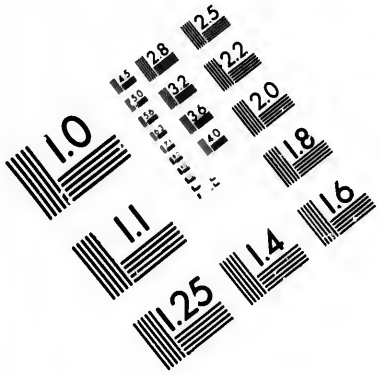

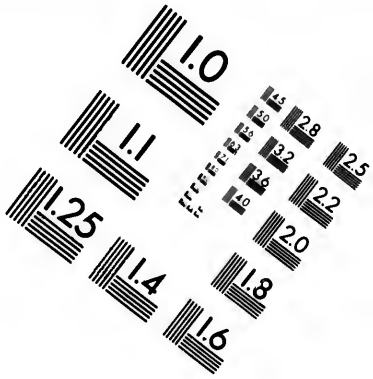

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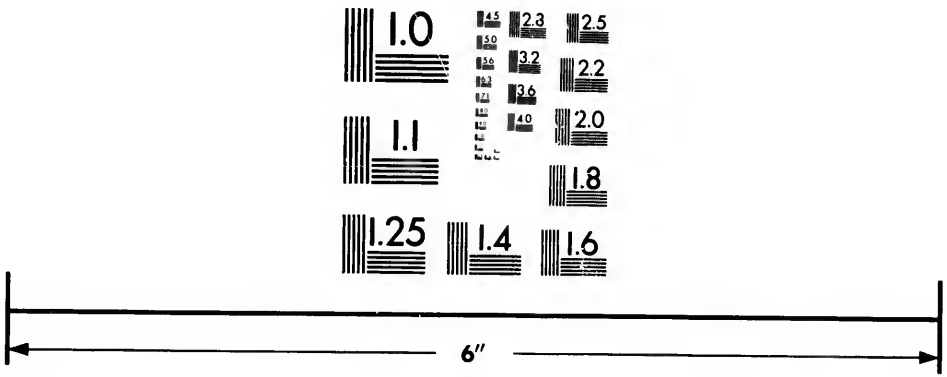

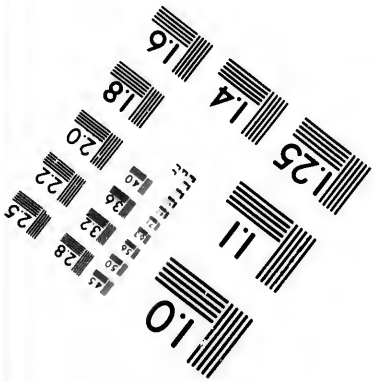

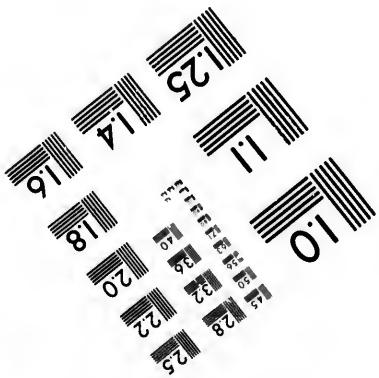

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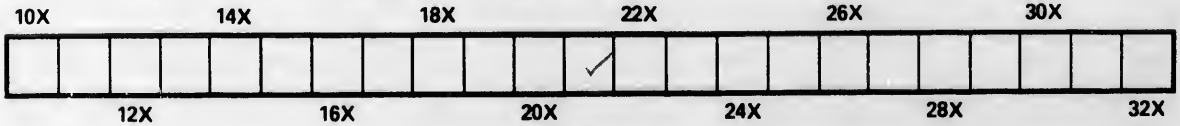

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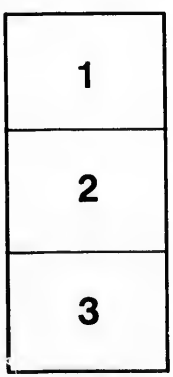

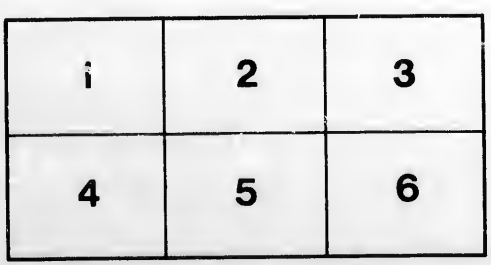

A PRACTICAL TREATISE

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.

THIRD EDITION.

BY

WILLIAM FULLER ALVES BOYS, LL.B.,

JUNIOR COUNTY COURT JUDGE,
COUNTY OF SIMCOE, ONTARIO.

TORONTO:
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To

THE HONOURABLE JAMES ROBERT GOWAN, C.M.G., D.C.L.,

SENATOR OF THE DOMINION OF CANADA,

To Whom in 1864,

WAS DEDICATED THE FIRST EDITION OF THIS WORK,

I NOW,

After the lapse of Twenty-nine years, dedicate this Third Edition, the last in all probability, that will be published,

IN ACKNOWLEDGMENT

OF A LONG, UNINTERRUPTED AND VALUED

FRIENDSHIP,

During which I have been the recipient, at his hands, of many kindnesses, and among which was the original suggestion to me of preparing

A WORK ON THE OFFICE OF CORONERS.

Wm. BOYS.

PREFACE TO THE THIRD EDITION.

CHANGES in the law, and the exhaustion of the previous editions of this work, have made a third edition necessary. The former editions were intended for use in the Province of Ontario only, but this one is adapted to all the Provinces and Territories of the Dominion of Canada, and to the Colony of Newfoundland. The Coroners' law in all these places has been brought down to the present time, and it is hoped the work will be found as reliable and useful in its extended field, as apparently it has hitherto been so found in the Province of Ontario.

Upon the suggestion of a Coroner, a new chapter has been added containing a programme of the ordinary proceedings at an inquest in consecutive order, with many of the forms required as the inquest proceeds, printed in their proper places, and the others referred to by their numbers in the appendix. With the chapter open before him while holding an inquest, no Coroner need ever be at a loss to know what next to do, and it is believed this programme will be found a convenient and valuable addition to the book.

The general arrangement, and much of the text, as in the former editions is taken from the well known English work on the same subject by the late Chief Justice Jervis; and the medico-legal portions have been largely taken *verbatim et literatim* from the authors referred to in the notes.

When using this edition outside of Ontario, the reader must refer to the end of each section to see if there are

any statutory alterations of the law applicable to the particular place he is interested in; and he 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.

No general list of cases is given, but the principal cases referred to will be found in the index.

I desire to express my appreciation of the valuable assistance I received in the preparation of this edition from my nephew George B. Nicol, Barrister-at law, and my son W. Alves Boys, Barrister-at-law, by their making numerous extracts for me from books in Osgoode Hall: and also from my nephew Douglas M. Stewart, student-at-law, by important help given to me in reading the printers' proof sheets.

BARRIE, 1893. W. B.

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ADDENDA ET CORRIGENDA.

At the end of note 1, page 11, change 573 to 513.

In line 12, from the top of p. 24, change page 13 to p. 12.

Page 27, note 3, should read, see Chap. XIV. s. 2.

Add to note 3. p. 36,—but see *Rex* v. *Dolby*, cited Umf. 144.

Add to note 3, p. 38,—but see 48 Geo. III. c. 13, s. 5, referred to on p. 36.

At the end of note 1, page 110, add,—But see *Reg.* v, *Dudley and Stephens*, L. R. 14 Q. B. D. 273, 560; and *Arp* v. *The State*, Alabama Supt. Court.

Add to the paragraph on p. 144, commencing "Poison of snakes," the following:—In Venezuela, where poisonous snakes are common, it is said that a plant called the *ocumillo*, when powdered and applied to the bite of a snake will effect a cure in almost all cases.

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 at the end of each section.

CHAPTER I.

OF THE OFFICE AND APPOINTMENT OF CORONERS.

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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.[1]

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.[2]

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.[3]

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 power 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

[1] Jer. O. C. 3; Impey, O. C. 473.
[2] Jer. O. C. 2.
[3] 4 Inst. 271; 2 Hale's P. C. 53.

could aspire to its attainment,[1] 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 her Majesty, and possessing the amount of education and mental ability necessary for the proper discharge of the duties.[2]

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 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.[3] 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.[4] And a stipendiary magistrate for any terri-

[1] 3 Ed. I. c. 10.

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

[3] R. S. O. c. 71, s. 8.

[4] 54 V. c. 37, s. 1, Ont.

torial or temporary judicial district in Ontario may be a coroner for the district.[1]

Before acting as coroner, the oath of allegiance and the oath of office should be taken,[2] since holding an inquest without taking these oaths would subject the coroner to a penalty, although his acts would probably be legal.

In *Quebec.*—No coroner in the districts of Quebec and Montreal can be a justice of the peace for the district wherein he is coroner during the time that he exercises his office.[3]

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.[4]

In *Prince Edward Island*, coroners must reside in their respective counties.[5] 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

[1] R. S. O. c. 71, s. 8.
[2] *See* Forms, Nos. 2 & 4.
[3] R. S. Q., 1888, Art. 2560.
[4] R. S. N. S. c. 8, s. 24.
[5] See Act 1855, P. E. I.

coroner a certificate under his hand, that the oaths were duly taken before him, and this certificate must be filed in the office of the provincial secretary before the coroner enters upon the duties of his office.[1]

In *British Columbia*, a coroner, before acting in his office, should take the oath of allegiance,[2] and the oath of office,[3] either before persons appointed by the Lieut.-Governor in Council for the purpose, or before a stipendiary magistrate, or justice of the peace. No fee is payable 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.[4]

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.[5]

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

[1] 39 V. c. 14, ss. 1, 2, 3 P. E. I.
[2] See Form No. 3.
[3] See Form No. 5.
[4] R. S. B. C. 1888, c. 24, ss. 3, 4.
[5] R. S. M. c. 93, s. 8.

other judges of the High Court who are said to be sovereign coroners, and have jurisdiction in all parts of the realm.[1] But in Ontario coroners must be specially appointed by the Lieut.-Governor by commission under the Great Seal;[2] 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, temporary judicial, or territorial district, or provisional county, or for any portions of the territory of Ontario not attached to a county for ordinary municipal and judicial purposes.[3] 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.[4]

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

[1] 2 Hale, 53.

[2] 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.

[3] R. S. O. c. 80, s. 1.

[4] R. S. O. c. 184, s. 46.

the locality, and possibly in part by the energy shown by those seeking the office.

In *Ontario*, "provincial coroners," for purposes of holding fire investigations, are appointed by the Lieut.-Governor in Council under the Great Seal.[1] As to these coroners, see further at p. 29.

The coroner, according to the definition at common law, is an officer of the king that hath cognizance of some pleas of the crown;[2] but there are several duties imposed by statute. The tenure of office is during the Queen's pleasure and the coroner's residence within the province;[3] 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, crownside, are coroners in and throughout the province.

In *Nova Scotia*, coroners are appointed 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.[4]

In this province coroners are sworn into office before a judge of the Supreme Court, or the warden of the county.[5]

In *New Brunswick*, under 54 V. c. 63, the Lieut.-Governor in Council may, from time to time, appoint such and so many coroners for the

[1] 54 V. c. 37, s. 1, Ont.

[2] Their power in proceeding to trial and indictment was taken away by *Magna Charta*, c. 17.

[3] See the Commission Form, No. 1.

[4] R. S. Nova Scotia, 5th series, 1884, c. 17, ss. 1, 7.

[5] *Id.*, s. 1.

city and county of St. John as may be deemed expedient, but not exceeding three such coroners resident in the city, and one resident in each parish.

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. 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.

In *British Columbia*, the Lieut.-Governor in Council, from time to time, appoints the 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-

[1] 39 V. c. 17, s. 4. P. E. I.

[2] R. S. B. C. 1888, c. 24, s. 2.

[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.

commissioner of the mounted police, are also *ex officio* coroners for the territories.[1]

In *Keewatin*, the Lieut.-Governor, who is the Lieut.-Governor of Manitoba for the time being, appoints the coroners for the district.[2]

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.[3]

By C. S. O. c. 71, 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.

[1] R. S. Can. c. 50, s. 82.
[2] R. S. Can. c. 53, ss. 7, 23.
[3] R. S. O. c. 80, s. 1.

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.[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]

In Ontario by R. S. O. c. 71, 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

[1] See Part II.
[2] Impey O. C. 473; 14 Ed. 1.
[3] Jer. O. C. 71.
[4] 1 Bac. Abr. 491; 2 Hawk. P. C. c. 28, s. 5.
[5] 32 U. C. Q. B. 569.

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.[1] This Act appears to authorize the creation of a new class of coroners for fire investigations only, but it does not interfere with the powers of the ordinary coroners in regard to similar enquiries.[2]

SEC. 2.—IN INQUESTS OF DEATH.

When it is made to appear to any coroner in Ontario that there is reason to believe a deceased person came to his death from violent or unfair means, or by culpable or negligent conduct, either of himself or of others,[3] under such circumstances as require investigation by a coroner's inquest *and not through mere accident or mischance*, or upon

[1] See C. S. C. c. 100, s. 17; *Davis* v. *The Justices of Pembrokeshire*, L. R. 7 Q. B. D. 573.

[2] See s. 3.

[3] In s. 4 of R. S. O. c. 80, the words "either of himself or" are left out, so that in cases of death from the culpable or negligent conduct *of the deceased* calling for an inquest to be held, the request for the inquest of the county attorney, had better be obtained, or no claim to any fees can be made notwithstanding the inquest in such cases is sanctioned by s. 2 of the Act.

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. This is the language of the R. S. of Ontario, c. 80, ss. 2 & 3, 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[1] 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

[1] See form No. 14.

crown attorney, or in the districts of Muskoka, Parry Sound, Rainy River and Nippissing, upon the written request of a stipendiary magistrate, or the inquest is held on the body of a prisoner.[1] The language of Chief Justice Jervis is very appropriate to the subject. He 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."[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]

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 East, 229, when the court

[1] R. S. O. c. 80, ss. 3, 4.

[2] 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."

[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.

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.[1]

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.[2]

Let it be borne in mind, then, that no inquest is now justifiable unless the deceased person came to his death from *violence*,[3] or *unfair means*,[4] or by *culpable*[5] or *negligent conduct*,[6] either of himself or 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,

[1] *Davidson* v. *The Quarter Sessions of Waterloo*, 22 U. C. Q. B. 405.

[2] *In re Fergus and Cooley*, 18 U. C. Rep. 341.

[3] 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 appeared to require investigation, an inquest might properly be held.

[4] See the previous note.

[5] See note 3, page 14.

[6] See note 3, page 14.

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 lunatic 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, must, *within forty-eight hours* after the death, be sent by the proprietor or superintendent to the nearest coroner.[1]

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.

The statute of the Province of Ontario, above referred to, requires 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,[2] 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

[1] R. S. O. c. 246, s. 44; see forms Nos. 12 & 13.

[2] See R. S. C. c. 182, s. 65.

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.

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 incase 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 the certificate that there is no ground for holding an inquest.[1] Inquests in these cases appear to be exceptions to the general rule in *Ontario*, which, under section 4 of R. S. O. c. 80, 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 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 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.[2]

The coroner being a judicial officer when holding inquests must, in Canada, act in person, and not by deputy.[3]

In what manner coroners should require the facts justifying inquests to be evidenced before

[1] R. S. O. c. 209, ss. 128.

[2] 55-56 V. c. 29, s. 944, Dom.

[3] Wood's Inst. 64, c. 1; *Rex* v. *Farrand*, 3 B. & A. 230; 1 Chit. 745.

they proceed to hold them, must generally depend upon the circumstances of each case. By analogy to other legal proceedings, the information should be on oath, and the Government in Ontario will not now pay accounts for inquests unless they are accompanied by the information on oath mentioned on p. 12. For the form of the information, see Form No. 14.

The inquiry can only be taken upon view of the body *(super visum corporis)* and must be restricted to the cause of death of the person upon whom the inquest is taken.

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 enquiry, if one is necessary, to the magistrates. 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.[1] It is usually supposed that in an ordinary grave, a body will become skeletonized in about ten years.[2] Yet the skeleton alone might afford very material evidence in some cases.

The inquest and inquisition being judicial acts they must not be done in Ontario on a Sunday.[3]

Where there are several coroners for the same place, an inquest may be taken by one or more; but when one proceeds in the matter, the acts of others will be void.[4]

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.[5]

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.[6]

If an inquest ought to be held, it is a misdemeanor for any one so to dispose of the body as to prevent the coroner from holding the inquest.[7]

One inquisition may be taken on the bodies of several persons killed by the same cause and dying

[1] 2 Lev. 140; and see c. 5, s. 1, and c. 12, s. 1.

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

[3] 7 Co. 666; *Dakins' case* 2 Saund. 291a; Jervis O. C. p. 279; *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) will not apply to coroners inquests.

[4] 2 H. P. C. 59.

[5] *Reg.* v. *White* 3 El. & El. 137.

[6] 4 M. S. Sum. 333.

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

at the same time;[1] but the mileage and fees can only be charged for the one inquest.[2]

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

In *Quebec* no inquest can be held unless as in Ontario a declaration in writing under oath is made by the coroner and giving a summary of the information received and on which he makes the declaration; and the declaration must be returned and filed with the inquisition.[3]

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.[4]

In *Nova Scotia* the law governing the procedure of coroners is simply the common law and practice of England and the language of Chief Justice Jervis quoted on page 13 sufficiently points out when an inquest should be held in this province. But 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 and the majority of the jury think it necessary, he should 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 at least four days before holding the

[1] *Reg.* v. *West* 1 G. & D. 481; 5 jur. 484.
[2] *Rex* v. *Warwick* (justices) 5 B. & C. 430.
[3] R. S. Q. 1888, Art. 2687 & 55-56 V. Que.
[4] R. S. Q. 1888, Art. 2688.

adjourned inquest the coroner must send to the commissioner, 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 appointed by the workmen of the colliery at which the accident occurred, must be allowed at any such inquest to examine any witness, but subject to the order of the coroner. If the inspector or other person 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 neglect 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.[1]

In *New Brunswick*, unless an inquest is held upon the written request of the attorney, or solicitor-general, or the clerk of the peace, or of a clerk of a county court, no fees are payable to any coroner in respect thereof, unless prior to issuing the warrant for summoning the jury, he makes a declaration[2] in writing under oath before a justice of the peace, a commissioner for taking affidavits to be read in the supreme court, a notary public, or any two freeholders resident in the county in which the inquest is to be held, stating that from information received he is of the opinion that there is reason for believing that the deceased

[1] R. S. N. S. c. 8, s. 24.

[2] See form No. 14.

came to his death under circumstances requiring investigation by a coroner's inquest. This oath must be returned and filed with the inquisition.[1] But if the coroner does not deem an inquest necessary, or if two justices of the peace of the county, certify to him that he will be justified in granting a warrant for burial of the body,[2] he should forthwith issue his warrant to bury the body without taking an inquisition.[3]

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 on page 13 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.[4]

In this province in the absence of a coroner an inquest may be held before a justice of the peace.[5]

In *British Columbia* the language of Chief Justice Jervis, quoted on page 13, sufficiently points out when an inquest should be held, since, in this

[1] 52 V c. 14, ss. 1, 2, N.B.
[2] See form No. 46.
[3] Con. Stats., N.B., c. 63, s. 7.
[4] P. E. I. Act of 1855.
[5] 39 V. c. 17, s. 4, P. E. I.

respect, the law of England as it stood on 19th Nov., 1858, governs.

In *Manitoba* coroners cannot claim any fees for inquests unless prior to holding them they take a similar declaration as is required in Ontario,[1] 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.[2]

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.[3] How it is to be "made to appear" that an inquest is necessary, is left to the

[1] See p. 13 and form No. 14.
[2] Rev. Stat., Man., c. 32, s. 5.
[3] Rev. Stat., Can., c. 50, s. 83, 84.

discretion of the 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 p. 23.

In *the Temporary Judicial District of Manitoulin* the law as to when an inquest should be held is the same as in *Ontario*. See p. 13.

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 as a stipendiary magistrate, has all the powers excepting the power of summoning juries, which a coroner has under the law of England.[1]

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 death has been occasioned,[2] 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,

[1] 52 V. c. 25, s. 22, N. F.

[2] *Reg* v. *Herford*, 3 El. & El. 115

but this was repealed by 20 V. c. 36, forming c. 88 of the Con. Stats. Can., 1859, and now embodied in c. 217, Rev. Stat. Ont., 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.[1]

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.[2]

[1] R. S. O. c. 217, s. 1, *In re Fergus & Cooley*, 18 U. C. Q. B. 341

[2] R. S. C. c. 167, s. 120: see also 54 V. c. 37, s. 1, s-s. 5, Ont.

Formerly in Ontario 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.[1] 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.[2] 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 shown by the coroner, and certified under his hand, why and for what purpose an adjournment took place, or became necessary in his opinion.[3]

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.[4]

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, or of any three householders

[1] Con. Stat. Can. c. 88, s. 9.
[2] R. S. O. c. 217, s. 9.
[3] R. S. O. c. 217, s. 10.
[4] *In re Fergus and Cooley*, 18 U. C. Q. B. 341.

resident in the vicinity of the fire.[1] 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.[2]

The jury and witnesses in these investigations will be noticed in Chapter XII, and the fees in Chapter XIV.

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 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. Their fees are the same as those chargeable by ordinary coroners when holding fire investigations,[3] 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

[1] R. S. O. c. 217, s. 3.
[2] R. S. O. c. 217, ss. 4, 5, 6.
[3] See c. 4.

—the power to summon witnesses, &c., the power and proceedings of provincial coroners are the same as those of ordinary coroners when holding fire inquests.[1]

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.

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.

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

In *Quebec*, coroners have the same powers and duties as to investigating accidents by fire as in Ontario,[2] except that the provisions of 24 V. c. 33 (C). limiting the responsibility for the expenses of the fire inquests to the party requiring the investigation, and requiring an instrument under the hands and seals of the head officer of the municipality and of at least two other members of the council to make the municipality liable for the expense of the investigation, and also not allowing the expenses of an adjournment unless it is clearly shown by the coroner and certified under his hand why an adjournment took place, are limited to Ontario and these provisions do not apply to Quebec.

[1] 54 V. c. 37, s. 1, Ont.

[2] Con. Stats. of Canada 1859, c. 88, 23 V. c. 35, Can.

