounts are presented, in sec. 14, Chap. XII., Part II., it will now, in connection with the subject of fees, only be necessary to give lists of them.

SEC. 1.—THE ONTARIO CORONER'S FEES IN INQUESTS OF DEATH. *a*

(See observations in Chap. XII., s. 14, Part II., as to making out and rendering accounts).

Fee where no inquest is held under R. S. O. 1897, c. 97, s. 6	$5 00
Precept to summon jury	50
Impanelling jury	1 00
Summons for witness, each[1]	25

a These fees are prescribed by R. S. O. 1897, c. 101.

[1] If a witness is summoned and not examined, only 25c. can be charged, and if a witness is called from the persons present, without being summoned, the sum of 25c. for the examination can alone be charged. When a witness is both summoned and examined, then 50c. can be charged.

Information or examination of each witness.....	$ 25
Taking every recognizance[2]	50
Taking inquisition, and making return (whether one or more days).....	4 00
Every warrant[3]	1 00
Necessary travel to take an inquest, per mile[4]....	20

In Quebec, the fees are:[5]—

For each inquisition and return.....	6 00
For every day exceeding two days in which the coroner is actually engaged in holding an inquest	3 00
For every mile actually travelled for the purpose of enquiring whether an inquest should be held, or for holding an inquest	10
In cases of an extraordinary nature, a secretary or clerk is allowed, *per diem*.....	2 00

Whenever a chemical analysis is deemed necessary by the jury and coroner, the latter must report to the Attorney-General, who selects the physician by whom such

[2] When an inquest is adjourned, the charge of 50c. is for taking the recognizances of the whole jury, and not of each separate juryman; and where witnesses are bound over to appear and give evidence, all the witnesses should be entered in one recognizance, unless special circumstances prevent it.

[3] Where a warrant is issued to bury the body, the Government will not pay this fee, unless a certificate from the churchwardens or other proper authorities is obtained, stating they required a warrant to issue before they would permit the interment. If this certificate is not procured, however, the county will usually pay for the warrant. The purpose for which the warrant is issued must always be stated in the account.

[4] The mileage is only to be charged in going to the inquest, and not in returning also. [*Rex* v. *Oxfordshire (Justices)*, 2 B. & A. 203.] If the coroner holds more than one inquest during the same journey, he can only charge the mileage for the second or other inquests from the place of holding the previous inquest, and not from his residence. The allowance is for mileage *necessarily* travelled, and to hold the second inquest he only *necessarily* travels from the place where the last was held. [*Rex* v. *Warwick (Justices)*, 5 B. & C. 430.] When mileage is claimed, the places from and to must be stated. When an adjournment or adjournments are necessarily made, coroners are allowed the mileage for each adjournment provided two sittings are not held on the same day.

[5] R. S. Q. 1888, Art. 2692.

analysis is to be made; and if such inquest and analysis have been specially difficult, the Attorney-General may allow a greater sum than $25, which is the ordinary limit for a chemical analysis comprising every analysis made on one body, or any part or parts of the same body, for one inquest in the Province of Quebec.

All reasonable expenses, such as the leasing of a place to hold the inquest, taking charge of the body, notifying the coroner, may be allowed by the coroner in the Quebec Province, and in case the services of physicians are required they are to be rendered by a physician of the locality where the inquest is held, or of the nearest locality.

If it be made to appear to the Attorney-General of Quebec Province that any useless inquest has been held, he may order that no fees be paid the coroner therefor.[6]

The coroner must swear to his account for fees and disbursements for each inquest held by him, and that the disbursements charged have been actually incurred by him, and that he made use of the least expensive of the ordinary means of transport. And this also applies to accounts in cases of inquiries not followed by an inquest.[7]

And also in Quebec in cases of an "extraordinary nature," the coroner can engage a secretary or clerk, and his fees are $2 per diem. And the Lieut.-Governor in Council may assign to the coroner of the District of Montreal a fixed salary, not to exceed the sum of two thousand four hundred dollars per annum, payable out of the Consolidated Revenue Fund of that Province, and every such coroner thereafter ceases to have a right to the fees allowed by R. S. Que. Art. 2692, above stated.[8]

[6] R. S. Que. Articles 2692, 2693.
[7] 58 V. c. 33, s. 1, Que.
[8] 58 V. c. 33, s. 2, Que.

All reasonable expenses, such as the leasing of a place to hold the inquest, taking charge of the body, notifying the coroner, may be allowed by the coroner in Quebec.[9]

No fees can be claimed by a coroner in Quebec in respect of an inquest unless prior to the issuing of his warrant for summoning the jury, he shall have made the declaration in writing under oath mentioned in Chapter II., s. 2, and shall have returned and filed the same with the inquisition.[10] And if the Attorney-General is convinced that an inquest is useless, he may order that no fees be paid for such inquiry.

Within fifteen days following the holding of any inquest, the coroner must send a detailed statement of the costs of the same to the Attorney-General, together with a certified copy of the declaration or demand made or received by him, as the case may be.[1]

In *Nova Scotia*, the fees are:[2]

For every inquisition.....	$7 00
To pay the jurymen, each	25
To pay the constable	50

Any extraordinary and necessary expense attending the inquest or burial of a deceased person, if approved of by the grand jury and municipal council, will be allowed as a municipal charge.[3] Such charges should be duly attested by the coroner before a justice of the peace as being reasonable and necessarily incurred.[4]

The medical examiner in Nova Scotia is entitled to be paid for every inquiry instituted in which he does not perform a *post-mortem*, the sum of four dollars; and where he does perform a *post-mortem*, the sum of twelve dol-

[9] R. S. Q. 1888, Art. 2692.
[10] 55-56 V. c. 26, Que.
[1] R. S. Que. Art. 2690.
[2] R. S. N. S. 1900, c. 36, s. 8. The coroner is not entitled to receive his fees from the municipal treasurer until after a certificate from the clerk of the crown of his return of the inquest is filed with the county treasurer.
[3] R. S. N. S. c. 128, schedule.
[4] R. S. N. S. c. 17, s. 6.

lars. A medical practitioner employed by the medical examiner, in *Nova Scotia*, to assist in a *post-mortem*, is entitled to be paid five dollars. A stipendiary magistrate in *Nova Scotia*, who holds an inquest, is entitled to be paid five dollars.[5]

In *New Brunswick*, the coroner's fees are:[6]

Taking and returning an inquisition, recognizance, swearing jurors, and witnesses, binding witnesses, and issuing thereon all subpoenas, warrants, etc.	$8 00
Travelling from his residence to the place where the body may be and returning, per mile	10

The printer's account for printing blank forms of inquisition, recognizances, warrants, subpoenas, etc., to be repaid to the coroner.

Issuing commitment for jurors or witnesses	$0 50

The fees and all moneys necessarily advanced on an inquest in *New Brunswick* are paid out of the funds of the County Treasurer of the county where the inquest is held, on the order of the coroner, but no payment for a *post-mortem* examination shall be allowed unless the same shall have been made by direction either of the coroner or the jury.[7]

In *Prince Edward Island*, the coroner's fees are:[8]—

Coroner's fees	$1 50
Precept to constable to summon jury	40
Each oath to a witness	15
Each subpoena	15
Each examination	25
Mileage, per mile	05
Taking recognizance of jury and witnesses on adjournment	50

[5] R. S. N. S. 1900, c. 37, s. 24.
[6] C. S. N. B. 1877, c. 119.
[7] 63 V. c. 5, ss. 23, 32, 33, N. B.
[8] 39 V. c. 17, s. 5, P. E. I. These fees are paid by the Provincial Government.

In *British Columbia*, the coroner's fees are:[9]—

For every inquest, including precept to summon jury, empanelling jury, summons to witness, information on examination of witness, taking every recognizance, inquisition and return, and every warrant and commitment	$10 00
For travelling allowance, per mile	20

Removing the body to and from the place provided for a *post-mortem* can be charged as part of the coroner's expenses incurred about the inquest.[10]

In *Manitoba*, the Lieutenant-Governor in Council from time to time determines the fees and allowances to be paid by the government of the province to coroners.[1]

Precept to summon jury	$0 50
Empanelling a jury	1 00
Summons for witness, each	25
Information, deposition, or examination of each witness	25
Taking every recognizance	25
Necessary travel to take an inquest, per mile each way	20
Taking inquisition and making return	5 00
Every warrant for arrest, if necessary	1 00
For *post-mortem* examination, if actually necessary and actually made	10 00

In *Newfoundland*, inquests are held by a stipendiary magistrate, or where there is no resident stipendiary magistrate, or when he shall be absent, by any justice of the peace in or near the locality, and the fees allowed are:—

For one medical witness	$5 00
Every necessary *post-mortem* examination	5 00
Every necessary witness—each day's attendance	75

[9] 61 B. C. c. 50, s. 5.
[10] 61 V. c. 50, s. 14. B. Col.
[1] R. S. M. c. 32, s. 6.

In *the North-west Territories*, the fees of coroners, jurors and witnesses attending inquests are fixed from time to time by the Governor in Council and are paid in such manner as he directs.[2]

SEC. 2.—THE CORONER'S FEES IN FIRE INQUESTS.

NOTE.—The same fees are also payable to Provincial coroners appointed in Ontario under R. S. O. 1897, c. 275, ss. 7, 15, for fire investigations.

1. In *cities, towns and incorporated villages in Ontario.*—For fire inquests in these places the coroner is entitled, for the first day's inquiry, to ten dollars: should the inquiry extend beyond one day, then to ten dollars *per diem* for each of two days thereafter and no more.[3]

2. In *country parts.*—For fire inquests not within a city, town or incorporated village the coroner is entitled to five dollars for the first day; and should the inquiry extend beyond one day, then to four dollars for each of two days thereafter, and no more.[4]

In *Quebec*, the fees for fire inquests are the same as in Ontario. In cities, towns and villages in Quebec they are paid by order on the treasurer of the municipality and elsewhere by the persons who demanded the inquiry.[5]

[2] R. S. C. c. 50, s. 87.

[3] In all cases the party requiring an investigation into an accident by fire in Ontario is alone responsible for the expenses of and attending such investigation; and no municipality can be made liable for any such expense, unless the investigation is required by a requisition under the hands and seals of the mayor or other head officer of the municipality, and of at least two other members of the council thereof. And such requisition is not to be given, unless there are strong special and public reasons for granting the same. R. S. O. 1897, c. 275, ss. 8, 9.

No expense of or for an adjournment of any fire inquest is chargeable against or payable by the party or municipal corporation calling for or requesting the investigation to be held, unless it is clearly shewn by the coroner, and certified under his hand, why and for what purpose an adjournment took place, or became necessary in his opinion. R. S. O. 1897, c. 275, ss. 7, 10.

[4] R. S. O. 1897, c. 275, s. 7.

[5] R. S. Que. Arts. 2996, 2997.

In *Newfoundland*, where all inquests are held by the stipendiary magistrates, the fees for fire inquests appear to be those provided for process and service in summary criminal cases: for which see 52 V. c. 25 (N.F.).

SEC. 3.—THE CORONER'S FEES FOR EXECUTING CIVIL PROCESS.

In *Ontario*, the same fees are to be taxed and allowed to coroners for services rendered by them in the execution and return of process in civil suits as would be allowed to a sheriff for the same service.[6]

As coroners would not be able to make out their accounts of fees for executing civil process without assistance from a solicitor or sheriff's officer, no tariff of such fees need be given here. It will be found in Tariff C, Con. Rules, and R. S. O. 1897, c. 101, s. 2.

Since coroners can act by deputy in the execution of civil process, it is recommended that they should so act, taking care to appoint, by a warrant,[7] a careful and prudent person with some knowledge and experience in such business.

In *Nova Scotia*, the same fees as a sheriff is entitled to, are allowed to coroners when discharging the duties of a sheriff.[8]

In *New Brunswick*, the following statutes will be found relating to coroners summoning juries for the

[6] Con. Rules 892, 1189. Consolidated Rules 1190 to 1195 inclusive relating to mileage, fees and poundage and taxing sheriff's costs, are made to apply to coroners by Con. Rule 892, and Con. Rule 1189 provides that coroners shall be entitled to the same fees and allowances as sheriffs in executing civil process. See Tariff C, Con. Rules. The head note of the reported case of *In re Duggan, Coroner*, 2 Q. B. 118, is misleading inasmuch as the case did not decide that a coroner had no right to poundage in a case of attachment against a sheriff. It really decided that neither a sheriff nor a coroner had at that time any right to poundage on an attachment against any one.

[7] See Form No. 63½.

[8] R. S. N. S. 5th series, 1884, c. 128, schedule.

supreme court and the county courts:—C. S. (N. B.) 1877, c. 45, s. 12; 31 V. c. 26, (N. B.); 45 V. c. 19, (N. B.).

SEC. 4.—THE FEES OF THE ONTARIO MEDICAL WITNESS.[9]

NOTE.—See observations upon making out and rendering accounts in Chap. XII., s. 14.

Attendance without a *post-mortem* each day[10]	$5 00
Attendance with a *post-mortem* but without an analysis. First day	10 00
Each day thereafter	5 00
Attendance with a *post-mortem* and an analysis, First day	20 00
Each day thereafter	5 00
Travel both to and from the inquest, per mile.[1]	20

Note.—If a second medical witness is called it must be upon the *written* request of the majority of the jury

[9] See R. S. O. 1897, c. 97, s. 13.

[10] The medical witness is only entitled to $5 for each day's attendance, and not $5 for each body where there are several dead. *(In re Askin & Chartris*, 13 U. C. Q. B. 498.) In that case it was decided that although the words "each day" were not in the statute (13 & 14 V. c. 56), it would be no straining construction of the statute to treat each day's attendance of the surgeon as a separate attendance entitling him to 25s. per diem, and £11, 5s. was allowed by the court in that case for nine days' attendance, with 28s. mileage. The medical witness had claimed 25s. for each of fifty-two bodies, but he was only allowed by the court 25s. per diem, for nine days, as there was but the one inquest on the fifty-two bodies. If, however, there had been held more than one *post-mortem* on different bodies, the medical witness would have been entitled to be paid for each *post-mortem*, under a decision upon an old statute, but one worded the same as the present statute. R. S. O. 1897, c. 97, s. 14.

[1] The mileage must be proved by the oath of the medical witness administered by the coroner, who then makes an order on the treasurer of the county (see Form No. 62) in favour of such medical practitioner for the payment of his mileage and fees, and the treasurer must pay the amount out of any funds he may then have in the county treasury. See R. S. O. 1897, c. 97, s. 14. But if the order is given for fees not warranted by the statute, the courts will not grant a mandamus to compel payment of such fees. See *In re Askin & Chartris*, 13 U. C. Q. B. 498.

naming the medical witness desired.[2] The second medical witness is entitled to the same fees respectively for attendance and for a *post-mortem* as the first one.[3] All accounts must be rendered in duplicate and under oath. It is no defence to the claim of a physician for fees for a *post-mortem* examination that the inquest was held with illegal and impure motives, at the instance of others; unless the physician himself knew of the facts. Nor is it necessary that a physician should see that the jury deem it necessary.

In *Quebec*, the fees of the medical witness are:[4]

For external examination	$5 00
For internal examination	10 00
For every mile actually travelled	10

In *Nova Scotia*, the medical witness is paid:

For attendance with or without a *post-mortem*....	$5 00
For travelling fees, per mile, necessarily travelled..	05

But no charge will be allowed unless the medical witness is called by direction of the majority of the jury, and a certificate from the coroner that such examination was required by a majority of the jury is produced.[5] And that such practitioner so attended and was examined as a witness by the direction of a majority of the jury. (*a*)

[2] R. S. O. 1897, c. 97, s. 13, and see *ante*, Chap. XII., sec. 9. In the case of *In re Harbottle and Wilson*, 30 Q. B. 314, it was held that where a coroner summoned a second medical practitioner as a witness at an inquest, and to perform a *post-mortem*, but it was not shewn that such practitioner had been named in writing and his attendance required by a majority of the jurymen, as provided by s. 13 of C. S. U. C. c. 97, a mandamus to the coroner to make his order on the county treasurer for the fees of such witness under section 10 of the statute, was refused. *Semble*, that on application for such mandamus, the county treasurer, as well as the coroner, must be called upon.

[3] R. S. O. 1897, c. 97, s. 13.

[4] R. S. Q. 1888, Art. 2392. The statute requires the physician in Quebec to be of the locality where the inquest is held, or of the nearest locality.

[5] R. S. N. S. 1900, c. 36, s.s. (2).

(*a*) A medical practitioner employed by the medical examiner in Nova Scotia to assist in a *post-mortem* is entitled to be paid $5. R. S. N. S. 1900, c. 37, s. 23.

In *New Brunswick*, the fees of a surgeon or medical witness are:[6]

Attendance without *post-mortem*	$3 00
Attendance with a *post-mortem*	8 00
Travel per mile, going and returning	05

These fees are paid by the county treasurer where the inquest is held on the order of the coroner, but no payment for a *post-mortem* will be allowed unless it has been ordered by the coroner or the jury.

When an inquest is held on the body of any person dying in a public institution in New Brunswick, the medical officer of such institution is not entitled to any remuneration except for a *post-mortem* and attendance to give evidence thereon.[7]

In *Prince Edward Island*, the medical witness is entitled to the following fees.[8] The fees are payable by the Provincial Government upon a certificate from the coroner that the medical witness was required by a majority of the jury:

Attendance at inquest, including a *post-mortem*, if any made	$5 00
Mileage per mile	05

In *British Columbia*, the medical witness is paid the following fees:

Attending at inquest without a *post-mortem*	$5 00
Attending inquest with a *post-mortem*, without analysis	10 00
Mileage each way to and from inquest per mile.[9]	20

In *Manitoba*, witnesses at coroners' inquests are seldom paid. If a medical witness is paid at all he is allowed $4 a day.

[6] 63 V. c. 5, ss. 23, 36 and schedule, N. B.
[7] 63 V. c. 5, s. 24, N. B.
[8] 39 V. c. 17, ss. 3, 5, P. E. I.
[9] The mileage must be proved by the statutory declaration of the medical witness taken by the coroner, who must certify to the correctness of the amount claimed. 61 V. c. 50, s. 19, B. Col.

In *Newfoundland*, the medical witness is allowed the following fees:[10]

Fee to one medical witness	$5 00
Every necessary *post-mortem*	5 00

And any further reasonable and necessary expenses actually incurred in special cases.

SEC. 5.—THE CHEMIST'S OR ANALYST'S FEES.

In *Ontario*, a Professor of Chemistry for making an analysis when requested to do so by the Attorney-General, is paid a fee of fifty dollars.[1]

In *Quebec*, for chemical analysis comprising every analysis made on one body or any part or parts of the same body, a fee not exceeding for one inquest, $20.[2]

Whenever in Quebec a chemical analysis is deemed necessary by the jury and coroner, the coroner reports to the Attorney-General, who selects the physician by whom such analysis is to be made, and if such inquest and analysis have been specially difficult the Attorney-General may allow a greater fee than $20.[3]

In *Nova Scotia*, any chemist or analyst employed by the medical examiner, is to be paid reasonable compensation for his services by the Provincial Treasurer on the certificate of the Attorney-General.[4]

SEC. 6.—THE JURORS' AND WITNESSES' FEES.

There is now a provision in Ontario for paying jurymen, but not witnesses at inquests, and consequently the

[10] 52 V. c. 25, N. F.

[1] See remarks on this subject in Chapter XII., s. 9, Part II., and Manual of Tariffs, 1893, p. 21.

[2] R. S. Que. Art. 2692.

[3] R. S. Q. 1888, Art. 2692.

[4] R. S. N. S. 1900, c. 37, s. 21.

latter are not entitled to any remuneration. The Act under which Crown witnesses are paid does not apply to coroners' courts. And even jurymen in *Ontario* are not entitled to any fees for inquests on the bodies of prisoners, or on the bodies of inmates in any county house of industry. In other inquests the jurymen in *Ontario* are entitled to fifty cents for any day upon which the inquest does not last more than four hours, and where the time occupied by such inquest on any day exceeds four hours, one dollar for each such day he attends such inquest, and every such juryman is entitled to be paid ten cents per mile for each mile necessarily travelled from his place of residence to the place where the inquest is held. The coroner must certify the account and make an order on the county or city treasurer for these fees.[5]

In *Nova Scotia*, each juror who has served on the jury is allowed 25 cents, and is paid by the coroner, who obtains the money from the municipal treasurer. There is no provision in Nova Scotia for the payment of witnesses.[6]

In *New Brunswick*, each juror and witness is entitled to 50c. per each day's attendance.[7] And an interpreter is entitled to $1 for each day's attendance, and mileage, the same as constables. A witness in *New Brunswick* is entitled to mileage at five cents per mile, going and returning by the most direct route to and from the inquest, but in no case shall any witness fees be allowed to employees of a railway (Government or otherwise), who may be called upon to give evidence at any inquest held by reason of an accident on, or connected with, the railway of which they are employees, beyond the actual necessary expenses incurred by such witness in attending to give such evidence.[8]

[5] R. S. O. 1897, c. 97, ss. 3, 16.
[6] R. S. N. S. 5th series, 1884, c. 128, schedule.
[7] C. S. N. B. 1877, c. 119.
[8] 63 V. c. 5, schedule N. B.

In *Prince Edward Island*, the following fees are payable to the jurors:[9]

To the foreman of the jury	$ 50
To each of the other jurors	40
To each witness	25
Mileage to jurors and witnesses when the distance is five miles or over, for each mile actually travelled and necessitated by each attendance	05

In *Manitoba*, the Government seldom pay jurors or witnesses at coroners' inquests. In special cases they pay witnesses at the rate allowed in criminal cases, viz.[10]

Each day attending inquest	$ 75
Mileage one way per mile	10

In *Newfoundland*, witnesses are allowed for each day's attendance besides expenses, 75c.

In the *North-west Territories*, the fees of jurors and witnesses attending inquests are fixed from time to time by the Governor in Council, and are paid in such manner as he directs.[1]

SEC. 7.—THE CONSTABLE'S FEES IN ONTARIO.[2]

(See observations upon making out and rendering accounts in Chap. XII., sec. 14.)

Attending on the inquest the first day, including summoning jury and witnesses, if done on the same day, but not including mileage	$2 00

[9] 39 V. c. 17, s. 5, P. E. I. The fees are chargeable to the Provincial Government.

[10] 55-56 V. c. 29, s. 871, Dom.

[1] R. S. C. c. 50, s. 87.

[2] Constables' accounts for services on inquests should be rendered separate from their other claims, and must be in duplicate with oath of correctness attached (See Form No. 70). Assistant constables must render their own accounts, certified by the coroner as correct, and that assistance was necessary (See Form No. 73). If the inquest is adjourned, in addition to the fee for each other day, the constable is allowed for serving witnesses served after the first day, together with mileage. R. S. O. 1897, c. 101, p. 1046.

Attending each adjournment	$ 1 50
Serving summons or subpoena to attend before coroner subject to first item	25
Mileage serving same	13
Exhuming body under coroner's warrant	4 00
Arrest of each individual upon a warrant	1 50
Mileage to serve warrant[3]	13
Mileage to take prisoners to gaol or attending assizes or sessions	10
Attending assizes or sessions each day	1 50
Taking prisoners to gaol, exclusive of disbursements necessarily expended on their conveyance per mile	10
Burying the body	2 00

All other special services a reasonable amount.

In *Quebec*, the constable's fees are:

Summoning each witness	$ 30
Summoning the jury	1 00

All reasonable expenses, such as leasing of a place to hold the inquest, taking charge of the body, notifying the coroner, may be allowed by the coroner.[4]

In *Nova Scotia*, the constable is allowed a fee of 50c. and is paid by the coroner, who obtains the money from the municipal treasurer.[5]

In *New Brunswick*, the constable's fees are:[6]

Summoning jury	$1 00
Attending on inquest	50
Serving each order, subpoena or permissive warrant	20

[3] If no service effected, mileage is still allowed on proof of due diligence in trying to effect service. No extra charge can be made for a conveyance, unless one is necessary to convey the prisoner.

[4] R. S. Q., Art. 2692.

[5] R. S. N. S. 1900, c. 36, s. 8.

[6] 63 V. c. 5, N. B.

Attending at burial if required.....$ 0 50
Travelling fees to serve any order, subpoena or warrant, the same as for similar services in suits before justices.[7]

In *Prince Edward Island*, the constable is allowed for his services at the inquest, $1.[8]

In *Manitoba*, constables at coroners' inquests are paid for their services according to the tariff of fees established by section 7 of chapter 45 of 52 V. (D.) viz.:

Arrest of each individual under warrant $1 50
Serving summons on juror or witness..... 25
Mileage to serve summons or warrant per mile (one way) necessarily travelled 10
Attending inquest each day if not more than 4 hours 1 00
If more than 4 hours 1 50

In *Newfoundland*, the constable's fees are:[9]

Serving summons or subpoena 25
Executing every warrant to arrest 50
Mileage, every mile beyond the two miles..... 10

[7] 63 V. c. 5, N. B.
[8] 39 V. c. 17, s. 5, P. E. I. This charge is payable by the Provincial Government.
[9] C. S. 2nd series. N. F., p. 597.

CHAPTER XV

THE GENERAL ORDER OF PROCEEDINGS AT INQUESTS.[1]

SEC. 1.—PROGRAMME AT INQUESTS *SUPER VISUM CORPORIS* 436

SEC. 2.—PROGRAMME AT FIRE INQUESTS 457

SEC. 1.—PROGRAMME AT INQUESTS *SUPER VISUM CORPORIS.*

For the convenience of coroners while holding inquests, the ordinary proceedings are stated in this chapter concisely, and as nearly in consecutive order as possible. By keeping the chapter open a coroner need not be at any loss to know what next to do, and as he proceeds he will find the common forms to be used before him as they are required.

On being notified of a death requiring investigation, and that the body is forthcoming, procure the following information on oath:—

INFORMATION TO HOLD INQUEST.

Form No. 10.

Canada,
Province of *Ontario*,
County of *Simcoe*,
To Wit:

I, A. B., of the of in the *County* of *Simcoe*, make oath and say:

1. That the body of a *man* (or *woman* or *male* or *female child, as the case may be*) now lies dead at the of in the *County* of

[1] As this chapter cannot be repeated for each province of the Dominion and for Newfoundland, when it is used outside of the Province of Ontario, it must be read bearing in mind the differences in the statute law noted in the previous chapters.

2. That the said body is the body of (*or if unknown say, is the body of a man or woman or male or female child, as the case may be*), to me this deponent unknown.

3. That I have reason to believe the said deceased person came to *his* (or *her*) death from violent (or unfair) means (or by culpable or negligent conduct of *himself* or of others) under such circumstances as require investigation and not through mere accident or mischance, (*or was a prisoner or lunatic confined in a penitentiary, gaol, house of correction, lock-up house, or house of industry, or private lunatic asylum*).

4. And my reasons for so believing are (*here state any reasons deponent has to give for his belief*).

Sworn before me at the of in the *County* of this day of A. D. 19 .

C. D.
Coroner, *County* of .

A.B.

Then the coroner, if he is satisfied it is a proper case for an inquest, must make the following declaration in writing under oath, before a Justice of the Peace, or a commissioner for taking affidavits in the High Court, or a Notary Public:—

DECLARATION OR OATH OF CORONER BEFORE ISSUING HIS PRECEPT FOR SUMMONING THE JURY.

(Form No. 14.)

Canada
Province of *Ontario*
County of *Simcoe*
To Wit:

I, C. D., of the of in the county of and province of , one of the coroners for the said county of declare under oath:

That from information received by me, I am of opinion that there is reason for believing that R. F. (*or a man*

or woman, or male or female child unknown), now lying dead at , did not come to *his* death from natural causes, or from mere accident or mischance, but that *he* came to *his* death from violence or unfair means, or culpable or negligent conduct of others, under circumstances requiring investigation by a coroner's inquest, so help me God.

Declared and sworn before me at the of in the *County* of this day of A.D. 19	C. D.
E. F. J. P. (*or Comr., etc., or Notary Public*), *County* of	Coroner, *County* of

This oath is to be retained by the coroner and returned by him, with the information on which it is taken, and filed with the inquisition. It need not be taken when the inquest is held upon the written request of the Crown Attorney, or if the inquest is held in the districts of Muskoka, Parry Sound, Rainy River and Nipissing, upon the written request of a stipendiary magistrate, or when held on the body of a prisoner and notice of the death is received from the warden, gaoler, keeper or superintendent of the penitentiary, gaol, prison, house of correction, lock-up house, or house of industry, in which the prisoner dies.[2]

After taking the oath the coroner issues a precept to the constables of the place where the body lies to summon a jury as follows:

[2] R. S. O. 1897, c. 97, ss. 3, 4.

PRECEPT TO SUMMON JURY.

Form No. 16.

Canada.
Province of *Ontario*
County of *Simcoe*
To Wit:

To the constables of the of in the *county* of , and all other His Majesty's officers of the peace in and for the said *county*.

By virtue of my office, these are in His Majesty's name to charge and command you, that on sight hereof you summon and warn *fifteen*[3] good and lawful men of your *township* personally to be and appear before me on the day of *instant*, at of the clock, in the noon precisely, at the house of or at the house called or known by the sign of the in the said *township* of in the said *county* of , then and there to do and execute all such things as shall be given them in charge on behalf of our Sovereign Lord the King, touching the death of *R. F.*, and for your so doing this is your warrant. And that you also attend at the time and place above mentioned, to make a return of those you shall so summon, and further to do and execute such other matters as shall be then and there enjoined you. And have you then and there this precept. Given under my hand and seal this day of one thousand nine hundred and

C. D.

[Seal.] Coroner, *county* of

A sufficient number of blank summonses must be given the constable for service of one upon each juror.

If the jury is to be summoned by the gaoler use form No. 17 in Appendix.

[3] *Any number in Ontario not less than twelve can be summoned.* Fifteen or sixteen will be found sufficient in most cases.

FORM OF SUMMONS TO JURYMAN.

Canada
Province of *Ontario*
County of *Simcoe*
To Wit:

To *R. M.* of the *township* of in the *county* of *carpenter*: By virtue of a warrant under the hand and seal of C. D., esquire, one of His Majesty's coroners for this *county*, you are hereby summoned personally to be and appear before him as a juryman on the day of *instant*, at of the clock in the noon precisely, at the *house* of called or known *by the sign of the* in the *township* of in the said county of then and there to inquire on His Majesty's behalf, touching the death of *R. F.*, and further to do and execute such other matters as shall be then and there enjoined you and not depart without leave. Hereof fail not at your peril. Dated the day of one thousand nine hundred and

H. S.
Constable of the said *county* of

To Mr. E. B., of the *township* of in the *county* of *carpenter.*

The constable after serving the jury makes a return on the back of the precept as follows:—

RETURN OF CONSTABLE TO PRECEPT TO SERVE JURY.

Form No. 19.

The execution of this precept appears by the schedule thereto annexed.

H. S.,
Constable,

Dated the 19

And to the precept the constable annexes the following schedule:

SCHEDULE OF JURYMEN SERVED.

Form No. 19.

Schedule of jurymen personally served by the undersigned constable under the annexed precept of C. D., coroner for the county of

Name of party served.	Occupation.	Date of service.	Where served.
1. Thomas Ames...	carpenter...	May 1st 19	At his home in *Barrie.*
2. James Bowman	shoemaker..	May 2nd 19	On lot *township* of
3. Peter McLean.. &c.	gentleman.. &c.	May 2nd 19 &c.	On *town line between Vespra & Barrie.*

Dated E. F., Constable.

If the body has been buried without any inquest having been held thereon, a precept to the proper authorities having charge of the place of burial, must be issued in the form No. 20. Upon the proper day, and at the hour and place, the coroner attends for the purpose of holding the inquest, and having received the constable's return of the precept with schedule of services, he directs the constable to open the court, which he does by proclaiming as follows:

PROCLAMATION AT OPENING COURT BEFORE CALLING JURY.

Form No. 21.

Oyez! Oyez! Oyez! you good men of this *county* summoned to appear here this day, to inquire for our Sovereign Lord the King, when, how and by what means *R.*

F. came to *his* death, answer to your names as you shall be called, every man at the first call, upon the pain and peril that shall fall thereon.

This proclamation can be repeated by the constable if known by heart, or he can read it, or the coroner can read it, and the constable repeat it after him.

The coroner then reads over the names of the jurymen, one by one, the constable calling after him, each name three times, unless the juryman sooner appears, and the coroner marks on the list the names of such as appear.

If any jurors make default and do not appear, the following proclamation should be made by the constable after all the names are called over:—

PROCLAMATION FOR DEFAULT OF JURORS.

Form No. 22.

Oyez! Oyez! Oyez! You good men who have been already severally called, and have made default, answer to your names and save your peril.

The defaulters' names are then to be called again three times, and those who still make default can be fined as stated in Part II., c. xii., s. 3, up to any sum not exceeding $4. For the certificate of fine of juror or witness, see Form No. 23. If sufficient jurors attend (that is twelve at least in Ontario) it is unusual to fine the others who do not obey the summons, and if there are not twelve jurors in attendance at the opening of the inquest other good and lawful men then present or near at hand, and belonging to the county or city where the body is found, may be summoned or called to make up the number. But if once the jury is complete and sworn no change can then be made in the members, either by adding to or subtracting from the number.

When the jurors have come forward, the coroner

brings them in view of the body[4] and requests them to choose their foreman. When this is done, the coroner addresses the jury as follows:—

ADDRESS TO JURY BEFORE SWEARING FOREMAN.

Form No. 24.

Gentlemen, hearken to your foreman's oath; for the oath he is to take on his part is the oath you are severally to observe and keep on your part.

The foreman must then take the Bible and be sworn first, as follows:—

FOREMAN'S OATH.

Form No. 25.

You shall diligently inquire and true presentment make of all such matters and things as shall be here given you in charge, on behalf of our Sovereign Lord the King, touching the death of *R. F.* [*or*, of a person unknown, *as the case may be*] here lying dead; you shall present no man for hatred, malice, or ill-will; nor spare any through fear, favour or affection; but a true verdict give, according to the evidence, and the best of your skill and knowledge. So help you God.

The other jurors are then sworn, three or four at a time, in their order on the list or panel, the body still being before them.

OATH OF JURYMEN.

Form No. 26.

The same oath which *J. D.*, your foreman, upon this inquest, hath now taken before you on his part, you and

[4] *R.* v. *Ferrand*, 3 B. & Ald. 260; but see also *Reg.* v. *Ingham*, 5 B. & S. 257. This last case decided it was not necessary to swear the jurymen *super visum corporis*, but the general practice as stated in the text, had better be followed until we have further authority for changing the usual practice in Canada.

each of you are severally, well and truly to observe and keep on your parts. So help you God.

This oath is repeated with each set of three or four jurymen until all are sworn.

If the foreman, or any of the jurymen, swear with the uplifted hand instead of the hand on the Bible, add to the oath immediately before the last four words (*So help you God*) the following:

"And this you do swear in the presence of the everliving God, and as you shall answer to God at the great judgment day. So help you God."

Or if the foreman or any juryman claims the right to affirm or declare, see the forms and directions in Part II., Chap. XII., s. 4.

When the foreman and jurymen are all sworn the coroner takes down in his minutes the names in full of the foreman and jurors and proceeds to call them over one by one, first saying:—"Gentlemen of the jury, you will answer to your names and say 'sworn' if you are sworn."

After a juror has been sworn, it has been held that he could not be removed or taken off the inquest by the coroner.[5]

The coroner now charges the jury, informing them of the purpose of the meeting.

CORONER'S CHARGE TO JURY AFTER THEY ARE SWORN.

Form No. 27.

Gentlemen, you are sworn to consider, on behalf of the King, how and by what means *R. F.* came to *his* death. Your first duty is to take a view of the body of

[5] *Rex* v. *Stukely*, 12 Mod. 493; Holt. 167.

the deceased, wherein you will be careful to observe if there be any and what marks of violence thereon; from which and a proper examination of the witnesses, intended to be produced before you, you will endeavour to discover the cause of *his* death, so as to be able to return a true and just verdict on this occasion.

This charge can be enlarged upon or varied as the occasion may require.

The coroner and jury, all being present together at one and the same time, now formally view the body, the coroner making in an audible voice so as to be heard by all the jurymen such observations as may occur to him as being of use to them in noticing, for instance, the place where the body was found, the position of the body, the wounds, marks and spots upon the body, the marks and spots upon the clothing, the surrounding objects, etc.[6] If the view is not where the body was found, and, it is thought necessary, a view of the actual place and surroundings where the body was found may be taken by the coroner and jury, still all being together at one and the same time, but this should be *after* viewing the body itself.

The body having been viewed it may be removed if necessary or proper, to some convenient place; or the coroner and jury may themselves go to another place, and there proceed with the inquiry; they need not sit in the same room with the body, nor at the place where it was found.

After the view the coroner first calls over the names of the jurymen to see they are all present, and having ascertained they are satisfied with the view, he then adds to his former charge any observations suggested by view-

[6] See Part II., c. xii., s. 7.

ing the body, and informs them briefly of the object of their inquiry, viz., the cause of death, adding:—

CORONER'S CHARGE AFTER VIEW OF THE BODY.

Form No. 28.

I shall now proceed to hear and take down the evidence respecting the fact, to which I must crave your particular attention.

The constable then calls silence and repeats after the coroner the following proclamation for the attendance of witnesses:—

PROCLAMATION FOR THE ATTENDANCE OF WITNESSES.

Form No. 30.

If any one can give evidence on behalf of our Sovereign Lord the King, when, how and by what means R. F. came to his death, let him come forth and he shall be heard.

If the inquiry is to be conducted privately, the room must be cleared, and the witnesses called in one by one.[7]

For forms of summons to a witness, (No. 29)—Summons for the attendance of a medical witness, (No. 33)—Warrant against a witness for contempt of summons, (No. 31)—See the above numbers in the Appendix of forms.

When a witness is called and comes forward to give evidence the coroner takes down his names in full, place of abode and occupation, and then swears him in the following words.

ORDINARY OATH OF WITNESS.

Form No. 36 (*a*).

The evidence which you shall give to this inquest on behalf of our Sovereign Lord the King, touching the

[7] See Part II., c. xii., s. 2.

death of *R. F.*, shall be the truth, the whole truth, and nothing but the truth. So help you God.

If the witness does not speak English an interpreter must be first sworn as follows:—

OATH OF INTERPRETER.

Form No. 37.

You shall well and truly interpret unto the several witnesses here produced on the behalf of our Sovereign Lord the King, touching the death of *R. F.*; the oath that shall be administered unto them, and also the questions and demands which shall be made to the witnesses by the court or the jury, concerning the matters of this inquiry; and you shall well and truly interpret the answers which the witnesses shall thereunto give, according to the best of your skill and ability. So help you God.

The witness is then sworn through the medium of the interpreter, using the form of oath—No. 36 (*a*),—or such other form as may be most binding upon his conscience. A Jew is to be sworn upon the Pentateuch, with his head covered, No. 36 (*a*). A Turk upon the Koran, No. 36 (*f*), etc. A Chinaman considers a peculiar form and ceremony most binding on his conscience, No. 36 (*e*). For the forms in such cases see Appendix of Forms, No. 36, and for further observations on the subject see Part II., Chapter XII., s. 4.

If a witness objects to take an oath, or is objected to as incompetent to take an oath, such person may make the following affirmation:—

AFFIRMATION OF WITNESS.

Form No. 36.

I solemnly promise, affirm and declare that the evidence given by me to this inquest shall be the truth, the whole truth and nothing but the truth.[8]

[8] R. S. O. 1897, c. 73, s. 14.

If the witness swears with the uplifted hand instead of upon the Bible, this oath must be given him:—

OATH OF WITNESS WHO SWEARS WITH UPLIFTED HAND.

Form No. 36. (*b*)

The evidence which you shall give to this inquest on behalf of our Sovereign Lord the King, touching the death of *R. F.*, shall be the truth, the whole truth and nothing but the truth, and this you do swear in the presence of the ever living God, and as you shall answer to God at the great judgment day. So help you God.

A witness who is unable to speak may give his evidence in any other manner in which he can make it intelligible[9]

The evidence of a child of tender years who, in the opinion of the coroner, does not understand the nature of an oath, may be received, though not given upon oath, if the coroner is of the opinion such child is possessed of sufficient intelligence to justify the reception of the evidence and understands the duty of speaking the truth, but such evidence must be corroborated by some other material evidence.[10]

The question of competency of a witness is one to be decided solely by the coroner on a preliminary examination called "on the *voir dire*." Various persons are not competent to be witnesses as will be seen on reference to Part II., Chap. XI., s. 1. If any question arises as to a witness being one of these persons, the coroner, before he is sworn as a witness, must examine him on the *voir dire*, first causing him to take this oath:—

OATH TO BE ADMINISTERED ON THE *VOIR DIRE*.

Form No. 35.

You shall true answer make to all such questions as the court shall demand of you. So help you God.

[9] 56 V. c. 31, s. 6.
[10] 56 V. c. 31, s. 25.

The coroner then questions the party in such a manner as may bring out the state of his intelligence, religious belief, etc., and if on the result the coroner is satisfied he is a competent witness to be sworn in the usual way and he is not objected to as incompetent to take an oath, he must tender him the ordinary oath of a witness, (Form No. 36 (*a*)), but if he is found to be incompetent to take that oath, or is objected to as incompetent to take an oath, and is not an idiot or a lunatic, he should be tendered the statutory affirmation for persons who object to take an oath, or who are objected to as incompetent to take an oath, (Form No. 36 (*a*)),[1] or if the objection to the witness is on account of tender years, and the coroner is of opinion such child does not understand the nature of an oath, he can receive the evidence, but not under oath, if he considers the child is possessed of sufficient intelligence to justify the reception of the evidence and understands the duty of speaking the truth; yet no case as above stated can be decided upon the evidence of such child alone, but such evidence must be corroborated by some other material evidence.[2]

The evidence of the witnesses should be taken down in writing fully and as nearly as may be in the actual words of each witness, using the first person.

The evidence should be entitled thus:—

INFORMATION OF WITNESSES.

Form No. 40.

Canada,
Province of *Ontario*,
County of *Simcoe*
To Wit:

Information of witnesses severally taken and acknowledged on behalf of our Sovereign Lord the King, touch-

[1] See 56 V. c. 31, s. 23.

[2] 56 V. c. 31, s. 25.

ing the death of *R. F.* at the *dwelling house of J. B., known by the name or sign of* in the of in the *county* of on the day of in the year of our Lord, one thousand nine hundred and , before me, *C. D.*, Esquire, one of His Majesty's coroners for the said *county*, on an inquisition then and there taken on view of the body of the said *R. F.*, then and there lying dead, as follows, to wit:—

E. F., of the of in the county of *yeoman*, being sworn, saith, etc.

The witness, who signs his evidence to the right hand, should, before he signs, be asked if that is the whole evidence he can give, and any additions or corrections he mentions should be noted; and also the jurors are usually asked if they have any questions they would like to have put to the witness; then if any further material evidence is given, it should be added to the deposition.

At the end of each separate information the coroner adds the following certificate to the left hand side:—

CORONER'S CERTIFICATE TO EACH INFORMATION.

Form No. 41.

Taken upon oath and acknowledged this day of , in the year of our Lord one thousand eight hundred and , before me.

C. D.,
Coroner.

E. F.

The evidence taken down must be read over to the witness, and he should be desired to sign it, and if he refuses to do so it is a contempt for which he may be committed (see Part II., Chap. XII., s. 4, and form No. 39), but his signature is not absolutely necessary.

If a witness attends, but refuses to give evidence, it is also a contempt for which he may be committed (see Part II., Chap. XII., s. 4, and form No. 38), and if a witness does not appear after being properly summoned, when called, he may be fined and committed. (See Part II., Chap. XII., s. 4, and forms Nos. 31 and 38).

If a medical witness is required, a summons according to form No. 33 should be issued, and see Part II., Chap. XII., s. 9.

All the evidence offered, whether for or against the accused, must be received, and the party accused, if present, must be allowed full opportunity of cross-examination of the witnesses. (See Part II., Chap. XII., s. 4.)

If it is necessary to adjourn the inquest (see Part II., Chap. XII., s. 8), the jurors must be bound by recognizance to attend at the time and place appointed (see form No. 43), and the witnesses notified when and where the inquest will be continued.[3]

The coroner then dismisses the jurors thus:—

CORONER'S ADDRESS ON ADJOURNMENT.

Form No. 44.

"Gentlemen, the court doth dismiss you for this time; but requires you severally to appear *here again* (*or at the adjourned place*) on the day of , *instant*, at of the clock in the *forenoon* precisely, upon pain of $40 a man, on a condition contained in your recognizance entered into."

The adjournment of the court is done by the constable proclaiming:—

PROCLAMATION ON ADJOURNMENT.

Form No. 45.

"Oyez! oyez! oyez! All manner of persons who have anything more to do at this court before the King's

[3] When the death has occurred in Nova Scotia from an accident in a mine, see remarks in Part II., Chap. XII., s. 8.

coroner for this *county*, may depart hence at this time, and give their attendance *here again* (*or at the adjourned place*) on *next*, being the day of *instant*, at of the clock in the *forenoon* precisely. God save the King.

The coroner should make an entry of the recognizance having been taken and of the time and place of adjournment. In settling the time, consider what the adjournment is for. If for a *post-mortem*,[4] two or three days will likely be sufficient. If for a chemical analysis, a clear week or ten days should be given the chemist. The inquest can be adjourned from time to time if the report of the chemist is not ready, but each time the adjournment must be to a definite day, place and hour.

A warrant may now, in the discretion of the coroner, be granted for burying the body, unless it is required for a *post-mortem* or it has to be delivered to the Inspector of Anatomy. (See Part II., Chap. XII., s. 8, and forms Nos. 46, 47).

When the jury again meet at the adjourned time and place, the formalities of opening the court must be gone through as at the commencement of the inquest, whether any business is done or not. And if a further adjournment is required, it must be done with the same formalities as the first one. The court can only be kept alive by a formal opening after each adjournment. (See Part II., Chap. XII., s. 8).

The constable makes proclamation, the jurors' names are called over, and if the inquest is to go on, without a further adjournment, the coroner recapitulates the state of the inquiry, and proceeds with the examination of the witnesses.

[4] No *post-mortem* in Ontario can be held unless an inquest is actually held, or the consent in writing to hold one is first obtained from the Crown Attorney. See 60 V. c. 14, s. 22. But see also the case of *Davidson* v. *Garrett*, 30 O. R. 653, referred *ante*, Part II., Chap. XII., s. 9.

After the evidence is all taken the coroner sums up the evidence to the jury, and directs them to consider of their verdict. No precise charge is necessary, but the law applicable to the facts of each case should be explained to them.

If they wish to consider their verdict they must do so by themselves. The constable is sworn to take charge of them as follows:—

OATH OF OFFICER IN CHARGE OF JURY.

Form No. 50.

You shall well and truly keep the jury upon this inquiry and shall not suffer any person to speak to them, nor shall you speak to them yourself, unless it be to ask them if they have agreed upon their verdict, until they shall be agreed. So help you God. (See note 2, Part II., Chap. XII., s. 3).