And in the cities of Quebec and Montreal fire inquests cannot be held by coroners, but must be held by inspectors and superintendents of police or recorders.[1]

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 witnesses by summons or warrant and to examine them under oath.[2]

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.[3]

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.[4]

Under this section it will be proper to mention that coroners in Ontario are required to return lists

[1] Con. Stats. Can. c. 88, s. 8.
[2] 52 V. c. 25, s. 21, N. F.
[3] R. S. O. c. 80, s. 13, and c. 79, s. 10.
[4] R. S. O. c. 217, s. 2; 54 V. c. 37, s. 1, s-s. 5, Ont.

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,[1] 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. c. 40, s. 14.[2]

The division registrar is the clerk of the municipality, except, until municipal organizations are formed, in Algoma, Nipissing, Thunder Bay, Rainy River, Muskoka and Parry Sound, and any territorial district formed after 31st December, 1887. For these latter places division registrars are specially appointed by the Lieut.-Governor in council.

In *Nova Scotia*, coroners must return each inquisition held *super visum corporis* to the clerk of the crown for the county, at or before the next sittings of the Supreme Court, and the clerk must file the same without charging any fee, and give the coroner a certificate containing the date of the inquisition, and the date of filing the same. And on or before the 10th January in every year, coroners in Nova Scotia must return a list in triplicate of all the inquests held by them during the year, together with the findings of the juries, to the office of the provincial secretary, under a penalty of $20.[3] And in inquests arising out of mine accidents

[1] R. S. O. c. 80, s. 14.

[2] See Form No. 114.

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

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 that any defect 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.[1]

In *New Brunswick*, the evidence taken at any inquest *super visum corporis*, together with the inquisition and the oath of the coroner stating the investigation was required (see form No. 15), must in all cases, except where a verdict of murder or manslaughter or accessory to murder before the fact 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. No fees for holding an inquest will be paid until after the coroner shall have filed the examinations or depositions except in the cases above excepted. And in New Brunswick coroners are also required on or before the first day of January in every 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.[2]

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

[1] R. S. N. S. c. 8, s. 24.

[2] 49 V. c. 27, ss. 1, 2, N.B.; 52 V. c. 14, ss. 1, 2, 3, N.B.

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 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[1] 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* 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

[1] 39 V. c. 17, P.E.I.

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.[1]

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

In *The North-West Territories*, the law has not been changed as regards coroner's returns since 15th July, 1870, upon which date the laws of England relating to civil and criminal matters were adopted.

In *Keewatin*, coroners make returns of inquests held by them to the Lieut.-Governer in such form and at such times as he directs.[2]

In *Manitoulin*, coroners make their returns of inquisition as in the rest of Ontario. See p. 29.

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.[3] The returns in fire inquests should be made to the attorney-general only.[4]

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

[1] R. S. (B.C.), 1888, c. 24, s. 17.
[2] R. S. C. c. 53, s. 27.
[3] 38 V. c. 8, s. 2. (Newf.)
[4] 52 V. c. 25, s. 21 (Newf.)

default.[1] When so acting, the coroner can do all lawful acts which the sheriff might have done.[2]

When judgment is recovered against a sheriff and his sureties on their covenants, 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.[3]

If a sheriff forfeits his office and becomes liable to removal, he is still to execute process until his successor is appointed.[4]

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 coroner, but to the under sheriff or deputy.[5]

When the process is awarded to the coroner, the sheriff is no longer considered as an officer in the suit;[6] 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,[7] even though a new sheriff be appointed in the meantime.[8]

[1] 4 Inst. 271, *Gilchrist* v. *Conger*, 11 U. C. 197; R. S. O. c. 52, s. 76.
[2] Hob. 85.
[3] R. S. O. c. 16, s. 24.
[4] R. S. O. c. 16, s. 25.
[5] R. S. O. c. 16, s. 45.
[6] Cro. Eliz. 894.
[7] 2 Hen. VI. 21, *a*; Bro. Exon. 110; 14 H. 8, 316; Jer. O. C. 52.
[8] Com. Dig. Officer, G. 13.

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, the court will award the *venire* to the coroner.[1]

Process against the deputy sheriff may, it seems, be awarded to the sheriff.[2]

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.[3]

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 & 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

[1] Jer. O. C. 52.

[2] *Gordon* v. *Bonter*, 6 U. C. Law Journal, 112.

[3] R. S. O. c. 52, s. 76; *Fraser* v. *Dickson*, 5 U. C. Q. B. 231.

in the county, and the declaration was therefore sustained. DRAPER, C.J., said: "The declaration does not show 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,' etc., 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."[1]

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 show 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.[2]

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.[3]

[1] *Johnston et al.* v. *Parke, et al.*, 12 C. P. 179.
[2] *Brown* v. *Gordon*, 16 U. C. Q. B. 342.
[3] *Clandinan* v. *Dickson et al.*, 8 U. C. Rep. 281.

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 have no authority (in all cases at least) to take him into another county and imprison him there.[1]

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,

[1] The Municipal Act of Ontario (R. S. O. c. 184. s. 464,) 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.

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,[1] the return must be in the name of all.[2]

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," etc., etc. 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*,[3] 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,

[1] 2 H. P C. 56.
[2] 2 Hawk. P. C. c. 9, s. 45; Staun. P. C. 53 (*a*).
[3] Cited Umf. 144.

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.[1]

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.[2]

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 any clerk, or bailiff of the sheriff, who may be present in, or have charge of the sheriff's office.[3]

[1] 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 on p. 36.

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

[3] Con. Rule 917.

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.[1]

A writ of attachment should be personally delivered to the coroner, in order to bring him into contempt.[2]

An attachment against a sheriff must issue to elisors in the first instance, if the coroner is the defendant in the cause.[3]

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.[4]

In the Creditors Relief Act (R. S. O. c. 65), the word "Sheriff" includes coroners.

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.[5]

By the Ontario consolidated rule No. 918, rules 873, 912 to 915 inclusive, 917, 919, 925 and 1233 to 1237 inclusive, 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.

[1] Con Rules 918, 925.

[2] 1 H. & W. 332, and see books of practice.

[3] *Reg* v. *Glamorganshire* (*Sheriff*), 1 D. N. S. 308; 5 Jur. N. S. 1010 B. C.

[4] R. S. O. c. 16, ss. 27, 28, 29.

[5] Jer. O. C. 71.

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.[1]

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.[2]

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, the general law, as stated in this section, will apply in these provinces and territories the same as it does in Ontario. 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 Superior 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.

[1] See Con. Rule No. 1252.

[2] 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.

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.

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 may be said to have become almost, if not quite obsolete.[1]

[1] 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*.

As regards Forfeiture, see Chap. III. s. 1, and Chap. X.

CHAPTER III.

OF THE JURISDICTION OF CORONERS IN INQUESTS OF DEATH.

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SEC. 1.—THEIR GENERAL JURISDICTION.

The general jurisdiction of the coroner is confined to deaths happening within the limits of his county, city or town, and cannot be enlarged by any private Act or delegation from the crown.[1]

A coroner for a county, it seems, may act in a city or town within his county ;[2] and see remarks on the subject on p. 44.

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.

In *Nova Scotia*, inquests may be held by a justice of the peace in the absence of a coroner.[3]

In *New Brunswick*, it would seem from the wording of 49 V. c. 27, s. 1, (N.B.), as if justices of the peace can hold inquests, but the writer has failed to find any statute of that province directly authorizing them to do so, and without special authority by statute, they would have no right to hold an inquest.

[1] 2 Finch, 388.

[2] *Ry.* v. *Berry*, 9 P. R. 123; and see remarks on the subject on p. 44.

[3] R. S., N.S., 5th Series, 1884, cap. 17, s. 7.

In *Prince Edward Island*, inquests may be held by a justice of the peace in the absence of a coroner.[1]

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

Coroners of counties have jurisdiction concurrent with coroners of the Admiralty over deaths happening in the arms of the sea (*infra corpus comitatus*)[3] and in great rivers[4] and in ships lying in harbour,[5] but they have none upon the high seas.

In *Regina* v. *Berry*,[6] 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. c. 80] 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

[1] Act of 1855 and 39 V. c. 17, s. 4, (P.E.I.)

[2] 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.

[3] 2 H. P. C. 15, 16, 54.

[4] 2 H. P. C. 15, 16, 54.

[5] 1 Str. 1097, 231.

[6] 9 Pr. R. 123.

prisoner, for the notice of death under the third section of the Coroners' Act (R. S. O. c. 80) 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.

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.[1]

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.[2]

In these cases of extended jurisdiction the coroner had better see that the body is brought within his county before holding the inquest.[3]

Where there is any doubt, the jurisdiction of the common law ought to be preferred.[4]

Sec. 3.—SUPREME JURISDICTION.

Coroners *virtute officii* have supreme jurisdiction everywhere,[5] within the limits of their ordinary official jurisdictions.

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

[2] 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.

[3] 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!

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

[5] 4 Rep. 47.

CHAPTER IV.

OF THE RIGHTS OF CORONERS.

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SEC. 1.—GENERAL REMARKS.

Coroners, while acting judicially, have no right to appoint a deputy.[1]

In England, this right has been conferred by statute,[2] but we have no such enactment in Canada. 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]

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;[4] 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.[5]

It was not until the reign of Hen. VII. that coroners were paid a regular fee for holding inqui-

[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. 71, and see Chap. II. sec. 5.
[4] 1 Com. 347.
[5] 2 Inst. 210, 176.

sitions, 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.

If the authorities refuse to allow fees to a coroner, his only remedy is to apply to a superior court for a mandamus.[3]

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.[4]

It has been held 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.[5]

In *Newfoundland*, the act abolishing the office of coroner,[6] 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.

[1] 3 Hen. VII. c. 1.

[2] 25 Geo. II. c. 29.

[3] 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.

[4] 4 T. R. 52.

[5] *Rex* v. *Norfolk* (Justices) 1 Nolan, 141.

[6] 38 V. c. 8 (Newf.).

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.[1] And they are exempted from being elected, or appointed, members of a municipal council, or to any other municipal office in Ontario.[2]

In *Manitoba*, coroners are exempted from serving on grand and petty juries,[3] and from being elected, or appointed, members of the municipal council or to any municipal office.[4]

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.

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

[1] 2 Roll. Abr. 632, s. 4; F. N. B. 167; R. S. O. c. 52, s. 6. s-s 13.
[2] R. S. O. c. 184, s. 78.
[3] R. S. Man. c. 81, s. 3.
[4] R. S. Man. c. 100, s. 55.

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 Sessions.[1]

A coroner, as a judge of a court of record, is not liable to a civil action for any thing done by him in his judicial 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.[2]

An action does not lie against a coroner for defamatory words spoken by him while holding an inquest.[3]

Trespass will not lie against a coroner for turning a man out of a room where the coroner is about to hold an inquisition.[4]

[1] R. S. O. c. 83, sch. p. 839.
[2] *Garner* v. *Coleman*, 19 C. P. 106.
[3] *Thomas* v. *Churton*, 8 Jur. N. S. 795; 2 B. & S. 475.
[4] *Garnett* v. *Farrand*, 6 B. & C. 611.

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 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

[1] Jer. O. C. 93; *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, No. 6.

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 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.[1]

And if a coroner neglects to discharge the duties required of him by the Dominion Act respecting Anatomy[2] 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.

Coroners in Ontario taking money to excuse any man from serving or being summoned to serve on juries may be fined.[3]

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.[4]

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.[5]

[1] 2 H. P. C. 58; 3 Ed. I. c. 10; 1 Leach, c. L. 43; Jer. O. C. 90; R. S. O. c. 40, ss. 14-28; R. S. O. c. 83, s. 7.

[2] R. S. C. c. 149 as amended by 52 V. c. 24, Dom.

[3] R. S. O. c. 50 s. 170.

[4] R. S. O. c. 71, s. 8; and see p. 10; *Davies* v. *Justices of Pembrokshire*, L. R. 7 Q. B. D. 513.

[5] 2 Lev. 140,

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,[1] false teeth &c.[2]

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.[3]

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.[4]

If a coroner inserts in the inquisition a material fact not found by the jury, he may be indicted for forgery.[5]

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.

In their ministerial character coroners are liable, like sheriffs in actions of debt, for an escape,[6] case

[1] 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.

[2] See remarks on p. 18, and in c. 12, s. 1.

[3] *In Re Hull* L. R. 9 Q. B. D. 689.

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

[5] 3 Salk. 172.

[6] 3 Lev. 399; 6 Mod. 37.

for a false return,[1] or by attachment,[2] 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,[3] and by an Ontario statute,[4] 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.[5]

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.[6]

In *Nova Scotia*, coroners who do not make a return in triplicate of the inquests held by them,

[1] Freem. 191.
[2] 2 Bl. 911, 1218.
[3] 55-56 V. c. 29, s. 143 Can.
[4] R. S. O. c. 16, ss. 28, 29.
[5] R. S. O. c. 16, ss. 27, 29.
[6] R. S. O. c. 16, ss. 28, 29.

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 liable to a penalty of $20.[1] 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.[2]

In *New Brunswick*, the only penalty prescribed by statute for a coroner's neglect in immediately returning the evidence and inquisitions to the clerk of the peace is, that he shall not be paid his fees until the return is made.[3] No statutory penalty is provided for neglect in making the yearly returns to the provincial secretary, but for not taking the declaration required before issuing his warrant for the jury, the coroner forfeits his fees altogether.[4]

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.[5]

In *British Columbia*, there is no statutory penalty prescribed for a coroner's neglect in making returns of inquests held by him.[6]

In *Manitoba*, coroners forfeit their fees for all inquests held without making the declaration required before issuing the warrant for the jury.[7]

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

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

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

[3] 49 V. c. 27 N. B.

[4] 52 V. c. 14, ss. 1, 3 N. B.

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

[6] 51 V. c. 24, s. 17, B. C.

[7] R. S. Man. c. 32, s. 5.

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 provinces of Ontario.

In *Newfoundland*, any person taking greater fees than prescribed by law for each offence forfeits the sum of $50.[1]

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*,[2] for a cause therein assigned.[3]

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.[4]

Confinement in prison out of the county is a sufficient ground for the removal of a coroner from his office, although during his absence another coroner of the same county has performed his duties.[5]

[1] 52 V. c. 25, s. 31, N. F.
[2] See Form, No. 7.
[3] Jer. O. C. 94.
[4] *Ex parte Parnell*, 1 J. & W. 451; *Ex parte* Pasley, 3 D. & W. 34 (Ir.).
[5] *Ex parte Parnell*, 1 J. & W. 451.

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.[1]

[1] 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. 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.[1]

INFANTS.

Under seven years, no person can be convicted of an offence by reason of any act or omission of such person.[2]

Between the ages of seven and fourteen, the presumption of law is that the infant is not capable of a mischievous discretion; but this presumption

[1] 1 H. P. C. 14.

[2] 55-56 V. c. 29, s. 9, Dom.

can be rebutted by strong evidence of his capacity to judge between good and evil.[1]

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 between seven and fourteen years of age may be convicted and punished for a capital crime.[2] Persons over fourteen are *prima facie* responsible for all their acts,[3] 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.[4]

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

[1] 4 Com. 23; 55-56 V. 29, s. 10, Dom.
[2] 1 H. P. C. 25, 27; 4 Com. 23; 55-56 V. c. 29, s. 10, Dom.
[3] 1 H. P. C. 25.
[4] 1 Hale, 33, 34; 55-56 V. c. 39, s. 11, Dom.

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.[1]

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 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.[2] 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.[3]

2. *Adventitious insanity* may be either *partial*, its victim being insane on only one subject, or

[1] 55-56 V. c. 29, s. 11, Dom.

[2] 1 Hale, 34; 55-56 V. c. 29, ss. 7, 11, Dom.

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

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.[1] While labouring under this disorder, no one is criminally responsible for his actions;[2] although a partial aberration of intellect which does not prevent the party from distinguishing right from wrong will not excuse his guilt.[3] Cases of much difficulty sometimes arise with this class of persons.

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.[4] Still the insanity caused by a habit of intoxication excuses from punishment.[5] Intoxication, too, may be considered as a circumstance tending to show a want of premeditation.[6]

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

Persons who do acts in obedience to existing laws or from the coercion of those under whom the

[1] "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.

[2] 4 Rep. 125 Bac. Abr. Idiots (A).

[3] 1 H. P. C. 30; 55-56 V. c. 29, s. 11, Dom.

[4] 1 H. P. C. 32; Co. Litt. 247

[5] 1 H. P. C. 32.

[6] 1 Russ. s. 7; C. & P. 317, 297, 145. But see Roscoe's Cr. Ev. 637.

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;[1] but this presumption ceased on 1st July, 1893, on which day the new criminal code came into 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.[2] 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.[3] 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,

[1] 1 H. P. C. 45, 47, 48, 516; 4 Bla. Com. 29.

[2] 55-56 V. c. 29, s. 13, Dom.

[3] Murder and homicide are crimes of a heinous character.

piracy, offences deemed to be piracy, attempting to murder, assisting in rape, forcible abduction, robbery, causing serious bodily harm, and arson.[1]

SEC. 4.—IGNORANCE.

Ignorance of the law is no excuse for crime, even in foreigners residing in Canada.[2] 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.[3]

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.[4]

[1] 55-56 V. c. 29, s. 12, Dom.
[2] 7 C. & P. 456; 1 H. P. C. 42; 56-56 V. c. 29, s. 14, Dom.
[3] 1 H. P. C. 42-43; 4 Bla. Com. 27.
[4] 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

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

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 or procuring knew or ought to have known to be likely to be committed in consequence of such counselling or procuring.[1]

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.[2]

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.[3]

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

[1] 55-56 V. c. 29, s. 62, Dom.
[2] 55-56 V. c. 29, s. 64, Dom.
[3] Fost. C. L. 349; Kel. 52.

to the prosecution of some other unlawful purpose.[1]

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.[2] 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.[3] But he who barely conceals an offence to be committed is guilty only of misprison of felony.[4]

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.[5]

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.[6]

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

[1] 2 Hawk. P. C. c. 29, s. 9.

[2] 1 H. P. C. 615.

[3] 2 Hawk. P. C. c. 29, s. 16.

[4] 2 Hawk. P. C. c. 29, s. 23.

[5] 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.

[6] 2 Hawk. P. C. c. 29, s. 18; Dyer, 168; 55-56 V. c. 29, ss. 61, 234, Dom.

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."

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.

[1] Fost, C. L. 372.

[2] 1 H. P. C. 347, 456. 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.

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*.[1]

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*.[2] 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.[3]

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*.[4]

As many persons look upon all suicides as deranged, coroners should caution the jury against being influenced by such a notion.[5]

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*.[6]

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.[7]

[1] 1 Hawk. P. C., c. 27, s. 4.
[2] Moor, 754; 1 Hawk. P. C., c. 27, s. 6.
[3] 2 Hawk. P. C., c. 27, s. 6.
[4] H. P. C. 411.
[5] Jer. 142.
[6] 1 Hal. P. C. 412.
[7] Jer. 143.

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 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 less severe provisions of the English enactments—a departure from duty which would have the sanction of humanity to support it. The Ontario law in this respect calls for amendment.

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.

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 (*see* p. 69), being the same law as in Manitoba, except that the burial must be between the hours of nine and twelve at night.

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

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

causes that person's death, or by wilfully frightening a child or 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.[1]

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 purpose of facilitating the commission of any of the offences hereafter mentioned, or the flight of the offender upon the commission, or

[1] 55-56 V. c. 29, ss. 220, 227, Can.

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.

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.[1]

Culpable homicide which would otherwise be murder, may be reduced to manslaughter by certain provocations, for which see *post* page 77.

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."[2]

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 any of the classes

[1] 55-56 V. c. 29, s. 228.

[2] 3 Inst. 47.

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.

For the protection which the law extends to persons authorized to arrest or assist in arresting offenders, or to prevent the escape of prisoners after being arrested, see Part II. sections 16 to 37 of the Criminal Code, 1892.

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.[1] 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.[2]

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.[3]

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.[4]

Every one who, by any act or omission, causes the death of another, kills that person, although death from that cause might have been prevented by resorting to proper means.[5]

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

[1] R. S. C. c. 183, ss. 8, 23.
[2] 55-56 V. c. 29, s. 221, Can.
[3] 55-56 V. c. 29, s. 223, Can.
[4] 55-56 V. c. 29 s. 224, Can.
[5] 55-56 V. c. 29, s. 225, Can.

the immediate cause of death be treatment, proper or improper, applied in good faith.[1]

The person killed must be a reasonable creature in being, and under the Queen's peace. Outlaws or aliens, being under the Queen's protection, may be the subjects of this offence. Killing an alien enemy in the time of war is not murder.[2] The person killed must be *in being;*[3] 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.[4] 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.

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.[5]

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.[6]

The means need not obviously tend to cause death, provided they apparently endanger life, and

[1] 55-56 V. c. 29, s. 226, Can.

[2] 3 Inst. 50; 1 H. P. C. 433.

[3] For the definition of when a child becomes a human being within the provisions of the Criminal Code, see *post*, and 55-56 V. c. 29, s. 219, Dom.

[4] 1 Hawk. P. C. c. 31, s. 16; Jer. 151.

[5] Jer. 152; 55-56 V. c. 29, ss. 220, 223, Dom.

[6] 55-56 V. c. 29, ss. 220, 223. Can.

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do ultimately occasion death, and are wilfully committed.[1] 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.[2] 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.[3] If a physician or surgeon intending to do his patient good unfortunately kill him, this is only homicide by misadventure;[4] 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.[5] A medical practitioner must be guilty of criminal misconduct arising from the grossest ignorance or most criminal inattention, to render him guilty of manslaughter;[6] 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.[7] The consent of the party killed does not extenuate the crime, such consent being merely void;[8] one who kills another by his desire,

[1] 1 E. P. C. 225.

[2] 1 E. P. C. 225.

[3] 4 Bla. Com. 197; 2 Mood. C. C. 120; 9 C. & P. 356.

[4] 4 Bla. Com. 197; 1 Hale, 429.

[5] 1 Hale P. C. 429.

[6] 3 C. & P. 635.

[7] 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 of the case."

[8] 55-56 V. c. 29, s. 59, Dom.

or persuades another to kill himself, is a murderer.[1]

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.[2] 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.[3] Hence if a man attempt to kill another, and accidently kill himself, he is *felo de se*;[4] or if in attempting to procure abortion death ensue, the person killing is guilty of murder.[5]

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.

[1] 1 Hawk. P. C. c. 27, s. 6.
[2] Jer. 161; Impey, 501.
[3] 1 E. P. C. 230.
[4] 1 Hawk. P. C. c. 27, s. 4.
[5] 1 E. P. C. 230.

(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]

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.[2]

(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 com-

[1] 55-56 V. c. 29, s. 229, Can.

[2] 55-56 V. c. 29, s. 229, Can.

mence 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.[1]

(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. 5 and 6) may be given by blows, words or gestures.[2]

(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 quarrel must not be a mere cloak for the purpose of gratifying a concerted malicious design.[3]

[1] 55-56 V. c. 29, s. 46, Can.
[2] 55-56 V. c. 29, ss. 45, 46, Can.
[3] Jer. 169.

Deliberate duelling is murder, both in the principals and seconds, if death ensue;[1] and no provocation, however grievous, will excuse the offender.[2]

If two persons quarrel, and agree to fight a considerable time after, when the blood must have cooled, and death follows, it is murder;[3] and it is the same in all fights where the circumstances shew that the parties do not commence in the heat of passion.[4]

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 sparring exhibitions are unlawful, because they tend to form prize-fighters and prize-fighting is illegal.[5]

(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;[6] but the correction must not exceed the bounds of moderation, either in the manner, the instrument, or the quality of

[1] 4 Bla. Com. 199.
[2] 3 East, 531; 1 H. P. C. 452.
[3] 1 Hawk, P. C. c. 31, s. 32.
[4] 1 Lev. 180.
[5] *Hunt* v. *Bell*, 1 Bing. 1.
[6] 1 E. P. C. 261; 55-56 V. c. 29, s. 55, Dom.

the punishment; or else, if death ensues, it will be manslaughter, if not actual murder.[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 imperative that he should know, the act was likely to cause death.[2] 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.[3]

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,

[1] 1 H. P. C. 473.
[2] Fost C. L. 261; 55-56 V. c. 29, s. 227, Dom.
[3] Jer. O. C. 176.

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; 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.[1]

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.[2]

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.[3]

In the case of carriers of passengers for hire somewhat greater care may be required, for Hubbard, J., in *Ingalls* v. *Bell*, 9 Metc. 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 car-

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

[2] 1 East. P. C. 263.

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

riages, 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 that class of injuries for which the law can afford no redress in the form of a pecuniary recompense."[1]

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.[2]

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.[3]

If a person drives carelessly, and runs over a child in the street, if he sees the child and yet

[1] *Readhead* v. *Midland R. W. Co.*, L. R. 2 Q. B. 412; 4 Q. B. 379.
[2] *R.* v. *Walker*, 1 C. & P. 320.
[3] *R.* v. *Walker*, 1 C. & P. 320.

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.[1]

What constitutes *negligence* in the case of driving must depend greatly upon the circumstances of each particular case.[2]

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.[3]

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 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.[4]

If a driver happens to kill a person, and it appears he might have seen the danger, but did not

[1] 1 Hale, P. C. 476; Foster, 263.
[2] Roscoe's Cr. Ev. 683.
[3] *Brown* v. *G. W. R. Co.*, 40 U. C. Q. B. 340.
[4] *R.* v. *Timmins*, 7 C. & P. 499.

look before him, it will be manslaughter for want of due circumspection.[1]

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.[2]

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.[3]

With regard to persons practising medicine or surgery, we have already seen[4] if they are guilty of criminal misconduct, arising either from gross negligence or criminal inattention in the course of their employment, and in consequence death ensues, it is manslaughter, and this whether they are licensed or not.[5] In *R.* v. *Long*,[6] Mr. Justice Baylcy 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."

[1] Foster, 263.

[2] 9 C. & P. 672.

[3] 7 C. & P. 153.

[4] See p. 76.

[5] 3 C. & P. 635; 4 C. & P. 398; 5 C. & P. 333; Roscoe's Cr. Ev. 688, 661, and cases there cited.

[6] 4 C & P. 440.

A *chemist* who negligently supplies wrong drugs, in consequence of which death ensues, is guilty of manslaughter.[1]

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.[2] 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.[3] 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.[4]

Deaths from *exposure*, or *the want of proper food* and *necessaries* are also included in the class of cases now under consideration. The neglect or omission, without lawful excuse to supply food, shelter, and other necessaries to wives, children, servants, apprentices, prisoners, or aged and infirm or other persons on the part of those who are under legal obligation to so supply them, whether by law or contract, or by the act of taking charge of them, wrongfully or otherwise, and in consequence of which death ensues is manslaughter.[5] And if the

[1] 1 Lewin, C. C. 169.

[2] 3 C. & P. 211.

[3] 1 C. & Mars. 236.

[4] 1 C. & Mars. 236.

[5] 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, s. 220, Dom.

neglect is wilful and deliberate, with the intention of bringing about death or of causing grievous bodily harm, it will even amount to murder.[1] 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.[2] 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 doing so.[3] In which case it must be alleged it was the prisoner's duty to supply the child with food.[4]

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.[5]

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.[6]

If a gaoler knows a prisoner in his charge is sick, and neglects or refuses to procure medical or

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

[2] 1 Russ. 490; 7 C. & P. 277.

[3] 8 C. & P. 611.

[4] 8 C. & P. 611.

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

[6] 2 Str. 856; Foster, 322; 1 East. P. C. 331.

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 perseverence in doing an act necessarily attended with danger, regardless of its consequences, the offence will be reduced to manslaughter.[1]

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,[2] and of the Railway Acts,[3] The Steamboat Inspection Act,[4] The Acts regulating the Sale of Poisons,[5] The Acts for the Protection of Persons employed in Factories,[6] The Act respecting Compensation to Workmen,[7] The Act respecting the Safety of Ships and the Prevention of Accidents on board thereof,[8] The Act

[1] 1 East P. C. 226; 1 Russ. 490.
[2] R. S. O. c. 212.
[3] R. S. O. c. 170; 51 V. c. 29, Dom.
[4] R. S. C. c. 78.
[5] R. S. O. c. 151; 52 V. c. 25, Ont.
[6] R. S. O. c. 208; 51 V. c. 33, Ont.
[7] 55 V. c. 30, Ont.
[8] R. S. C. c. 77.

respecting the Navigation of Canadian Waters,[1] The Act respecting the protection of Navigable Waters,[2] The Act respecting Bridges,[3] The Act respecting the improper use of Fire-arms and other Weapons,[4] The Act respecting Explosive Substances,[5] The Act respecting Prize Fighting,[6] The Street Railway Act,[7] The Act regulating Travelling on Highways and Bridges,[8] The Act respecting the Use of Traction Engines on Highways,[9] The Act to regulate the Means of Egress from Public Buildings,[10] The Act requiring Threshing, Sawing and other Machines to be protected,[11] and of all other Acts of the various Provinces, or of Newfoundland, of a similar character, 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.[12]

(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;[13] and if death ensue, the implied malice will be rebutted, unless

[1] R. S. C. c. 79.
[2] R. S. C. c. 91.
[3] R. S. C. c. 93.
[4] R. S. C. c. 148.
[5] R. S. C. c. 150.
[6] 55-56 V. c. 29, ss. 92 to 97, and page 434, Dom.
[7] R. S. O. c. 171.
[8] R. S. O. c. 195.
[9] R. S. O. c. 200.
[10] R. S. O. c. 210.
[11] R. S. O. c. 211.
[12] 55-56 V. c. 29, s. 14, Dom.
[13] Fost. C. L. 270, 271.

no sufficient resistance was made, or sufficient time intervenes for the blood to cool.[1]

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).

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 fœtus *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.[2]

The author of *The Vestiges of Creation* states that "at one of the last stages of man's fœtal career, he exhibits an intermaxilary bone which is characteristic of the perfect ape, this is suppressed,

[1] 1 E. P. C. 297.
[2] 1 Hale, 433.

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[1] 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.

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.[2]

A child may breathe *in utero* after the membranes have been ruptured, but all such cases reported were in exceptionally difficult labours.[3]

[1] 55-56 V. c. 29, ss. 218, 219, Can.

[2] 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.

[3] Tidy Vol. 3 p.p. 158, 159.

Again; a child may be wholly produced, and remain for some time without respiring, life being kept up from the fœtal circulation continuing, or from causes which appear to be involved in much obscurity.[1] 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;[2] 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.[3] The child being seen to move or breathe, would of course be evidence of life.[4]

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.[5]

Respiration is the *best* test of a child having been born alive; but in deciding whether or not it

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

[2] Taylor, 324.

[3] 1 Beck, 448.

[4] Cases of this kind may be divided into two classes:—1. Where the child's life is merely a continuation of its fœtal 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 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. See 55-56 V. c. 29, s. 219, Can.

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

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.[1] 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.[2]

Absence of the signs of respiration is no proof of natural dead birth; as the mother may cause herself to be 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.[3]

Because of the inconstancy of living weights, the *static test* of live birth by weighing the lungs,

[1] 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. See p. 91.

[2] Taylor, 325, 327.

[3] Tidy vol. 3, p. 160.

is considered worthless, it being necessary to trust to the average living weights, since the lungs of the same child cannot be weighed before and after respiration.[1]

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.[2]

Pulsation of the cord is an undoubted sign of life; also beating of the heart.[3] 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.[4]

Neglecting to provide reasonable assistance, by a woman in her delivery, and the child is permanently injured 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.[5]

And any one who disposes of the dead body of a child in any manner, with intent to conceal the

[1] Tidy, vol. 3, p. 162.
[2] Tidy, vol. 3, p. 155.
[3] Tidy, vol. 3, p. 156.
[4] Tidy, vol. 2, p. 65.
[5] 55-56 V. c. 29, s. 239, Can.

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]

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. *post.*

A person using the hydrostatic test in cases of alleged infanticide should remember that the lungs

[1] 55-56 V. c. 29, s. 240, Can.
[2] Tidy, vol. 3, p. 277.
[3] Taylor, 352.
[4] Taylor, 353.

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.[1] The lungs may sink from disease;[2] or they may sink, although the child has lived for hours and even for days;[3] 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;[4] or from respiration before complete birth.[5]

The employment, however, of pressure as an essential part of the hydrostatic test disposes for the most part of putrefaction as a difficulty.[6]

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 general opinion is that no fœtus can be said to be born alive;[7] 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:*

[1] Taylor. 325.
[2] Taylor, 325.
[3] Taylor, 327.
[4] Taylor, 330.
[5] Taylor, 339.
[6] Tidy, vol. 3, p. 166.
[7] Tidy, vol. 3, p. 31.

(*a*) At *six months*—Length, from nine to ten inches; weight one to two pounds; eyelids, agglutinated; pupil closed by membranæ pupillares; testicles not apparent in the male.

(*b*) At *seven months*—Length, from thirteen to fourteen inches; weight, three to four pounds; eyelids, not adherent; membranæ pupillaries, 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; membranæ pupillaries, 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; membranæ pupillares, 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.[1]

4. *Monstrosities.*—Some persons have the notion that monstrosities may be destroyed; but this is not correct. If destroyed under an impression of

[1] Taylor, 354.

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.[1]

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.[2]

If a child is injured before or during birth, and dies from the injury *after* birth, this would be homicide.[3]

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.[4]

The better opinion seems to be that wilful prevention of the commencement of respiration in a child after being wholly born is murder, although no case to the point has yet been decided.

[1] *Reg.* v. *West*, Nottingham Lent Assizes, 1848.

[2] *Rex.* v. *Bayley*, Car. C. L. 243.

[3] 3 Inst. 50; 1 Bla. Com. 129; Hawk. P. C. b. 1, c. 31, s. 16; 55-56 V. c. 29, s. 219, Dom.

[4] Wharton & Stille, 790.

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 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 possibility that something might have been done to prevent the death will not render it less murder.[1]

Causing the death of a child by giving it spirituous liquors in a quantity unfit for its tender age, is manslaughter.[2]

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,[3] 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.[4]

[1] *Reg.* v. *West*, Car. & R. 784; 2 Cox, C. C. 500; 55-56 V. c. 29, ss. 219, 227, Can.

[2] 3 C. & P. 210.

[3] Page 65.

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

Abortion may properly be induced in cases where the life of a woman is at stake, and there is less to be feared 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.[1] Under the criminal code *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.[2]

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.[3]

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.[4]

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

[1] Tidy, vol. 3, p. 100.
[2] 55-56 V. c. 29, s. 271, Can.
[3] 55-56 V. c. 29, s. 697, Dom.
[4] Taylor, 357.

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.[1]

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.[2]

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, particularly 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.*

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 im-

[1] Tidy, vol. 3, p. 193.
[2] Tidy, vol. 3, p. 196.

portant 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.[1]

Severe injuries are sometimes unintentionally inflicted on infants suddenly born, while the mother is standing, sitting, or on her knees.[2]

In deaths from starvation, mere neglect or imprudence, without actual malice, will not make them cases of infanticide.[3]

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.[4]

Tumours on the head, containing blood, arising from the same causes, sometimes lead to a similar suspicion.[5]

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.[6]

Attempts innocently made by the female to aid her delivery sometimes cause injuries to the child's body.[7]

[1] Med. Gaz. vol. 48, p. 985.

[2] Taylor, 368.

[3] 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.

[4] Taylor, 367.

[5] Taylor, 366.

[6] Taylor, 365.

[7] Taylor, 372.

Nævi materni, or mothers' marks, in newly born children, are more common than is generally supposed, and may closely simulate marks of violence.[1]

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.[2]

7. *Evidence.*—The consideration of evidence in general is reserved for another chapter.[3]

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. Unless this takes place within twelve or fifteen days from delivery, no satisfactory evidence can in general be obtained.[4]

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

[1] Tidy, vol. 1, p. 152.
[2] Tidy, vol. 3, p. 197.
[3] See chapter XI. *post.*
[4] Taylor, 382.

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.[1] 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,[2] which made concealment of the birth almost conclusive evidence of the child's murder. But the severity of the statute[3] 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 Dominion Statute, 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.

[1] 55-56 V. c. 29, s. 697, Dom.

[2] 21 Jac. 1, c. 27.

[3] 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.

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; 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.[1] The main distinction between manslaughter and murder is the absence of "malice aforethought."[2]

2. *Practical remarks.* — All homicide is presumed to be malicious until the contrary is proved.[3]

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.[4] 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.[5] And if the death result from a violent and unlawful restraint of personal liberty,[6] or from

[1] 4 Blac. Com. 191.

[2] A distinction as venerable as the Mosaic Law. See Num. xxxv. 15 and following verses.

[3] 1 E. P. C. 224.

[4] Jer. O. C. 185; Moir's case. Rosc. C. E. 717. 55, 56 Vic. c. 29, s. 229, Dom. and see remarks on p. 77 as to provocation.

[5] Fost. 291. [6] 1 E. P. C. 233.

the first transport of passion, arising from the detection by the husband of the adulterer in the act,[1] 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.[2] 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.[3] Provocation of a slight kind will extenuate the guilt of homicide, where the party killing does not act with cruelty or use dangerous instruments;[4] 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.[5]

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.[6]

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]

[1] 1 H. P. C. 486.
[2] 1 Hale 455
[3] 1 Russ. 581.
[4] Fost. 291.
[5] 2 Lew. 225.
[6] 9 C. & P. 359; 55, 56 Vic. c. 29, ss. 93, 94, Dom.
[7] 1 H. P. C. 484; Jer. 192.

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.[1]

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.[2]

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. 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.[3]

[1] Arch C. P. 510.

[2] Fost. Cr. Law, 296. See also the remarks under the head of "Murder," sec. 2.

[3] 4 Bla. Com. 182.

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 standerby; when a person shooting at game, or at a mark, with due caution, undesignedly kills another; when a parent, moderately correcting his child, 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.[1]

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,[2] or if there was reasonable grounds to believe that it was not.[3]

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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.

[1] 1 H. P. C. 431; Jer. 217.
[2] Jer. 218; 1 Russ. 658; Impey, O. C. 508.
[3] Fost. 265; 1 Russ. 659.

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.[1]

This kind of homicide is often barely distinguishable from manslaughter. The true criterion between them is this:—When both parties are actually combating 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.[2]

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.[3]

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.[4]

Killing from unavoidable necessity takes place in cases such as the following: Two persons being shipwrecked, got on the same plank, which, proving unable to save them both, one thrust the other from it, whereby he was drowned. It is said

[1] 1 Russ. 661; 55, 56 Vic. c. 29, ss. 45, 46, Dom.
[2] 4 Bla. Com. 184; Fost. 277.
[3] Impey, O. C. 506; Jer. 220; 56-56 V. c. 29, ss. 45, 46, 47, Dom.
[4] 1 Hale, 484.

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, excuses the homicide in such cases.[1] This principle of self-preservation cannot be considered to extend to the justification of the immediate and direct taking of another's life. Two cases of this kind have recently been reported in the newspapers. One where a shipwrecked party in order to save themselves from perishing by starvation, killed a boy who was one of their number. 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.

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;[2] 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.

(2) *Practical Remarks*]—1. Killing in execution of the law must be done when, and in the manner,

[1] 4 Bla. Com. 186.

[2] 55-56 V. c. 29, s. 15, Dom.

the law requires it. Therefore *wantonly* to kill the greatest of malefactors, is murder.[1] 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;[2] unless, perhaps, when he acts contrary to the judgment upon a warrant from the Crown.[3]

(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.[4] If an officer of justice or other person is restricted in the legal execution of his duty, he may repel force by force.[5] But he must not kill after the resistance has ceased.[6] 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.[7]

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.

[1] 1 H. P. C. 497.
[2] 1 Hale, 433, 501; 2 Hale, 411; 4 Bla. Com. 179.
[3] Fost. 268; 4 Bla. Com. 405.
[4] 4 Bla. Com. 180.
[5] 1 H. P. C. 494; 2 *Ibid.* Jer. 181.
[6] E. P. C. 297.
[7] Fost. 271; Hale, 481; Jer. 228, and see 55-56 V. c. 29, Part II., Dom.

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 arrest effected, by reasonable means in a less violent manner.[1]

In the case of a riot,[2] if the officers (and those commanded to assist them), endeavouring at the proper time[3] 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 justified and free from all blame.[4] They would be justified also by the common law.[5]

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

[1] 55-56 V. c. 29, s. 32.

[2] 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.

[3] *i.e.*, thirty minutes after the Riot Act has been read. 55-56 V. c. 29, s. 84, Dom.

[4] 55-56 V. c. 29, ss. 40, 41, Dom.

[5] 1 H. P. C. 495; 1 E. P. C. 304.

the suppression of such riot, and as is not disproportioned to the danger which they, on reasonable grounds, believe to be apprehended from the continuance of the riot.[1]

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 prisoner in civil or criminal suits, and this without first retreating.[2]

(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.[3]

[1] 55-56 V. c. 29, s. 42.
[2] Fost. 321; 1 Hale, 481, 496; 55-56 V. c. 29, ss. 17, 18, 31, Dom.
[3] 55-56 V. c. 29, s. 49, Can.

CHAPTER IV.

OF POISONS.

The author has been advised by a valued correspondent to omit this chapter in the present edition of this work, and no doubt some apology is required for not taking the advice. For a lawyer to attempt to instruct medical men in the subject of poisons, and indeed in any other branch of medical jurisprudence, is apparently a piece of presumption, and if these portions of the work were put forward as from the writer's own knowledge, the presumption would not only be apparent, but real. They are inserted, however, as concise and convenient extracts and compilations from the leading medical writers on the subjects, and in no way as his original productions. There is not a statement of any importance that cannot be verified by reference to standard authors, and in most cases the identical words of these authorities are made use of. The information given is consequently reliable, and it is believed will be found handy for reference by coroners and medical witnesses engaged upon inquests, and who have not always at hand more important works to refer to. It is impossible for medical men, not in the daily habit of teaching students, to bear in mind, all the effects and symptons of the various poisons, or to recall at any given moment, all the medico-legal knowledge they should have in their minds when suddenly called upon to perform a *post-mortem*, or to give evidence at an inquest, and while these portions of this work are not set forward as at all original or complete, it is hoped they contain enough to suggest to medical men much that may have been forgotten for the moment, or to at least put them on their guard, and so justify the retention of the chapter.

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

action 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 pottassium 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 all the usual symptons 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.

[1] Brown & Stewart, p. 320.

Of recent years a class of bodies called *Ptomaines* has attracted much attention and may here be briefly noted. The symptoms are of a narcotic irritant poison. Ptomaines have been found in decayed meat, cheese, sausages, certain shell-fish, 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 putrified human bodies, among which are a *strychnine-like* substance, a *atrophine-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 new 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.[1]

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 having poisonous effects on frogs, and he has even supposed that death from various diseases may be due to the formation of these compounds.[2]

[1] Brown & Stewart, p. 13.
[2] Brown & Stewart, pp. 13, 14.

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 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,[1] and it has in fact no direct connection with the fatal result, that being caused by the absorbed portion only.[2]

The appearances common to dead bodies generally are often mistaken for the effects of poison.[3]

Unhealthy or improper food, or acute disease, may cause suspicious symptoms. This is a common solution of suspected poisoning.[4]

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.[5]

If possible, the approximate *quantity* of the poison should be ascertained and stated, particu-

[1] Browne & Stewart, p. 14.
[2] Reese, p. 203.
[3] Browne & Stewart, p. 15.
[4] Browne & Stewart, p. 15.
Browne & Stewart, p. 15.

larly where the substance *may* have been administered medicinally.[1]

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.[2]

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 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.[3]

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.[4]

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.

[1] Browne & Stewart, p. 15.
[2] Browne & Stewart, p. 423.
[3] Reese, pp. 218, 221.
[4] Reese, p. 221.

When these crystals form on the mucous membrane of the stomach, they may be mistaken for the effects of poison.[1]

Dark coloured wine, highly coloured fruits or certain medicines taken shortly before death, may stain the stomach so as to prove deceptive.[2]

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 *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.

[1] Tidy, Vol. 1, p. 79.
[2] Tidy, Vol. 1, p. 89.

Classification of poisons.[1]—

IRRITANTS.

Mineral .... { Non-metallic.... { Acids, Sulphuric. / Metalloids, Phosphorus. }
Mineral .... { 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 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

[1] Many of the following observations upon poisons, their classifications symptoms and antidotes, were originally compiled by the late Prof. Croft, 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.

colour, not unlikely to be mistaken for the action of a corrosive poison.[1]

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.[2]

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 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

[1] Tidy, Vol. I, p. 68.
[2] Tidy, Vol. I, p. 90.

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.[1]

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.

Fatal dose for an adult is a fluid drachm, and for an infant half that quantity, but the degree of concentration must be considered.

[1] 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 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.

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, &c., 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.

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 membrane 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.

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, &c., 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.

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 occassionally 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 inflammation 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, are of frequent occurrence. Salivation, strangury, exfoliation of the cuticle and skin of the tongue, with falling off of the hair, fœtor 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.