The coroner then withdraws, or if more convenient the constable can take the jury to another room, and he attends at the outside of the door until they are agreed.

When the jury have agreed, they return or the coroner is called in, and the names of the jurors are called over, and if all are present, the coroner asks them if they have agreed upon their verdict. If they are unanimous the verdict is delivered by the foreman, but if not, the coroner collects their voices, beginning at the bottom of the panel, and according to the opinion of the majority, provided in Ontario, twelve at least agree, the verdict is taken. If the majority, being twelve members at least, do not agree, no verdict can be taken. In such a case the coroner should offer such further remarks to the jury as he may consider likely to aid them in coming to an agreement, and then asks them to retire and again consider their verdict, and when it becomes hopeless to expect them to agree, they should be adjourned to the next

assizes for the county or city, when they may have the benefit of the opinion and direction of the judge. See Part II., Chap. XII., s. 3.

When twelve jurors agree upon a verdict and such twelve are a majority of the whole jury, the coroner records it on his minutes and draws up the inquisition in form and at the foot affixes a seal for himself and one for each of the jurymen.[5] The coroner and the jury then sign their names in full opposite the respective seals and the coroner adds to his, the office thus:—

C. D. Coroner, county of

The formal inquisition can be copied or adapted from one of the forms in the appendix. (See forms, No. 76 to 113.)

The inquisition being thus completed, the coroner requests the jury to hearken to their verdict as recorded thus:—

CORONER'S ADDRESS TO THE JURY AFTER RECORDING THE VERDICT.

Form No. 51.

Gentlemen, hearken to your verdict as delivered by you, and as I have recorded it. You find, etc., (*here repeat the substance of the verdict and then add*). So say you all.

If the verdict charges any one with guilt in connection with the death, and he is present, he should be asked if he wishes to make any statement, and if he does the evidence should be first read over to him and then he should be cautioned in the following manner:—

CAUTION TO ACCUSED.

Form No. 52.

Having heard the evidence, do you wish to say anything in answer to the charge? You are not bound to

[5] See remarks as to seals being required in Part II., Chap. XII., s. 15.

say anything, but whatever you do say will be taken down in writing, and may be given in evidence against you at your trial. You must clearly understand that you have nothing to hope from any promise of favour, and nothing to fear from any threat, which may have been held out to you to induce you to make any admission or confession of guilt, but whatever you now say may be given in evidence against you upon your trial notwithstanding such promise or threat.[6]

The coroner then takes down in writing any statement the accused makes in the form No. 52 of the appendix, but he is not to be sworn. The statement should be read over to him, and he should be got to sign it, if he will do so, at the end. The coroner dates and signs it as shown in the form No. 52.

If the accused is not already in custody a warrant should be issued to apprehend him and commit him to prison (see form Nos. 53 and 54), or if he be already in prison a detainer must be issued to the gaoler (see form No. 55), but if the accusation is one of manslaughter or murder, the coroner by warrant (see form No. 56) under his hand, must direct the accused to be taken into custody and be conveyed with all convenient speed before a magistrate; or in a proper case the coroner may direct the accused to enter into a recognizance before him with or without a surety or sureties, to appear before a magistrate. And the coroner must transmit to the magistrate the depositions taken before him in the matter.[7]

The coroner then makes out his warrant to bury the body, if it is not already buried (see form No. 46), and the body is not one which has to be handed over to the

[6] 55-56 V. c. 29, s. 591, Dom. This section of the Criminal Code does not appear to be applicable to coroners' inquests, but the form of caution to the accused includes all that was necessary under the old form, and the additions thereto now made by the Code can offer no objection to its use.

[7] 55-56 V. c. 29, ss. 568, 642, Dom.

inspector of anatomy; but before the interment of the body the division registrar must be supplied with all the particulars required to be registered touching the death, in the form provided by the Act requiring the registration of births, marriages and deaths.[8]

If it is a case that will come to trial, and is not one of manslaughter or murder, which as stated above must be sent before a magistrate, the witnesses must be bound over to appear at the trial (see form No. 59, and note 1), and the prosecutor to appear and prosecute (see form No. 58). If a witness refuses to enter into a recognizance to appear and give evidence at the trial he must be committed to gaol. (See form No. 60.)

In taking any recognizance—for instance of jurors upon an adjournment—of a prosecutor to prosecute—of witnesses to give evidence—the practice is to address the parties, mentioning their names thus:—

You J. T., C. F. and R. D., etc., do severally acknowledge to owe to our Sovereign Lord the King, etc., (*following the wording of the appropriate form in the appendix*, see forms 58, 59).

The formal recognizance is afterwards entered up by the coroner on his minutes as given in the forms, and this need not be signed by the conusors, or parties, but only by the coroner.

If a married woman or a person under twenty-one years of age, or an apprentice, is to be bound over to give evidence, etc., see instructions in note (1) to form No. 59, appendix.

After the recognizances, if any are required, are all taken, the jurors are discharged by the constable making the following:—

[8] 59 V. c. 17, s. 21, Ont. And see Part I., Chap. XII., s. 4.

PROCLAMATION AT THE CLOSE OF INQUEST.

Form No. 61.

Oyez! Oyez! Oyez! You good men of this *township* who have been impanelled and sworn of the jury to inquire for our Sovereign Lord and King, touching the death of *R. F.*, and who have returned your verdict, may now depart hence and take your ease. God save the King.

Instructions regarding the coroner's returns, defraying expenses, fees of coroners, fees of medical witness, fees of constable, etc., can be found by reference to the table of contents at the beginning of this work or to the index at the end of it.

The coroner should be present at any trial arising out of an inquest held by him.

SEC. 2.—PROGRAMME AT FIRE INQUEST.

The general order of proceedings at a fire inquest being very much the same as in inquests *super visum corporis*, it will not be necessary to draw up a separate programme under this section.

Coroners can follow the order laid down in Part II., Chapter XV., section 1, using the same forms, only with such obvious alterations as the different nature of the inquiry will suggest. And they must remember that it is not their duty to institute inquiry into the cause or origin of all fires, but only of those where there is reason to believe they were the result of culpable or negligent conduct or design, or occurred under such circumstances as, in the interests of justice, and for the due protection of property, require investigation.[9]

[9] R. S. O. 1897, c. 275, s. 2.

As in all cases in Ontario the expenses of and attending fire inquests are to be borne by the party requiring them,[10] the coroner must see that he gets a proper requisition according to form No. 115 before holding a fire inquest. If a municipality desires the investigation it must be required by an instrument in writing under the hands and seals of the mayor or other head officer of the corporation, and of at least two other members of the council thereof. The statute does not say the requisition must have the seal of the corporation attached, but as a matter of prudence coroners are advised to require a by-law of the council ordering the inquiry, and authorizing the head officer of the corporation to attach the common seal to the requisition and also authorizing him and two other members of the council to sign it. The statute states that the requisition is not to be given unless there are strong, special and public reasons for granting the same.[1]

In these fire inquests a jury may be impanelled or not in the discretion of the coroner, unless one is required in writing by an insurance agent, or any three householders in the vicinity of the fire, when the coroner must proceed with a jury. The jurors are to be chosen from the householders resident in the vicinity of the fire.[2]

The form of inquisition in a fire inquest will be found in the appendix. (No. 119).

The coroners' duties and powers in these investigations as to taking down the evidence, etc., are the same as in other inquests.[3] A juror, however, who makes default in attending a fire inquest in Ontario must not be fined over $4 (see form No. 23). And when an adjourn-

[10] R. S. O. 1897, c. 275, s. 8.
[1] R. S. C. 1897, c. 275, s. 9.
[2] R. S. O. 1897, c. 275, s. 3.
[3] R. S. O. 1897, c. 275, ss. 4, 5, 6.

ment of the inquest is required, it must be clearly shown by the coroner, and certified under his hand (see Part I., Chap. II., s. 3), why and for what purpose an adjournment took place, or became necessary,[4] otherwise no expenses of the adjournment can be charged.

By the Revised Statutes of Ontario, chapter 275, provincial coroners in Ontario are, by virtue of their appointment, both coroners and justices of the peace for every county and part of Ontario, and have jurisdiction all over the province for the purposes of fire investigations. For further observations regarding this class of coroners and regarding fire inquests, see Part I., Chap. II., s. 3, and schedule of fees in Chap. XIV., sec. 2.

[4] R. S. O. 1897, c. 275, s. 10.

APPENDIX OF FORMS.

APPENDIX.

FORMS.

Any form required can be readily found by ascertaining its number and page from the following list[1].

No.		PAGE.
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3.	Oath of allegiance in British Columbia	467
4.	Oath of office	467
4*a*.	Oath of office in New Brunswick	468
5.	Oath of office in British Columbia	468
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No. 1.

COMMISSION.[1]

Province of Canada.

[Great Seal] Elgin and Kincardine.

Victoria, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, &c., &c., &c.

To *Greeting.*

Know you, that having special trust and confidence in your loyalty, integrity and ability. We have constituted and appointed, and by these presents do constitute and appoint you the said to be Coroner within the District of of our Province of Canada, in addition to those persons who have been heretofore appointed by our Royal Commission, to execute the said office in the said district. To have, hold and enjoy the said office of Coroner, and to execute the duties thereof according to the laws of that part of our said Province, formerly called Upper Canada, together with all and singular the rights, fees, profits and privileges thereunto belonging and appertaining, unto you the said for and during our pleasure, and your residence within our said Province.

[1] This form of commission is now, of course, out of date, but is still given in this edition of the work as a sample by which more modern commissions may be drafted if required.

In testimony whereof, we have caused these our letters to be made patent, and the Great Seal of our said Province to be hereunto affixed. Witness, our right trusty and right well-beloved cousin, James, Earl of Elgin and Kincardine, Knight of the most ancient and most noble Order of the Thistle, Governor-General of British North America, and Captain General and Governor in Chief in and over our Province of Canada, Nova Scotia, New Brunswick and the Island of Prince Edward and Vice-Admiral of the same, &c., &c., &c., at Montreal, this 17th day of August, in the year of our Lord one thousand eight hundred and forty-eight, and in the twelfth year of our reign.

ROBERT BALDWIN, *Attorney-General.*

By command, W. B. SULLIVAN, *Secretary.*

No. 2.

OATH OF ALLEGIANCE.

Canada, Province of County of To wit: } I, A.B., do sincerely promise and swear, that I will be faithful and bear true allegiance to His Majesty King Edward [or the reigning Sovereign for the time being] as lawful Sovereign of the United Kingdom of Great Britain and Ireland, and of this Province, dependent on, and belonging to the said Kingdom; and that I will defend him to the utmost of my power against all traitorous conspiracies or attempts whatever which may be made against His Person, Crown and Dignity, and that I will do my utmost endeavour to disclose and make known to His Majesty, his heirs and successors, all treasons and traitorous conspiracies and attempts which I shall know to be against him or any of them. All this I do swear without any equivocation, mental evasion or secret reservation. So help me God. (See R. S. C. 1886 c. 112, and R. S. O. 1897 c. 16, s. 3. This

oath may be taken in the form of an affirmation by all persons allowed by law to affirm instead of making oath, beginning thus:—"I do sincerely promise and affirm." And ending—"and all this I do affirm without any," etc.

No. 3.

CORONERS' OATH OF ALLEGIANCE IN BRITISH COLUMBIA.

I, A. B., do sincerely promise and swear, that I will be faithful and bear true allegiance to His Majesty, King Edward, his heirs and successors. So help me God.

Sworn and subscribed by the said A. B. at the of in the County of this day of A.D. 19 .

A. B.,
Coroner.

C. D.

A Com. [or as the case may be]. See page 4.

No. 4.

OATH OF OFFICE.

You shall swear that you will well and truly serve our Sovereign Lord King Edward and his liege people in the office of Coroner (*or Deputy Coroner, as the case may be*), as one of His Majesty's Coroners of this County (or *District*) of . And therein you shall diligently and truly do and accomplish all and everything appertaining to your office, after the best of your cunning, wit and power, both for the King's profit and for the good of the inhabitants within the said County (or *District*); taking such fees as you ought to take by the laws and statutes of this Province, and not otherwise. So help you God.

Sworn, &c.

No. 4a.

CORONERS' OATH OF OFFICE IN NEW BRUNSWICK.

I swear that I will well and truly serve our Sovereign Lord the King and his liege people in the office of Coroner for this County of , and that I will diligently and truly do everything appertaining to my office after the best of my power for the doing of right and for the good of the inhabitants within the said County. So help me God.

Sworn, &c.

No. 5.

CORONERS' OATH OF OFFICE IN BRITISH COLUMBIA.

I, A. B., swear that I will well and truly serve our Sovereign Lord the King's Majesty and his liege people, in the office of Coroner, and as one of His Majesty's Coroners, and therein truly do and accomplish all and everything appertaining to my office, after the best of my cunning, wit and power, both for the King's profit and for the good of the inhabitants within the district of , in the Province of British Columbia, taking such fees as I ought to take by the laws, statutes and orders in council of the Province, and not otherwise. So help me God.

Sworn and subscribed by the said A. B. at the of in the County of this day of A.D. 19 .

A. B.,
Coroner.

C. D.

A Com. [or as the case may be]. See page 4.

No. 6.

INDICTMENT FOR NOT TAKING AN INQUEST.

Canada,
Province of
County of
To wit:

The jurors of our Lord the King, upon their oath present, that on, &c., one A. B. *was drowned in a certain pond*, and that the body of the said A. B., at, &c., lay dead, of which C. D., Esquire, afterwards to wit, on the day of in the year aforesaid then being one of the Coroners of our said Lord the King for the County aforesaid, had notice; nevertheless the said C. D., not regarding the duty of his office in that behalf, afterwards to wit, on, &c., to execute his office of and concerning the premises, and to take inquisition of our said Lord the King according to the laws and customs of this Province, concerning the death of the said A. B., unlawfully, obstinately and contemptuously did neglect and refuse; and that the said C. D. no inquisition in that behalf hath as yet taken against the peace, &c.

No. 7.

WRIT DE CORONATORE EXONERANDO.

Canada,
Province of *Ontario*,
County of
[L.S.]

Edward, by the grace of God, of the United Kingdom of Great Britain and Ireland, King, Defender of the Faith, &c. To the Sheriff of the County of , greeting. Forasmuch as we have for certain understood that C. D., one of our Coroners for your County, was appointed Coroner for your County in the year one thousand nine hundred and that *he is about to quit the County and reside at a distance therefrom, and, therefore, cannot perform the duty of a Coroner in your County;*

we command you, that without delay you remove the said C. D. from the office of Coroner in your County.

Witness, &c.[2]

No. 8.

SHERIFF'S RETURN THEREON.

By virtue of the within writ to me directed, I have removed the within named C. D. from the office of a Coroner of and in my County, as within I am commanded.

Dated this day of 19 .

The answer of A. B., Sheriff, County of .

No. 9.

CERTIFICATE OF TWO JUSTICES IN NEW BRUNSWICK THAT INQUEST NOT NECESSARY.

Canada,
Province of New Brunswick,
County of
To wit:

We, A. B., of the of in the County of , and C. D., of the of in the County of , two of His Majesty's justices of the peace in and for the said County of . Hereby certify to G. H., a Coroner for the said County of , that we are of the opinion that he the said coroner, as well as all other Coroners for the said County, will be justified in not holding an inquest upon the body of E. F. [*or of a man or woman or a male or female child, unknown*] now lying dead at , and in granting a warrant for the burial of such body forthwith without taking an inquisition thereon.[1]

[2] See the grounds of removal, *ante* pp. 82, 83.

[1] C. S. N. B. 1877, c. 63, s. 7.

Given and certified under our hands and seals this day of A.D. 19 , at the of in the said County of .

A. B., [SEAL.]
J.P.

C. D., [SEAL.]
J.P.

No. 10.

INFORMATION ON OATH OF PARTY NOTIFYING CORONER OF THE DEATH.

Canada, Province of *Ontario*, County of *Simcoe* To wit: } I, A. B. of the of in the County of , *occupation*, make oath and say:

1. That the body of R. F., (*or of a man, woman or male or female child unknown*) lies dead at in the County of

2. That (*here state the circumstances of the death as far as known and which render an inquest necessary*).

3. That I am of the opinion there is good reason for believing that the said R. F. (*or unknown man, woman, or male or female child*), did not come to *his* (*or her*) death from natural causes, or from mere accident or mischance; but came to *his* (*or her*) death from violence or unfair means, or culpable or negligent conduct of others, under circumstances requiring investigation by a Coroner's inquest. So help me God.[4]

Sworn before me at the of in the County of this day of A.D. 19 . } A.B.

G. H.
Coroner.

[4] R. S. O. c. 80. s. 2.

No. 11.

NOTICE TO CORONER OF DEATH OF A PRISONER.

To. G. H., Esquire, one of the Coroners for the County of , Province of

Sir,—I, J. K., of the of in the County of in the said Province, keeper of the common gaol for the said County (*or as the case may be*) hereby give you notice that E. F. a prisoner in the said *gaol* died in the said gaol on this day, and that *his* (*or her*) body now lies therein; and that the circumstances attending *his* (*or her*) death were as follows:—(*here state briefly the cause of death as far as known*). Of all which you will please take due notice and act thereon according to law.

Dated the 19 .

J. K.

Keeper of the common gaol of the *County* of

No. 12.

CERTIFICATE OF DEATH OF A LUNATIC IN PRIVATE ASYLUM.

Canada,
Province of *Ontario*,
County of *Simcoe*
To wit:

I, G. K. of the of in the County of medical attendant of the Private Lunatic Asylum known as (*here state the name of the establishment if it has one*) at the of in the County of hereby certify:

1. That E. F., a patient in the said asylum, now lies dead therein.

2. That A. B. and C. D. (*giving the names of those present at the death*) *was* (*or were*) present at the death of the said E. F.

3. That the cause of death of the said E. F. (ascertained by *post-mortem* examination (*if so*) was (*here state the cause of death as far as known*).

Dated this day of A.D. 19 .[1]

[Signed] G. K.
Medical attendant of .[2]

No. 13.

CERTIFICATE TO BE ANNEXED TO OR ENDORSED ON THE ABOVE CERTIFICATE.

I, H. F. of the of in the County of *proprietor* (or *superintendent*) of the *above* (or *within*) named Private Lunatic Asylum, hereby certify that the *above* (or *within*) is a true and correct copy of the certificate of the death, and cause of death, of E. F., a patient now lying dead in the said asylum, and which was drawn up and signed and handed to me by G. K., the medical attendant of the said asylum, under the provisions of the statute in that behalf.

Dated this day of A.D. 19 .

H. F.
Proprietor (or Superintendent) of

No. 13a.

DECLARATION OF CORONER UNDER OATH WHEN INQUEST NOT NECESSARY.

Canada,
Province of
County of
To wit:

I, A. B. of the of in the *County* of and Province of , a Coroner in and for the said *County*, do hereby declare under oath that

[1] R. S. O. c. 246, s. 44.

[2] A copy of this certificate certified as under by the proprietor or superintendent of the house must within forty-eight hours after the death be transmitted by such proprietor or superintendent to the nearest coroner, see p. 15.

from information received by me I am of the opinion that there was reason for believing A. C., deceased, did not come to *his* death from natural causes, or from mere accident, or by chance, but from violence, or unfair means, or culpable, or negligent conduct of others, under circumstances requiring investigation by a Coroner's inquest, but after viewing the body of the said A. C., deceased, and having made such further inquiries as I deemed necessary, and finding that the said A. C., at the time of his death, was not a prisoner, I have come to the conclusion that an inquest is unnecessary, the said deceased having, in my judgment, come to his death from , and I have in consequence issued my warrant to bury the body of the said A. C. [and have withdrawn my precept for the holding of an inquest on the said body]. *These last words in brackets are to be added when a precept has been issued.*

Sworn before me at the of in the County of this day of A.D. 19 .

A. B.

A Commissioner, etc.

No. 14.

DECLARATION OF CORONER BEFORE ISSUING WARRANT FOR JURY.

Canada, Province of *Ontario*, County of *Simcoe* To wit:

I, G. H., of the of in the County of and Province of *Ontario*, a Coroner in and for said County, do hereby declare under oath that from information received by me to the following effect [*here state a summary of the information*] I

am of the opinion that there is good reason for believing that E. F. [*or an unknown man, woman or male or female child*] now lying dead at , did not come to *his* (or *her*) death from natural causes, or from mere accident or mischance; but came to *his* (or *her*) death from violence or unfair means, or culpable or negligent conduct of others, under circumstances requiring investigation by a coroner's inquest.[1] So help me God.

Sworn before me at the of in the County of this day of A.D. 19 . | G. H., Coroner.

(A J.P., Notary Public or Commissioner.)

No. 15.

DECLARATION OF CORONER IN NEW BRUNSWICK PRIOR TO ISSUING WARRANT FOR JURY.

I, G. H., of the of in the County of and Province of New Brunswick, a Coroner in and for said County, do hereby declare under oath that from information received by me, the said Coroner, I am of the opinion that there is reason for believing that (*name of deceased*), did not come to *his* (or *her*) death from mere natural causes or from mere accident, or mischance, but came to his (*or* her) death from violence, criminal or unfair means, or culpable or negligent conduct of others, (*or* of himself, *or* herself, *as the case may be*), under circumstances requiring investigation by a coroner's inquest, and the

[1] R. S. O. 1897, c. 97, s. 4. The declaration is not required when an inquest is to be held upon the written request of the County Crown Attorney, or when an inquest is to be held in the Districts of Muskoka, Parry Sound, Rainy River and Nipissing, upon the written request of a Stipendiary Magistrate; or when the inquest is upon the death of a prisoner. Nor to inquests in the City of Toronto. See 3 Edw. VII. c. 7, s. 22.

grounds on which I base such belief or suspicion, are as follows (here set out fully the grounds.)[8]

Taken and declared by the said G. H., Coroner, at the of in the County of in the Province of New Brunswick, this day of A.D. 19 . Before

A. B.

G. H.

(A J.P. or a Commissioner, Notary Public, or two freeholders resident in the county in which such inquest is to be held.)

No. 16.

WARRANT TO CONSTABLE TO SUMMON JURY.

Canada, Province of *Ontario*, County of To wit:

To any Constable of the of in the County of

By virtue of my office, these are in His Majesty's name to charge and command you, that on sight hereof you summon and warn not less than twelve nor more than twenty-four[9] able, lawful, honest, good and sufficient men of your *several townships* personally to be and appear before me on the day of instant, at of the clock, in the noon at the house of called or known by *the sign of the* in the said township of in the said County of then and there to do and execute all such things as shall be given them in charge, on behalf of our Sovereign Lord the King, touching the death of R. F. And for your so doing this is your warrant. And that you also attend at the

[8] C. S. N. B. c. 124. Form (B).

[9] Any number not less than twelve can be summoned, but it is not usual to summon more than twelve unless it is feared they will not all attend.

time and place above mentioned, to make a return of those you shall so summon; and further to do and execute such other matters as shall be then and there enjoined you. And have you then and there this warrant. Given under my hand and seal this day of one thousand nine hundred and

C. D.,
Coroner, County of . [L.S.]

No. 16a.

WARRANT OF CORONER IN NEW BRUNSWICK TO SUMMON JURY.

To any constable of the County of

By virtue of my office, these are in His Majesty's name to charge and command you, that on sight hereof, you summon and warn (*not fewer than seven, nor more than thirteen*), good and lawful men of your County, personally to be and appear before me on the day of instant, at of the clock in the noon, at (*here insert sufficient description of the place where the inquest is to be held*) in the said County of then and there to enquire of, do and execute all such things as shall be given them in charge, on behalf of our Sovereign Lord the King, touching the death of X. Y., and for so doing this is your warrant. And that you also attend at the time and place above mentioned to make a return of those whom you shall have so summoned. And further to do and execute such other matters as shall be then and there enjoined you. And have you then and there this warrant.

Given under my hand and seal this day of A.D. 19 .

(*Signature*)
Coroner. [Seal.]

No. 17.

WARRANT TO GAOLER TO SUMMON JURY.

Canada,
Province of Ontario,
County of
To wit:

To the keeper of the common gaol of the *County* of or his deputy there or other proper officer, by virtue of my office, these are in His Majesty's name to authorize and require you, upon receipt hereof, to summon or cause to be summoned twelve[10] good and lawful men, prisoners within the walls of your prison, to be and appear before me at the room of the said prison, on the day of at of the clock, in the of the same day, to inquire into the cause of the death of late a prisoner within the said prison, and to do and execute all such things as in His Majesty's behalf shall be given them in charge, and have then and there the names of the persons so summoned, together with my precept. And hereof you are not to fail, as you will answer the contrary at your peril. Given under my hand and seal this day of in the year of our Lord one thousand nine hundred and .

C. D.,
Coroner, *County* of . [L.S.]

No. 18.

SUMMONS FOR JURY.[1]

Canada,
Province of *Ontario*,
County of
To wit:

To R. M., of the Township of in the *County* of *carpenter*. By virtue of a warrant under the hand and seal of C. D., Esquire, one of His Majesty's Coroners for this *County*, you are hereby summoned personally to be and appear before him as a juryman, on the day of , *instant*, at of

[10] Or such number as will constitute half the jury

[1] The Coroner should furnish these summonses to the constable.

the clock, in the noon, precisely, at (*here insert a description of the place where the inquest is to be held*), in the said *County* of , then and there to inquire on His Majesty's behalf, touching the death of R. F., and further to do and execute such other matters and things as shall be then and there given you in charge, and not depart without leave. Hereof fail not at your peril. Dated the day of one thousand nine hundred and .

Yours, &c.

H. S.,

Constable of the said of .

No. 19.

RETURN OF CORONER'S WARRANT.

The execution of this warrant appears by the schedule thereto annexed.

The answer of Constable.

Schedule of jurymen personally served by the undersigned constable under the annexed warrant of C. D., Coroner for the County of

Name of party served.	Occupation.	Date of service.	Where served.
1. Thomas Ames,	carpenter	Jan. 2nd 19	At his house Barrie.
2. James Bowman,	shoemaker	Jan. 3rd 19	On lot No. 10 Vespra.
3. Peter Coulson,	farmer	Jan. 3rd 19	On Con. 10, Innisfil.
	&c.	&c.	

No. 20.

WARRANT TO TAKE UP A BODY INTERRED.

Canada,
Province of *Ontario*,
County of
To wit:

To the Minister and Churchwardens of (*or to the proper authorities having charge of the place of burial*). Whereas, complaint hath been made unto me, one of His Majesty's Coroners for the said County, on the day of , that the body of one G. R. was privately and secretly buried in your *township*, and that the said G. R. died, not of a natural but violent death; and whereas no notice of the violent death of the said G. R. hath been given to any of His Majesty's Coroners for the said County, whereby, on His Majesty's behalf, an inquisition might have been taken on view of the body of the said G. R. before his interment, as by law is required. These are, therefore, by virtue of my office, in His Majesty's name, to charge and command you that you forthwith cause the body of the said G. R. to be taken up and safely conveyed to in the said *township*, that I with my inquest may have a view thereof, and proceed therein according to law. Herein fail not, as you will answer the contrary at your peril. Given under my hand and seal this day of one thousand nine hundred and

G. H.
Coroner, County of [L.S.]

No. 21.

PROCLAMATION BEFORE CALLING JURY.

Oyez! Oyez! Oyez! You good men of this County, summoned to appear here this day, to inquire for our Sovereign Lord the King, when, how and by what means *R. F.* came to his death, answer to your names as you shall be called, every man at the first call, upon the pain and peril that shall fall thereon.

No. 22.

PROCLAMATION FOR DEFAULT OF JURORS.

Oyez! Oyez! Oyez! You good men who have been already severally called, and have made default, answer to your names and save your fine.

No. 23.

CERTIFICATE OF FINE OF JUROR OR WITNESS.

Canada,
Province of *Ontario*,
County of
To wit:

I, A. B., Coroner of and for the County of do certify, that *C. D.*, of the of in the County of yeoman [*or as the case may be*] after being duly summoned as a juror (*or as a witness*) and after being openly called three times, was fined by me on this day of A.D. 19 the sum of ,[2] for not appearing at an inquest holden before me this day of A.D. 19 upon the body of about the age of who was found dead at (*or other particulars or description*) to serve as a juror (*or as a witness to give evidence*) upon such inquest.[3]

A. B.,
Coroner, County of

No. 24.

ADDRESS TO JURY BEFORE SWEARING FOREMAN.

Gentlemen, hearken to your foreman's oath; for the oath he is to take on his part is the oath you are severally to observe and keep on your part.

[2] The sum must not exceed four dollars. See p. 311.

[3] This certificate should be made out at the time the juror or witness makes default, and be transmitted to the Clerk of the Peace of the county in which the delinquent resides, on or before the first day of the next General Sessions. And a copy of the certificate must be served upon the person by leaving it at his residence within a reasonable time after the inquest. R. S. O. ch. 80, s. 5; R. S. O. c. 52, s. 166; and see R. S. O. c. 217, ss. 4, 5, as to fires.

No. 25.

FOREMAN'S OATH.

You shall diligently inquire and true presentment make of all such matters and things as shall be here given you in charge, on behalf of our Sovereign Lord the King, touching the death of R. F., now lying dead, of whose body you shall have the view; you shall present no man for hatred, malice or ill-will, nor spare any through fear, favour or affection; but a true verdict give according to the evidence, and the best of your skill and knowledge. So help you God.[4]

No. 26.

OATH OF JURYMEN.

The same oath which A. B., your foreman upon this inquest, hath now taken before you on his part, you and each of you are severally well and truly to observe and keep on your parts. So help you God.[5]

No. 26a.

OATH OF A JUROR IN NEW BRUNSWICK.

You shall diligently inquire and a true presentment make of all such matters and things as are here given you in charge on behalf of our Sovereign Lord the King, touching the death of X. Y., and shall, without fear, affection or ill-will, a true verdict give according to the evidence, and to the best of your skill and knowledge. So help you God.

[4] The oath should be administered in view of the body. See the various forms of oaths and affirmations given in form No. 36 and select the one most binding on the party's conscience, varying it to suit the foreman and jurors.

[5] See previous note.

No. 27.

THE CORONER'S CHARGE TO JURY AFTER THEY ARE SWORN.

Gentlemen, you are sworn to consider on behalf of the King, how and by what means R. F. came to *his* death. Your first duty is to take a view of the body of the deceased, wherein you will be careful to observe if there be any and what marks of violence thereon; from which and a proper examination of the witnesses intended to be produced before you, you will endeavour to discover the cause of *his* death, so as to be able to return a true and just verdict on this occasion.[6]

No. 28.

CORONER'S CHARGE AFTER VIEW OF THE BODY.

After the view is taken, and the jury called over, the Coroner should add to his former charge any necessary observations he may have made on view of the body, and add: "I shall now proceed to hear and take down the evidence respecting the fact, to which I must crave particular attention."

No. 29.

SUMMONS TO A WITNESS.

Canada, Province of *Ontario*, *County* of To wit: } To A. P., of the *Township* of in the *County* of *yeoman*. Whereas I am credibly informed that you can give material evidence on behalf of our Sovereign Lord the King, touching the death of A. P., now lying dead in the

[6] This general form of a charge by a coroner to a jury can be varied or added to so as to meet the circumstances of particular cases.

of in the said *County* of . These are, therefore, by virtue of my office, in His Majesty's name, to charge and command you personally to be and appear before me at (*here insert a sufficient description of the place where the inquest is to be held*) in the said at of the clock, in the noon on the day of instant then and there to give evidence and be examined, on His Majesty's behalf, before me and my inquest touching the premises. Herein fail not, as you will answer the contrary at your peril. Given under my hand and seal this day of one thousand nine hundred and .

C. D.,
Coroner, *County* of . [L.S.]

No. 30.

PROCLAMATION FOR THE ATTENDANCE OF WITNESSES.

If any one can give evidence on behalf of our Sovereign Lord the King, when, how and by what means R. F. came to *his* death, let him come forth and he shall be heard.

No. 31.

WARRANT AGAINST A WITNESS FOR CONTEMPT OF SUMMONS.

Canada, Province of *Ontario*, *County* of To wit:

To A. B., Constable of the of in the *County* of and to all others His Majesty's officers of the peace in and for the said *County*. Whereas, I have received credible information that C. D., of the of in the said *County*, can give material evidence on behalf of our Sovereign Lord the

King, touching the death of E. F., now lying dead in the said of ; and whereas the said C. D., having been duly summoned to appear and give evidence before me and my inquest touching the premises, at the time and place in the said summons specified, of which oath hath been duly made before me, hath refused and neglected so to do, to the great hindrance and delay of justice. These are, therefore, by virtue of my office in His Majesty's name, to charge and command you, or one of you, without delay to apprehend and bring before me, one of His Majesty's Coroners for the said now sitting at the aforesaid, by virtue of my said office, the body of the said C. D., that he may be dealt with according to law: and for so doing this is your warrant. Given under my hand and seal the day of one thousand nine hundred and .

G. H.,
Coroner, *County* of . [L.S.]

No. 32.

DECLARATION OF CORONER IN QUEBEC THAT POST MORTEM IS NECESSARY.

Canada, Province of *Quebec*, *County* of To wit: } I, G. H. of the of in the of one of the Coroners of the County of in the Province of Quebec, hereby declare that in my opinion the holding of a *post-mortem* examination of the body of E. F. (*or a man, woman or male or female child unknown*) now lying dead at and upon which body an inquest is now being held by me, is necessary in order to ascertain whether or not the said deceased came to *his* (or *her*) death from violence or other unfair means.

Dated at this day of A.D. 19

G. H.
Coroner.

No. 33.

SUMMONS FOR THE ATTENDANCE OF A MEDICAL WITNESS.

Coroner's Inquest at upon the body of

By virtue of this my order as Coroner for the *County* of you are hereby required to appear before me and the jury at on the day of one thousand nine hundred and at o'clock, to give evidence touching the cause of the death of (*and when the witness is required to make or assist at a post-mortem examination, add*) and make (*or assist in making*) a *post-mortem* examination of the body, with (*or* without) an analysis (*as the case may be*) and report thereon at the said inquest.[7]

Dated at this day of A.D. 19 .

A. B., Coroner.

To C. D., Surgeon (*or M. D., as the case may be*).

No. 34.

REQUISITION OF JURY IN QUEBEC FOR A POST MORTEM.

T. G. H. Esquire, one of the Coroners for the *County* of in the Province of Quebec.

We, the undersigned, being a majority of the jurymen sitting at an inquest now being held by you on the body of E. F. (*or of a man, woman or male or female child unknown*) at the of in the said *County*. Hereby require that you direct a *post-mortem* examination of the said body to be made in order to ascertain the cause of the death of the said E. F.

Dated at this day of A.D. 19

A. B.
C. D.
etc.

[7] R. S. O. c. 80, s. 7; R. S. B. C. 1888, c. 24, s. 7; C. S. N. B. 1903, c. 124, Form K.

No. 35.

OATH TO BE ADMINISTERED ON THE VOIR DIRE.

You shall true answer make to all such questions as the court shall demand of you. So help you God.

No. 36.

OATH OR AFFIRMATION OF A WITNESS.

(*a*) *Common oath.*

The witness swears upon the Bible held in the right hand as follows:—

The evidence which you shall give to this inquest on behalf of our Sovereign Lord the King, touching the death of R. F., shall be the truth, the whole truth and nothing but the truth. So help you God.

(*b*) *Oath of a Scotch witness or one who swears with the uplifted hand.*

Instead of taking the Bible let him hold up the right hand and then say to him: The evidence which you shall give to this inquest on behalf of our Sovereign Lord the King, touching the death of A. B., shall be the truth, the whole truth and nothing but the truth, and this you do swear in the presence of the ever living God, and as you shall answer to God at the great judgment day. So help you God.[8]

(*c*) *Affirmation of a person who objects on conscientious grounds to take an oath, or is objected to as incompetent to take an oath.*

You solemnly affirm that the evidence to be given by you shall be the truth, the whole truth and nothing but the truth.[9]

[8] *Mildrone's Case*, 1 Leach C. C. 412; *Walkers' Case*, 1 Leach C. C. 498; *Mee* v. *Reid*, Pea. R. 23.

[9] The Canada Evidence Act, 1893, s. 23.

(*d*) *Oath of a Jew.*

A Jew is sworn with his head covered, upon the Pentateuch opened and placed before him using the words of the common oath (*a*) *as above, only substituting the name "Jehovah" instead of "God" and letting the witness conclude by kissing the books of Moses,*[10] by handing him the Bible open at one of the five first books of the Old Testament.

(*e*) *Oath of a Chinaman.*

The witness kneels down and on a china saucer being placed in his hand he breaks it.

The oath is then administered as follows:—

You shall tell the truth and the whole truth. The saucer is cracked and if you do not tell the truth your soul will be cracked like the saucer.[1]

(*f*) *Oath of a Mahomedan.*

A Mahomedan places his right hand flat upon the Koran, and the other hand to his forehead, and brings the top of his forehead down to the book, and touches it with his head. He then looks for some time upon it, and on being asked what the ceremony was to produce, he answers that he is bound by it to speak the truth.[2]

(*g*) In other cases the oath should be that which the witness himself declares to be binding upon his conscience, and he is always allowed to adopt the ceremonies of his own religion.[3] The wording of the oath in such cases may be as follows—

You swear according to the custom of your country and of the religion you profess, that the evidence you

[10] Willes, 543.

[1] Oke's Magisterial Formulist, 6th Ed., 873; *R.* v. *Entrehman*, Car. and M. 248.

[2] *Rex* v. *Morgan*, 1 Leach, C. C. 54.

[3] *Omichund* v. *Barker*, Willes, 547; *Atcheson* v. *Everett*, Comp. 382; *Miller* v. *Salomans*, 7 Ex. 534, 558.

shall give to this inquest on behalf of our Sovereign Lord the King, touching the death of R. F., shall be the truth, the whole truth and nothing but the truth. So help you God.

No. 37.

OATH OF INTERPRETER.

You shall well and truly interpret unto the several witnesses here produced on the behalf of our Sovereign Lord the King, touching the death of R. F., the oath that shall be administered unto them, and also the questions and demands which shall be made to the witnesses by the court or the jury concerning the matters of this inquiry; and you shall well and truly interpret the answers which the witnesses shall thereunto give, according to the best of your skill and ability. So help you God.

No. 37a.

OATH TO BE TAKEN BY THE MEDICAL EXAMINER, OR DEPUTY MEDICAL EXAMINER, UNDER SEC. 4 OF R. S. NOVA SCOTIA, 1900, c. 37.

I of in the County of Halifax, make oath and say, that I will well and faithfully perform all such duties as devolve upon me in the office of Medical Examiner (*or Deputy Medical Examiner*) for the city of Halifax and town of Dartmouth, without fear, favour or partiality, and according to the best of my knowledge and ability.

Sworn at in the County of this day of A.D. 19 , before me

[To be taken before a Judge of the Supreme Court or of a County Court, and to be filed with the Provincial Secretary.]

No. 38.

COMMITMENT OF A WITNESS FOR REFUSING TO GIVE EVIDENCE, OR FOR NON-PAYMENT OF A FINE.

Canada,
Province of
County of
To wit:

To the Constables of the *Township* of in the *County* of and all other His Majesty's officers of the peace in and for the County aforesaid, and also to the keeper of the gaol in the said County. Whereas, I heretofore issued my summons under my hand directed to C. D., of, &c., requiring his personal appearance before me, then and now one of His Majesty's Coroners for the said *County* of at the time and place therein mentioned, to give evidence and be examined, on His Majesty's behalf, touching and concerning the death of E. F., then and there lying dead, of the personal service of which said summons, oath hath been duly made before me, and whereas the said C. D. having neglected and refused to appear, pursuant to the contents of the said summons, I thereupon afterwards issued my warrant under my hand and seal, in order that the said C. D., by virtue thereof, might be apprehended and brought before me to answer the premises: And whereas the said C. D., in pursuance thereof, hath been apprehended and brought before me, now duly sitting by virtue of my office, and hath been duly required to give evidence, and to be examined before me and my inquest, on His said Majesty's behalf, touching the death of the said C. D., notwithstanding, hath absolutely and wilfully refused, and still doth wilfully and absolutely refuse to give evidence and be examined touching the premises, or to give sufficient reason for his refusal, in wilful and open violation and delay of justice; and whereas I, the

said Coroner, for such contempt did impose upon the said C. D. a fine to the amount of dollars, the same to be paid within days; and whereas the said C. D. hath neglected and refused, and still doth neglect and refuse to pay the said fine or to purge his said contempt: these are, therefore, by virtue of my office, in His Majesty's name, to charge and command you or one of you, the said constables and officers of the peace in and for the said *Township* and *County*, forthwith to take the body of the said C. D. and convey the same to the gaol of the said *County* at the of in the said County, and safely to deliver the same to the keeper of the said gaol; and these are, likewise, by virtue of my said office, in His Majesty's name, to will and require you, the said keeper, to receive the body of the said C. D. into your custody, and him safely to keep in the gaol for days (*not to exceed fourteen*) until he shall have paid the said fine [if committed for refusing to give evidence] until he shall consent to give his evidence and be examined before me and my inquest, on His Majesty's behalf, touching the death of the said E. F., together with the costs of this commitment,[3] or until he shall from thence be discharged by due course of law; and for so doing this is your warrant. Given under my hand and seal this day of in the year of our Lord one thousand nine hundred and .

A. B.,
Coroner, *County* of . [L.S.]

[3] In the North-West Territories the witness can be committed for any term not exceeding ten days, unless in the meantime he consents to be examined. R. S. C. c. 178. And in New Brunswick the witness can be fined a sum of not exceeding five dollars and may be committed for a period not exceeding fourteen days or until he shall sooner purge his contempt and pay the costs of the issuing of the commitment and of the execution thereof and of his conveyance to gaol.

No. 39.

COMMITMENT OF A WITNESS FOR REFUSING TO SIGN HIS INFORMATION.

Canada, Province of *Ontario*, *County* of To wit:

To M. N., one of the Constables of the of in the County of and all other His Majesty's officers of the peace in and for the said *County*, and also to the keeper of the gaol of the said *County*. Whereas C. D., of the of in the said *County* of *yeoman*, is a material witness on behalf of our Sovereign Lord the King, against G. H., late of the of in the *County* aforesaid, labourer, now charged before me, one of His Majesty's Coroners for the said *County*, and my inquest, with the wilful murder of E. F., there now lying dead; and whereas the said C. D. at this time of my inquiry, on view of the body of the said E. F., how and by what means *he*, the said E. F., came by *his* death, hath personally appeared before me, and my said inquest, and, on His Majesty's behalf, hath given evidence and information on oath touching the premises, which said evidence and information having by me been reduced into writing, and the contents thereof by me, in the presence of my said inquest, openly and truly read to *him*, the said C. D., who doth acknowledge the same to be true, and that the same doth contain the full substance and effect of the evidence by *him* given before me to my said inquest, and the said C. D. having by me been requested and desired to sign and set *his* hand to *his* said testimony and information, and to acknowledge the same as by law is required, yet notwithstanding, the said C. D. hath wilfully and absolutely refused, and still doth wilfully and absolutely refuse so to do, in open defiance of law, and to the great hindrance of public justice. These are, therefore, by virtue of my office, in His Majesty's name, to charge and command you, or one of you, the said Constables and other His Majesty's officers of the peace in and

for the said *County* of forthwith to convey the body of the said C. D. to the gaol of the said County at in the said *County*, and *him* safely to deliver to the keeper of the said gaol; and these are, likewise, by virtue of my said office, in His Majesty's name, to will and require you the said keeper, to receive the body of the said C. D. into your custody, and *him* safely to keep in prison until *he* shall duly sign and acknowledge *his* said information, or shall be from thence otherwise discharged by due course of law: and for so doing this is your warrant. Given under my hand and seal this day of in the year of our Lord one thousand nine hundred and

A. B.,
Coroner, *County* of . [L.S.]

No. 40.

INFORMATION OF WITNESSES.

Canada, Province of *Ontario*, *County* of To wit: | Informations of witnesses severally taken and acknowledged on behalf of our Sovereign Lord the King, touching the death of R. F., at the *dwelling house of J. B., known by the name or sign of* in the of in the *County* of on the day of in the year of our Lord one thousand nine hundred and before me A. B., *Esquire*, one of His Majesty's Coroners for the said *County*, on an inquisition then and there taken on view of the body of the said R. F., then and there lying dead, as follows, to wit:

C. D., of the of in the said *County* of *yeoman*, being sworn, saith, &c. (*stating the evidence in the first person*).

C. D.

At the end of each separate information the Coroner adds the following certificate:

No. 41.

CORONER'S CERTIFICATE TO EACH SEPARATE INFORMATION.

Taken upon oath and acknowledged this day of in the year of our Lord one thousand nine hundred and before me.

A. B.,
Coroner, County of .

No. 42.

REQUISITION OF JURY FOR A SECOND MEDICAL WITNESS

To G. H., Esquire, one of the Coroners for the *County* of *Simcoe* in the Province of *Ontario*.

We, the undersigned, being a majority of the jurymen sitting at an inquest now being held by you on the body of E. F. (*or of a man, woman or male or female child unknown*) at the of in the said County, and it appearing to us that the cause of the death of the said E. F. has not been satisfactorily explained by the evidence of the medical practitioner and other witnesses already examined before us, hereby require you to issue your proper order for the attendance of J. K., a medical practitioner, as a witness before the said inquest, and to perform a *post-mortem* examination on the said body, and we hereby name the said J. K. to you for such purpose, in accordance with the statute in that behalf.[3]

Dated at this day of A.D. 19 .

A. B.
C. D.
&c., &c.

[3] R. S. O. c. 80. s. 9.

No. 43.

RECOGNIZANCE OF JURORS UPON AN ADJOURNMENT.

Gentlemen, you acknowledge yourselves severally to owe to our Sovereign Lord the King the sum of forty dollars to be levied upon your goods and chattels, lands and tenements, for His Majesty's use, upon condition that if you and each of you do personally appear here again (*or at an adjourned place*) on next, being the day of instant, at of the clock in the precisely, then and there to make further inquiry, on behalf of our Sovereign Lord the King, touching the death of the said E. F., of whose body you have had the view; then this recognizance to be void, or else to remain in full force. Are you content?

No. 44.

THE CORONER'S ADDRESS ON ADJOURNMENT.

Gentlemen, the court doth dismiss you for this time, but requires you severally to appear here again (*or at the adjourned place*) on the day of instant, at of the clock, in the precisely, upon pain of $40.00 a man, on the condition contained in your recognizance entered into.

No. 45.

PROCLAMATION ON ADJOURNMENT.

Oyez! Oyez! Oyez! All manner of persons who have anything more to do at this court before the King's Coroner for this *County*, may depart home at this time, and give their attendance here again (*or at the adjourned place*) on next being, the day of instant, at of the clock in the precisely. God save the King.

No. 46.

WARRANT TO BURY AFTER A VIEW.