Arsenic is used to harden lead in making shot, and the use of shot in cleaning bottles, &c., 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, &c.

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 burial 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.[1]

Reese states that arsenic is not a cumulative poison.

Arsenic possesses a strong anticeptic 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.

[1]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.

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 mucus 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 occured 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 fæces 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. 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.

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.

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 table-spoonful, 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.

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 urœmic 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.

Fatal Period.—Death may quickly follow if the chloroform is not properly diluted with air, (the average amount of vapour to act safely as an anæsthetic being three and a half per cent., the maximum being four and a half per cent.). 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 anæsthetic 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. The maximum of vapour to act safely is four and a half per cent.

Choral 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 anæsthetic 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. Reese is of the opinion that ether is a much safer anæsthetic than chloroform.

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 glistening, 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.

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 constriction 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.[1]

Glycerine increases the stability of prussic acid and may be useful if suspected substances have to be kept a long time.

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.[2] An external

[1] Browne & Stewart, pp. 63-67.

[2] Taylor I, p. 380.

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, many serious accidents have happened. The kernels of peach, apricot and cherry stones may also produce similar symptoms if eaten in quantity.

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.

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 rattle snakes 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 atrophine. 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.

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 alkaloids 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 ⅓ 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 abdomen 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.

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.

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;

[1] For a valuable report of this trial see Browne & Stewart's *Reports of Trials for murder by Poisoning.*

[2] Browne & Stewart, p. 291.

[3] Browne & Stewart, p. 287.

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.

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 in the limbs; 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, 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.[1]

In cases of poisoning by aconite, death may result from asphyxia, shock or syncope.

Fatal dose.—Variable, according to the strength of the preparations, $^1/_{21}$ of a grain and $^1/_{13}$ of a grain have produced death. In a newspaper report of a recent inquest in England on the body of one William Wight, $^1/_{21}$ of a grain is said to have caused his 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.

[1] Browne & Stewart, p. 576.

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.

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.

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 on 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, 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 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, magnesia

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, &c. 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 œsophagus.

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.

Oxalic acid, (known also in the arts as acid of sugar).—Finely pounded chalk or whitening is probably the best antidote; 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.

Phosphorous.—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, and that warm diluent drinks or demulcents, such as arrow-root, mucilage, &c. 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 potassæ 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 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, glutin 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 sul-

phates, especially the sulphate of magnesium, and vomiting should be early promoted by zinc sulphate, followed by opium and castor oil if necessary.

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; 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.

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.

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 coffee. Prof. Reese says atropine should then be carefully administered hypodermically, every half hour watch-

ing 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.

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.

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 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, urethan 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 vigorously 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.

Aconite, Aconitine (the active alkaloid principle of aconite).—There is no chemical antidote. The stomach should be emptied by the stomach pump or an active emetic. Animal charcoal, tannin or astringent infusions, 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.

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.

CHAPTER VI.

OF WOUNDS AND BRUISES.

SEC. 1.—EXAMINATION OF WOUNDS 159
" 2.—CHARACTERS OF A WOUND INFLICTED DURING LIFE 161
" 3.—CHARACTERS OF A WOUND MADE AFTER DEATH 162
" 4.—PRACTICAL REMARKS 163

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

[1] Taylor, Vol. I p. 485.

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.[1] 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 found arsenic. The girl, to avoid her father's anger, had poisoned herself.[2] 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 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.[3]

[1] Taylor, Vol. I. p. 485.
[2] Taylor, Vol. I. p. 485.
[3] Tidy, Vol. I. p. 85.

The effects of vermin on a body may resemble, and should not be mistaken for wounds.[1]

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.[2]

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.[3]

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.[4] 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.[5]

[1] Tidy, Vol. I. p. 92.
[2] Taylor, Vol. I. p. 487.
[3] Taylor, Vol. I. p. 487.
[4] Taylor, Vol. I. p. 487.
[5] Taylor, Vol. I. p. 709.

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.[1]

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 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.[2]

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

[1] Tidy, Vol. I. p. 81.
[2] Taylor, Vol. I. p. 487.

contused wounds, however, do not always cause much hemorrhage.[1]

SEC. 4.—PRACTICAL REMARKS.

The discoloration 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 discolored parts are generally recognized as not being the immediate seat of the violence from the skin over them being smooth and unabraded.[2]

This discoloration often proceeds from natural causes. Aged persons sometimes have it on their legs and feet.[3] Persons severely afflicted with scurvy will get it on the slightest pressure.[4] 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 produce stripes which to the unprofessional observer would present the appearance of being the effect of blows from a

[1] Taylor, Vol. I. pp. 488, 489.
[2] Taylor, Vol. I. p. 490.
[3] Taylor, Vol. I. p. 494.
[4] Taylor, Vol. I. p. 495.

stick or other violence,[1] 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 discoloration from that produced by blows. Almost invariably the cutis alone is found discolored when the skin is cut into, and the extravasation of blood, compared to the size of the marks, is slight.[2]

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

[1] Taylor, Vol. I. p. 495; Tidy, Vol. I. p. 65.
[2] Taylor, Vol. I. p. 495.

or lungs, meningitis, injury to the back during life, inflammation of the intestines.[1]

Putrefaction will also produce suspicious-looking marks on dead bodies, but their general characters are well distinguished, and cannot easily be confounded with marks of violence.[2]

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 discoloration to indicate their cause.[3] These ruptures can be distinguished from those occurring from natural causes by the absence of disease in the organ injured.[4]

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.[5]

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

[1] Tidy, Vol. I. p. 66.
[2] Taylor, Vol. I. p. 496.
[3] Taylor, Vol. I. p. 496.
[4] Taylor, Vol. I. p. 494.
[5] Taylor, Vol. I. p. 499.

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 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.[1]

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.

[1] Taylor, Vol. I. p. 502.

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.[1] When blood is found, the manner in which it is diffused over the weapon should be carefully noticed.[2] 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.[3] Foreign substances, such as wadding, paper, hay-seeds, etc., found in wounds, may afford strong evidence of their origin if carefully examined.[4] 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.[5]

Scorched hairs away from the actual seat of a burn are suggestive of its origin having been a flame.[6]

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

[1] Taylor, Vol. I. p. 536.
[2] Taylor, Vol. I. p. 536.
[3] Taylor, Vol. I. p. 537.
[4] Taylor, Vol. I. pp. 538, 543.
[5] Taylor, Vol. I. p. 538.
[6] Tidy, Vol. II. p. 95.

single blow, or by many injuries each comparatively slight.[1] In such cases the age, constitution, and the previous state of health or disease may accelerate or retard the fatal consequences.[2]

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.[3] 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.[4] A man is not bound to have his body always in so sound and healthy a state as to warrant an unauthorized assault upon him.

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

[1] Taylor, Vol. I. p. 586.
[2] Taylor, Vol. I. p. 586.
[3] 1 Hale, 428.
[4] 1 Hale, 428; *Regina* v. *Paine*, C. C. C. 1880.

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. 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.[1]

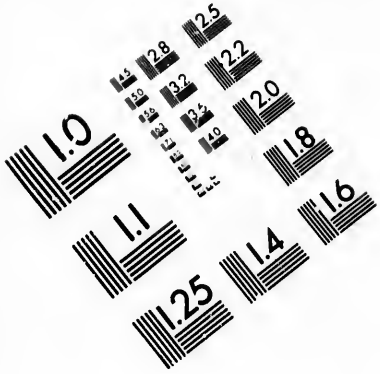
A difficulty may also occur from persons who were near the scene of a murder at the time of its committal, not having heard any cries or noise, which can be explained in cases where the trachea is found divided. An injury of this kind produces a loss of voice.[2]

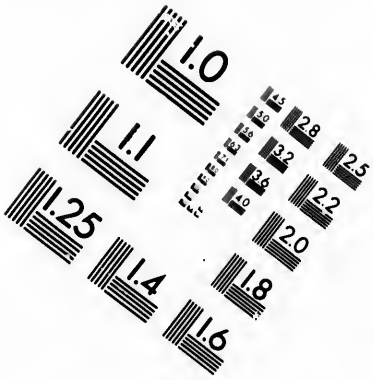
Although, in cases of severe wounds persons may survive long enough to perform various acts of volition and locomotion, yet the infliction of a mortal wound, particularly when accompanied with much hemorrhage, will generally prevent all *struggling*.[3] This is important to know in some cases, in order 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.

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.

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

[1] Taylor, Vol. I. p. 634.
[2] Taylor, Vol. I. p. 632.
[3] Taylor, Vol. I. p. 634.





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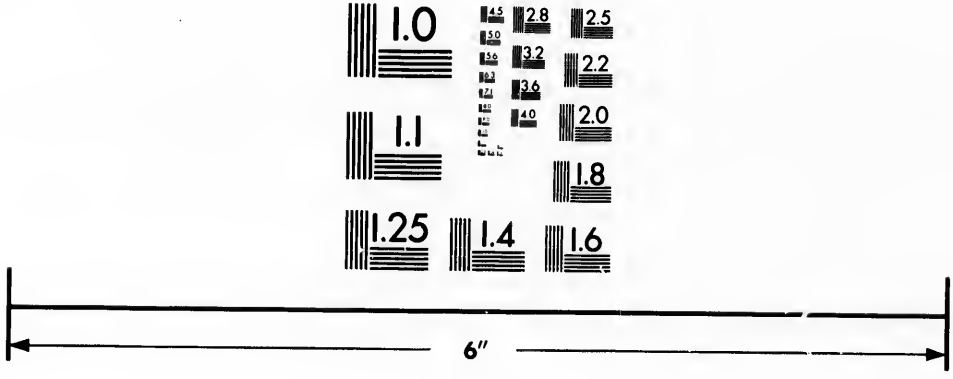

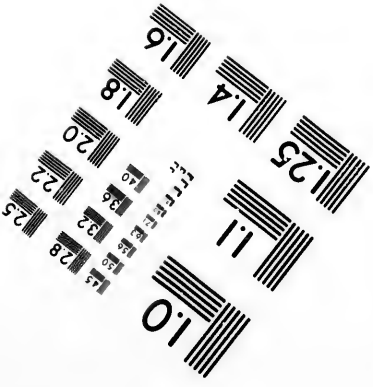

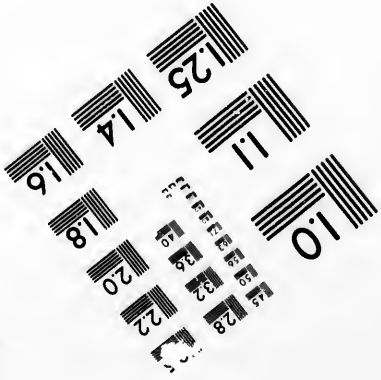

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cases. Severe ruptures of the various organs may take place without there being any external signs of injury to account for them.[1]

There has been some discussion as to whether people in trouble ever really die of an actual "broken heart." The London *Daily News* recently stated that the late Sir George Pago[illegible]entions an actual case of broken heart cited by Dr. [illegible]. 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.

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*,

[1] Taylor, Vol. I. p. 665.

stated "there are *indicia* in Medical Science from which it can be said at what distance small shot were fired at the body.[1]

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 the 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.[2]

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.[3]

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.

If possible, the projectile in cases of gunshot wounds should be carefully examined, and means

[1] *Preeper* v. *The Queen*, 15 S. C. 401, an instructive case on the admission of evidence.

[2] Taylor, Vol. I. p 685.

[3] Tidy, Vol. I. p. 164.

adopted to preserve 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.

[1] Vol. II. p. 115.
[2] Taylor, Vol. I. p. 687.

A gun fired close to a person may cause death, although merely loaded with wadding or even gunpowder.[1]

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.

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.[2]

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.[3]

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

[1] Taylor, Vol. I. pp. 689, 701.
[2] Tidy, Vol. I. p. 214.
[3] Tidy, Vol. I. p. 212.

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.[1]

Prof. Reese states that the entrance orifice of the ball is livid and depressed, and is larger than the point of exit 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.[2]

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

[1] Taylor, Vol. I. p. 685; Tidy, Vol. I. p. 160.
[2] Reese, pp. 114, 115.

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.[1] 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.[2]

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.[3]

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.[4]

[1] 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.

[2] Taylor, Vol. I. p. 689.

[3] Tidy, Vol. I. p. 162.

[4] Taylor; Devergie; Beck.

CHAPTER VII.

OF THE HYDROSTATIC TEST.

This test, although now exploded as a reliable one, for the purpose of proving the 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

[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].

pieces float 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.[1]

While performing this test, the remarks regarding it in Chapter III. s. 3, should not be lost sight of.

[1] 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.

[1] Taylor, Vol. I. p. 555.

[2] Taylor, Vol. I. 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.

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.

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.[1]

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.

As a rule blood spots have well-defined and somewhat raised edges. Their *general appearance* should be noted. Examine them with a large

[1] Taylor, Vol. I. pp. 555, 556.

magnifying glass. If they are on a coloured substance they can be seen best by artificial light.[1]

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.[2]

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.[3]

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.[4]

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.[5]

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

[1] Tidy, Vol. I. p. 184.
[2] Taylor, Vol. I. p. 556.
[3] Tidy, Vol. I. p. 189.
[4] Tidy, Vol. I. p. 201.
[5] Tidy, Vol. I. p. 190.

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. 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.[1]

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.[2]

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

[1] 2 Beck, 146.

[2] Tidy, Vol. I. p. 155.

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."[1] 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 opposum, (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 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."[2]

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.

[1] Tidy Vol. I. p. 200.
[2] Reese p. 140.

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, claiming the difference is apparent under instruments of very high power, except in the blood of the guinea-pig and the opposum. 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."[1]

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

[1] See Taylor's Mannual of Med. Jur. Eleventh American edition, p. 279.

adult. Nor can *menstrual* blood be distinguished from that of the body generally.[1]

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.[2]

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.

[1] Taylor, Vol. I. p. 566; Tidy, Vol. I. p. 20.
[2] Taylor, Vol. I. pp. 569-570.

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 days of Popery 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 Coroner's Act of 1887,[1] coroners were forbidden to inquire of the goods of such persons who were found guilty of murder or manslaughter.

[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

[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.

prisoner, are competent and compellable to give evidence in every court of justice concerning the matters in issue.[1]

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.

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 *voir dire*,[2] and formerly it was held that no objection to the competency of witnesses could be made except upon the *voir dire;* but it appears that now a witness may be declared incompetent, and his evidence rejected at any time during the examination.[3]

There are various causes which may affect the *credibility* of a witness, but a blemish of this kind must not exclude the witness, and the amount of credit due to his testimony the jury will be the judges of.

1. *Idiots*, or those who never have had any understanding from their birth, are incompetent to

[1] The prisoner and his wife or husband are now competent but not compellable to give evidence. See the Canada Evidence Act, 1893, s. 4, Dom.

[2] See form No. 35.

[3] Jarvis O. C. 261.

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.[1]

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

[1] 1 H. P. C. 34; 1 Leach. C. C. 455; 3 Car. & P. 127; The Canada Evidence Act, 1893, s. 6, Dom.

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.[1]

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 if they do believe in God and that he will so reward or punish them, they are competent as witnesses.[2] 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 *void dire*.[3] 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.[4]

[1] 56-57 V. c. 31, s. 25, Dom.

[2] *Omichund* v. *Barker*, Willes, 538; 1 Sm. L. C. 194; Powell on Evi. p. 22.

[3] See Form No. 35.

[4] *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.

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. 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.[2] The testimony of the wife of an accomplice is not a proper confirmation of his statement.[3] 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.[4] 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.[5]

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.[6]

6. *Husband or wife of prisoner.*—Husbands and wives of persons charged are now competent, but not compellable, to give evidence, but the

[1] The Canada Evidence Act, 1893, s. 4.
[2] 5 C. & P. 236.
[3] 7 C. & P. 168.
[4] Jervis, O. C. 260.
[5] 8 C. & P. 107.
[6] *The Queen* v. *Thompson*, L. R. C. C. R. Weekly Notes, 1893, p. 86.

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,[1] and in the case of a wife mortally injured by her husband, her dying declarations, if not otherwise inadmissible, are evidence against him;[2] as are also the dying declarations of the husband against the wife, under similar circumstances.[3] And after a divorce *a vinculo matrimonii*, either husband or wife can give evidence for or against the other.[4]

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. 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.[5]

[1] The Canada Evidence Act, 1893, s. 4.
[2] 1 East. P. C. 357.
[3] 1 East, P. C. 455.
[4] Peake's Evid. App. p. 39.
[5] 1 Salk 405; Roscoe 135; *Reg.* v. *Winegarner*, 17 Ont. R. 208.

9. *Constables.*— Coroners' constables can be sworn as witnesses, or as jurors, or as both together.[1]

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.

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; 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.[2] 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 tendered on the point.

And a written statement of a witness is not to be admitted as equal to the oral evidence of the

[1] *Reg.* v. *Winegarner*, 17 O. R. 208.
[2] Roscoe's Cr. Ev. 2.

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 need not to be required, for there are no degrees in secondary evidence.

Sec. 3.—PRESUMPTIVE EVIDENCE.

On many investigations 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.

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.[1]

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.[2]

A presumption may be rebutted by a contrary and stronger presumption.[3]

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.[4]

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 should not be received. But

[1] 55-56 V. c. 29, s. 11, Dom.

[2] Powell's Ev. 56.

[3] 5 Taunt, 326.

[4] 55-56 V. c. 29, s. 13, Dom.

the opinions of skilled or scientific witnesses are admissible to elucidate matters which are of a strictly professional or scientific character.[1]

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 other person, but no evidence so given can be used against him in any criminal proceeding thereafter instituted against him, other than a prosecution for perjury in giving such evidence.[2]

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.

[1] 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.

[2] The Canada Evidence Act, 1893, s. 5.

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.[1]

SEC. 6.—HEARSAY EVIDENCE.

Hearsay evidence, or the oral or 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.[2]

(*b*) When it is essentially connected with a transaction and forms part of it.

(*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.[3]

(*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. Here the feeling of responsibility on the approach of death is looked

[1] Powell's Ev. 83.
[2] Powell's Ev. 87.
[3] Powell's Ev. 94.

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.[1] The declarations must have been made by a person who, if alive, would have been a competent witness.[2]

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 believed he should not recover in spite of the hope expressed by the surgeon.[3]

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.[4]

Prof. Tidy, states,—

It may fall to the lot of a medical man to be present when dying declarations are made which

[1] 3 C. & P. 629; Roscoe's Cr. Ev. 3; 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.

[2] Powell's Ev. 124.

[3] *Regina* v. *Bayley*, Ex. Cham. Jan. 1857.

[4] Powell's Ev. 124.

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, &c. 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.[1]

(*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.

[1] Tidy, Vol. I, p. 12; and see Taylor, Vol. I, p. 481; Reese, p. 25.

If the prosecutor or his wife has obtained the confession by any threat or promise, it is inadmissible, or if the 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, the evidence against him should be first read over, and then he should be cautioned according to the form No. 52, in appendix.[1] 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.

(*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

[1] 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.

what the deceased person said on that subject at the time.[1]

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. Under this rule, evidence that a prisoner has committed a similar crime before, or that he has a disposition to commit such crimes is inadmissible.[2] Evidence of good character is admissible in criminal cases, but as coroners' juries have no power to try the party suspected, such evidence need not be taken at inquests.

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

[1] Roscoe's Cr. Ev. 30.
[2] Powell's Ev. 225.

if a question from its nature cannot be put except in a leading manner, the coroner should allow it to be asked ;[1] 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 coroner 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.[2]

[1] Powell's Ev. 439.
[2] 55-56 V. c. 29, s. 698.

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.[1]

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.[2]

SEC. 11.—ADMISSIBILITY OF INQUISITIONS ETC. TAKEN BEFORE CORONERS.

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.[3]

[1] 55-56 V. c. 29, s. 696, Dom.

[2] Roscoes N. P. pp. 110, 111. Lond. Law Monthly, Ed. 1890.

[3] A mere outline of the rules of evidence which coroners will most commonly have to consider, has been attemped in the text. Further information on the subject of evidence can be found in the works of Taylor, Roscoe, Starkle, Powell, Phillips and others.

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.

When the coroner receives proper notice of a death having taken place under such circumstances as require investigation,[1] he should procure the necessary information on oath,[2] and if within his jurisdiction proceed to hold his inquest forthwith, by issuing a precept or warrant[3] 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.[4] But the time ought in each case to be governed by the state of the body.

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.[5]

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

[1] See p. 11.

[2] See p. 12 and form No. 10.

[3] See form No. 16, and see remarks upon the case of *In re Berry*, 9 Ir. R 123, on p. 44.

[4] 1 Stra. 22; 1 Salk. 377 and 235.

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

whole of the body should be inspected.[1] 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 judgment 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.[2]

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.[3]

If the body has been buried, the coroner may lawfully take it up for the purpose of holding an inquest.[4] 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.[5]

It is a misdemeanor to burn or otherwise so dispose of a body upon which an inquest ought to

[1] *R.* v. *Bond*, 1 Stra. 22, and see pp. 18 and 51.
[2] 55 & 56 V. c. 29, s. 944, Dom.
[3] R. S. O. c. 8, s. 3.
[4] 2 Haw. c. 9, s. 23; 4 M. S. Sum. 333.
[5] 1 Salk. 377.

be held, as to prevent the coroner from holding the inquest.[1]

The proceedings by inquisition, being judicial, must not be conducted on a Sunday in Ontario.[2]

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.[3]

In cases where a coroner has authority to act, the proceedings are in substance the same as before a grand jury.[4]

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;* [5] 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 it is necessary to do so.[6]

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

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

[2] 9 Co. 666; Dakins' case 2 Saund. 291a; Jer. O. C. 279; *In re Cooper, et al.*, 5 Ir. R. 256; it is submitted that section 729 of 55 & 56 V. c. 29, Dom. does not apply to coroners' inquests.

[3] 2 Hawk. c. 9, s. 25; Latch. 166; Poph. 209, and see *ante*. p. 43.

[4] *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.

[5] Hist. of the Commonwealth, by Sir T. Smith, p. 96.

[6] R. S. N. S. 5th Series 1884, c. 17, s. 3.

not.[1] 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.[2]

And the coroners' court being a court of record[3] 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.[4]

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, 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 shewing a little authority. A coroner had far better err on the side of publicity, than in conducting 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,

[1] 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.

[2] 6 B. & C. 611; and see 10 B. & C. 237; and see judgment of Lord Abinger in *Jewison* v. *Dyson*, 9 M. & W. 585.

[3] 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.

[4] B. & C. 625, and *ante*, p. 50.

the constable should then be instructed to expel him, using no unnecessary violence.[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 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.[2]

Sec. 3.—THE JURY, AND HOW SUMMONED.