Canada,
Province of *Ontario*,
County of
To wit:

To the Minister and Churchwardens of (*or to the proper authorities having charge of the intended place of burial*) and to all others whom it may concern. Whereas an inquisition hath this day been held upon view of the body of R. F., who (*not being of sound mind, memory and understanding, but lunatic and distracted, shot himself*) and now lies dead in your township; these are therefore to certify that you may lawfully permit the body of the said R. F. to be buried; and for your so doing this is your warrant. Given under my hand and seal this day of one thousand nine hundred and .

A. B.,
Coroner, *County* of . [L.S.]

No. 46a.

ANOTHER FORM OF WARRANT FOR BURIAL.

(Taken from the New Brunswick Act.)

I, the undersigned, Coroner for the *County* of do hereby authorize the burial of the body of , which has been viewed by the inquest jury (*or as the case may be*). Witness my hand this day of A.D. 19 .

(*Signature*)

Coroner.

No. 47.

WARRANT TO BURY A *FELO DE SE* AFTER INQUISITION FOUND.[4]

Canada, Province of *Ontario*, *County* of To wit:

To the Churchwardens of (*or to the proper authorities having charge of the intended place of burial*) and Constables in the *Township* of *County* of . Whereas, by an inquisition taken before me, one of His Majesty's Coroners for the said *County* of this day of in the 5th year of the reign of His present Majesty King Edward VII. at the of in the said *County* of on view of the body of J. D., then and there lying dead, the jurors in the said inquisition named have found that the said J. D. feloniously, wilfully and of his malice aforethought did kill and murder himself; these are, therefore, by virtue of my office, to will and require you forthwith to cause the body of the said J. D. to be buried according to law; and for your so doing this is your warrant. Given under my hand and seal this day of in the year of our Lord one thousand nine hundred and .

A. B.,
Coroner, *County* of . [L.S.]

No. 48.

THE RETURN THERETO.

By virtue of the within warrant to us directed, we have caused the body within named to be buried according to law.

C. D., }
E. F., } Churchwardens.
J. D., Constable.

[4] The interment should take place within twenty-four hours after the finding of the inquisition, and the warrant to bury a *felo de se* is not to be directed to the minister, for no service is to be said (see Part II., c. iii., s. 1); it may be directed to the constables only.

No. 48a.

ORDER OF A POLICE MAGISTRATE TO DELIVER THE BODY OF A PERSON FOUND DEAD, ETC., TO RELATIVES OR FRIENDS, UNDER R. S. O. c. 177, s. 2, THE ANATOMY ACT.

To all whom it may concern:—

Whereas A. B. of (*here state the name, residence and occupation of the person to whom, and on whose behalf, the order is applied for*), has satisfied me that he is a *bona fide* friend of C. D., now lately deceased, and is entitled to have delivered to him the body of the said deceased for the purpose of interring the same.

I hereby authorize and order every person and authority having the present custody or control of the body of the said deceased, to forthwith upon presentation of this order, deliver the said body of the said deceased to the said A. B., in order that the same may receive proper burial.

Witness my hand and seal as Police Magistrate of and for the Town (*or* County, *as the case may be*) this day of A.D. 19 .

A—— B—— [L.S.]
P.M.

No. 49.

PROCLAMATION ON OPENING ADJOURNED MEETING.

Oyez! Oyez! Oyez! All manner of persons who have anything more to do at this court before the King's Coroner for this County, on this inquest now to be taken, and adjourned over to this time and place, draw near, and give your attendance; and you gentlemen of the jury who have been impanelled and sworn upon this inquest to inquire touching the death of R. F., severally answer to your names and save your recognizances.

No. 50.

OATH OF OFFICER TO KEEP THE JURY UNTIL THEY ARE AGREED IN THEIR VERDICT.

You shall well and truly keep the jury upon this inquiry, and shall not suffer any person to speak to them, nor shall you speak to them yourself, unless it be to ask them if they have agreed on their verdict, until they shall be agreed. So help you God.[5]

No. 50a.

OATH OF OFFICER TO KEEP A RETIRING JURYMAN AND BRING HIM BACK WITH ALL DUE SPEED.

You shall well and truly keep the juryman (or *jurymen*) who is (*or* are) about to retire with you, and shall not suffer any person to speak with him (or *them*), nor shall you speak to him (or *them*) yourself. And you shall bring him (or *them*) back to the remaining jurymen with all due and convenient speed.

No. 51.

CORONER'S ADDRESS TO THE JURY AFTER RECORDING THEIR VERDICT.

Gentlemen, hearken to your verdict as delivered by you, and as I have recorded it. You find, &c. (*Here repeat the substance of the verdict, and then add*) So say you all.

[5] See pages 307, 308, note 10.

No. 52.

CAUTION TO, AND STATEMENT OF, THE ACCUSED.

Canada, Province of *Ontario*, *County* of To wit:

A. B. stands charged before me, the undersigned, one of His Majesty's Coroners in and for the *County* of this day of in the year of our Lord one thousand nine hundred and by an inquisition taken before me, this day of in the year of our Lord one thousand nine hundred and at the of in the said *County* of on view of the body of R. F., then and there lying dead; for that the said A. B., on the day of in the year of our Lord one thousand nine hundred and at the of in the *County* of did wilfully murder the said R. F. (*or as the finding may be*), and the said charge being read to the said A. B., and the witnesses for the prosecution, C. D., E. F., &c., being severally examined in his presence, the said A. B. is now addressed by me as follows:—"Having heard the evidence do you wish to say anything in answer to the charge? You are not bound to say anything, unless you desire to do so; but whatever you say will be taken down in writing, and may be given in evidence against you at your trial. You must clearly understand that you have nothing to hope from any promise of favour and nothing to fear from any threat which may have been held out to you to induce you to make any admission or confession of guilt, but whatever you now say may be given in evidence against you upon your trial, notwithstanding such promise or threat." Whereupon the said A. B. saith as follows:—(*Here state whatever the prisoner may say, and in his very words as nearly as possible. Get him to sign it, if he will, at the end.*)

Taken before me at the day and year first above mentioned.

J. S.,
Coroner, *County* of .

No. 53.

WARRANT TO APPREHEND THE ACCUSED.

Canada, Province of *Ontario*, *County* of To wit: To the constables of the *Township* of in the *County* of and all others His Majesty's peace officers in the said County,

Whereas, by an inquisition taken before me, G. H., one of His Majesty's Coroners for the said *County*, this day of at in the said *County*, on view of the body of G. R., then and there lying dead, one C. D., late of in the said *County*, *labourer*, stands charged with the wilful murder of the said G. R. These are, therefore, by virtue of my office, in His Majesty's name, to charge and command you and every of you, that you or some one of you, without delay do apprehend and bring before me, G. H., the said Coroner, or one of His Majesty's justices of the peace of the said *County*, the body of the said C. D., of whom you shall have notice, that he may be dealt with according to law; and for your so doing this is your warrant. Given under my hand and seal this day of one thousand nine hundred and .

G. H.,
Coroner, *County* of . [L.S.]

No. 54.

WARRANT OF COMMITMENT.

Canada. Province of *Ontario*, *County* of To wit: To the constables of the *Township* of in the *County* of and all other His Majesty's officers of the peace for the said *County*, and to the keeper of His Majesty's gaol at in the said County. Whereas, by an inquisition taken

before me, one of His Majesty's Coroners for the said *County* of the day and year hereunder mentioned, on view of the body of R. L., lying dead in the said of in the *County* of aforesaid, J. K., late of the of in the said *County*, *labourer*, stands charged (*here insert the crime charged*). These are, therefore, by virtue of my office, in His Majesty's name, to charge and command you, the said constables and others aforesaid or any of you, forthwith safely to convey the body of the said J. K. to His Majesty's gaol at aforesaid, and safely to deliver the same to the keeper of the said gaol. And these are, likewise, by virtue of my said office, in His Majesty's name, to will and require you, the said keeper, to receive the body of the said J. K. into your custody, and him safely to keep in the said gaol, until he shall thence be discharged by due course of law; and for your so doing this shall be your warrant. Given under my hand and seal this day of one thousand nine hundred and .

G. H.,
Coroner, *County* of . [L.S.]

No. 55.

WARRANT OF DETAINER.

Canada.
Province of *Ontario*,
County of Simcoe,
To wit:

To the keeper of His Majesty's gaol at of the *County* of . Whereas you have in your custody the body of J. K.; and whereas by an inquisition taken before me, one of His Majesty's Coroners for the said *County* of the day and year hereunder written, at the of in the said *County*, on view of the body of R. L., then and there lying dead, he, the said J. K., stands charged with (*here insert the crime charged*). These are, therefore, in

His Majesty's name, by virtue of my office, to charge and command you to detain and keep in your custody the body of the said J. K. until he shall thence be discharged by due course of law; and for your so doing this is your warrant. Given under my hand and seal this day of one thousand nine hundred and .

G. H.,
Coroner, *County* of . [L.S.]

No. 56.

WARRANT TO TAKE ACCUSED BEFORE A JUSTICE OF THE PEACE.

Canada,
Province of *Ontario*,
County of *Simcoe*,
To wit:

To all or any of the constables and other peace officers in the said *County* of *Simcoe*.

Whereas, A. B., of the of in the of , *labourer*, has this day, upon an inquisition, taken before the undersigned, a Coroner for the said *County* of *Simcoe*, been charged with (*here insert the crime charged*). And whereas, the said A. B. has not already been charged with the said offence before a magistrate or justice. These are, therefore, to command you, in His Majesty's name, forthwith to take the said A. B. into custody, and convey *him* (or *her*), with all convenient speed, before a magistrate or justice, in and for the said *County* of to answer unto the said charge and to be further dealt with according to law.

Given under my hand and seal this day of in the year 19 at in the *County* aforesaid.*

F. H., [L.S.]
Coroner, *County* of .

* 55 & 56 Vict. c. 29, s. 568 D.

No. 57.

RECOGNIZANCE OF ACCUSED TO APPEAR BEFORE A JUSTICE OF THE PEACE.[6]

Canada,
Province of *Ontario*,
County of *Simcoe*
To wit:

Be it remembered that on this day of in the year 19 , A. B., of , (*labourer*) I. M., of , (*grocer*), and N. O., of , (*butcher*) personally came before me, the undersigned, one of the Coroners for the said *County* of *Simcoe*, 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 A. B. the sum of and the said L. M. and N. O., the sum of[7] 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 Sovereign Lord the King, his heirs and successors, if he (*or she*), the said A. B., fails in the condition endorsed (or *hereunder written*).

Taken and acknowledged the day and year first above mentioned at , before me .

F. H.,
Coroner, *County* of

The condition of the within (*or* above) written recognizance, is such that, whereas, the said A. B. was this day charged upon an inquisition taken before the within mentioned Coroner, for that *he* (*or she*), the said A. B., was guilty of manslaughter (*or murder*) in causing the death of E. F., and, whereas, the said A. B. had not already been charged with the said offence before a magistrate or

[6] 55-56 V. c. 29, s. 568, Dom.

[7] These sums should be settled by the coroner in accordance with the gravity of the charge. The principal A.B. is usually bound in double the sum in which each of the sureties is bound.

justice, and he (*or she*) is required to appear before a magistrate or justice to answer such charge, and to be further dealt with according to law; if, therefore, the said A. B. appears, with all convenient speed, before C. J., a magistrate of the said *County* of *Simcoe*, and duly surrenders himself (*or herself*) to answer unto the said charge, and to be further dealt with according to law in all respects as though he (or she) had been brought, or had appeared, before the said magistrate upon a warrant or summons issued by him, and does not depart without leave of the said magistrate, then the said recognizance to be void, otherwise to stand in full force and virtue.[8]

F. H.,
Coroner, *County* of .

No. 58.

RECOGNIZANCE TO PROSECUTE, ETC.

Canada,
Province of *Ontario*,
County of
To wit:

Be it remembered, that on the day of in the fifth year of the reign of our Sovereign Lord Edward[9] of the United Kingdom of Great Britain and Ireland, King, Defender of the Faith, A. B., of the township of in the county of *baker;* C. G., *of the same place, victualler;* E. F., *of the same place, labourer* (*and so insert the names of all bound over*) do severally acknowledge to owe to our Sovereign Lord the King, the sum of two hundred dollars, of lawful money of Canada, to be levied on their several goods and chattels, lands and tenements, by way of recog-

[8] 55-56 V. c. 29, s. 568, Dom.

[9] The years of the reign of King Edward are reckoned from the 22nd of Jany., 1901, consequently up to but not including the 22nd of Jany., 1905, will be the 4th year of his reign.

nizance, to His Majesty's use, in case default shall be made in the conditions following:

The condition of this recognizance is such, that if the above bounden do severally personally appear at the Assizes to be holden at in and for the County of and the said A. B. shall then and there prefer or cause to be preferred to the grand jury a bill of indictment against G. H., and now in custody for the (*as the finding may be*); and that the said A. B., C. G., and E. F. do then and there severally personally appear to give evidence on such bill of indictment to the said grand jury, and in case the said bill of indictment shall be returned by the grand jury a true bill, that then they the said A. B., C. G., and E. F., do severally personally appear at the next Assizes to be holden for the said County of and the said A. B. shall then and there prosecute or cause to be prosecuted the said G. H. on such indictment; and the said A. B., C. G., and E. F. do then and there severally give evidence to the jury, that shall pass on the trial of the said G. H. touching the premises, and not depart the court without leave; then this recognizance to be void, otherwise to remain in full force.[10]

[10] If a wife be to give evidence, and the husband be not present to enter into the recognizance, the wife is to be bound, not in any penal sum, but upon pain of imprisonment, thus:—"*Sarah, the wife of John Rogers of the same place, hatter*, on pain of imprisonment in case she shall make default in such condition." If the husband be present he is to be bound for the appearance of his wife (not as mainpernor, for they are but one flesh) and the wife's name only is inserted throughout the condition. If an infant or an apprentice be to give evidence, the parent or master is to be bound in recognizance, thus:—"*John Styles, of the same place, sword-cutler*, the mainpernor of *George Adams*, his apprentice," *or* "the mainpernor of *George Styles*, his son, an infant (*as the fact may be*) do severally owe," &c. (*as before*), and the child's or apprentice's name is to be inserted throughout the condition.

When the parties are to enter into recognizance, call them over by their names, and state the recognizances in the second person. The record is usually made out afterwards, and need not be signed by the coroner.

Taken and acknowledged this day of one thousand nine hundred and before me

C. D.,
Coroner, *County* of .

No. 59.

RECOGNIZANCE TO GIVE EVIDENCE.

Canada,
Province of *Ontario*,
County of
To wit:

But it remembered (*as in the last precedent*), J. P., of the *Township* of in the *County* of *blacksmith*; T. P., *of the same place, victualler*; J. R., *of the same place, white-smith*, the husband of S. R.; J. B., *of the same place, haberdasher*, the mainpernor of J. J., his apprentice, an infant; J. S., *of the same place, sword cutler*, the mainpernor of G. S., his son, an infant, do severally acknowledge to owe to our Sovereign Lord the King, the sum of two hundred dollars, of lawful money of Canada, to be levied on their several goods and chattels, lands and tenements, by way of recognizance to His Majesty's use, in case default shall be made in the condition following; and *Susan*, the wife of J. P., *of the same place, labourer*, on pain of imprisonment in case she shall make default in such condition: The condition of this recognizance is such, that, if the above bounden J. P., T. P., S. R., the wife of the said J. R., J. J., G. S., and S. P., do severally personally appear at the next Assizes, to be holden at , in and for the *County* of , and then and there give evidence on a bill of indictment to be preferred to the grand jury against C. D., now at large, for the (*here state crime*); and in case the said bill of indictment shall be returned by the grand jury a true bill, then that they do severally personally appear at the Session of Gaol Delivery, to be holden for the said *County* of ,

next after the apprehending or surrender of the said C. D., and then and there severally give evidence to the jury that shall pass on the trial of the said C. D., touching the premises; and not depart the court without leave, then this recognizance will be void, otherwise to be and to remain in full force.

Taken and acknowledged, this day of , one thousand nine hundred and , before me.[1]

F. E., Coroner *County* of .

No. 60.

COMMITMENT OF A WITNESS FOR REFUSING TO ENTER INTO RECOGNIZANCE TO APPEAR TO GIVE EVIDENCE.

Canada, Province of *Ontario*, *County* of To wit: } To the constables of the *Township* of , in the *County* of , and all other His Majesty's officers of the peace in and for the said County, and also to the keeper of the gaol of the said *County*. Whereas, upon an inquisition this day taken before me, one of His Majesty's Coroners for the County aforesaid, at , in the said *County*, on view of the body of C. D., then and there lying dead, one J. U., of the *Township* aforesaid, in the *County* aforesaid, labourer, was by my inquest then and there sitting, found guilty of (*here state the crime*); and whereas one U. B., of the Township and County aforesaid, yeoman, was then and there examined, and gave information in writing before me and my inquest touching the premises, and which said information he, the said U. B., then and there before me and my inquest duly signed and acknowledged, and by which said information it appears that the said U. B. is a material witness on His Majesty's behalf against the said J. U., now in custody, and charged by my said inquest

[1] See note to form No. 58.

with the said crime, and the said U. B. having wilfully and absolutely refused to enter into the usual recognizance for his personal appearance at the next General Gaol Delivery to be holden in and for the *County* of aforesaid, and then and there to give evidence on His Majesty's behalf against the said J. U. touching the premises, to the great hindrance and delay of justice. These are, therefore, by virtue of my office, in His Majesty's name to charge and command you, or one of you, the said constables and other His Majesty's officers of the peace in and for the said *County*, forthwith to convey the body of the said U. B. to the gaol of the said *County*, and safely to deliver the same to the keeper of the said gaol there; and these are likewise by virtue of my said office, in His Majesty's name to will and require you, the said keeper, to receive the body of the said U. B. into your custody, and him to safely keep in the said gaol until he shall enter into such recognizance before me, or before one of His Majesty's justices of the peace for the said *County*, for the purposes aforesaid, or in default thereof, until he shall be from thence otherwise discharged by due course of law: and for your so doing this is your warrant.

Given under my hand and seal, this day of , one thousand nine hundred and

G. H., Coroner, *County* of [L.S.]

No. 61.

PROCLAMATION AT THE CLOSE OF INQUEST.

Oyez! oyez! oyez! You good men of this *Township* who have been impanelled and sworn of the jury to inquire for our Sovereign Lord the King, touching the death of R. F., and who have returned your verdict, may now depart hence and take your ease. God save the king.

No. 62.

ORDER FOR PAYMENT OF MEDICAL WITNESS.

By virtue of section fourteen of chapter ninety-seven of the Revised Statutes of Ontario 1897, I, A. B., one of the Coroners of and for the *County* of do order you the treasurer of the said *County* of to pay to the sum of , being the fees due to him for having attended as a medical witness at an inquest holden before me this day of upon the body of about the age of , who was dead at (*or other particulars or description*) and at which said inquest the jury returned a verdict of . (*State the verdict concisely*).

A. B., Coroner, *County* of

Witnessed by me, C. D., of the *Township* of in the *County* of .

To the Treasurer of the *County* of .[2]

No. 63.

SPECIMEN OF A MEDICO-LEGAL REPORT.[3]

I, the undersigned Thomas Brown, Doctor of Medicine, member of the Royal College of Surgeons, and Licentiate of the Society of Apothecaries, residing at , and practising as a surgeon, and registered; hereby declare that being requested to examine the body of a male infant,

[2] Robinson, C.J., said, "Whether the treasurer would be safe in paying the coroner's order, provided it did not appear upon the face of it to be illegal, is one question. It is quite another question whether, when he declines to pay it, we should apply the prerogative process of a *mandamus* to compel his compliance with an order which he may see to be illegal. The Act only authorizes the coroner to make his order upon the treasurer for the payment of *such fees* as are mentioned in the Act, and if he has given an order for fees not warranted by the statute, we should certainly not interfere to compel their payment. See *In re Askin* v. *Charteris*, 13 Q. B. 498.

[3] Taken from Prof. Tidy's Legal Medicine, vol. iii., p. 200. And see remarks upon medico-legal reports on pp. 357, 367.

found on the 20th of July, 1882, in a goods-shed of the London and North-Western Railway Company, I accordingly did so on the 21st day of July, 1882, and that the following account is a true statement of the facts of the case:—

The body was that of a well-developed and mature male child, and as shewn by the facts, born at full term. Its length was 20½ inches. It weighed 7¼ pounds. The head measured 3¼x4¼x5 inches. The nails were well-developed and nearly reached the ends of the fingers. There was a good deal of hair on the head, the hairs being about ¾ of an inch long. Both testicles were in the scrotum. The pupillary membranes were fully absorbed. There was not much hair on the trunk. The navel was as nearly as possible at the middle point of the child's length. The navel string had been tied and cut off 2¾ inches from the body. It had completely withered, and almost separated from the body. There were no signs of external injury, except that around the mouth there were longitudinal and transverse markings intersecting one another, such as the warp and woof of a coarsely woven fabric would produce if firmly pressed upon the flesh. The extremities of the fingers and toes, especially the nails, and the ears and nose, were extremely livid or dark. On opening the body, I found the following appearances:—The lungs nearly filled the chest. The diaphragm reached as high as the sixth rib. The right side of the heart was loaded with dark blood. The left side of the heart was empty. The foramen ovale was nearly closed, and the ductus arteriosus was funnel shaped and closed at the end nearest the aorta. The pericardium, or bag containing the heart, and the pleurae, or bag containing the lungs, the lining membranes of the bronchial tubes and of the interior of the heart, were all marked with bright star-shaped patches or extravasations of blood. The lungs weighed 1120 grains. The edges of the lungs were emphysematous, in

other words, the air-vesicles were distended, bloodless and broken down one into the other. The air-vesicles of the rest of the lungs were plainly visible to the naked eye, and some portions of both lungs floated in water. The remainder of the lungs were gorged with blood, which escaped freely mixed with froth, when they were incised. These portions sank in water, although not quite to the bottom of the vessel. The bronchial tubes contained frothy mucus mixed with blood. There was nothing remarkable in the abdomen, except that all the organs and the veins were distended with dark blood. The umbilical arteries had closed. In the stomach I found a quantity of starchy food (probably arrowroot) with some milk, and in the large intestines there was some fœcal matter of a brownish colour. The point of ossification of the lower epiphysis of the femur was three lines in diameter. On opening the head, the membranes of the brain were found much congested and the sinuses filled with dark blood. There were numerous bloody points in the brain substance. The brain weighed $10\frac{3}{4}$ ounces. The liver weighed 3 ounces.

From these appearances I conclude:—

1st. That this child was born at full term and alive.

2nd. That he survived his birth for some days.

3rd. That the probability is that he died from suffocation, such suffocation being purposely effected with a coarse damp towel or cheese-cloth, the marks of the fabric on the lips and round the mouth being of a coarser nature than those caused by the linen or body-clothes generally in use.

Further, I have also examined a woman aged about years, whose name was said to be , whom I found in bed at .[1] She had dark circles round her eyes. The pulse was weak and compressible, and over 100 (106) per minute. The skin, etc., of the

[1] See remarks upon the right to examine a woman under these circumstances in Part II., c. iii., s. 3, s.-s. 7.

belly or abdomen was relaxed, flabby and wrinkled. It was marked with numerous shiny streaks (lineae albicantes) and purplish marks, similar marks being also found on the thighs. A body in the situation of the uterus could be felt through the abdominal walls, somewhat larger than a cricket ball. There was milk in both breasts, and a dark circle (areola) round each nipple, in which numerous and large follicles could be seen. The perinaeum was torn for about half an inch towards the anus, but not extending into it. The vagina was much relaxed, and had a bruised and dark appearance. The uterus felt large and heavy. The os uteri was wide open and admitted two fingers. It presented three or four distinct lacerations, or tears. A sound could be passed into the uterus to a depth of nearly five inches. There was a greenish yellow lochial discharge. The under-linen, bedding, etc., were stained with blood. From these appearances I conclude:—

1st. That this woman has been recently delivered, and probably within a week or ten days.

2nd. That considering the lacerations of the perinaeum and os uteri, the child of which she was delivered was in all probability mature and of full size.

In witness whereof I have hereunto set my hand this 21st day of July, 1882.

(Signed) THOMAS BROWN.

No. 63a.

WARRANT APPOINTING CORONER'S DEPUTY IN CIVIL MATTERS.

Canada,
Province of
County of
To wit:
and *Province* of

To all to whom these presents shall come. Greeting.

Whereas, I., A. B., of the of in the *County* of , one of His Majesty's Coroners

for the said *County*, being called upon to act as a substitute for the Sheriff of the said County, that officer being incapacitated by interest (*or* having made default *as the case may be*), in the matter of (*here state the nature of the civil business the Coroner is required to perform*).

Now know ye. That I have nominated, constituted, and appointed; and by these presents do nominate, constitute and appoint, C. D., of the of in the *County* of , *gentleman*, my deputy, of and for the said *County* of , and do depute and authorize him to act and execute all things to the said office of Deputy-Coroner in anywise appertaining or belonging and which I, myself, might or could lawfully do in the execution of the business above mentioned.

In witness whereof I have hereunto set my hand and seal this day of , A.D. 19 .

A. B.,

[Seal] Coroner, *County* of .

No. 64.

CERTIORARI TO THE CORONER.

[L.S.] Edward, &c. To. G. H., Coroner for our *County* of greeting. We being willing, for certain reasons, that all and singular the inquisition, examinations, informations, and depositions taken by or before you, touching the commitment of C. D. to the custody of the keeper of our gaol at , in and for our *County* of , for murder [*or manslaughter*] as is said, be sent by you before the Chief Justice of our High Court of Justice, at Toronto, do command you that you send under your seal before our said Chief Justice, in our court before us at Toronto, immediately after the receipt of this our writ, all and singular the said inquisition, examinations, informations and depositions, with all things touching the

same, as fully and perfectly as they have been taken by and before you, and now remain in your custody or power, together with this our writ, that we may cause further to be done thereon what of right, and according to the law and custom of this *Province* we shall see fit to be done.

Witness, &c.

By the Court.

No. 65.

RETURN THEREON.

The execution of this writ appears by the schedule hereunto annexed. The answer of G. H., one of the Coroners of our Lord the King for the *County* of within named, with the seal affixed. (*Annex a list of all the papers returned, numbering them consecutively and head the list—Schedule referred to in the annexed writ.*)

No. 66.

HABEAS CORPUS.

[L.S.] Edward, &c. To the Sheriff of , and also to the keeper of our gaol at , in and for our *County* of , or his deputy, greeting. We command you that you have before the Chief Justice of our High Court of Justice, at Toronto, immediately after the receipt of this our writ, the body of , being committed and detained in our prison under your custody (as is said) together with the day and cause of *his* taking and detainer, by whatsoever name the said may be called therein, to undergo and receive all and singular such things as our

said Chief Justice shall then and there consider of concerning him in that behalf; and have you then there this writ.

Witness, &c. By the Court.

[*Endorsed on the back of the writ*]. The execution of this writ appears in the schedule hereto annexed. The answer of , Sheriff, *County* of .

No. 67.

RETURN THEREON.[5]

I, , of the County of , do humbly certify and return to the Honourable Chief Justice in the writ to this schedule annexed named, that before the said writ came to me, that is to say, on the day of in the year of the reign of his present Majesty King Edward, C. D., in the said writ named, was taken and in His Majesty's gaol for the said *County* under my custody is detained, by virtue of a warrant under the hand and seal of G. H., Esquire, one of His Majesty's Coroners for the said *County*, the said C. D., by an inquisition taken before the said Coroner, on view of the body of R. F., lying dead at the , of , in the said *County*, standing charged with the killing and slaying of the said R. F., and this is the cause of the taking and detaining of the said C. D., which writ, together with his body, I have ready, as by the said writ I am commanded.

A. B.,
Sheriff, County of .

[5] On a separate piece of paper and annexed to the writ.

No. 68.

NOTICE OF BAIL.

In the High Court of Justice, Queen's Bench Division.

The King v. *C. D.*

Take notice that an application will be made in His Majesty's High Court of Justice, at Toronto, on next, or so soon after as counsel can be heard, that the above-named defendant, then brought into court by virtue of a writ of *habeas corpus*, may be admitted to bail for his personal appearance at the next sessions of Oyer and Terminer and General Gaol Delivery, to be holden in and for the *County* of , to answer all such matters and things as in His Majesty's behalf shall then and there be objected against him, and so from day to day, and not depart the court without leave; and the names and descriptions of the bail are, A. B., of &c.; E. F., of &c.

Dated, &c.

To G. H., Esquire, Coroner for the *County* of ,
and to L. M. (*the prosecutor*).

I. J.

No. 69.

VENIRE FACIAS TO THE CORONER TO AMEND HIS INQUISITION.

Edward, &c. To the Sheriff of , greeting. We command you that you do not forbear by reason of any liberty in your bailiwick, but that you cause to come before us on , wheresoever, &c., G. H., gentleman, one of the Coroners of your *County*, to answer to us touching several defects in a certain inquisition lately taken before him, upon view of the body of one R. F., there lying dead.

Witness, &c.

C. D. A. B.

No. 70.

OATH OF CORRECTNESS OF ACCOUNT.

Ontario,
County of
To wit:

I, A. B., of the of in the *County* of Coroner *Medical Witness or Constable*) make oath and say:

1. That the above (*or within*) amount for services performed by me is just and true in every particular.

2. That I have not been paid any portion of the charges, nor has any other person received payment for me or on my behalf, nor has any other person or persons to my knowledge rendered a similar account for the same services. [*If there is any charge in the account for mileage, add the following clause:*

3. That to perform such services, I necessarily travelled from to , being miles.

Sworn before me at the of in the *County* of this day of 19
C. D., J. P.

A. B.,
Coroner (*or Medical Witness or Constable.*)

No. 71.

DECLARATION OF CORONER TO BE ATTACHED TO HIS ACCOUNT.[a]

I, C. D., of the of , in the *County* of , one of the Coroners for the said *County*, hereby declare that it was made to appear to me by the information of A. B., hereto annexed, that there was reason to

[a] The information, evidence, inquisition and all the papers are to be attached together and delivered to the Crown Attorney, who will give a certificate that they have been filed with him, and that it appears from the information and papers there was sufficient grounds to warrant the holding of an inquest within the meaning of the statute. This certificate, and the declaration above given, must be attached to the coroner's account.

believe E. F., late of (*or* a person unknown, whose body lay dead at) had come to his (*or* her) death from violent (*or* unfair) means (*or state whatever reason for holding the inquest was given in the information*); and I thereupon proceeded to hold an inquest upon the said body, which inquest resulted in a verdict of the jury finding the deceased came to his (*or* her) death by [*here state the verdict under one of the following heads:* Murder, Manslaughter, Justifiable Homicide, Suicide, Accidental Death (specifying the cause), Injuries (cause unknown), Found Dead or Natural Death].

Dated at the day of A.D. 19 .

C. D.

Coroner, *County* of .

No. 72.

OATH OF MILEAGE.[1]

I, A. B., constable (*or as the case may be*) make oath and say, that I did on the day of in the matter of the inquest held at on the body of necessarily travel from to being miles in order to [*here state the nature of the service*].

Sworn before me at
19 .
this day of A.D.
C. D., J.P.

A. B.,
Constable.
(*or as the case may be.*)

No. 73.

CERTIFICATE OF CORONER TO CONSTABLE'S ACCOUNT.

I hereby certify that the above (*or within*) services were performed by Constable A. B., under my directions

[1] This affidavit must be sworn before a justice of the peace, and can be used by a medical witness or constable, and is to be attached to the account rendered for services.

(*if the account is an assistant constable's add*) and that assistance was necessary,[8] and that the account therefor is correct.

C. D.,
Coroner, *County* of .

No. 73a.

CERTIFICATE OF CROWN ATTORNEY THAT PAPERS ARE FILED AND INQUEST WARRANTED.

Office of the Crown Attorney,
County of .

I hereby certify that the formal information required by statute, and the inquisition and papers connected with the inquest referred to in the annexed account, together with the declaration under oath of the Coroner who held the said inquest, were duly filed in this office on the day of A.D. 19 according to law, and that [*in my opinion it appears from the information and papers filed, there was sufficient grounds to warrant the holding of such inquest within the meaning of the Act respecting coroners.* Or *the said inquest was held upon my written request to hold the same*].

Dated the day of A.D. 19 .

F. H.,
County Crown Attorney,
County of

No. 73b.

ORDER FOR BURIAL.

I, the undersigned Coroner for the of , do hereby authorize the burial of the body of A. B., which has been viewed by the inquest jury. Witness my hand this day of A.D. 19 .

A. B., Coroner.

[8] All accounts must have the proper date placed opposite the respective charges and must be verified by the oath of the party making the charge. See Form No. 70.

No. 74.

THE CAPTION OR INCIPITUR OR BEGINNING OF EVERY INQUISITION OF DEATH.

Canada, Province of *Ontario*, **County** of **To wit:** } An inquisition taken for our Sovereign Lord the King, at the house of A. B., known by the sign of situate in the of in the *County* of on the day of 19 in the year of the reign of our Sovereign Lord Edward,[9] (and by adjournment on the day of *or as the case may be*) before C. D., *Esquire*, one of the Coroners of our said Lord the King for the *said County*, on view of the body of E. F., then and there lying dead, upon the oath (*or oath and affirmation*) of [*naming all the jurors sworn*] good and lawful men of the said *County*, duly chosen, and who being then and there duly sworn, and charged to inquire for our said Lord the King, when, where, how and by what means the said E. F. came to *his* death, do upon their oath say—That, &c., [*Then follows the verdict or finding of the jury, and after that the attestation or closing part of the inquisition. See the next form*].

No. 75.

THE ATTESTATION OR CLOSING PART OF EVERY INQUISITION.

[*After the caption and verdict should follow the attestation in these words*:] In witness whereof, as well the said Coroner as the jurors aforesaid, have hereunto set and subscribed their hands and seals the day and year first above written. [*Under the attestation the Coroner signs his name, adding his office, thus:* "Coroner of the *County* of ," *and the jury sign their names in rotation under the Coroner's. A seal had better be affixed for the Coroner and for each of the jurymen.*]

[9] See note form No. 58.

No. 75a.

FORM OF INQUISITION IN NEW BRUNSWICK.

(C. S. N. B. 1903, c. 124)

An inquisition taken for our Sovereign Lord the King at , in the Parish of , in the County of , on the day of A.D. 19 , (and by adjournment on the day , *or as the case may require*), before A. B., one of the Coroners of our Lord the King for the said County of upon the oath of (*in the case of murder or manslaughter, here insert the name of the jurors, L. M., N. O., etc.*), being good and lawful men of the said County duly sworn to inquire for our Lord the King, as to the death of X. Y. (*or of a person to the jurors unknown*), and those of the said jurors, whose names are hereunto subscribed, on their oaths do say: (*Here set out the circumstances of the death, as for example*):

(*a*) That the said X. Y. was found dead on the day of , in the year aforesaid, at in the County of .

(*b*) And that the cause of his death was that he was thrown by P. Q. against the ground, whereby the said X. Y. had a violent concussion of the brain, and instantly died (*or set out other cause of death*).

Here set out the conclusion of the jury as to the death, as for example:

(*c*) And so do further say that the said P. Q. did murder (*or* did commit manslaughter by unlawfully killing and slaying) the said X. Y.

Or, do further say that the said P. Q. is not guilty of culpable homicide in killing the said X. Y., because such homicide was justifiable (*or* excusable, *as the case may be*), because the said P. Q., by misfortune, and against his will (*or*, of necessity, in self defence) did kill the said X. Y.

At the end add:

In witness whereof the said Coroner has subscribed his hand and affixed his seal, and the said jurors have subscribed their hands, the day of A.D. 19 .

(*Signature*)

Coroner [L.S.]

Signatures Jurors.

Another example is (From New Brunswick Statute):

That the said X. Y., did on the day of , instant, fall into a pond of water situate at , by means whereof he died.

(*Here set out the conclusion of the jury as to the death, as for example*):

And so do further say that the said X. Y., not being of sound mind, did kill himself;

Or, do further say that the said X. Y. did wilfully and unlawfully kill himself;

Or, do further say that by the neglect of P. Q. to fence the said pond, X. Y. fell therein, and that therefore P. Q. is guilty of manslaughter in causing the death of the said X. Y.;

Or, do further say that the said X. Y. by misadventure fell into the said pond and was killed.

In witness whereof, &c.

No. 76.

BY DROWNING HIMSELF, BEING AN INFANT.

[*Copy caption as in Form No. 74, and then proceed*], that the said R. F., then being an infant under the age of discretion, to wit, of the age of years, not having discernment between good and evil, on the day of in the year aforesaid, into a certain river of water

commonly called the did cast and throw himself, by means of which casting and throwing the said R. F., then being such infant under the age of discretion as aforesaid, in the waters of the said river was then there suffocated and drowned; of which said drowning and suffocation he, the said R. F., then there instantly died; and so the jurors aforesaid upon their oath aforesaid do say, that the said R. F., so being such infant under the age of discretion as aforesaid, in the manner and by the means aforesaid, did kill himself. In witness, &c. [*finish with the attestation as in Form No. 75*].

No. 77.

BY POISONING HIMSELF, BEING AN INFANT.

[*Copy caption as in Form No. 74*] that one C. D., then being an infant and under the age of discretion, to wit, of the age of years, not having discernment between good and evil, on the day of in the year aforesaid, a large quantity of a certain deadly poison called *white arsenic*, to wit, two drachms of the said *white arsenic*, which the said C. D., so being such infant as aforesaid, then accidentally found, into and with a certain quantity of beer did put, mix and mingle, the said C. D. not knowing that the said *white arsenic* so as aforesaid by him put, mixed and mingled into and with the said beer was a deadly poison; and that the said R. F. afterwards, to wit, on the day and year aforesaid, did take, drink and swallow down a certain large quantity to wit, half a pint of the said beer, with which the said *white arsenic* was so mixed and mingled by the said C. D., as aforesaid, the said R. F. at the time he so took, drank and swallowed down the said beer, not knowing that there was any *white arsenic* or any other poisonous or hurtful ingredient mixed or mingled therewith; by means whereof

he, the said R. F., then became sick and greatly distempered in his body; and the said R. F. of the poison aforesaid, so by him taken, drunk and swallowed down as aforesaid and of the sickness occasioned thereby, from the said day of in the year aforesaid, until the day of the same month in the year aforesaid, did languish, and languishing did live; on which said last mentioned day in the year aforesaid he, the said R. F., of the poison aforesaid and of the sickness and distemper occasioned thereby, did die: and so the jurors aforesaid, upon their oath aforesaid, do say that the said C. D., so being such infant under the age of discretion as aforesaid, him, the said R. F., in the manner and by the means aforesaid, did kill and slay, but not feloniously nor of his malice aforethought; and so the said R. F. came to his death. In witness, &c. [*finish with the attestation as in Form No. 75*].

No. 78.

BY SHOOTING HIMSELF, BEING A LUNATIC.

(*Copy caption as in Form No. 74*), that the said R. F., not being of sound mind, memory and understanding, but lunatic and distracted, on the day of in the year aforesaid, a certain pistol loaded and charged with gunpowder and one leaden bullet, which pistol he, the said R. F., in his right hand then held, to and against the head of him the said R. F., did shoot off and discharge, by means whereof the said R. F. did then give unto himself, with the leaden bullet aforesaid, so discharged and shot out of the pistol aforesaid, by force of the gunpowder aforesaid, in and upon the head of him the said R. F., one mortal wound, of which said mortal wound he the said R. F. then and there instantly died: and so the jurors aforesaid, upon their oath aforesaid, do say, that the said

R. F., not being of sound mind, memory and understanding, but lunatic and distracted, in the manner and by the means aforesaid did kill himself. In witness, &c. (*finish with the attestation as in Form No. 75*).

No. 79.

BY STABBING HIMSELF, WHERE THE CAUSE AND DEATH ARE IN DIFFERENT COUNTIES.

(*Copy caption as in Form No. 74*), that the said R. F., not being of sound mind, memory and understanding, but lunatic and distracted, on the day of in the year aforesaid, at the , of , in the *County* of with a certain penknife, which he, the said R. F., in his right hand then held, in and upon the left side of the belly of him the said R. F., near the abdomen, did strike, stab and penetrate, thereby then giving unto himself, the said R. F., with the penknife aforesaid, in and upon the left side of the belly of him, the said R. F., near the abdomen aforesaid, one mortal wound, of which said mortal wound he, the said R. F., from the said day of , in the year aforesaid, at the last aforesaid, in the County last aforesaid, and also in the of , in the County of aforesaid, did languish, and languishing did live, on which said last-mentioned day, in the year aforesaid, he, the said R. F., at the last aforesaid, in the County of aforesaid, of the said mortal wound did die; and so the jurors aforesaid, upon their oath aforesaid do say, that the said R. F., not being of sound mind, memory and understanding, but lunatic and distracted, in the manner and by the means aforesaid, did kill himself. In witness, &c. (*finish with the attestation as in Form No. 75*).

No. 80.

BY DROWNING HIMSELF.

(*Copy caption as in Form No. 74*), that the said R. F., not being of sound mind, memory and understanding, but lunatic and distracted, on the day of in the year aforesaid, into a certain pond of water, situate in the of in the County of , did cast and throw himself, by means of which said casting and throwing he, the said R. F., not being of sound mind, memory and understanding, but lunatic and distracted, in the waters of the said pond was then suffocated and drowned, of which said drowning and suffocation he, the said R. F., then instantly died: and so the jurors aforesaid, upon their oath aforesaid, do say, that the said R. F., not being of sound mind, memory and understanding, but lunatic and distracted, in the manner and by the means aforesaid, did kill himself. In witness, &c. (*finish with the attestation as in Form No. 75*).

No. 81.

BY THROWING THE DECEASED OUT OF A WINDOW.

(*Copy caption as in Form No. 74*), that one C. D., not being of sound mind, memory and understanding, but lunatic and distracted, on the day of in the year aforesaid, him the said R. F. through and out of a certain window of a certain dwelling-house, situate at the of , in the *County* of , to and against the ground then did violently cast and throw, thereby giving to the said R. F., by the casting and throwing aforesaid, to and against the ground as aforesaid, a violent

concussion of the brain, of which said violent concussion the said R. F. then instantly died; and so the jurors aforesaid, upon their oath aforesaid, do say, that the said C. D., not being of sound mind, memory and understanding, but lunatic and distracted, him the said R. F., in manner and by the means aforesaid, did kill and slay, but not feloniously nor of his malice aforethought, and so the said R. F. came to his death. In witness, &c., (*finish with the attestation as in Form No. 75*).

No. 82.

BY SHOOTING HIMSELF IN A FIT OF DELIRIUM.

(*Copy caption as in Form No. 74*), that the said R. F., then labouring under a grievous disease of the body, to wit, a fever (*or as the case may be*), and by reason of the violence of the said grievous disease, then being delirious and out of his mind, on the day of , in the year aforesaid, a certain pistol loaded with gunpowder and one leaden bullet, which said pistol the said R. F., in his right hand then held to and against the head of him the said R. F., he, the said R. F., being so delirious and out of his mind as aforesaid, did shoot off and discharge, thereby then giving unto himself in and upon the head of him the said R. F., with the leaden bullet aforesaid out of the pistol aforesaid, then by force of the gunpowder aforesaid shot off and discharged aforesaid, one mortal wound, of which said mortal wound he, the said R. F., then instantly died; and so the jurors aforesaid, upon their oath aforesaid, do say, that the said R. F., so being delirious and out of his mind as aforesaid, in the manner and by the means aforesaid, did kill himself. In witness, &c., *finish with attestation as in Form No. 75*).

No. 83.

BY HANGING HIMSELF.

(*Copy caption as in Form No. 74*), that the said R. F., not having the fear of God before his eyes, but being moved and seduced by the instigation of the devil, on the day of in the year aforesaid, in and upon himself in the peace of God, and of our said Lord the King then being, feloniously, wilfully and of his malice aforethought, did make an assault; and that the said R. F., one end of a certain piece of small cord unto a certain iron bar then fixed in the ceiling of His Majesty's gaol for the *County* of (wherein the said R. F. was then a prisoner in custody charged with felony) and the other end thereof about his own neck did then fix, tie and fasten, and therewith did then hang, suffocate and strangle himself, of which said hanging, suffocation and strangling he the said R. F. then[10] instantly died: and so the jurors aforesaid, upon their oath aforesaid, do say, that the said R. F., in the manner and by the means aforesaid, feloniously, wilfully and of his malice aforethought, did kill and murder himself, against the peace of our said Lord the King, his crown and dignity. In witness, &c. (*finish with the attestation as in Form No. 75*).

No. 84.

BY SHOOTING HIMSELF.

(*Copy caption as in Form No. 74, and then continue as in the 83rd Form*) down to *did make an assault*; and then substitute:—and that the said R. F. a certain pistol charged with gunpowder and one leaden bullet, which he the said R. F. in his right hand then had and held, feloniously, wilfully and of his

[10] The respective times of the wound and death must be shewn. The death must appear to be within a year and a day after the cause of death.

malice aforethought, to and against the head of him the said R. F. did then shoot off and discharge; and that the said R. F. with the leaden bullet aforesaid, out of the pistol aforesaid, then by force of the gunpowder aforesaid, shot and sent forth as aforesaid, in and upon the head of him the said R. F., feloniously, wilfully and of his malice aforethought, did strike, wound and penetrate, then giving unto himself with the leaden bullet aforesaid, so as aforesaid discharged and shot out of the pistol aforesaid by the force of the gunpowder aforesaid, in and upon the head of him the said R. F., one mortal wound, of the breadth of one inch and depth of three inches, of which said mortal wound he the said R. F. then instantly died: and so the jurors, &c., (*conclude as in preceding form*).

No. 85.

BY DROWNING HIMSELF.

(*Commence as in Form No. 83*), did make an assault, and that the said R. F. in a certain pond there situate, wherein there was a great quantity of water, then and there feloniously, wilfully and of his malice aforethought, did cast and throw himself; by means of which said casting and throwing into the pond aforesaid, he the said R. F. in the pond aforesaid with the water aforesaid was then and there choked, suffocated and drowned; of which said choking, suffocation and drowning he the said R. F. then and there instantly died. And so the jurors, &c., (*conclude as in Form No. 83.*

No. 86.

MURDER.

(*Copy caption as in Form No. 74*), that C. D. otherwise called E. F. (*or, that a certain person to the jurors*

aforesaid unknown) on the day of in the year aforesaid, at in the *County* of did feloniously, wilfully and of his malice aforethought, kill and murder one R. F., against the peace of our Lord the King his crown and dignity. In witness, &c., (*finish with attestation as in Form No. 75*).

No. 87.

MANSLAUGHTER.

(*Copy caption as in Form No. 74*), that C. D., on the day of in the year aforesaid, at in the County of did feloniously and unlawfully kill and slay one R. F., against the peace of our Lord the King, his crown and dignity. In witness, &c., (*finish with attestation as in Form No. 75*).

No. 88.

EXCUSABLE HOMICIDE BY CORRECTION.