Inquests held by coroners are expressly excepted from the operation of the Juror's Act, [3] and coroners left to make all inquests by jurors of the same description as they were used and accustomed to do before the passing of that Act.

No qualification by estate is necessary for jurors on inquests, but they should be "lawful and honest men."[4] Aliens, convicts and outlaws are not such, and if impanelled on the inquest, it seems the inquest may be avoided.[5] They should be rejected by the coroner, although, strictly speaking, jurors upon inquests are not challengeable.[6]

[1] *Agnew* v. *Stewart*, 21 U. C. Q. B. 396, and *post*, s. 5, p. 226.
[2] R. S. N. S. c. 8, s. 24.
[3] R. S. O. c. 52, s. 138, and see *Reg.* v. *Winegarner*, 70 Ont. R. 208.
[4] Lord Raymond, 1305.
[5] 2 H. P. C. 60, 155; Lamb Just. 391.
[6] Mir. c. 1, s. 13; Brit. 6 a.

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 should be rejected if it is possible to do without him.

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, although jurors taken from the body of the county cannot be objected to. Householders should be preferred.[1]

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,[2] except when the prisoner was executed under sentence of law, in which case the jury must not be composed of prisoners confined in the gaol, or of officers of the prison.[3]

And in inquests upon fires, they are to be impanelled from among the householders resident in the vicinity of the fire.[4]

No person appears to be exempted from serving on coroners' juries, yet those who are exempted from serving on other juries had better not be summoned.[5]

The following persons are absolutely freed and exempted from being returned and from serving as

[1] Fort. de Land, c. 25.
[2] Umfrev. 212, 213.
[3] 55-56 V. c. 29, s. 944, Dom.
[4] R. S. O. c. 217, s. 3.
[5] See *In re Dutton* [1892] 1 Q. B. 486.

either grand or petit jurors in any of the courts of Ontario.[1]

1. Every person upwards of sixty years of age.

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 officer of the Dominion or Provincial Government; and

6. 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.

7. Every Inspector of prisons.

8. The wardens of the Provincial Penitentiary, the Central Prison and Reformatory.

9. Every officer and servant in the said Penitentiary, Central Prison and Reformatory.

10. Every judge of a court having general jurisdiction throughout Ontario.

11. Every judge of any county or other court (except the General Sessions of the Peace) having jurisdiction throughout any county in Ontario.

12. Every sheriff, coroner, gaoler and keeper of a house of correction or lock-up-house.

[1] R. S. O. c. 52, ss. 6, 7, 8, 9, 10.

13. Every priest, clergyman and minister of the gospel recognized by law, to whatever denomination of Christians he may belong.

14. 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.

15. Every solicitor of the Supreme Court of Ontario actually practising.

16. Every officer of any court of justice, whether of general, county, or other local jurisdiction, actually exercising the duties of his office.

17. Every physician, surgeon and apothecary, duly qualified to practise and being in actual practice.

18. Every officer in Her Majesty's army or navy on full pay.

19. The officers, non-commission officers and men of corps of volunteers, while they continue such.

20. Every pilot and seaman actually engaged in the pursuit of his calling.

21. Every officer of the post office, customs, and excise.

22. Every sheriff's officer and constable.[1]

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,

[1]A coroner's constable is admissible as a juror, but if it can be avoided it is better that he should not be sworn of the jury. See *R.* v. *Winegarner*, 17 Ont. R. 208.

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 such 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.

Every member of the Senate and House of Commons and of the Legislative Assembly of this Province—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 Her Majesty's inferior courts.

No man not being a natural-born or naturalized subject of Her Majesty is qualified to serve as a grand or petit juror in any of the courts aforesaid on any occasion whatever.

No man attainted of any treason or felony, or convicted of any crime that is infamous, 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.

The coroner's jury in Ontario may consist of any number of persons not less than twelve; and the verdict must be the opinion of the majority, provided that majority be composed of twelve jurymen at least.[1]

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. 36 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 been mitigated and the jurors allowed reasonable accommodation and comforts while making up their decision. If after some delay, there is no chance of a verdict the coroner should adjourn the jury to the next assizes

[1] *Regina* v *Golding*, 39 Q. B. 259.

for the county. And if they cannot then agree the judge of the assize will discharge them.[1]

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.[2]

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 point was not before the learned judge for consideration. In the fifth edition of Jervis, 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.[3] 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

[1] *Regina* v. *Reinheatz*, 4 F. & F. 1094.

[2] 56-56 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.

[3] See *Coleman* v. *City of Toronto*, 23 Ont. R. 345.

next assizes for the county and have them there dealt with by the presiding judge.

In a recent 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.[1]

The jury may at any time during the investigation call back witnesses and ask them further questions.

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.[2]

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.

The jury are summoned by the coroner issuing his precept or warrant to the constables of the county to summon at least twelve[3] able and sufficient men to appear before him at an hour and place named. This warrant, with a summons for each juryman[4] is given to a constable, who should serve the jurors personally, or at least leave the

[1] *Attorney-General* v. *Moore*, 1893, 1 Ch. 676.

[2] 1 Salk, 405; Roscoe, 130; *R.* v. *Winegarner*, 17 O. R. 208; and see *R.* v. *Petrie*, 20 O. R. at p. 320.

[3] Any number thought advisable, but not less than twelve, may be summoned. See Form No 16.

[4] See Form No. 18.

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.[1] Where a party jury is required, a warrant must also be issued to the gaoler of the prison.[2]

If a person duly summoned as a juror does not, after being openly called three times, appear and serve as such juror, the coroner may fine the delinquent person any sum he may deem proper, not exceeding four dollars.[3] And he must thereupon make out and sign a certificate[4] 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 for 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 the person 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 part of the fines imposed at such General Sessions.[5] If sufficient jurors attend the inquest, it is unusual to fine those who do not obey the summons.

[1] See Form No. 19.
[2] See Form No. 17. Jervis O. C. 322.
[3] R. S .O. c. 80, s. 5, and see 2 Hale, 59.
[4] See Form No. 23.
[5] R. S. O. c. 80, ss. 5, 6.

Jurors are sometimes summoned verbally, but this can hardly be considered a compliance with the statute which says "duly summoned."

A warrant to summon the jury with a summons for each of at least twelve jurors should 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 at hand they should be served with a regular summons, care being taken to choose only residents of the county where the body is found.[1]

If a constable refuse or neglect to make a return of the service of jurors he can be fined before the judge of assize.[2]

In *Nova Scotia*, coroners are authorized by statute to personally, or by a constable to summon the jury.[3] Where the inquest is on the body of a person killed by a mine accident 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 can serve as a juror or as coroner,[4] 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 colliery than

[1] In *re Dutton*, 1892, 1 Q. B. 486.
[2] 2 Hale, 59.
[3] R. S. N. S. 5th series, 1884, c. 17, s. 3.
[4] R. S. N. S. c. 8, s. 24.

that at which the accident occurred, who shall form part of the jurymen in such inquests.[1]

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.[2] They are to be selected from the nearest inhabitants.[3]

In *British Columbia*, a jury must consist of not less than six persons.[4] To avoid any uncertainty as to the meaning of the statute in this behalf, it is recommended not to summon more than eleven jurors, under any circumstances, and if six at least agree their verdict can be taken. Whatever number of jurors are summoned, six at least must agree to find a valid verdict, but if there are more than eleven jurors it would be questionable if a verdict of six only could be taken. If a juror does not appear and serve after being duly summoned and openly called three times, the coroner may impose a fine upon him not exceeding ten dollars, and by warrant under his hand, may by such person as he shall appoint, levy the amount with costs, by distress of the goods and chattels of the delinquent, the cost not to exceed those usually payable under distress for rent.[5]

In *The North-West Territories*, a coroner's jury need not exceed six persons, but six jurors at

[1] R. S. N. S. c. 8, s. 24.
[2] See Form No. 16.
[3] 39 V. c. 17, s. 2, P. E. I.
[4] R. S. B. C. 1888, c. 24, s. 6.
[5] R. S. B. C. c. 24, s. 13.

least must agree to render the verdict valid.[1] 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.[2]

Sec. 4.—THE WITNESSES, AND HOW SUMMONED.

Who are competent witnesses has already been considered in the chapter on Evidence.

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 summons[3] to compel their attendance, and to commit them should they refuse to appear,[4] or, after appearing refuse to give evidence upon the subject of inquiry[5]; or he may 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.[6]

The witnesses are summoned by giving a constable subpœnas[7] for them, which he must serve,

[1] R. S. C. c. 50, s. 85.
[2] 38 V. c. 8, N. F.
[3] See Form No. 29.
[4] See Form No. 31.
[5] See Form No. 38; 1 Chitty Cr. L. 164.
[6] R. S. O. c. 80, ss. 5, 6; and see Form No. 23.
[7] See Form No. 29.

and keep a memorandum of the service on each witness, in order to be able to prove it.

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.[1]

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.[2] 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.[3] A Jew is sworn upon the Pentateuch, a Turk upon the Koran, &c. And Quakers, Mennonists, Tunkers and United 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[4] 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, s. 23, and only applies to *witnesses*. With regard to coroners *jurors* the former practice must govern.[5]

[1] See 55-56 V. c. 29, ss. 675, 680, Dom.

[2] See Form No. 36; Umf. 177.

[3] *Mildrone's Case*, Leach Cr. Ca. 412; *Walker's Case*, Leach Cr. Ca. 498.

[4] See Form No. 36, and Can. Ev. Act, 1893.

[5] 55-56 V. c. 29, s. 675.

A juror must be sworn according to the usual form[1] 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.[2]

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.[3]

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 a foreigner, unable t 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.[4]

The coroner 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.[5]

After each witness is sworn, and his evidence reduced into writing by the coroner, it must be read over to him.[6] Then ask him if it be the whole of the evidence he can give, and any additions or corrections he mentions should be noted.

[1] See Forms 25, 26.

[2] *Walker's Case*, Leach Cr. Ca. 498.

[3] *Edmunds* v. *Rowe*, R. & M. 77.

[4] See Form, No. 37.

[5] 2 Hale, 62, 157; *Rex* v. *Scorey*, 1 Leach C. L. 43; *R.* v. *Colmer*, 9 Cox C. C. 506.

[6] *R.* v. *Plummer*, 1 C. & K. 600.

Request him to sign the depositions at the end and to the right hand of the paper. His doing so is not absolutely necessary,[1] but to refuse is a contempt for which it is said the witness may be committed.[2]

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."[3]

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.[4]

In *British Columbia*, a witness duly summoned, who, after being openly called three times, fails to appear and give evidence, may be fined by the coroner in the same way and to the same extent as a juror.[5]

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

[1] L. C. L. 996.
[2] See Form, No. 39; Chitty C. L. 164 s. 1, C. & K. 600.
[3] Powell, Ev. 307.
[4] See Form, No. 43.
[5] R. S. B. C. 1888, c. 24, s. 13.

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 confine-

[1] 55-56 V. c. 29, Dom.
[2] See Form K. Sch. to Act.
[3] See 55-56 V. c. 29, ss. 580, 813, Dom.
[4] See 55-56 V. c. 29, s. 581, Dom.
[5] See Form L. Sch. to Act.

ment, or in the custody of the person having him in charge, with a view to secure his presence as a witness 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.[1] 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[2] which may be executed anywhere within the jurisdiction of such justice.[3] 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

[1] See Form P. P. Sch. to Act.
[2] See Form M. Sch. to Act.
[3] 55-56 V. c. 29, s. 583, Dom.

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,[1] 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 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.[2]

SEC. 5.--COUNSEL.

Counsel appear to be on the same footing as the general public[3] with regard to having a right to attend the inquiry. The coroner can exclude them if he thinks proper and counsel cannot insist upon being present, and upon examining and cross-examining witnesses, 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

[1] See Form O. Sch. to Act.
[2] 55-56 V. c. 29, s. 585, Dom.
[3] See Chap. XII. s. 2.

be represented by counsel, such desire should be gratified except under very special circumstances.[1]

This power of exclusion should be cautiously used, as few cases can occur in which its exercise can result in any good.

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 into a grand jury room, and insist on examining witnesses called before them.[2]

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.[3]

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.

In *Nova Scotia*, when an inquest is held on the body of a person killed in a mine accident, the

[1] *Barclees' Case*, 2 Sid. 90, 101; Jervis O. C. 241.

[2] *Agnew* v. *Stewart*, 21 U. C. Q. B. 396.

[3] The professional reader is referred to Jervis O. C. 264, *et seq.*, for arguments and cases for and against this power of exclusion, and *Agnew* v. *Stewart*, 21 U. C. Q. B. 396; *Garnett* v. *Ferrand*, 1 B. & C. 611.

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.[1]

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.[2]

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,[3] and afterwards proceeds to call over the names of the jury, making a dash against the

[1] R. S. N. S. c. 8, s. 24.
[2] See Form, No 19.
[3] See Form, No. 21.

name of each as he appears. They are not challengeable, but an objection properly made may be admitted.[1] When the court is opened no other persons should be allowed to act as jurymen than those already selected or summoned,[2] nor should any of those selected 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.

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,[3] and then his fellows, by three or four at a time,[4] in their order upon the panel, and it is better with the body still before them.[5] 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.[6] The jury

[1] Umf. 185.

[2] See Cox's Cr. Law Cases, Vol. IX. Part VI.

[3] See Form, No. 25.

[4] See Form, No. 26.

[5] But see *R.* v. *Ferrand*, 3 B. & Ald. 260; *R.* v. *Ingham*, 5 B. & S. 257.

[6] See Form, No. 27.

should then 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 is an *indispensable* proceeding, as all inquests must be taken *super visum corporis*—that is, upon 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.[1]

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.

[1] 2 Hawk. P. C. 9.

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,[1] but all must be present at one and the same time, in order that the observations of the coroner may be heard by all.[2]

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.[3] 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.[4]

[1] 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.

[2] 1 Chit. Rep. 745 S. C.; 3 B. & A. 260.

[3] *R.* v. *Ingham*, 5 B. & S. 257.

[4] See *in re Berry*, 9 Ir. R. 123.

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.[1]

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.[2] 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:[3]

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] 55-56 V. c. 29, s. 944, Dom.

[2] 2 Beck, p. 3.

[3] Much of the information given under these heads is taken from the *Upper Canada Law Journal* for February, 1856.

1. *The place where the body is found.*—When inspecting the place where the body is found, care should be 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 V., 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 su-pected 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.[1]

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

[1] 2 Beck. 149.

same person walking, and of the same person standing still will be larger than either.[1]

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.[2]

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 handker-*

[1] Tidy, Vol. I. pp. 153, 154.
[2] Tidy, Vol. II. p. 737.

chief. 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.[1] 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 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 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.

As a rule a *horizontal* mark of a cord, the knot being on the same level as the cord, more especi-

[1] Taylor, Vol. II. pp. 55, 57.

ally 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.[1]

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.[2] What was in the hands, if any thing, and if a 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.[3]

If possible, the body should be first viewed exactly in the position in which it was found.

[1] Tidy, Vol. III. p. 264.

[2] 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 experienced 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."

[3] Tidy, Vol. I. p. 56.

3. *The Marks and Spots upon the Body and Clothing.*—These may be examined by the coroner and jury, but 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.[1]

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 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 lightening may simulate those of violence, and lead to a suspicion of foul play.[2] Putrefaction often sets in very rapidly after death from lightening.[3]

The existence of *goose-skin* or *cutis anserina* proves that a body found in water was thrown into

[1] Tidy, Vol. I. p. 167.
[2] Tidy, Vol. II. p. 133.
[3] Tidy, Vol. II. p. 141.

the water when the skin possessed the power of contractility.[1]

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.[2]

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.[3]

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.[4]

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

[1] Tidy, Vol. III. p. 220.
[2] Tidy, Vol. I. p. 34.
[3] Tidy, Vol. I. p. 44.
[4] Tidy, Vol. I. p. 49.

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 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.[1]

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.[2]

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

[1] Tidy, Vol. I. pp. 51, 55.

[2] Tidy, Vol. I. p. 59.

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 considered 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.[1] 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.[2]

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

[1] Tidy, Vol. I. pp. 57, 58.
[2] Tidy, Vol. I. p. 184.

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.[1]

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.

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 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.[2]

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:

[1] Tidy, Vol. III. p. 243.
[2] Jervis O. C. 323.

"I shall proceed to hear and take down the evidence respecting the fact, to which I must crave your particular attention."

The officer in attendance now calls silence, and repeats after the coroner the following proclamation for the attendance of witnesses:

"If any one can give evidence on behalf of our Sovereign Lady the Queen, 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 [1] or through the medium of an interpreter, who must also be sworn,[2] and then takes down his evidence, having previously prepared his examination papers or book by intituling the informations.[3] So long as the fair and obvious meaning of the words of the witness is taken down[4] in the presence of the party accused, if he can be apprehended, the requirements of the law will be fulfilled, but it is frequently desirable at trials

[1] See Form, No. 36.

[2] See Form, No. 37.

[3] See Form, No. 40.

[4] 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.

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.

Before the witness signs his examination, let it be read over to him, and ask him 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.[1]

All the evidence offered, whether for or against the accused, must be received.[2]

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[3] 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.[4] The coroner then dismisses them.[5]

If on the day appointed for continuing the inquest the court is not formally opened and further

[1] See Form, No. 40.

[2] 2 Hale, 157, 60, 61.

[3] See Form, No. 43.

[4] 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.

[5] See Form, No. 44.

adjourned, the proceedings drop and the court is dissolved, and everything else done in the matter of the 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 busines was to be done.[1]

A warrant may now, in the discretion of the coroner, be granted for burying the body,[2] 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. If it was found publicly exposed, in Ontario and is unclaimed within 24 hours after death by a known relative or by some person who obtains an order from a police magistrate having jurisdiction in the locality, authorizing the delivery of the body to such person, and who pays the sum of five dollars to defray the funeral expenses of the body claimed, which sum is to be paid to the undertaker when the body has been properly interred, or the dead person being a lunatic, died in an Ontario Provincial Asylum for the insane, the coroner must give notice thereof to

[1] *R.* v. *Payn*, 34 L. J. Q. B. 59.

[2] See Forms, Nos. 46, 47.

the Inspector of Anatomy of the locality, if there be one, and deliver it to him whether an inquest has been held on it or an inquest is found unnecessary. If there be no Inspector of Anatomy for the locality, the body must be interred as customary.[1] And the body of any person found dead, in Ontario, who, immediately before death, had been supported in and by any public institution, is to be placed under the control of the Inspector of Anatomy for the locality.[2]

The bodies of persons, being lunatics, dying in any Provincial Lunatic Asylum in Ontario, are to be decently interred in all cases.[3]

The body of every convict who dies in the penitentiary, if claimed, must be delivered over to the friends or relatives of the deceased; 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.[4]

The adjournment of the court is done by the officer making proclamation.[5]

Formerly the jury had to inquire as to deodands, flight, forfeiture and escape, but now they need only consider the cause of death.

It has been held not to be improper for the Crown-attorney, acting for the prosecution at the

[1] R. S. O. c. 149, ss. 1, 7; 52 V. c. 24, s. 1, Ont.
[2] R. S. O. c. 149, ss. 1, 7; 52 V. c. 24, s. 1, Ont.
[3] R. S. O. c. 149, s. 1.
[4] R. S. C. c. 182, s. 66.
[5] See Form, No. 45.

inquest, to enter the jury room with the consent of the coroner, *after* the jury had agreed upon their verdict, to advise the jury as to the proper language to be employed in drawing up their decision.[1]

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.[2]

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.

[1] *R.* v. *Sanderson*, 15 Ont. R. 106.

[2] 1 Salk. 405; *R.* v. *Winegarner, 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.

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.[1]

In *New Brunswick*, after the inquest the coroner must grant a permissive warrant[2] 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 the alms house of the city of Fredericton, the towns of Portland or St. Andrews, or any other town or parish with an established alms house, it must be sent to the dead house in charge of the constable attending the inquest, and be delivered to the keeper thereof, accompanied by the warrant, to be by the constable delivered to, or left at the residence of the overseers of the poor of the parish wherein the body was found, or any one of them, who shall bury the deceased in the

[1] R. S. N. S. c. 8, s. 24.

[2] See Form, No. 46.

same manner as if he had died a pauper, unless otherwise directed by the coroner. Should the distance be beyond such limits, the warrant must direct the constable to bury the body in a decent manner with proper economy, and to render an account of the expenses to the coroner which, with the constable's fees for burying the body, must be paid to the constable by the overseers of the poor of such parish on the order of the coroner stating the charge is reasonable and proper.[1]

Sec. 9.—The Medical Testimony.

If in Ontario or New Brunswick the coroner finds that the deceased was attended during his last illness or at his death by any legally qualified[2] medical practitioner, he may issue his order for the attendance of such practitioner as a witness at such inquest.[3] Or if the coroner finds that the deceased was not so attended, he may issue his order for the attendance of any legally qualified[4] medical practitioner, being at the time in actual practice, in or near the place where the death happened; and the coroner may, at any time before the termination of the inquest, direct a *post mortem* examination, with or without an analysis of the contents of the

[1] C. S. N. B. 1877, c. 63, s. 6.

[2] Legally qualified practitioners are persons duly licensed. 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.

[3] See Form, No. 33, and R. S. O. c. 80, s. 7; C. S. N. B. c. 63, s. 1.

[4] See Form, No. 33, and R. S. O. c. 80, s. 8.

stomach or intestines, by the medical witness summoned to attend at such inquest.

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]

It is usual, and coroners are most strongly recommended to have the analysis made by an experienced chemist.[3]

If in Ontario and New Brunswick 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 assist at the *post mortem* examination.[4]

Whenever it appears to the majority of the jurymen sitting at any coroner's inquest in Ontario and New Brunswick that the cause of death has not been satisfactorily explained by the evidence of the medical practitioner, or other witnesses examined

[1] Tidy, Vol. I., p. 4.

[2] *R.* v. *Quinch*, 4 C. & P. 571.

[3] See remarks as to analysis, *post*.

[4] R. S. O. c. 80, s. 8; C. S. N. B. c. 63, s. 1.

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[1] for the attendance of such medical practitioner or practitioners as a witness or witnesses, and for the performance of a *post mortem* examination as above mentioned, and whether before performed or not.

A second medical practitioner cannot properly be called by the coroner alone. The majority of the jury must ask for him, 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.[2]

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.[3]

[1] See Form, No. 33.

[2] *In re Harbottle and Wilson*, 30 U.C. Q. B. 314. And see form No. 42.