(*Copy caption as in Form No. 74*), that C. D., on the day of in the year aforesaid, with a certain cane, which he the said C. D. in his right hand then held, the said R. F. then being an apprentice to him the said C. D., moderately and by way of chastisement did beat and strike; and that the said C. D. him the said R. F. with the cane aforesaid, in and upon the right side of him the said R. F. casually by misfortune, and against the will of him the said C. D., did then beat and strike, thereby then giving unto him the said R. F., with the cane aforesaid, casually, by misfortune and against the will of the said C. D., in and upon the right side of him the said R. F., one mortal bruise, of which said mortal bruise the said R. F., from the said day of in the year aforesaid, did languish, and languishing did live; on which said last

mentioned day, in the year aforesaid the said R. F. of the said mortal bruise did die. And so the jurors aforesaid, upon their oath aforesaid do say that the said C. D. him the said R. F., in the manner and by the means aforesaid, casually and by misfortune, and against the will of him the said C. D., did kill and slay. In witness, &c. (*finish with attestation as in Form No. 75*).

No. 89.

EXCUSABLE HOMICIDE BY A KNIFE.

(*Copy caption as in Form No. 74*), that the said R. F. and one C. D., on the day of in the year aforesaid, being infants under the age of 12 years, in the peace of God, and of our said Lord the King, then being in friendship, and wantonly and in play struggling together, and then and there both falling to the ground, it so happened that, casually and by misfortune, and against the will of him the said C. D., the said R. F. then fell upon the point of a certain open clasp-knife, which he the said C. D. then had and held in his right hand; by means of which said falling he the said R. F. did then, casually, by misfortune and against the will of him the said C. D., receive one mortal wound in and upon the right breast of him the said R. F., of the breadth of one inch and depth of three inches; of which said mortal wound the said R. F., from the said day of in the year aforesaid, until the day of in the same year, did languish, and languishing did live; on which said day of in the year aforesaid, the said R. F. of the mortal wound aforesaid did die. In witness, &c. (*conclude as in Form No. 75*).

No. 90.

EXCUSABLE HOMICIDE IN DEFENCE OF PERSON.

(*Copy caption as in Form No. 74*), that on the day of in the year aforesaid, the said R. F. being in a certain common drinking-room belonging to a public house, known by the sign of , in which said common drinking-room one C. D. and divers other persons were then present, the said R. F., without any cause or provocation whatsoever given by the said C. D., did then menace and threaten the said C. D. to turn him the said C. D. out of the said common drinking-room, and for that purpose did then lay hold of the person of him the said C. D., and on him the said C. D. violently did make an assault, and him the said C. D. without any cause or provocation whatsoever did then beat, abuse and ill-treat: whereupon the said C. D., for the preservation and safety of his person, and of inevitable necessity, did then, with the hands of him the said C. D., defend himself against such the violent assault of him the said R. F., as it was lawful for him to do; and the said R. F. did then receive, against the will of him the said C. D., by the falls and blows which he the said R. F. then sustained by his the said C. D.'s so defending himself as aforesaid, divers mortal bruises in and upon the head, back and loins of him the said R. F.; of which said mortal bruises he the said R. F., from the said day of in the year aforesaid, until the day of the same month in the same year did languish, and languishing did live; on which said day of in the year aforesaid, the said R. F. of the mortal bruises aforesaid did die. And so the jurors aforesaid, upon their oath aforesaid, do say that the said C. D. him the said R. F., in defence of himself the said C. D. in manner and by the means aforesaid did kill and slay. In witness, &c. (*finish with attestation as in Form No. 75*).

No. 91.

JUSTIFIABLE HOMICIDE AGAINST A STREET ROBBER.

(*Copy caption as in Form No. 74*), that the said R. F., with certain other persons to the jurors aforesaid unknown, on the day of in the year aforesaid, in and upon C. D., in the King's highway then being, feloniously did make an assault, and him the said C. D. in bodily fear and danger of his life did then put, and one gold watch of the goods and chattels of him the said C. D. from the person and against the will of him the said C. D. in the King's highway aforesaid then feloniously did steal, take and carry away, against the peace of our said Lord the King, his crown and dignity. And the jurors aforesaid, upon their oath aforesaid, do say that after the said R. F. and the said persons to the jurors aforesaid unknown, had done and committed the felony and robbery aforesaid, they the said R. F. and the said persons to the jurors aforesaid unknown, did then endeavour to fly and escape for the same; whereupon the said C. D., together with E. H. and E. F., and certain other persons to the jurors aforesaid unknown, called in and taken to their assistance, did then pursue and endeavour to take and apprehend the said R. F. and the said persons to the jurors aforesaid unknown, for the doing and the committing of the said felony and robbery; and that the said R. F. in such pursuit was overtaken by them the said C. D., E. H. and E. F. and the said persons to the jurors aforesaid unknown: whereupon the said C. D., E. H., E. F., and the said persons to the jurors aforesaid unknown, did then lawfully and peaceably endeavour to take and apprehend the said R. F., who was then peaceably required to surrender himself, in order to be brought to justice for the felony and robbery aforesaid; and that the said R. F., to prevent his being taken and apprehended, did then with a pistol loaded with gunpowder and a

leaden bullet which he the said R. F. then had and held in his right hand, menace and threaten to shoot the first man that should attempt to seize him the said R. F.; and that the said R. F. did then refuse to surrender himself, and did obstinately and unlawfully stand upon his defence, in open defiance of the laws of this Province; and that upon such endeavour to take and apprehend the said R. F., he the said R. F. did then discharge and shoot off the said pistol so loaded with gunpowder and a leaden bullet as aforesaid, at and against him the said C. D.; and that on the said R. F. so continuing obstinately and unlawfully to resist and refuse to surrender himself to public justice, they the said C. D., E. H. and E. F., in order to apprehend and take the said R. F., to be brought to justice for the said felony and robbery, and in order to oblige the said R. F. to surrender himself for the purposes aforesaid did then, justifiably and of inevitable necessity, attack and assault the said R. F., by means whereof the said R. F. did then receive in such his obstinate and unlawful defence, and before he could be taken and apprehended, divers mortal wounds and bruises, of which said mortal wounds and bruises the said R. F. did languish, and languishing did live; and that after the said R. F. was so wounded and bruised as aforesaid, he the said R. F. was then taken and apprehended, and on the day and year last mentioned was lawfully committed to the common gaol for the County of , and of such mortal wounds and bruises did then and there languish, and languishing did live; on which said day of in the year aforesaid, within the gaol aforesaid, the said R. F. of the mortal wounds and bruises aforesaid did die. And so the jurors aforesaid, upon their oath aforesaid, do say that the said C. D., E. H. and E. F., him the said R. F., in manner and by means aforesaid, in the pursuit of justice, of inevitable necessity and justifiably, did kill and slay. In witness (*finish with attestation as in Form No. 75*).

No. 92.

DEATH BY A CART.

(*Copy caption as in Form No. 74*), that C. D. on the day of in the year aforesaid, in a certain public highway in the of in the County aforesaid, being driving a certain cart drawn by three horses, and laden with twelve sacks of coal, it so happened that the said R. F. being in the said highway, was then there accidentally, casually and by misfortune, forced to the ground by the foremost horse of the said three horses so drawing the said cart, and the said cart so laden as aforesaid, was then there by the said horses violently and forcibly drawn to and against the said R. F., and the off-wheel of the said cart, so drawn and laden as aforesaid, did then there accidentally, casually and by misfortune, violently go upon and pass over the breast and body of the said R. F., by means whereof the said R. F., from the weight and pressure of the said cart, so laden and drawn as aforesaid, did then receive one mortal bruise in and upon his said breast and body, of which said mortal bruise the said R. F. then instantly died: and so the jurors aforesaid, upon their oath aforesaid, do say, that the said R. F., in manner and by the means aforesaid, accidentally, casually and by misfortune, came to his death, and not otherwise. In witness, &c., (*finish with attestation as in Form No. 75*).

No. 93.

BY THE OVERTURNING OF A CHAISE.

(*Copy caption as in Form No. 74*), that the said R. F., on the dy of , in the year aforesaid, then being in a certain chaise, driving a certain gelding then drawing the same, it so happened that the said R. F. was then and there casually, accidentally and by misfortune, overturned and violently thrown out of the said chaise to

and against the ground, by means whereof the said R. F. did then receive one mortal fracture in and upon the hinder part of the head of him, the said R. F., of which said mortal fracture the said R. F., from the said day of in the same year aforesaid, until the day of in the same year, did languish, and languishing did live; on which said day of , in the year aforesaid, the said R. F. of the mortal fracture aforesaid did die: and so the jurors aforesaid, upon their oath aforesaid, do say that the said R. F., in the manner and by the means aforesaid, accidentally, casually and by misfortune, came to his death, and not otherwise. In witness, &c., (*finish with attestation as in Form No. 75*).

No. 94.

DROWNED BY THE OVERTURNING OF A BOAT.

(*Copy caption as in Form No. 74*), that the said R. F., on the day of , in the year aforesaid, being ordered by one C. D., his master, to fasten the boat of the said C. D. to her moorings or road in the river instead thereof did then pin the same to a pile, under one of the arches of , and in the said boat the said R. F. did then lay himself down to sleep, and it so happened that by the flowing in of the tide the said boat (the said R. F. being then asleep in the same) was then forced athwart the said arch, and pinned down and overset, by means whereof the said R. F. was then accidentally, casually and by misfortune, thrown out of the said boat into the said river , and in the waters thereof was then suffocated and drowned, of which said suffocation and drowning the said R. F. then instantly died; and so the jurors aforesaid, upon their oath aforesaid, do say, that the said R. F., in the manner and by the means aforesaid, came to his death, and not otherwise. In witness, &c., (*finish with attestation as in Form No. 75*).

No. 95.

BY THE KICK OF A HORSE.

(*Copy caption as in Form No. 74*), that the said R. F., on the day of , in the year aforesaid, was riding upon a certain horse of J. K., Esquire, and the said R. F. from the back of the said horse then casually fell to the ground, and the horse aforesaid then struck the said R. F. with one of his hinder feet, and thereby then gave to the said R. F. upon the head of the said R. F. one mortal wound, of which the said R. F. did languish, and languishing did live, from the said day of , in the year aforesaid, until the day of , in the year aforesaid, on which said day of in the year aforesaid, the said R. F., of the mortal wound aforesaid, died; and so the jurors aforesaid, upon their oath aforesaid, do say, that the said R. F., in manner and form aforesaid, and not otherwise, came to his death. In witness, &c., (*finish with attestation as in Form No. 75*).

No. 96.

BY FALLING FROM THE LEADS OF A HOUSE.

(*Copy caption as in Form No. 74*), that the said R. F., on the day of , in the year aforesaid, being upon certain garret leads belonging to the dwelling-house of C. D., situate in the township of , in the County aforesaid, it so happened that, accidentally, casually and by misfortune, the said R. F. then fell from the said leads to and against the ground; by means whereof the said R. F. then received one mortal wound on the crown of the head of him the said R. F.; of which said mortal wound the said R. F. then and there instantly died. And so the jurors aforesaid, upon their oath aforesaid, do say that the said R. F., in manner and by the means aforesaid, accidentally, casually and by misfortune, came to his death, and not otherwise. In witness, &c., (*finish with attestation as in Form No. 75*).

No. 97.

DROWNED BY BATHING.

(*Copy caption as in Form No. 74*), that the said R. F., on the day of in the year aforesaid, going into a certain pond situate in the of , in the County aforesaid, to bathe, it so happened that accidentally, casually and by misfortune, the said R. F. was in the waters of the said pond then suffocated and drowned, of which said suffocation and drowning the said R. F. then instantly died; and so the jurors aforesaid, upon their oath aforesaid, do say, that the said R. F., in manner and by the means aforesaid, accidentally, casually and by misfortune, came to his death, and not otherwise. In witness, &c., (*finish with attestation as in Form No. 75*).

No. 98.

FOUND DROWNED.

(*Copy caption as in Form No. 74*), that the said man, to the jurors aforesaid unknown, on the day of , in the year aforesaid, was found drowned and suffocated in a certain pond situated at the of , in the County aforesaid, and that the said man, to the jurors aforesaid unknown, had no marks of violence appearing on his body, but how or by what means the said man became drowned and suffocated, no evidence doth appear to the jurors. In witness, &c., (*finish with attestation as in Form No. 75*).

No. 99.

BY A FIRE.

(*Copy caption as in Form No. 74*), that on the day of in the year aforesaid, the warehouse of C. D., situate at the of , in the County aforesaid, casually took fire, and the said R. F., being then present and

aiding and assisting to extinguish the said fire, it so happened that a piece of timber, by the force and violence of the said fire, accidentally, casually and by misfortune fell from the top of the said warehouse upon the head of him the said R. F., by means whereof the said R. F. then received one mortal fracture on the head of him the said R. F., of which said mortal fracture the said R. F. from the day of in the year aforesaid, until the day of the same month, in the same year, did languish, and languishing did live; on which said day of , in the year aforesaid, the said R. F., of the said mortal fracture did die: and so the jurors aforesaid, upon their oath aforesaid, do say, that the said R. F., in manner and by the means aforesaid, accidentally, casually and by misfortune, came to his death, and not otherwise. In witness, &c., (*finish with attestation as in Form No. 75*).

No. 100.

BY BEING BURNT.

(*Copy caption as in Form No. 74*), that the said R. F., on the day of in the year aforesaid, being alone in her room or apartment in a certain almshouse, situate at the of in the County aforesaid, it so happened as she the said R. F. was then there sitting by her fireside, that the woollen petticoat of her the said R. F., which she the said R. F. then had on her body, accidentally, casually and by misfortune, took fire, by means whereof and from the smoke arising from the said fire, the said R. F. was then suffocated and burnt, of which said suffocation and burning the said R. F. then instantly died: and so the jurors aforesaid, upon their oath aforesaid, do say that the said R. F., in manner and by the means aforesaid, accidentally, casually and by misfortune, came to her death, and not otherwise. In witness, &c., (*finish with attestation as in Form No. 75*).

No. 101.

BY BEING SUFFOCATED.

(*Copy caption as in Form No. 74*), that the said R. F., on the day of in the year aforesaid, being intoxicated with liquor, and laying himself down to sleep near unto a certain tile kiln then burning in a certain field, commonly called the brick field, situate at the of in the County aforesaid, it so happened that accidentally, casually and by misfortune, the said R. F., by the smoke and sulphurous smell arising from the fire in the said tile kiln, was there and then choked, suffocated and stifled, of which said choking, suffocation and stifling the said R. F. then instantly died: and so the jurors aforesaid, upon their oath aforesaid, do say that the said R. F., in manner and by the means aforesaid, accidentally, casually and by misfortune, came to his death, and not otherwise. In witness, &c., (*finish with attestation as in Form No. 75*).

No. 102.

OF A CHILD BY SUDDEN DELIVERY.

(*Copy caption as in Form No. 74*), that C. D., the mother of the said new-born male child, on the day of in the year aforesaid, the said male child did bring forth of her body alive suddenly and by surprise, and that the said new-born male child then died soon after its birth, in a natural way, and not from any violence, hurt or injury received from the said C. D., its mother, or any other person to the knowledge of the said jurors; nor had the said new-born male child any marks of violence appearing on his body. In witness, &c., (*finish with attestation as in Form No. 75*).

No. 103.

BY A DIFFICULT BIRTH AND HARD LABOUR.

(*Copy caption as in Form No. 74*), that the said R. F., on the day of in the year aforesaid, being big with a certain female child, afterwards, to wit, on the same day and year, after a violent and lingering pain and hard labour, with great difficulty did bring forth the said female child alive; and that the said R. F., from the said day of in the year aforesaid, until the day of the same month, in the same year, of the weakness and disorder occasioned by such violent and lingering pain, difficult birth and hard labour aforesaid, did languish, and languishing did live; on which said day of in the year aforesaid, the said R. F. of the weakness and disorder aforesaid, occasioned by the hard labour and difficult birth aforesaid, did die: and so the jurors aforesaid, upon their oath aforesaid, do say, that the said R. F., in manner and by the means aforesaid, came to her death, and not otherwise. In witness, &c., (*finish with attestation as in Form No. 75*).

No. 104.

STILL BORN.

(*Copy caption as in Form No. 74*), that the new-born female child was still born. In witness, &c., (*finish with attestation as in Form No. 75*).

No. 105.

STARVED.

(*Copy caption as in Form No. 74*), that the said R. F., on the day of in the year aforesaid, through the inclemency of the weather and the want of the common

necessaries of life, and by no violent ways or means whatsoever, to the knowledge of the said jurors, did die. In witness, &c., (*finish with attestation as in Form No. 75*).

No. 106.

NATURAL DEATH.

(*Copy caption as in Form No. 74*), that the said R. F., on the day of in the year aforesaid, and for a long time before, did labour and languish under a grievous disease of the body, to wit, an asthma, and on the said day of in the year aforesaid, the said R. F., by the visitation of God, in a natural way, of the disease and distemper aforesaid and not by any violent means whatsoever, to the knowledge of the said jurors, did die. In witness, &c., (*finish with attestation as in Form No. 75*).

No. 107.

FOUND DEAD.

(*Copy caption as in Form No. 74*), that the said R. F., on the day of in the year aforesaid, in a certain field, situate at the of in the *County* aforesaid, was found dead; and that the said R. F. had no marks of violence appearing on his body, but, by the visitation of God, in a natural way, and not by any violent means whatsoever, to the knowledge of the said jurors, did die. In witness, &c., (*finish with attestation as in Form No. 75*).

No. 108.

SUDDEN DEATH BY FITS.

(*Copy caption as in Form No. 74*), that the said R. F., on the day of in the year aforesaid, being a person liable and subject to violent fits, was for the benefit

of his health, gently riding on a certain gelding, in the King's common highway, called in the of in the *County* aforesaid; and being so riding as aforesaid, it so happened that the said R. F. was then suddenly seized with a fit, and by reason of the violence thereof the said R. F. then fell from the back of the said gelding to and against the ground in the said highway, and then instantly died; but had no marks of violence or bruises appearing on his body: and so the jurors aforesaid, upon their oath aforesaid, do say that the said R. F., by the violence of the fit aforesaid, and in the manner and by the means aforesaid, came by his death and not otherwise. In witness, &c., (*finish with attestation as in Form No. 75*).

No. 109.

BY EXCESSIVE DRINKING.

(*Copy caption as in Form No. 74*), that the said R. F., on the day of , in the year aforesaid, by excessive drinking, and not from any hurt, injury or violence done or committed to the said R. F., to the knowledge of the said jurors, did die. In witness, &c., (*finish with attestation as in Form No. 75*).

No. 110.

DEATH IN PRISON.

(*Copy caption as in Form No. 74*), that the said R. F., being a prisoner in the prison aforesaid, on day of in the year aforesaid, at the prison aforesaid, by the visitation of God, in a natural way, to wit, of a fever, and not otherwise, did die. In witness, &c., (*finish with attestation as in Form No. 75*).

No. 111.

BY HANGING IN EXECUTION OF SENTENCE OF DEATH.

(*Copy caption as in Form No. 74*), that the said R. F., being a prisoner confined in the common gaol for the *County* of , under legal sentence that he be hanged by the neck until he be dead, was, on day the day of A.D. 19 , within the walls of the said gaol, legally hanged by the neck until he was dead, in pursuance and in accordance with such sentence: and the jury aforesaid, upon their oath aforesaid, do say, that having enquired into the identity of the body, of which they have had a view, and upon which this inquest has been held, with that of the said prisoner R. F., so under sentence of death as aforesaid, they have ascertained the identity of the same, and that judgment of death was duly executed upon the said offender. And the jurors aforesaid, upon their oath aforesaid, do further say, that the said R. F., in manner and by the means aforesaid, came to his death, and not otherwise. In witness, &c., (*finish with attestation as in Form No. 75*).[1]

No. 112.

KILLED BY EXPLOSION OF BOILER OF STEAM ENGINE.

(*Copy caption as in Form No. 74*), that on the day of , in the year aforesaid, the said R. F., being on board of a certain steamboat called the then floating and being navigated on the water of the River , it so happened that accidentally, casually and by misfortune, a certain boiler containing water, and then forming part of a certain steam engine in and on board of the said steamboat and attached thereto, and which said

[1] This inquisition must be in duplicate, and one of the originals delivered to the Sheriff. See 55-56 V. c. 29, s. 944, Dom.

boiler was then used and employed in the working of the said steam engine, for the purpose of propelling the said steamboat along the said river, and was then heated by means of a fire, then also forming part of the said steam engine in the said steamboat, burst and exploded, by means whereof a large quantity, to wit, ten gallons of the boiling and scalding water and steam then being within the cavity of the said boiler, and a large quantity, to wit, one bushel of hot and burning cinders and coals forming part of the said fire, accidentally, casually and by misfortune, were cast, thrown and came from and out of the said boiler and steam engine with great force and violence upon and against the head, face and neck of him the said R. F., whereby he, the said R. F., then received in and upon his head, face and neck divers mortal burns and scalds, of which said mortal burns and scalds he, the said R. F., then instantly died: and so the jurors aforesaid, upon their oath aforesaid, do say, that the said R. F., in manner and by the means aforesaid, accidentally, casually and by misfortune, came to his death, and not otherwise. In witness, &c., (*finish with attestation as in Form No. 75*).

No. 113.

KILLED BY COLLISION ON A RAILWAY.

(*Copy caption as in Form No. 74*), that on the day of in the year aforesaid, a certain locomotive steam engine, numbered , with a certain tender attached thereto and worked therewith, and also with divers, to wit, ten carriages used for the conveyance of passengers for hire, on a certain railway called the Railway, and which said carriages respectively were then attached and fastened together and to the said tender, and were then

propelled by the said locomotive steam engine, were moving and travelling along the said railway towards the *town* of : and the jurors aforesaid, upon their oaths aforesaid, do further say, that whilst and during the time the said locomotive steam engine, tender and carriages, were so moving and travelling along the said railway as aforesaid, a certain other locomotive steam engine, numbered , with a certain other tender attached thereto and worked therewith, and also with divers, to wit, five other carriages used for the conveyance of passengers for hire, on the said railway, and which said last-mentioned carriages respectively were then attached and fastened together and to the said last-mentioned tender, and were then propelled by the said last-mentioned locomotive steam engine, and in one of which said last-mentioned carriages the said R. F. was then a passenger, and was then riding and being carried and conveyed therein, were then also moving and travelling along the said railway in a direction from the said *town* of , and towards the said first-mentioned locomotive steam engine, tender and carriages; and that the said first-mentioned locomotive steam engine, tender and carriages, and the secondly mentioned locomotive, steam engine, tender and carriages being then so respectively moving and travelling upon the said railway in different and opposite directions as aforesaid, then accidentally, casually and by misfortune, came into sudden, violent and forcible contact and collision; by means whereof the said R. F. then received divers mortal wounds, bruises and concussions, of which said mortal wounds, bruises and concussions he, the said R. F., then instantly died: and so the jurors aforesaid, upon their oath aforesaid, do say, that the said R. F., in manner and by the means aforesaid, accidentally, casually and by misfortune, came to his death, and not otherwise. In witness, &c., (*finish with attestation as in Form No. 75*).

No. 114.

RETURN OR CERTIFICATE OF DEATH FOR DIVISION REGISTRAR.

County of Division of [2]

Name and Surname of Deceased.	
Sex.	
Residence.	
Rank or Profession.	
Duration of Illness.	
Cause of Death.	

I hereby certify the foregoing to be a true and correct certificate of the cause of the death of the person (*or persons*) therein named.

Given under my hand this day of A.D. 19

.....

Coroner, County of

[2] Each city, town, incorporated village, township or union of townships, is a Registration Division, and the clerks of such municipalities are the Division Registrars. When any Registrar is not within any organized municipality, the Lieutenant-Governor in Council may appoint a Division Registrar for the same, and may make such rules and regulations as may be necessary to secure a correct record of the births, marriages and deaths occurring therein until the territory comprising the Registration Division, or some part thereof, either with or without other territory, becomes a municipality. See R. S. O. 1897, c. 44, ss. 9, 10.

FORMS RELATING TO FIRE INQUESTS.

No. 115.

REQUISITION TO HOLD A FIRE INQUEST.

To A. B., Esquire, one of the Coroners of the County of

I, the undersigned C. D., of the of in the *County* of (*occupation*) hereby require you to institute an inquiry into the cause or origin of the fire which wholly (*or* partly *as the case may be*) consumed the shop (*or* dwelling *or other buildings*) situated upon lot No. on the side of street in the of in the *County* of (*or as the case may be*) on the day of A.D. 19 . And to ascertain whether the said fire was kindled by design, or was the result of negligence or accident*; and I undertake and agree to pay the expenses of and attending such investigation.[3]

Dated at this day of A.D. 19 .

C. D.

No. 116.

REQUISITION OF A MUNICIPAL CORPORATION TO HOLD A FIRE INVESTIGATION.

To A. B., Esquire, one of the Coroners of the *County* of in the Province of *Ontario*.

The Corporation of the of in the *County* of and Province of *Ontario*, and the undersigned Mayor

[3] If a jury is required, the requisition must be from an agent of an insurance company, or three householders in the vicinity of the fire, and a clause must be added to the above form where marked with an * as follows: "And you are required to proceed in the said investigation with the assistance of a jury."

And if the requisition is intended to charge a municipality with the expense of the investigation, it must be under the hands and seals of the Mayor or other head officer of the municipality, and of at least two other members of the council thereof.

On the back of the requisition, a short affidavit should in all cases be endorsed, stating that the deponent has reason to believe that the fire referred to was the result of culpable or negligent conduct or design, or occurred under such circumstances as in the interests of justice, and for the due protection of property, require an investigation, as the case may be. See form No. 117.

and two councillors thereof, hereby require you to institute an inquiry into the cause or origin of the late fire which wholly (or *partly*) consumed the shop (or *dwelling or other buiding*) situated upon lot No. on the side of street in the of in the said *County* (or *as the case may be*) on the day of A.D. 19 , and to ascertain whether the said fire was kindled by design, or was the result of negligence or accident. And the said corporation undertakes and agrees to pay the expenses of and attending such investigation, there being strong special and public reasons for granting this requisition.

In witness whereof the Mayor (or *other head officer of the municipality*), and two other members of the council of the said municipal corporation have hereunto set their hands and seals and the seal of the said corporation, in pursuance of the statute in that behalf this day of A.D. 19 .

C. D., [Seal]
Mayor.

[Seal of Corporation] E. F., [Seal]
Councillor.

G. H., [Seal]
Councillor.

Endorse the affidavit (*Form No. 117*) *on the back of this requisition.*

No. 117.

AFFIDAVIT TO BE ENDORSED ON REQUISITION FOR A FIRE INQUEST.

Canada, Province of *Ontario*, County of *Simcoe*, To wit: } I, C. D., of the of in the County of *Simcoe* and Province of Ontario, *occupation*, make oath and say:—

1. That a fire wholly (*or partly*) consumed a shop (*or dwelling or other building*) situated upon Lot No.

on the side of street, in the of in the said *County*, on the day of A.D. 19 .

2. That I have reason to believe the said fire was the result of culpable or negligent conduct or design, or occurred under such circumstances as in the interests of justice and for the due protection of property require investigation.

3. And my reason for so believing is, (*here state any reason the deponent may be able to give for his belief*).

Sworn before me at the of in the *County* of this day of , A.D. 19 ,
A. B.
Coroner.

C. D.

No. 118.

CERTIFICATE THAT ADJOURNMENT OF A FIRE INQUEST WAS NECESSARY.

Canada, Province of *Ontario*, County of *Simcoe*.

I, A. B., of the of in the County of *Simcoe*, one of the Coroners of the said County, hereby certify that during the investigation held by me as to the origin of the fire which took place on the day of A.D. 19 , by which the shop, (*dwelling or other building*) situated upon Lot No. on the side of street, in the of in the said *County*, was wholly (*or partly*) consumed by fire, it became necessary to adjourn the said inquiry from the day of A.D. 19 , to the day of A.D. 19 , (*if more than one adjournment give the dates of the others*) and such adjournment was made, and was necessary

in my opinion for the following purpose (*here state the purpose*).

Certified under my hand this day of A.D. 19 .

A. B.

Coroner.

No. 119.

THE CAPTION, OR INCIPITUR, OF A FIRE INQUISITION.

Canada, Province of Ontario, *County* of To wit:

An inquisition taken for our Sovereign Lord the King, at the house of A. B., known by the sign of situate in the of in the *County* of on the day of in the year of the reign of our Sovereign Lord Edward[4] before C. D., Esquire, one of the Coroners of our said Lord the King for the said *County*, to inquire into the cause or origin of a certain fire which occurred in the said of on the day of A.D. 19 , in the said year of the reign of our Sovereign Lord Edward, at or about the hour of o'clock (*noon or in the forenoon or afternoon as the case may be*), whereby the house (*or other building*) of A. B., &c., situate upon Lot No. on the side of street in the said of (*or upon Lot No. in the concession of the township of in the said County of as the case may be*) was wholly (*or in part*) consumed, upon the oath (*or* oath and affirmation) of (*naming all the jurors sworn*), good and lawful men of the said duly chosen from among the householders resident in the vicinity of the said fire; and who, being then and there duly sworn and charged to inquire, for our said Lord the King, into the cause or origin of said fire,

[4] See note 1. to Form No. 58.

and whether it was kindled by design or was the result of negligence or accident, do upon their oaths say that, &c., (*then follows the verdict or finding of the jury, and after that the attestation or closing part of the inquisition. See Form No. 75*).

N. B.—Any other forms required in relation to fire inquests can be adapted from the corresponding forms relating to ordinary inquests.

No. 120.

INQUISITION FOR CONCEALING TREASURE TROVE.

Court of Criminal Appeal, Nov. 14th, 1863 (*a*).

Inquisition for concealing the finding of treasure trove from the Crown. It is not necessary to aver that the prisoner concealed it fraudulently. The words "unlawfully, wilfully and knowingly," are sufficient.

COPY OF INQUISITION.

Rape, of Hastings, Sussex } An inquisition taken for
To wit: } our Sovereign Lady the Queen, at the dwelling-house of Richard Thompson, known by the name of the John's-cross Inn, in the parish of Mountfield, in the Rape of Hastings, in the County of Sussex, on the 27th of March, 1863, before me, Nathaniel Pochell Kill, gentleman, Coroner for the said Rape, by virtue of my said office, and of the statute in that case made and provided, upon the oaths of Isaac Manington [&c., naming all the jurors] the several persons whose names are hereunder written and seals affixed, good and lawful men of the said Rape duly chosen, and hereby assembled before me at the time and place aforesaid, and now here duly sworn and charged to inquire on the part of and for our Sovereign Lady the Queen, of and concerning certain treasure lately found in the earth and soil of and in a certain field situate and being in the said parish

(*a*) *Reg.* v. *Thomas and Willett*, 9 Cox C. C. 376

of Mountfield, and in the occupation of one Thomas Adams, of the said parish of Mountfield, farmer; and they the said jurors, being duly sworn and charged, upon their oath aforesaid, to inquire on the part of our said Lady the Queen of and concerning the said treasure as aforesaid, and having heard evidence upon oath produced to them, do, on their oath aforesaid, say, that on the 12th January, 1863, William Butchers of the said parish of Mountfield, labourer, being employed by the said Thomas Adams in ploughing in the said field, did then and there find deposited, hidden and concealed in and under the earth and soil of the said field, in the parish of Mountfield aforesaid, in the Rape aforesaid, certain pieces of old gold of the weight of eleven pounds, or thereabouts, and of the value of £530, and upwards, sterling, of current moneys of this realm, and which said pieces of gold were of ancient times deposited, hidden and concealed as aforesaid, and that the owner or owners thereof cannot now be found. And the jurors aforesaid, upon their oath aforesaid, do further say that the said several pieces of old gold so deposited, hidden, concealed, and found as aforesaid, before and at the time of so finding the same as aforesaid, were, and from thence hitherto have been, and still are, the gold, money and property of our said Lady the Queen; and the jurors aforesaid upon their oath aforesaid, do further say that the said William Butchers and Silas Thomas, of the said Parish of Mountfield, bricklayer, and Stephen Willett, of the town and port of Hastings, cab proprietor, from the time of the said finding until and at the time of taking of this inquisition at the said parish of Mountfield, in the said Rape of Hastings, in the said County of Sussex, concealed the said finding of the said several pieces of old gold from me the said Coroner, and from our said Lady the Queen, and did not make known the said finding to any person or persons whomsoever lawfully authorized or empowered to receive

the said old gold, or the information respecting the finding thereof, on behalf of our said Lady the Queen. And the said jurors do further say that the said William Butchers and Silas Thomas are now respectively in full life, and living in the said parish of Mountfield, in the said Rape of Hastings, and that the said Stephen Willett is also now in full life, and living at the town and port of Hastings aforesaid.

In witness, &c.[5]

No. 121.

INDICTMENT FOR CONCEALING TREASURE TROVE.

Court of Criminal Appeal.[6]

Indictment for concealing the finding of treasure trove from the Crown. It is not necessary to aver that the prisoner concealed it fraudulently. The words "unlawfully, wilfully and knowingly," are sufficient.

COPY OF INDICTMENT IN ABOVE CASE.

Sussex, } The jurors of our Lady the Queen
To wit: } upon their oath present, that heretofore and before the committing of the offence hereafter mentioned, to wit, on the 12th day of January, A.D. 1863, one William Butchers, labourer in the employ of one Thomas Adams, farmer of the parish of Mountfield, in the County

[5] Brammwell, B., on the prisoner's being found guilty discharged them on bail to appear and receive judgment if necessary, and reserved for the opinion of the Court of Criminal Appeal two questions:—

1. Whether the indictment and inquisition or either is sufficient in law?

2. Whether the evidence as to the prisoners or either was sufficient to justify the verdict.

The conviction was affirmed, the Court of Appeal holding that both prisoners were guilty, and that it was not necessary to aver in the indictment a "fraudulent concealment"—the expression "unlawfully" being sufficient.

[6] *Reg.* v. *Thomas and Willett*, 9 Cox C. C. 376.

of Sussex, while he the said William Butchers, was ploughing in a certain field in the occupation of the said Thomas Adams, at the parish aforesaid, in the County aforesaid, did find hidden in and under the ground and soil of the said field certain treasure of gold of the value of £500, and upwards, of lawful money of Great Britain, and which said treasure was of ancient time hidden as aforesaid, and the owner thereof at the time when the same was so hidden as aforesaid cannot now be found. And the jurors aforesaid, upon their oath aforesaid, do further present that our Lady the Queen, in right of her Royal crown, and by virtue of her Prerogative Royal, is, and at the time of the said finding was, entitled to the said treasure so found as aforesaid. And the jurors aforesaid upon their oath aforesaid, do further present that Silas Thomas, of the parish aforesaid, in the county aforesaid, labourer, and Stephen Willett, of the parish of Ore, in the County aforesaid, labourer, from the said 12th day of January in the year aforesaid, to the time of taking this inquisition did unlawfully, wilfully and knowingly conceal the finding of the said treasure from the knowledge of our Lady the Queen, against the peace of our said Lady the Queen, her crown and dignity.

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ADDENDA.

No. 15a.

DECLARATION OF CORONER UNDER OATH WHERE INQUEST IS NOT NECESSARY.

Canada
Province of
County of
To wit

I of the of in the of and Province of , a coroner in and for the said county, do hereby declare under oath that from information received by me, I was of the opinion that there was reason for believing deceased did not come to *his* death from natural causes, or from mere accident or mischance, but from violence or unfair means or culpable or negligent conduct of others, under circumstances requiring investigation by a coroner's inquest; but after viewing the body of the said deceased, and having made such further inquiries as I deemed necessary, and finding the said , was not a prisoner at the time of *his* death, I have come to the conclusion that an inquest is unnecessary, the said deceased having in my judgment come to *his* death from , and I have in consequence issued my warrant to bury the body of the said [1] and have withdrawn my warrant for holding of an inquest on the said body.

Sworn before me at the of in the County of this day of , A.D. 19 .

A Commissioner, &c., for the County of .[2]

[1] This statement should be omitted if no warrant for an inquest was issued.

[2] This declaration can be sworn before a Commissioner, or J. P., or Notary Public.

No. 23a.

FORM OF COMMITMENT IN NEW BRUNSWICK FOR NON-PAYMENT OF A FINE, ETC.

To any constable of the parish of and also the keeper of the gaol of the County of , to wit:—

Whereas, I heretofore issued my summons under my hand directed to G. H., requiring his personal appearance before me, a coroner for the said County of , at the time and place therein mentioned, to give evidence and be examined on His Majesty's behalf touching the death of X. Y., of the personal service of which said summons, oath hath been duly made before me; and whereas the said G. H. having neglected and refused to appear pursuant to the contents of said summons, I therefore afterwards issued my warrant, under my hand and seal, in order that the said G. H. by virtue thereof, might be apprehended and brought before me, and hath been duly required to give evidence and be examined before me and my inquest, on His Majesty's behalf, touching the death of X. Y.; yet the said G. H. notwithstanding hath wilfully and absolutely refused, and still doth wilfully and absolutely refuse, to give evidence and be examined touching the premises, or to give sufficient reason for his refusal, in wilful and open violence and delay of justice; and whereas, I, the said coroner, for such contempt did impose upon the said G. H. a fine to the amount of dollars, the same to be paid within days; and whereas the said G. H. hath neglected and refused, and still doth neglect and refuse, to pay the said fine, or to purge his said contempt; These are therefore, by virtue of my office, in His Majesty's name, to charge and command you, or one of you, the said constables in and for the said County of , forthwith to take the body of the said G. H., and convey the same to the gaol of the County of , and safely to deliver the same to the keeper of the said gaol there; And

these are likewise by virtue of my said office, in His Majesty's name, to require you, the said keeper, to receive the body of the said G. H. into your custody, and him safely keep for days[1], until he shall have paid the said fine, [*If committed for refusing to give evidence under sub-section (2) of section 10, say:—until he shall consent to give his evidence and be examined before me and my inquest, on His Majesty's behalf, touching the death of the said X.Y.*], together with the costs of this commitment, and two dollars for the execution hereof, or until he shall be discharged from thence by due course of law; and for so doing this is your warrant. Given under my hand and seal, this day of A. D., 19 .

A. B. Coroner. [L.S.]

N. B.—When a juror or a witness is to be committed for any reason other than that given above, the introductory and other parts of the form are to be varied to suit the facts.

No. 26b.

OATH OF JURYMEN IN BRITISH COLUMBIA.

You shall diligently inquire touching the death of upon whose body an inquest is about to be held, and a true verdict give according to the evidence. So help you God.

No. 36a.

(*h*) *Affirmation of a Quaker, Mennonist, Tunker or Unitas Fratrum*, or other person allowed by law to affirm:—

I, A. B., do solemnly, sincerely and truly declare and affirm that I am one of the society called Quakers, [*or as*

[1] A term not to exceed 14 days.

the case may be. Here the witness repeats his name and continues] I, A. B., do solemnly, sincerely and truly declare and affirm that the evidence I shall give to this inquest touching the death of shall be the truth, the whole truth and nothing but the truth. So help me God.

Add to note 1, p. 488, after "and M. 248," the following:—There appears to be more than one form of oath binding on the conscience of a Chinaman, for at a trial in Canada between two Chinamen it was reported the witnesses were all sworn after each one had cut off the head of a chicken in the yard of the Court House. As China is a large country there may be different forms of oath in use there, so a Chinese witness had better be asked what form of oath he considers most binding on his conscience, and let him be sworn accordingly, unless there is any suspicion that he selects a form he considers not to be binding upon him, on purpose to save his conscience in stating what he knows to be untrue. At a trial in Ontario a case was reported where the plaintiff offered in open court to abide by the evidence of the opposite party and his Chinese witnesses, and not offer any evidence on his own behalf, if they would take the Chinese oath; but this the Chinese defendant refused, as he claimed to be a Christian and insisted on being sworn on the English Bible.

Substitute this for (*c*) p. 487 and withdraw the note No. 9:

Affirmation of a person who objects on conscientious grounds to take an oath.

I solemnly promise, affirm and declare that the evidence given by me to this inquest shall be the truth, the whole truth and nothing but the truth.[9]

[9] R. S. O. 1897, c. 73, s. 14.

Since the manuscript of the 4th edition of this work was prepared, there have been two alterations and additions in the law respecting inquests and coroners [made by some of the Provinces], and in the fees allowed. These will be found set out as follows:

In *Ontario*, by an Act to amend the Act respecting Coroners (R. S. O. c. 97), dated 1905, it is made the duty of the council in every city and town in Ontario to provide a court room for the holding of inquests, and until some other court room is set aside for that purpose, inquests shall be held in the police court room of the municipality, but at such times as shall not interfere with the use of such court room for the holding of the police court.

In *Nova Scotia*, R. S. 1900, c. 36, was amended in 1905, c. 32, by striking out the words "which shall include any charge for a *post mortem* examination if such is made," in section 9, s.-s. 2, and by adding to that section the following sub-section:—3. Such practitioner, if he shall make a *post mortem* examination, shall be entitled to receive from the municipal treasurer a further sum of $5 for such examination, upon a certificate from the coroner by whom the inquest is held, that such examination has been made by a direction of the majority of the jury.

In *New Brunswick* a fee of $4, to be paid by the council, is allowed the coroner under the Consolidated Statutes of 1903, c. 124, for viewing the body, where an inquest is not held. This fee is to be paid by the council. And by section 29, if the council should be of opinion that the inquest, or view, is unnecessary, payment of the fee may be refused except on the certificate of the Attorney-General. In *New Brunswick* an interpreter is entitled to $1 per diem and mileage, the same as are allowed to constables in that Province. The fee of $8 allowed the coroner in this Province includes taking and returning an inquisition, recognizance,

swearing jurors and witnesses, binding over witnesses and issuing all subpoenas, warrants, etc.

In *Manitoba* a circular from the Department of the Attorney-General for that Province, dated Winnipeg, June, 1905, was addressed to the coroners thereof in the words following:—

To the Coroners of the Province:

Gentlemen,—The experience of this Department has shown that, whilst many of the coroners are thoroughly familiar with their duties as such, there are some who are not aware of all the points covered by the following instructions and suggestions:

1. Every coroner should make himself thoroughly familiar with "The Coroners' Act," chapter 37, R. S. M. 1902, a copy of which is sent herewith.

2. Below find new tariff of coroners' fees fixed by Order-in-Council under said Act in effect May, 1905.

(1) Necessary travelling to investigate sudden death, or to hold inquest, per mile each way	$0 20
Or if conveyance hired or railway used, actual cost, and per mile each way	10
(2) Making investigation into cause of death, and making and keeping, in a proper book with index, record of particulars of case, including name, cause of death, description of person, clothing and property found on deceased, and report to Department of Attorney-General..	10 00
(3) Making affidavit of necessity for inquest or procuring direction to hold	1 00
(4) Precept to summon jury and attending officer	1 00
(5) Empanelling a jury	1 00
(6) Summons for each witness	25
(7) Taking examination of each witness.....	50

(8) Taking recognizance of jury on adjournment	$0 50
(9) Recognizance of witnesses (all)	50
(10) Taking inquisition and making return	5 00
If over two hours, per hour	2 00
(11) Warrant of arrest when necessary	1 00
(12) For *post mortem* examination if actually necessary and actually made, and record of same	10 00

Your very special attention is called to the wording of item 2 of above tariff, under which every coroner, to entitle himself to the fee mentioned, must provide himself with the record book mentioned, and faithfully enter in it all such particulars as the item specifies. If a claim is made for a fee under item 12 of the tariff, a record of the results of the *post mortem* should be first made in the same record book for future reference when necessary.

3. In every case of sudden death, from whatever cause, reported to a coroner as occurring in his district, a careful investigation should be made and the result reported to this Department. It is not necessary or desirable that a coroner should first get instructions from this Department to make such investigation.

4. If a coroner proceeds to hold an inquest without making the affidavit mentioned in section 4 of the said Act, except in the cases provided for in section 5, no fees can be paid him by this Department in respect of such inquest.

5. It is recommended that every coroner should procure a copy of some work on the office, such as "Boys on Coroners," which can be got from The Carswell Company, or The Canada Law Book Company, both of Toronto.

6. In every case in which murder or manslaughter is charged or suspected, a careful and thorough post-mortem examination of the body should be made, so as to ascertain definitely the cause of the death, and in order that clear proof

may be forthcoming that there was no other cause of the death than the wound or injury or poisoning inflicted or done by the accused person. If this is neglected a serious miscarriage of justice may follow. See, as to this point, Taylor's "Medical Jurisprudence," fourth ed., p. 509.

Cases of Suspected Poisoning.

The following suggestions have been furnished by the late Official Analyst to the Government:

1. *Adjourned Inquests.*—It is useless to adjourn an inquest for two or three days for an analysis to be made. The analysis of a stomach may take a month or more.

2. *Information Supplied to Analyst.*—Since certain poisons may become decomposed by the formation of the putrefaction products of the tissues, it is desirable to finish the analysis as early as possible. All information which may assist the analyst in arriving at a speedy conclusion, by testing first for those poisons most likely to be present, should therefore be sent. Symptoms should be fully described, and any suspicious circumstances mentioned. Where possible, the drinking vessel last used should be sent to the analyst, also any medicine bottles which may be found.

3. *Disinterments.*—The embalming fluids employed by undertakers often contain arsenic. Samples of the liquids used in laying out the body should therefore be sent with the viscera.

4. *Parts of the Body Required for Analysis.*—For various reasons, in many cases of poisoning, the poison will not be found in the stomach. Speaking generally, the liver, as representing one of the most vascular organs, should be sent with the stomach.

5. *Packing Samples for Shipment.*—Viscera should not be placed in alcohol or methylated spirits, and no iodoform,

formaline or other disinfectant should be mixed with articles for analysis. Wide-mouthed half-gallon bottles, with glass stoppers, fitting tight with rings of cork, are usually obtainable, and are perhaps best suited for sending samples in. (Those with metal lids are not liquid-tight, and are liable to contaminate the contents with tin, etc.) Glass fruit-jars may also be used for the purpose.

6. *Containers should be Washed.*—The person packing the viscera should be prepared to state that all vessels enclosing the samples were washed out immediately before the samples were placed in them for shipment.

7. *Sealing.*—All vessels containing samples for analysis must be sealed in such a way that they cannot be opened without breaking the seal. A copy of the seal may be sent to the analyst for comparison in aiding identification before the Courts, but in every case the wrapper should be marked and signed in such a way that the person who sent the sealed package may be able afterwards to positively identify the wrapper, and if this and the sealing are properly done, the package may be sent by express.

8. When these matters are not carefully attended to there is the possibility of some of the contents being removed or tampered with or others substituted during the transit, and then the evidence of the analyst at a trial will be useless for want of strict proof of the identity of what he examined with the articles packed up by the coroner.

(Sgd.) GEORGE PATTERSON,
Deputy Attorney-General.

This circular from the Department of the Attorney-General for Manitoba is given in full, as various parts of it may be of general use to coroners elsewhere than in Manitoba. It should be read by coroners and medical witnesses in connection with what is stated on pages 353 to 376 of the main work, 4th edition.