[3] R. S. O. c. 80, s. 11. 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

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.[1]

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.[2] 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.[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.

above mentioned, to have more medical evidence if they think it requisite. When considering if they shall summon a medical man, 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.

[1] *In re Harbottle and Wilson*, 30 U. C. Q. B. 314.

[2] U. C. Law Journal, Vol. I. p. 85.

[3] U. C. Law Journal, Vol. I. p. 84.

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.[1]

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.[2]

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 iden-

[1] U. C. Law Journal, Vol. I. p. 86.

[2] Tidy, Vol. I. p. 4.

tification, etc. A careless, or superficial or hurried examination, in such cases, has been pronounced a palpable dereliction of duty.[1]

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.[2]

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.
Mithylated ether (sp. gr. 0.720)	10 ozs.
Absolute alcohol	1 oz.
Sulphuric acid	4 drms.

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 deoderized.[3]

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.[4]

[1] Tidy, Vol. I. pp. 92, 93.
[2] Tidy, Vol. I. p 93.
[3] Tidy, Vol. I. p. 93.
[4] Tidy, Vol. I. p. 184.

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.[1]

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.[2]

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, and in chapter 4 apply as much to medical men called to see a body as to coroners 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 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

[1] Tidy, Vol I. p. 255.
[2] Tidy, Vol. III. p. 285.

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.

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, &c. 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.[1]

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.

Before dissection is begun, an 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

[1] 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.

render our 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, &c. *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.[1]

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 is 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

[1] 2 Beck, pp. 6, 7.

death is perfectly discovered in one or the other cavity; all of them should be inspected.[1]

It is recommended to commence the dissection at the head.[2] 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 transverse 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.[3] 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 œsophagus 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.

[1] 2 Beck, p. 7.

[2] 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.

[3] 2 Beck, p. 8.

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.[1]

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.[2]

The abdominal cavity will now remain. It is examined by making a crucial incision, and, if necessary, by removing the pubal bone. Each part must be carefully examined: the intestines with a blunt-pointed bistoury, to avoid injuring them.[3]

If there is any suspicion of poisoning, Dr. Beck says the whole of the alimentary canal, from the œsophagus 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 liga-

[1] 2 Beck, p. 10.
[2] 2 Beck, p. 10.
[3] 2 Beck, p. 11.

ture 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 œsophagus, stomach and duodenum are then to be extracted together, taking care previously to tie a ligature round the top of the œsophagus.[1]

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.[2]

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.

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

[1] 2 Beck, 11.

[2] Tidy, Vol. I. p. 19.

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.[1]

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.[2]

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.[3]

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.[4]

Where the body is frozen, it should be thawed by being placed in a warm room for some hours

[1] Tidy, Vol. I. pp. 126-128.

[2] For a copy of a Medico-legal Report taken from Prof. Tidy's work, see Form, No. 63.

[3] Tidy, Vol. I. p. 255.

[4] Tidy, Vol. I. p. 259.

before the *post mortem*. It should not be immersed in warm water.[1]

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,[2] if it is thought advisable during the *post mortem* to examine the inner coats of 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. 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, &c.—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,

[1] Tidy, Vol. I. p. 255.

[2] As to an analysis in Quebec, see chap. XIV. sec. 5.

sealed all over, and sent off at once for immediate analysis.

But the vapour of prussic acid will traverse paper, wet or dry bladder, &c., 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.[1]

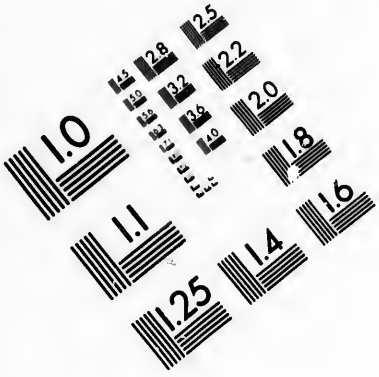
The greatest care should be taken to preserve the identity of the vomited or other matter taken from the body, or the most correct analysis afterwards made will be inadmissible as evidence.

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.

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

[1] Browne & Stewart, p. 61.



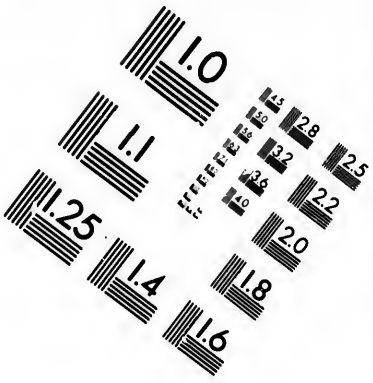
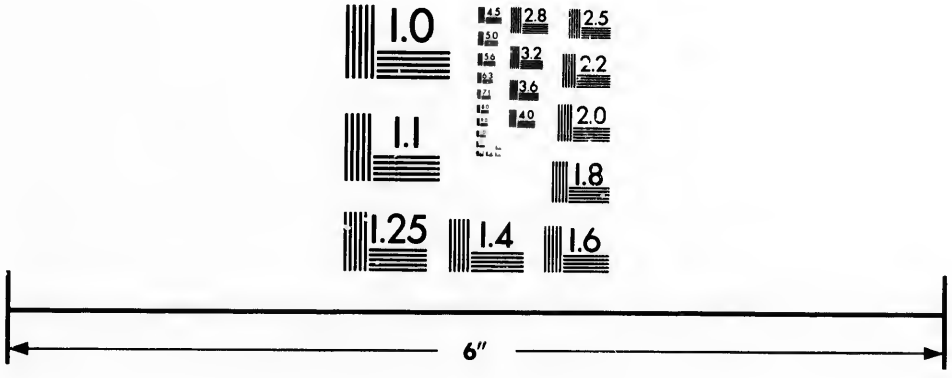
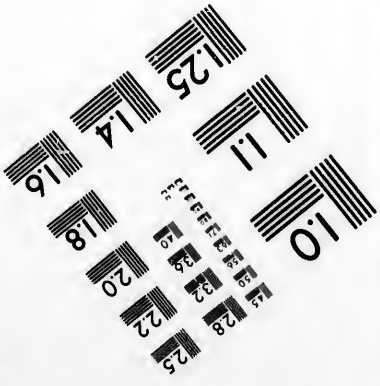


IMAGE EVALUATION TEST TARGET (MT-3)





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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.[1]

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-sensitiveness, no matter how pro-

[1] Browne & Stewart, p. 463.

voked 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. 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. 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*.[1]

[1] Apparently an instance of this occurred at a recent 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

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.

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]

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 *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 is to be paid to the county treasurer.[3]

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 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.

[2] R. S. Q. 1888, Art. 2692.

[3] C. S. N. B. 1877, c. 63, s. 5.

In *British Columbia*, the law is the same as in Ontario as regards summoning a medical practitioner, directing a *post mortem*, summoning a second medical practitioner, and as regards the disqualification of a medical man who is suspected of improper or negligent treatment of the deceased.[1] The written request of the jury for a second medical witness must be attached by the coroner to his certificate for the payment of such medical witness, and the municipality in which the body is found must pay the fees as well as all other costs, fees, and expenses of and incidental to the holding of the inquest.[2]

And in *British Columbia*, if a medical witness disobeys the coroner's order for his attendance at the inquest, he can be fined under the same circumstances as in Ontario, but the fine is not less than $20 and not more than $100, to be recovered by complaint of the coroner, or of any two jurymen, made before any two justices of the peace, who must hear and adjudicate upon the same, and proceed as upon like cases in Ontario. See p. 251.[3]

Sec. 10.—THE DEPOSITIONS.

The depositions or evidence must be taken 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 appre-

[1] See p. 250; R. S. B. C. 1888, c. 24, ss. 7, 8, 9; and see forms, No. 33, 42.
[2] R. S. B. C. 1888, c. 24, ss. 10-15.
R. S. B. C. 1888, c. 24, s. 12.

hended, and must be certified and subscribed by the coroner, and in Ontario caused to be delivered without delay,[1] 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.[2] 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.[3]

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 and the depositions, etc., will ultimately be sent by the magistrate in Ontario to the crown attorney, it

[1] R. S. O. c. 79, s. 10, say "forthwith."
[2] R. S. O. c. 79, s. 10.
[3] 55-56 V. c. 29, s. 568, Dom.

seems 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.[1]

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 administrators to certify it.[2]

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.[3]

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

[1] 55-56 V. c. 29, 642, Dom.

[2] 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*.

[3] *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.

contrivance of the party to whom their testimony is adverse.[1] But they cannot be received, though the witnesses are dead, unless it is proved that they were signed by the coroner.[2] And before they can be received, evidence must be given that they are the identical papers taken before the coroner without alteration.[3]

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 them, and the same, with the inquisition, must in all cases, except where a verdict of murder 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.[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 a statute passed in 1836, coroners upon any inquisition taken before

[1] 1 Kel. 55; 1 Lev. 180; Phil. Ev. 166; *R.* v. *Gutteridge*, 9 C. & P. 471; *R.* v. *Scaife*, 1 M. & R. 551.

[2] *R.* v. *England*, 2 Leach, 770, 771.

[3] Kel. 55; Fost. 337; Hawk. b. 2, c. 46, s. 15; Phill. Ev. 162-5. But 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. See also in this connection, s. 3, s-s. (*j* & *l*), 568, 642.

[4] 49 V. c. 27, ss. 1, 2, N. B.

[5] 55-56 V. c. 29, s. 568, Dom.

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.[1]

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.

Sec 11.—OBSTRUCTIONS—HOW PUNISHED.

It is a misdemeanour to interrupt or obstruct the coroner or his jury in the view or inquiry.[2] 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;[3] 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.[4] It is better, however, for coroners not to make use of this power, but to have the offending party punished for the misdemeanour.

[1] 55-56 V. c. 29, s. 568, Dom.
[2] Umf. 123.
[3] 6 B. & C. 611; 1 Ld. Raym. 454; 1 Mod. 184; 2 Mod. 218.
[4] Jer. O. C. 268.

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 inquisition should be pleaded with the same strictness and legal precision as indictments.[3]

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]

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

[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.
[3] Jer. O. C. 271.
[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.

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.[1]

They are—

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.
10. The verdict.
11. The party charged.
12. The addition.
13. The allegation of time and place.
14. The description of the act.
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

[1] 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 usual and better practice is to insert it in both.[1]

2. *The place where holden* —The place at which the inquisition is holden must appear on the face of the inquisition.[2] If no place is stated,[3] or if the place stated is not shewn with sufficient certainty to be within the jurisdiction of the coroner[4] it is insufficient.[5]

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.[6] 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.[7]

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.[8]

The time should be stated in the present tense.[9]

The year of the Queen's reign, without adding the year of our Lord, is sufficient; or the year of

[1] 2 Hale, P. C. 166.

[2] 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.

[3] Dyer, 69.

[4] Cro. Jac. 276, 277.

[5] 2 Hawk. P. C. c. 25; and see *Reg.* v. *Winegarner*, 17 O. R. 208.

[6] 2 Saund. 291.

[7] 1 T. R. 316.

[8] Jervis, O. C. 246; *Reg. v. Winegarner*, 17 O. R. 208.

[9] 2 Hawk. P. C. c. 25, s. 127.

our Lord, without adding the year of the Queen's reign, will suffice. Numbers should not be expressed by figures, but by words at length,[1] or at least in Roman numerals.[2]

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.[3]

The names 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 inquisition must state that the inquiry was taken on *view* of the body, or it will be bad.[4]

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.[5]

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.[6]

No addition or occupation of the deceased is necessary,[7] nor need the deceased be distinguished

[1] 2 Hawk. P. C. 170.
[2] 1 Str. 26.
[3] 22 Ed. IV. 13, 16; Sum. 207; S. P. C. 96; 2 Ld. Raymond, 1305.
[4] Jer. O. C. 277.
[5] 2 Hawk. P. C. c. 25, ss. 71, 72.
[6] 3 Camp. 264; Holt. C. N. P. 595; 2 H. P. C. 281.
[7] 2 H. P. C. 182.

from another person of the same name by the addition of "the younger."[1] 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.[2]

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.[3] And the place where the death happened or where the body was found should also be stated.[4]

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,[5] or of so and so (naming one or two) and others.[6] So it must expressly appear that 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.[7] If their christian names and

[1] 3 B. & A. 579.
[2] 2 C. & P. 230.
[3] Jer. O. C. 279.
[4] *Reg.* v. *Evett*, 6 B. & C. 247.
[5] 6 B. & C. 247.
[6] 2 H. P. C. 168
[7] 2 Hawk. P. C. c. 25, s. 126.

surnames are given in the body of the inquisition, it is not necessary that the jurors should sign their names in full.[1] 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.[2]

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.[3]

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.[4]

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.[5]

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 compound-

[1] *Reg.* v. *Golding*, 39 Q. B. 259.

[2] 3 C. & P. 414.

[3] Ld. Raym. 710; 2 Hawk. P. C. c. 25, s. 126.

[4] Jer. O. C. 281; *Reg.* v. *Breden, et al.*, 16 U. C. Q. B. 487.

[5] *In re Millar, et al.*; 15 U. C. Q. B. 244; *Ex parte Scratchley*, 2 D. & L. 29.

ing 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.[1]

The verdict of the jury does not prevent the accused being tried for a higher or lesser offence.

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.[2] A second christian name cannot be added after an *alias dictus*;[3] 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.[4] The surname should be the one usually given to or acknowledged by the party; and if there is a doubt which one of two names is his real surname, the second may be added after an *alias*, adding the christian name to each.[5]

When the party is unknown, he may be described as a "certain person to the jurors afore-

[1] *Reg.* v. *Farley*, 24 Q. B. 384.
[2] Co. Lit. 3; 6 Mod. 115, 116; Jer. O. C. 281.
[3] Ld. Raym. 562; Willes, 554; 2 East, 111.
[4] 5 T. R. 195.
[5] Bro. Misn. 47; Jer. O. C. 282.

said 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.[1]

If the name sounds the same it is no objection if it is misspelt.[2] 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.[3]

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.[4]

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.[5]

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,

[1] R. & R. 409.

[2] 10 East, 84; 16 East, 110.

[3] 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.

[4] *The Queen* v. *The Directors of the G. W. Railway Co.*, L. R. 20 Q. B. D. 410.

[5] R. S. O. 1877, c. 79, s. 12.

except perhaps in cases where local description is required.[1]

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."[2]

If the offence is charged to have been committed on an impossible day, the inquisition is bad.[3]

The jury should point out the precise time at which the accident happened that caused the death of the deceased, and also the precise time at which the death took place.[4]

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.[5] 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.[6] 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 called accessories before the fact,[7] 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

[1] R. S. O. 1877, c. 79, s. 12.
[2] *Rex* v. *Higgins*, 3 C. & P. 414.
[3] *Reg.* v. *Mitchell*, 7 C. & P. 800.
[4] *Reg.* v. *Brownlow*, 3 P. & D. 52.
[5] *Reg.* v. *Breden*, 16 U. C. Q. B. 487; 5 East, 244.
[6] Jer. O. C. 286.
[7] 2 East, 4.

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 kill and slay" the deceased. Imperti nent 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,[1] inference or argument,[2] 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.[3] And the same if the party is charged in two different characters in the disjunctive.[4]

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.[5]

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.

[1] 2 Ld. Raym. 1363.
[2] 2 Hawk. P. C. c. 25, s. 58.
[3] Jer. O. C, 289.
[4] 2 Ro. Rep. 263.
[5] Jer. O. C. 299.

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.[1] 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.[2] 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 V. c. 29, or by the powers of amendment now vested in the courts.[3]

[1] Fost. C. L. 424; 2 H. P. C. 184.

[2] Plowd. 255; 1 Saund. 356: 1 Keb. 66; 1 Salk. 377; 7 Mod. 16.

[3] 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 act corresponding 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.

15. *The Attestation.*—This is an essential part of the inquisition.[1] 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,[2] 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.[3]

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.[4]

A person who cannot write his name should not be sworn as a juror if it can be avoided.

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.[5] Affix a separate seal for the coroner and for each of the jurymen.

If it is necessary to accept jurors who sign with their marks, such marks ought to be verified by an attestation.[6] But a juror who has put his mark

[1] See Form, No. 75.

[2] *Rex* v. *Evett*, 6 B. C. 247; *Rex* v. *Bowen*, 3 C. & P. 602.

[3] Jer. O. C. 297; *Reg.* v. *Golding*, 39 Q. B. 259; *Rex* v. *Bennett*, 6 C. & P. 179.

[4] *Rex* v. *Norfolk (Justices)*, 1 Nolan, 141.

[5] See *Reg.* v. *Winegarner*, 17 O. R. 208.

[6] *Rex* v. *Bowen*, 3 C. & P. 602; *Reg.* v. *Stockdale*, 8 D. P. C. 517.

must be taken *prima facie* to have done so in the presence of the other jurors.[1]

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, 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]

Coroners should keep copies of all inquisitions, in order to be able to make their returns to the proper officers.[5]

Sec. 13.—Publication of Proceedings.

Strictly speaking, it is unlawful to publish a statement of the evidence before a coroner's jury,

[1] *Lewin's Case*, 2 Lewin C. C. 125.

[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] See page 29.

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

[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.

a medical witness; and, as previously stated, 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.

There is also no direct provision in Ontario for defraying the expense of burying persons who have no friends or property available for the purpose, but if the coroner issues his warrant to bury the body, all proper acts done in pursuance of that warrant ought to be paid by the Government, and if not so paid, the county authorities should sanction the amount being paid out of the county funds.[1]

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 acci-

[1] When the body of a deceased person has been found publicly exposed in Ontario, the coroner, if there is no inspector of Anatomy for the locality, is required to cause it to be interred, as the Act says, "As has been customary." See R. S. O. c. 149, s. 7.

dent 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 ;[1] and also a certificate of the Crown attorney[2] that the inquisition and papers have been filed with him, and that he considered there were sufficient grounds o warrant the holding of an inquest within the meaning of the Act respecting coronors,[3] 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.[4] And when mileage is claimed, the places from and to must be mentioned. Unless this requisition is complied with the accounts will not be passed.

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,[5] 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

[1] See Form, No. 14. The oath can be sworn before a J. P.; a commissioner, or a notary public. See R. S. O. c. 80, s. 4.

[2] See Form, No. 73½.

[3] For this certificate the crown attorney is entitled to be paid $1.00 by the Government. See circular, No. 18, from the Treasury Department of Ontario.

[4] See circular of Inspector-General of Jany. 26, 1864.

[5] See Form, No. 70.

all demands of the party rendering the same up to the time of such rendering.

The coroner should give the medical witness an order[1] on the treasurer of the city or county for the payment of his fees.[2]

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.[3] 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 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.

[1] See Form, No. 62.

[2] R. S. O. c. 80, s. 10.

[3] *Rex* v. *Kent* (*Justices*), 14 East, 229 ; *Reg.* v. *Gloucestershire* (*Justices*), 7 El. & Bl. 845.

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.[1]

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.[2]

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 demand made for a *post mortem* by a majority of the jury, or of his declaration as to the necessity for a *post mortem*.[3] 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 Statutes of Quebec, respecting anatomy, shall be buried at the expense of the corporation in which it is found.[4] And if the body is found upon the beach of, or floating in, the River St. Lawrence opposite the parish of Beaumont and the

[1] See C. R. 1232.

[2] See Form, No. 73, and see circular from Inspector-General's Office of Jany. 26th, 1864.

[3] R. S. Q. 1888, Art. 2690.

[4] R. S. Q. 1888, Art. 2691.

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.[1]

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.[2]

[1] R. S. Q. 1888, Art. 2691.
[2] R. S. B. C. 1888, c. 24, s. 15, 16.

CHAPTER XIII.

PROCEEDINGS SUBSEQUENT TO THE INQUISITION.[1]

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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

[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 on p. 21.

[2] See Form, No. 56.

[3] See Form, No. 57.

[4] See remarks on p. 270.

[5] 55-56 V. c. 29, s. 568, Dom.

proper officer in these and in other cases has already been mentioned.[1]

The witnesses called for the purpose of exculpating a party accused should not be bound over to appear.[2]

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.[3] If the husband is present, he must be bound for the appearance of his wife.[4] And if an apprentice or minor is a witness, the master or parent is bound for his appearance.[5]

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.[6]

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

[1] See Chap. XII. s. 10.
[2] *Reg.* v. *Taylor*, 9 C. & P. 672.
[3] See Form, No. 59, and note thereto.
[4] See Form, No. 59; Impey O. C. 265.
[5] See Form, No. 59; Impey O. C. 566
[6] *In re Urwin*, O. B. 1827; Car. C. L. 17.

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.

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.[1] And now ample powers of amendment are expressly given to the courts by legislative enactments.[2]

If the inquisition is quashed, a new inquiry may, by leave of the court,[3] be instituted by the coroner,[4] the body being disinterred by order of the court for that purpose, if it has not been a long time buried.[5]

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 inquisition by special commissioners, who proceed without viewing the body, by the testimony of witnesses only;[6] 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

[1] 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.

[2] 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.

[3] Str. 167.

[4] 3 Mod. 80.

[5] Salk. 377; 1 Str. 22, 533.

[6] 2 Hawk. P. C. c. 9, 556; 1 Salk. 190.

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 shew 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. C. J. Cockburn, 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.[1]

If the inquisition is quashed for a defect in form only, the coroner may and ought to take a new in-

[1] *The Queen* v. *Carter*, Q. B. D. *Weekly Reporter*, July 8th, 1876.

quisition, in like manner as if he had taken none before.[1] But 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 not having been quashed, and no writ of *melius inquirendum* having been awarded.[2]

Sec. 4.—OF TRAVERSING INQUISITIONS.

It seems that inquests of coroners are in no case conclusive, but any one effected by them, either collaterally or otherwise, may deny their authority and put them in issue.[3]

It has been doubted whether inquiries of *felo de se* were traversable, but the law appears to be now settled that they are.[4]

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.[5]

Sec. 5—OF QUASHING INQUISITIONS.

We have seen [6] that no inquisition found upon or by any coroner's inquest, will be quashed for

[1] 2 Roll. Abr. 32; 2 H. P. C. 59; 2 Str. 69: Jer. O. C. 91.
[2] *Reg.* v. *White*, 3 El. & El. 137.
[3] 3 Keb. 489; 6 B. & C. 247, 615, 627; Jer. O. C. 312.
[4] See Jer. O. C. 312, 313, 314; 2 Lev. 152.
[5] 3 Mod. 80; 1 Salk. 190; Jer. O. C. 515; but see Impey O. C. 489.
[6] See Chap. XIII. sec. 3; R. S. O. 1877, c. 79, s. 12.

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,[1] or if the accused parties are designated as the directors of a railway or other company without naming them,[2] or if the inquisitions are uncertain in their language,[3] or if the finding of the jury is not legally warranted by the facts set forth,[4] or if twelve jurors did not agree in the finding, even if the finding was in other respects good.[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,

[1] In the case of *Reg.* v. *Johnston*, recently 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.

[2] *The Queen* v. *The Directors of the G. W. Railway Co.*, L. R. 20 Q. B. D. 410.

[3] 12 Mod. 112; *Reg.* v. *Bredenstal*, 16 U. C. Q. B. 487.

[4] *Cully, in re* 5 B. & Ad. 230; and see *Reg.* v. *Farley*, 24 Q. B. 384; *Reg.* v. *Goulding*, 39 Q. B. 259.

[5] *Cabat's Case*, 2 Hale P. C. 161 n; Jer. 253.

[6] Jer: O. C. 318; *ex parte Carruthers*, 2 M. & R. 397.

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*.[1]

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, and the jury having found their verdict upon the other evidence only.[2]

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.[3]

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,[4] 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.[5] Nor the improper reception of evidence.[6]

[1] *Reg.* v. *Carter*, 45 L. J. Q. B. D. 711; 13 Cox, C.C. 220.

[2] *Reg.* v. *Staffordshire (coroner)*, 10 L. T. N. S. 650 Q. B.; *Reg.* v. *Ingham*, 5 B. & S. 257.

[3] *Re Casey, et al.*, 3 Ir. C. L. R. 22; *Reg.* v. *McIntosh*, 7 W. R. 52 s. c. 32 L. T. 146.

[4] *Re Casey, et al.*, 3 Ir. C. L. R. 22; *Re Miller*, 15 U. C. Rep. 244; *Reg.* v. *Ingham*, 5 B & S. 257.

[5] *Reg.* v. *Sanderson*, 15 Ont. 106.

[6] *Reg* v. *Ingham*, 5 B. & S. 257; *Reg.* v. *Sanderson*, 15 Ont. 106.

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.[1]

After a verdict, the court will presume that a coroner's inquisition was found by twelve jurors, if twelve were necessary.[2]

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.[3]

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

[1] *Reg.* v. *Yorkshire* (*coroner*), 9 Cox, C.C. 373.
[2] *Taylor* v. *Lambe*, 6 D. & R. 188; 4 B & C. 138.
[3] *Scratchley, Ex parte*, 2 D. & L. 29.

was held on motion to quash the inquisition, that the proceedings were irregular and the motion was granted.[1]

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 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.[2]

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.[3]

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.[4]

Misconduct of the coroner or jury will also be a good reason to quash the inquisition.[5] For instance,

[1] *In re The Mitchelstown Inquisition*, 22 L. R. (Ir.) 279.
[2] *In re The Mitchelstown Inquisition*, 22 L. R. (Ir.) 279.
[3] *In re The Mitchelstown Inquisition*, 22 L. R. (Ir.) 279.
[4] *R.* v. *Berry*, 9 Pr. Rep. 123.
[5] 3 Mod. 80.

if the coroner wilfully misdirects the jury,[1] or if he withdraw some of the jurymen in order to induce the others to find a particular verdict.[2]

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.[3]

An inquisition taken before an unauthorized person, being a nullity, will not be quashed.[4]

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.[5] The affidavits, in moving for a *certiorari*, should be entitled *The Queen* v. *A. B.* (naming the coroner who held the inquest).[6]

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 equi-

[1] *R.* v. *Wakefield*, 1 Str. 69.

[2] *R.* v. *Stukely*, 12 Mod. 493; Holt. 167.

[3] *R.* v. *Bond*, 1 Str. 22; 2 Hawk. P. C. c. 9. s. 24.

[4] 8 A. & E. 936; 1 P. & D. 146.

[5] See Chap. XIII. s. 3.

[6] *The Queen* v. *Carter*, *Weekly Reporter*, July 8, 1876; *The Queen* v. *Farley*, 24 Q. B. 384.

valent to the finding of a grand jury, and such person might be tried and convicted upon it.[1] And it seems if an indictment was found for the same offence, and the prisoner was acquitted on the one, he ought to be arrainged on the other, to which he might however, plead his former acquittal.[2] 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.[3] Now under section 642 of the Dominion Criminal Code, 1892, no one can be tried upon a coroner's inquisition.

[1] 2 Hale, 61.
[2] 2 Hale, 61; 1 Salk, 382.
[3] 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.[1]

(See observations in Chap. XII. sec. 14, as to making out and rendering accounts).

Precept to summon jury	$0 50
Impanelling jury	1 00

[1] These fees are prescribed by R. S. O. c. 83.

Summons for witness, each[1]	$ 0 25
Information or examination of each witness[1]	0 25
Taking every recognizance[2]	0 5
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]	0 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	0 10
In cases of an extraordinary nature, a secretary or clerk is allowed, *per diem*	2 00

[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.

[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.

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.[1]

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 on p. 20, and shall have returned and filed the same with the inquisition.[2] And if the Attorney-General is convinced that an inquest is useless, he may order that no fees be paid for such inquiry.

In *Nova Scotia*, the fees are :[3]—

For every inquisition, including $2.50 for fees of the jury and 50c. for the constable's fee.....$10 00

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.[4] Such charges should be duly attested by the coroner before a justice of the peace as being reasonable and necessarily incurred.[5]

[1] R. S. Q. 1888, Art. 2692.

[2] 55-56 V. c. 26, Que.

[3] R. S. N. S. 5th series, 1884, c. 17, s. 4, and c. 128, schedule. 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.

[4] R. S. N. S. c. 128, schedule.

[5] R. S. N. S. c. 17, s. 6.

In *New Brunswick*, the coroner's fees are :[1]

Taking and returning an inquisition, recognizance, swearing jurors, binding witnesses, and issuing thereon all subpœnas and warrants consequent	$8 00
Travelling from his residence to the place where the body may be and returning, per mile	0 10

The printer's accounts for printing all forms of inquisition, recognizances, subpœnas, etc., are to be repaid the coroner.

The fees and all moneys necessarily advanced on an inquest in New Brunswick are paid out of the public funds, and the county council must, on presentation of the account, order it to be paid by the county treasurer.[2]

In *Prince Edward Island*, the coroner's fees are :[3]—

Coroner's fees	$1 50
Precept to constable to summon jury	0 40
Each oath to a witness	0 15
Each subpœna.....	0 15
Each examination	0 25
Mileage, per mile	0 05
Taking recognizance of jury and witnesses on adjournment	0 50

In *British Columbia*, the coroner's fees are :[4]—

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	0 20

[1] C. S. N. B. 1877, c. 119.

[2] C. S. N. B. 1877, c. 63, s. 8.

[3] 39 V. c. 17, s. 5, P. E. I. These fees are paid by the Provincial Government.

[4] R. S. B. C. 1888, c. 24.

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] The only schedule of fees for coroners so determined up to 31st May, 1893, is as follows :—

Precept to summon jury	$0 50
Empanelling a jury	1 00
Summons for witness, each	0 25
Information, deposition, or examination of each witness	0 25
Taking every recognizance	0 25
Necessary travel to take an inquest, per mile each way	0 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*, the fees for holding inquests are such as are provided for process and service in summary criminal cases, and are set out in 52 V. c. 25, N. F. As already stated, inquests in this colony are only held by stipendiary magistrates.

Sec. 2.—THE ONTARIO CORONER'S FEES IN FIRE INQUESTS.[2]

Note.—The same fees are also payable to Provincial Coroners appointed in Ontario under 54 V. c. 37, Ont., for fire investigations.

1. In *cities, towns and incorporated villages.*—For fire inquests in these places the coroner is

[1] R. S. M. c. 32, s. 6.

[2] In all cases the party requiring an investigation into an accident by fire is alone responsible for the expenses of and attending such

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.[1]

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.[2]

In *Quebec*, the fees for fire inquests are the same as in Ontario. In cities, towns and villages they are paid by order on the treasurer of the municipality and elsewhere by the persons who demanded the enquiry.

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.)

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 to charge any municipal corporation, unless there are strong special and public reasons for granting the same. R. S. O. c. 217, ss. 8, 9.

[1] No expenses of or for an adjournment of any fire inquest is chargeable against or payable by the party or municipal authorities 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. c. 217, ss. 7. 10.

[2] R. S. O. c. 217, s. 7.

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.[1]

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.

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,[2] 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.[3]

In *New Brunswick*, the following statutes will be found relating to coroners summoning juries for the 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.).

[1] Con. Rules 918, 1232. Consolidated Rules 1233 to 1237 inclusive relating to mileage, fees and poundage and taxing sheriffs' costs, are made to apply to coroners by Con. Rule 918, and Con. Rule 1232 provides that coroners shall be entitled to the same fees and allowances as sheriffs in executing civil process. See Tariff C, Con. Rule 7.

[2] See Form, No. 63½.

[3] R. S. N. S. 5th series, 1884, c. 128, schedule.

SEC. 4.—THE FEES OF THE ONTARIO MEDICAL WITNESS.[1]

NOTE.—See observations upon making out and rendering accounts in Chap. XII, sec. 14.

Attendance without a *post mortem* each day.[2]	$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[3]	0 20

NOTE.—If a second medical witness is called it must be upon the *written* request of the majority of the jury naming the medical witness desired.[4] The second medical witness is entitled to the same fees respectively for attendance and for a *post mortem* as the first one.[5] All accounts must be rendered in duplicate and under oath.

In *Quebec*, the fees of the medical witness are:[6]

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.....	05

[1] See R. S. O. c. 80, s. 10.

[2] 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.

[3] 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. c. 80, s. 10. 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.

[4] R. S. O. 1887, c. 80, s. 9, and see *ante*, Chap. XII, sec. 9.

[5] R. S. O. 1887, c. 80, s. 10.

[6] R. S. Q. 1888, Art. 2692.

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.[1]

In *New Brunswick*, the fees of the medical witness are:[2]

Attendance without *post mortem*	$ 4 00
Attendance with a *post mortem*	8 00
Travel per mile	05

These fees are paid by the county treasurer 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 jurors.

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 fee except for a *post mortem* and attendance to give evidence thereon.[3]

In *Prince Edward Island*, the medical witness is entitled to the following fees.[4] 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

[1] R. S. N. S. 5th series, 1884, c. 17, s. 5.
[2] C. S. N. B. 1877, c. 63 and c. 119.
[3] C. S. N. B. 1877, c. 63, s. 4.
[4] 39 V. c. 17, ss. 3, 5, P. E. I.

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*	10 00
Mileage each way to and from inquest per mile.[1]	20

In *Manitoba*, witnesses at coroners' inquests are seldom paid. If a medical witness is paid at all he is allowed $4.00 a day.

In *Newfoundland*, the medical witness is allowed the following fees:[2]

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 FEES IN ONTARIO.

In *Ontario*, a professor of chemistry for making an anlaysis when requested to do so by the Attorney-General is paid a fee of fifty dollars.[3]

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, $20.00.

Whenever in Quebec a chemical analysis is deemed necessary by the jury and coroner, the coroner reports to the Attorney-General, who selects

[1] 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. R. S. B. C. 1888, c. 24, s. 11.

[2] 52 V. c. 25, N. F.

[3] See remarks on this subject at p. 264.

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 $20.00.[1]

SEC. 6.—THE JURORS AND WITNESSES IN ONTARIO.

There is no provision in Ontario for paying either jurymen or witnesses at inquests, and consequently they are not entitled to any remuneration. The Act under which crown witnesses are paid does not apply to coroners' courts.

In *Nova Scotia*, for jury fees the sum of $2.50 is allowed and is paid by the coroner out of his fee of $10.00.[2]

In *New Brunswick*, each juror is entitled to 50c. per each day's attendance.[3]

In *Prince Edward Island*, the following fees are payable to the jurors:[4]

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

[1] R. S. Q. 1888, Art. 2692.

[2] R. S. N. S. 5th series, 1884, c. 128, schedule.

[3] C. S. N. B. 1877, c. 119.

[4] 39 V. c. 17, s. 5, P. E. I. The fees are chargeable to the Provincial Government.

they pay witnesses at the rate allowed in criminal cases, viz:[1]

Each day attending inquest	$ 75
Mileage one way per mile	10

In *Newfoundland*, witnesses are allowed for each day's attendance besides expenses, 75c.

Sec. 7.—THE CONSTABLES' 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
Attending inquest each day other than the first, if not engaged over four hours	1 00
Attending inquest each day other than the first, if engaged more than four hours	1 50
Serving summons or subpœna to attend before coroner if inquest not held the same day as service	0 25
Mileage serving same, one way	0 10
Exhuming body under coroner's warrant	2 00
Arrest of each individual upon a warrant	1 50
Mileage to serve warrant[3] and to take prisoners to gaol or attend assizes or sessions	0 10

[1] 55-56 V. c. 29, s. 871, Dom.

[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.

[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.

Attending assizes or sessions each day	$1 50
Taking prisoners to gaol, exclusive of disbursements necessarily expended on their conveyance per mile	0 10
Burying the body	2 00

All other special services a reasonable amount.

In *Quebec*, the constable's fees are:

Summoning each witness	$0 30
Summoning the jury	1 00

In *Nova Scotia*, the constable is allowed a fee of 50c. and is paid by the coroner out of his fee of $10.00.[1]

In *New Brunswick*, the constable's fees are:[2]

Summoning jury	$1 00
Attending inquest	0 50
Serving each order, subpœna or permissive warrant	0 20
Attending at burial if required	0 50
Mileage to serve any order, subpœna or warrant going and returning per mile	0 05

In *Prince Edward Island*, the constable is allowed for his services at the inquest, $1.00.[3]

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	0 25

[1] R. S. N. S. 5th series, 1884, c. 128, schedule.

[2] C. S. N. B. 1877, c. 119.

[3] 39 V. c. 17, s. 5, P. E. I. This charge is payable by the Provincial Government.

Mileage to serve summons or warrant per mile (one way) necessarily travelled	$0 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 :[1]

Serving summons or subpœna	0 25
Executing every warrant to arrest	0 50
Mileage, every mile beyond the two miles	0 10

[1] 52 V. c. 25.

CHAPTER XV.

THE GENERAL ORDER OF PROCEEDINGS AT INQUESTS.[1]

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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] 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.

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 .

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 others) under such circumstances as require investigation and not through mere accident or mischance, (or was a prisoner or lunatic confined in a penetentiary, 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., 18 .

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 WARRANT 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 misenance, 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. 18

E. F.

J.P. (or Comr. etc. or Notary Public,) County of .

C. D.

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 penetentiary, gaol, prison house of correction, lock-up house, or house of industry, in which the prisoner dies.[1]

After taking the oath the coroner issues a precept or warrant to the constables of the place where the body lies to summon a jury as follows:

[1] R. S. O. c 80, ss. 3, 4.

WARRANT 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 Her Majesty's officers of the peace in and for the said county.

By virtue of my office, these are in Her Majesty's name to charge and command you, that on sight hereof you summon and warn *fifteen*[1] 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 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 Lady the Queen, 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 warrant. Given under my hand and seal this day of one thousand eight 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.

[1] *Any number in Ontario not less than twelve can be summoned.*

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., gentleman, one of Her 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 Her 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 eight 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 warrant as follows :—

RETURN OF CONSTABLE TO WARRANT TO SERVE JURY.

Form No. 19.

The execution of this warrant appears by the schedule thereto annexed.

H. S.,
Constable,

Dated the 18

And to the warrant 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 warrant of C. D. coroner for the county of

Name of party served.	Occupation.	Date of service.	Where served.
1. Thomas Ames,	carpenter	May 1st 18	At his home in Barrie.
2. James Bowman	shoemaker	May 2nd 18	On lot township of
3. Peter McLean	gentleman	May 2nd 18	On town line between Vespra & Barrie.

If the body has been buried without any inquest having been held thereon, a warrant to the proper authorities having charge of the place of burial, must be issued in the form No. . 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 warrant 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 Lady the Queen, 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 the names of such as appear on the list.

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 at p. 217. 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 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[1] 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 Lady the Queen, 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 each of you are severally, well and truly to observe and keep on your parts. So help you God.

[1] *R.* v. *Ferrand.* 3 B. & Ald. 260: but see also *Reg.* v. *Ingham*, 5 B. & S. 257.

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 on p. 222.

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."

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 Queen, 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.

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.[1] 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 viewing the body, and informs them briefly of the object of their inquiry, viz., the cause of death, adding:—

[1] See pp. 231 to 242.

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 Lady the Queen, 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.[1]

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.

The evidence which you shall give to this inquest on behalf of our Sovereign Lady the Queen, touching the death of *R. F.*, shall be the truth, the whole truth, and nothing but the truth. So help you God.

[1] See pp. 207, 208.

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 Lady the Queen, 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 on the New Testament through the medium of the interpreter, using the form of oath given above—No. 36,—unless that is not the form most binding upon his conscience. A Jew is to be sworn upon the Pentateuch. A Turk upon the Koran, etc. A Chinaman considers a peculiar form and ceremony most binding on his conscience. For the forms in such cases see Appendix of forms, No. 36, and for further observations on the subject see pages 221, 222.

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 affirm that the evidence to be given by me shall be the truth, the whole truth and nothing but the truth.[1]

[1] The Canada Evidence Act, 1893, s. 23.

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.

The evidence which you shall give to this inquest on behalf of our Sovereign Lady the Queen, 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.

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.[1]

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 p. 188. 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 :—

[1] The Canada Evidence Act, 1893, s. 25.

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.

The coroner then questions the party in such a manner as may bring out the state of his intelligence, religious belief, &c., 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) 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),[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

[1] See The Canada Evidence Act, 1893, s. 23.

[2] The Canada Evidence Act, 1893, s. 25.

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 Lady the Queen, 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 eight hundred and , before me, *C. D.*, Esquire, one of, Her 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, &c.

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 p. 223 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 p. 220, and form No. 38) and if a witness does not appear, after being properly summoned, when called, he may be fined and committed. (See p. 220, and forms Nos. 31 and 38).

If a medical witness is required, a summons according to form No. 33 should be issued, and see pp. 249, 250.

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 p. 223).

If it is necessary to adjourn the inquest, (see p. 244) 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.[1]

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 $100.00 a man, on the 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 Queen's 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 Queen.

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*, two or three days will likely be sufficient. If for a chemical analysis, a clear week or ten days should be given the chemist.

A warrant may now, in the discretion of the coroner, be granted for burying the body, unless it

[1] When the death has occurred in Nova Scotia from an accident in a mine, see remarks on p. 248.

is required for a *post mortem* or it has to be delivered to the Inspector of Anatomy. (See p. 245, 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 remarks on p. 244).

The constable makes proclamation, the jurors' names are called over, and if the inquest is to go on, the coroner recapitulates the state of the inquiry, and proceeds with the examination of the witnesses.

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 p. 215).

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 twelve 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, when they may have the benefit of the opinion and direction of the judge. (See p. 214.)

When twelve agree upon a verdict, 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. 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 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.[1]

[1] 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.

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 No. 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.[1]

The coroner then makes out his warrant to bury the body, if not already done (see form No. 46), and the body is not one which has to be handed over to the inspector of anatomy.

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

[1] 55-56 V. c. 29, s. 568, Dom.

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 Lady the Queen, etc., (*following the wording of the appropriate form in the appendix.*)

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:

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 Lady the Queen, touching the death of *R. F.* and who have returned your verdict, may now depart hence and take your ease. God save the Queen.

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 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.[1]

As in all cases in Ontario the expenses of and attending fire inquests are to be borne by the party requiring them,[2] the coroner must see that he gets a proper requisition according to form No. 115

[1] R. S. O. c. 217, s. 1.
[2] R. S. O. c. 217, s. 8.

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.[1] 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.

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 should not be fined over $4.00 (see form, No. 23), And when an adjournment of the inquest is required, it must be clearly shown by the coroner,

[1] R. S. C. c. 217, s. 9.
[2] R. S. O. c. 217, s. 3.
[3] R. S. O. c. 217, ss. 4, 5, 6.

and certified under his hand, (see p. 26), why and for what purpose an adjournment took place, or became necessary,[1] otherwise no expenses of the adjournment can be charged.

By 54 V. c. 37, s. 1, (O.), provincial coroners in Ontario 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 pp. 27, 28, and schedule of fees in chap. xiv. sec. 2.

[1] R. S. O. c. 217, s. 10.

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APPENDIX.

FORMS.

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[1] Coroners are recommended to keep on hand printed copies in blank of the most common forms in order to save time and avoid errors.

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N.B.—Any other forms required in relation to fire inquests can be adapted from the corresponding forms relating to ordinary inquests.

FORMS.

No. 1.

COMMISSION.

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.

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 Ontario,
County of
To wit:

I, A.B., do sincerely promise and swear, that I will be faithful and bear true allegiance to Her Majesty Queen Victoria [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 her to the utmost of my power against all traitorous conspiracies or attempts whatever which may be made against Her Person, Crown and Dignity, and that I will do my utmost endeavour to disclose and make known to Her Majesty, her heirs and successors, all treasons and traitorous conspiracies and attempts which I shall know to be against her, or any of them. All this I do swear without any equivocation, mental evasion or secret reservation. So help me God. (See R. S. O. c. 15, s. 3.)

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 Her Majesty, Queen Victoria, her 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. 18 .

A. B.,
Coroner.

C. D.
A Com. [or as the case may be.]

See page 5.

No. 4.

OATH OF OFFICE.

You shall swear that you will well and truly serve our Sovereign Lady Queen Victoria and her liege people in the office of Coroner, as one of Her Majesty's Coroners of this County of . And therein you shall diligently and truly do and accomplish all and everything and things appertaining to your office, after the best of your cunning, wit and power, both for the Queen's profit and for the good of the inhabitants within the said county; taking such fees as you ought to take by the laws and statutes of this Province, and not otherwise. So help you God.

No. 5.

CORONERS' OATH OF OFFICE IN BRITISH COLUMBIA.

I, A. B., swear that I will well and truly serve our Sovereign Lady, the Queen's Majesty and her liege people,

in the office of Coroner, and as one of Her Majesty's Coroners, and therein truly do and accomplish all and every thing appertaining to my office, after the best of my cunning, wit and power, both for the Queen'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. 18 .

A. B.,
Coroner.

C. D.

A Com [or as the case may be.] See page 5.

No. 6.

INDICTMENT FOR NOT TAKING AN INQUEST.

Canada, Province of Ontario, County of To wit:

The jurors of our Lady the Queen 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 Lady the Queen 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 Lady the Queen, 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.] } VICTORIA, by the grace of God, of the United Kingdom of Great Britain and Ireland, Queen, 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 eight 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.[1]

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 18 .

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 Her Majesty's justices of the peace in and

[1] See the grounds of removal, *ante*, p. 55.

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]

Given and certified under our hands and seals this day of A.D. 18 , 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,*

[1] C. S. N. B. 1877, c. 63, s. 7.

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.[1]

Sworn before me at the of in the County of this day of A.D. 18 .
G. H.
Coroner.

A. B.

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 18 .
J. K.
Keeper of the common gaol of the county of

[1] R. S. O. c. 80, s. 2.

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. 18 .[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

[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.

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. 18

H. F.

Proprietor (or Superintendent) of

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. 18 . } G. H., Coroner.

A. B.,

(A J.P., Notary Public or Commissioner.)

[1] R. S. O. c. 80.

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 E. F., the deceased, did come to *his* (or *her*) death under circumstances requiring investigation by a coroner's inquest.[1]

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. 18 . Before A. B. } G. H.

(A J.P. or a Commissioner, Notary Public, or two freeholders resident in the county.

No. 16.

WARRANT TO CONSTABLE TO SUMMON JURY.

Canada. Province of Ontario, County of To wit; } To the Constables of the Township of in the County of , and all other Her Majesty's officers of the peace in and for the said county. By virtue of my office, these are in Her Majesty's name to charge and command you, that on sight hereof you summon and warn twenty-four[2] able, lawful, honest, good and sufficient men of your *several townships* personally

[1] 52 V. c. 14, N. B.

[2] Any number not less than twelve can be summoned.

to be and appear before me on the day of instant, at of the clock, in the 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 Lady the Queen, 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 warrant. Given under my hand and seal this day of one thousand eight hundred and .

C. D.,
Coroner, County of . [L.S]

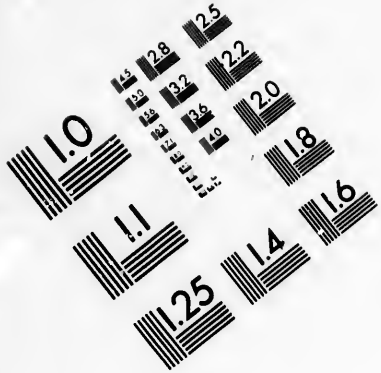
No. 17.

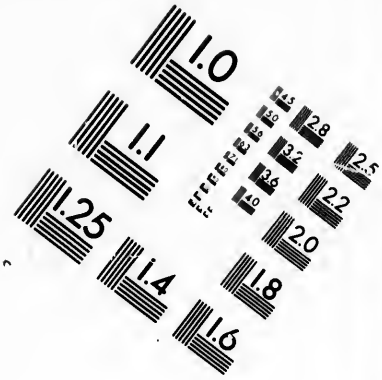
WARRANT TO GAOLER TO SUMMON JURY.

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 Her Majesty's name to authorize and require you, upon receipt hereof, to summon or cause to be summoned twelve[1] 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 Her Majesty's

[1] Or such number as will constitute half the jury.





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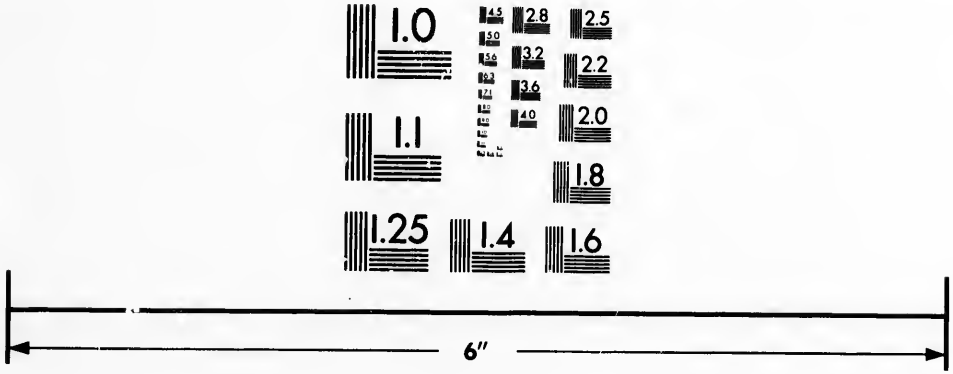

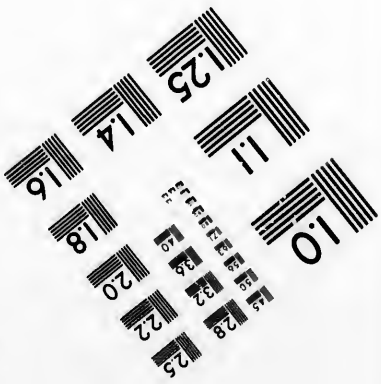

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behalf shall be given them in charge, and have then and there the names of the persons so summoned, together with my precept. And hereof you are not to fail, as you will answer the contrary at your peril. Given under my hand and seal this day of in the year of our Lord one thousand eight 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., gentleman, one of Her 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 precisely, at the house of known by the sign of in the township of in the county of , then and there to inquire on Her 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 eight hundred and .

Yours, &c.
H. S.,
Constable of the said County of .

[1] The Coroner should furnish these summonses to the constable.

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 18	At his house Barrie.
2. James Bowman,	shoemaker	Jan. 3rd 18	On lot No. 10 Vespra.
3. Peter Coulson,	farmer	Jan. 3rd 18	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 Her 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 Her Majesty's Coroners for the said county, whereby, on Her 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 Her 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 eight 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 Lady the Queen, 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. 18 the sum of ,[1] for not appearing at an inquest holden before me this day of A.D. 18 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.[2]

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.

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

[1] The sum must not exceed four dollars. See pp. 219, 220, 223.

[2] 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. c. 80, s. 5; R. S. O. c. 52, s. 166; and see R. S. O. c. 217, ss. 4, 5, as to fires.

in charge, on behalf of our Sovereign Lady the Queen, 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.[1]

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 and keep on your parts. So help you God.[2]

No. 27.

THE CORONER'S CHARGE TO JURY AFTER THEY ARE SWORN.

Gentlemen, you are sworn to consider on behalf of the Queen, 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 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.

[1] 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.

[2] See previous note.

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 Lady the Queen, touching the death of A. P., now lying dead, in the township of in the said county of . These are, therefore, by virtue of my office, in Her Majesty's name, to charge and command you personally to be and appear before me at the dwelling house of J. R., known as the sign of situate at in the said township at o'clock, in the on the day of instant, then and there to give evidence and be examined, on Her 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 eight 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 Lady the Queen, 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 Her 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 Lady the Queen, 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 Her Majesty's name, to charge and command you, or one of you, without delay to apprehend and bring before me, one of Her 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 eight 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. 18 } 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 you are hereby required to appear before me and the jury at on the day of one thousand eight 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.[1]

[SIGNED], A. B., Coroner.

To C. D., Surgeon (*or M.D. as the case may be*).

[1] R. S. O. c. 80, s. 7; R. S. B. C. 1888, c. 24, s. 7.

No. 34.

REQUISITION OF JURY IN QUEBEC FOR A *POST MORTEM*.

To 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. 18

A. B.
C. D.
etc.

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 Lady the Queen, 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 repeat to him the common oath (*a*) *as far as the word "truth" and then add*:—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.[1]

(*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.[2]

(*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.*[3]

(*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.[4]

(*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

[1] *Mildrone's Case* 1 Leach C. C. 412; *Walkers' Case*, 1 Leach C. C. 498; *Mee.* v. *Reid*, Pea. R. 23.

[2] The Canada Evidence Act, 1893, s. 23.

[3] Willes, 543.

[4] Oke's Magisterial Formulist, 6th Ed., 873; *R.* v. *Entrehman*, Car. and M. 248.

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.[1]

(*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.[2] The wording of the oath in such cases should be as follows :—

You swear according to the custom of your country and of the religion you profess, that the evidence you shall give to this inquest on behalf of our Sovereign Lady the Queen, 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 Lady the Queen, 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.

[1] *Rex.* v. *Morgan*, 1 Leach, C. C. 54.

[2] *Omichund* v. *Barker*, Willes, 547; *Atcheson* v. *Everett*, Cowp. 382; *Miller* v. *Salomans*, 7 Ex. 534, 558.

No. 38.

COMMITMENT OF A WITNESS FOR REFUSING 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 Her 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 Her Majesty's Coroners for the said county of at the time and place therein mentioned, to give evidence and be examined, on Her 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 Her said Majesty's behalf, touching the death of the said E. F., yet 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: these are, therefore, by virtue of my office, in Her 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 convey the body of the said C. D. to the gaol of the said county at the of 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 Her 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, until he shall consent to give his evidence and be examined before me and my inquest,[1] on Her Majesty's behalf, touching the death of the said E. F., 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 eight hundred and .

A. B.,
Coroner, County of . [L.S.]

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 Township of in the County of and all other Her 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 Lady the Queen, against G. H., late of the of in the county aforesaid, labourer, now charged before me, one of Her Majesty's Coroners for the said county, and my inquest, with the wilful murder of

[1] 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.

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 Her 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 Her Majesty's name, to charge and command you, or one of you, the said Constables and other Her 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 Her 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 eight 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 Lady the Queen, 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 eight hundred and before me A. B., *Esquire*, one of Her 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 eight 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.[1]

Dated at this day of A.D. 18 .

A. B.
C. D.
&c. &c.

No. 43.

RECOGNIZANCE OF JURORS UPON AN ADJOURNMENT.

Gentlemen, you acknowledge yourselves severally to owe to our Sovereign Lady the Queen the sum of forty dollars to be levied upon your goods and chattels, lands and tenements, for Her 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 Lady the Queen, 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?

[1] R. S. O. c. 80, s. 9.

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 Queen'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 Queen.

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 eight hundred and .

A. B.,
Coroner, County of . [L.S.]

No. 47.

WARRANT TO BURY A *FELO DE SE* AFTER INQUISITION FOUND.[1]

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 Her Majesty's Coroners for the said county of this day of in the year of the reign of Her present Majesty Queen Victoria, 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 eight hundred and .

A. B.,
Coroner, County of . [L.S.]

[1] The interment must take place within twenty-four hours after the finding of the inquisition (see p. 69), 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 p. 69); it may be directed to the constables only.

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.

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 Queen'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.[1]

[1] See page 215, note 2.

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.

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 Her Majesty's Coroners in and for the county of this day of in the year of our Lord one thousand eight hundred and by an inquisition taken before me, this day of in the year of our Lord one thousand eight 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 eight 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 thus: A. B.*)

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 Her Majesty's peace officers in the said county,

Whereas, by an inquisition taken before me, G. H., one of Her 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 Her 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 Her 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 eight hundred and .

G. H.,
Coroner, County of . [L.S.]

No. 84.

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 Her Majesty's officers of the peace for the said county, and to the keeper of Her Majesty's gaol at in the said county. Whereas, by an inquisition taken before me, one of Her 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, for instance*, the wilful murder of the said R. L.) These are, therefore, by virtue of my office, in Her 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 Her 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 Her 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 eight hundred and .

G. H.,
Coroner, County of . [L.S.]

No. 55.

WARRANT OF DETAINER.

CANADA, Province of Ontario, County of To wit: } To the keeper of Her 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 Her 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, for instance*, the wilful murder of the said R. L.) These are, therefore, in Her 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 eight 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 the *manslaughter* (or *murder*) of E.F. (*or a man, woman or male or female child unknown*) of . 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 Her 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 18 at in the county aforesaid.[1]

F. H., [L.S.]
Coroner, County of .

No. 57.

RECOGNIZANCE OF ACCUSED TO APPEAR BEFORE A JUSTICE OF THE PEACE.

CANADA,
Province of Ontario,
County of Simcoe.
To wit:

Be it remembered that on this day of in the year 18 , A. B., of , (*labourer*) L. 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 Lady the Queen, her heirs and successors, the several sums following, that is to say: the said A. B. the sum of

[1] 55, 56 V. c. 29, s. 568, Dom.

and the said L. M. and N. O., the sum of each,[1] 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 Lady the Queen, her 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 justice, and he 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 to answer unto the said charge, and to be further dealt with according to law in all respects as though he 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.[2]

F. H.,
Coroner, County of .

[1] 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. See p. 293.

[2] 55, 56 V. c. 29, s. 568, Dom., and see note 1 to form No. 48.

No. 58.

RECOGNIZANCE TO PROSECUTE, ETC.

Canada,
Province of Ontario,
County of .
To wit:

Be it remembered, that on the day of in the year of the reign of our Sovereign Lady Victoria[1] of the United Kingdom of Great Britain and Ireland, Queen, 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 Lady the Queen, 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 Her 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 wilful murder of R. F., late the wife of the said E. F. (*or 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

[1] The years of the reign of Queen Victoria are reckoned from the 20th of June, 1837, consequently up to but not including the 20th of June, 1894, will be the 57th year of her reign.

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.[1]

Taken and acknowledged this day of one thousand eight hundred and before me

C. D.,
Coroner, County of .

No. 59.

RECOGNIZANCE TO GIVE EVIDENCE.

CANADA, Province of Ontario, County of To wit: Be 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, whitesmith*, 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 Lady the Queen, 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 Her Majesty's use, in case default shall be made in the

[1] 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.

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 wilful murder of *Sarah*, his wife (*or as the finding may be*); 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 eight 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 town- of , in the county of , and all other Her 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 Her Majesty's coroners for the county aforesaid, at , in the said county, on view of the

[1] See note to form No. 58.

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 the wilful murder of the said C. D.; 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 Her Majesty's behalf against the said J. U., now in custody, and charged by my said inquest with the said murder, 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 Her 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 Her Majesty's name to charge and command you, or one of you, the said constables and other Her 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 Her 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 Her 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 eight 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 Lady the Queen, touching the death of R. F., and who have returned your verdict, may now depart hence and take your ease. God save the Queen.

No. 62.

ORDER FOR PAYMENT OF MEDICAL WITNESS.

By virtue of section ten of chapter eighty of the Revised Statutes of Ontario, 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., Co. ner, County of

Witnessed by me, C. D., of the Township of in the County of .

To the Treasurer of the County of [1].

[1] 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.

No. 63.

SPECIMEN OF A MEDICO-LEGAL REPORT.[1]

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, 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 extremeties 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 fora-

[1] Taken from Prof. Tidy's Legal Medicine, vol, iii., p. 200. And see remarks upon medico-legal reports on pp. 252, 260.

men 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 pleuræ, or bags 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 conjested 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 .[2] She had dark circles round her eyes. The pulse was weak and compressible, and over 100 (106) per minute. The skin, etc., of the belly or abdomen was relaxed, flabby and wrinkled. It was marked with numerous shiny streaks (lineæ 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 perinæum 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 perinæum 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.

[2] See remarks upon the right to examine a woman under these circumstances on p. 103.

No. 63 1/2.

WARRANT APPOINTING CORONER'S DEPUTY IN CIVIL MATTERS.

CANADA, Province of , County of , To wit: } To all to whom these presents shall come. Greeting. Whereas I, A. B., of the of in the county of and Province of , one of Her 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., 18 .

A. B.,

[SEAL.] Coroner, County of .

No. 64.

CERTIORARI TO THE CORONER.

[L.S.] VICTORIA, &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 Lady the Queen 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.] VICTORIA, &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.[1]

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 her present Majesty Queen Victoria, C. D., in the said writ named, was taken and in Her 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 Her 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.

[1] 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 Queen v. *C. D.*

Take notice that an application will be made in Her 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 Her 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*).

No. 69.

VENIRE FACIAS TO THE CORONER TO AMEND HIS INQUISITION.

Victoria, &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.

No. 70.

OATH OF CORRECTNESS OF ACCOUNT.

ONTARIO, County of To wit:	I, A. B., of the of in the county of Coroner (*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 18 C. D., J.P.	A. B., Coroner (*or Medical Witness or Constable.*)

No. 71.

DECLARATION OF CORONER TO BE ATTACHED TO HIS ACCOUNT.[1]

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 informa-

[1]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 delaration above given, must be attached to the Coroner's accounts.

tion of A. B., hereto annexed, that there was reason to 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. 18 .

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 this day of A.D. 18 .
C. D., J.P.

A. B.,
Constable
(*or as the case may be.*)

[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.

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 (*if the account is an assistant constable's add* and that assistance was necessary,[1] and that the account therefor is correct.

C. D.,
Coroner, County of .

No. 73 1/2.

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. 18 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. 18 .

F. H.,
County Crown Attorney,
County of .

[1] 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.

INQUISITIONS.

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 Lady the Queen, at the house of A. B., known by the sign of situate in the of in the county of on the day of 18 in the year of the reign of our Sovereign Lady Victoria,[1] (and by adjournment on the day of *or as the case may be*) before C. D., *Esquire*, one of the coroners of our said Lady the Queen 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 Lady the Queen, 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

[1] See note form No. 58.

," 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.]

No. 76.

HOMICIDE BY INFANTS UNDER DISCRETION.

By drowning himself.

[*Copy caption as at p.* 398 *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 at p.* 398.]

No. 77.

By poisoning the deceased.

[*Copy caption as at p.* 398.] 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 at p.* 398.

HOMICIDE BY MADMEN, LUNATICS AND IDIOTS.

No. 78.

By shooting himself.

(*Copy caption as at p.* 398), 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 at p.* 398).

No. 79.

By stabbing himself, where the cause and death are in different counties.

(*Copy caption as at p.* 398), 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 at p.* 398).

No. 80.

By drowning himself.

(*Copy caption as at p.* 398), 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 at p.* 398).

No. 81.

By throwing the deceased out of a window.

(*Copy caption as at p.* 398), 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 at p.* 398).

No. 82.

By shooting himself in a fit of delirium.

(*Copy caption as at p.* 398), 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 at p.* 398).

No. 83.

FELO DE SE.

By hanging himself.

(*Copy caption as at p.* 398), 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 Lady the Queen 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 Her 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 (1) instantly died: and so the jurors afore-

[1] 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.

said, 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 Lady the Queen, her crown and dignity In witness, &c., (*finish with the attestation as at p.* 398).

No. 84.

By shooting himself.

(*Copy caption as at p.* 398, *and then continue as in the 83rd form,*) did make an assault; 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 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 at p.* 398,) 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 Lady the Queen, her crown and dignity. In witness, &c., (*finish with attestation as at p.* 398.

No. 87.

Manslaughter.

Copy caption as at p. 398.) 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 Lady the Queen, her crown and dignity. In witness, &c. (*finish with attestation as at p.* 398.

No. 88.

Excusable Homicide by correction.

(*Copy caption as at p.* 398.) 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 at p.* 398.

No. 89.

EXCUSABLE HOMICIDE BY A KNIFE.

(*Copy caption as at p.* 398), 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 Lady the Queen, 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. And so the jurors, &c., (*conclude as in Form No. 88.*)

No. 90.

EXCUSABLE HOMICIDE IN DEFENCE OF PERSON.

(*Copy caption as at p.* 398), 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 at p.* 398.)

No. 91.

JUSTIFIABLE HOMICIDE AGAINST A STREET ROBBER.

(*Copy caption as at p.* 398), 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 Queen'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 Queen's highway aforesaid then feloniously did steal, take and carry away, against the peace of our said Lady the Queen, her 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 brough 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 such endeavour to take and apprehend the said R. F. 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 at p.* 398.)

No. 92.

DEATH BY A CART.

(*Copy caption as at p.* 398), 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 at p.* 398.)

No. 93.

BY THE OVERTURNING OF A CHAISE.

(*Copy caption as at p.* 398), that the said R. F., on the day 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 at p.* 398).

No. 94.

DROWNED BY THE OVERTURNING OF A BOAT.

(*Copy caption as at p.* 398), 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 at p.* 398).

No. 95.

BY THE KICK OF A HORSE.

(*Copy caption as at p.* 398), 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 at p.* 398).

No. 96.

BY FALLING FROM THE LEADS OF A HOUSE.

(*Copy caption as at p.* 398), 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 at p.* 398).

No. 97.

DROWNED BY BATHING.

(*Copy caption as at p.* 398), 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 at p.* 398).

No. 98.

FOUND DROWNED.

(*Copy caption as at p.* 398), 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 at p.* 398).

No. 99.

BY A FIRE.

(*Copy caption as at p.* 398), 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 at p.* 398).

No. 100.

BY BEING BURNT.

(*Copy caption as at p.* 398), 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 at p.* 398).

No. 101.

BY BEING SUFFOCATED.

(*Copy caption as at p.* 398), 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 at p.* 398).

No. 102.

OF A CHILD BY SUDDEN DELIVERY.

(*Copy caption as at p.* 398), that C. D., the 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 at p.* 398).

No. 103.

BY A DIFFICULT BIRTH AND HARD LABOUR.

(*Copy caption as at p.* 398), 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 at p.* 398).

No. 104.

STILL BORN.

(*Copy caption as at p.* 398), that the new-born female child was still born. In witness, &c., (*finish with attestation as at p.* 398).

No. 105.

STARVED.

(*Copy caption as at p.* 398), 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 at p.* 398).

No. 106.

NATURAL DEATH.

(*Copy caption as at p.* 398), 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 at at p.* 398.

No. 107.

FOUND DEAD.

(*Copy caption as at p.* 398), 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 at p.* 398).

No 108.

SUDDEN DEATH BY FITS.

(*Copy caption as at p.* 398), 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

Queen'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 at p.* 398).

No. 109.

BY EXCESSIVE DRINKING.

(*Copy caption as at p.* 398), 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 at p.* 398).

No. 110.

DEATH IN PRISON.

(*Copy caption as at p.* 398), 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 at p.* 398).

No. 111.

BY HANGING IN EXECUTION OF SENTENCE OF DEATH.

(*Copy caption as at p.* 398), 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. 18 , 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 at p.* 398).[1]

No. 112.

KILLED BY EXPLOSION OF BOILER OF STEAM ENGINE.

(*Copy caption as at p.* 398), 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 accidently, 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 at p.* 398).

No. 113.

KILLED BY COLLISION ON A RAILWAY.

(*Copy caption as at p.* 398), 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 send 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 at p.* 398).

No. 114.

RETURN OR CERTIFICATE OF DEATH FOR DIVISION REGISTRAR.

County of Division of [1] .

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. 18 .

.....

Coroner, County of .

[1] Each city, town, incorporated village, township or union of townships, is a Registration Division, and the clerks of such municipalities are the Division Registrars, except in the Districts of Algoma, Nipissing, Thunder Bay, Rainy River, Muskoka and Parry Sound. For these latter places Division Registrars are appointed by the Lieutenant-Governor in Council, who may also appoint Division Registrars for any territorial districts formed after 1887. See R. S. O. c. 40, ss. 3 & 14.

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. 18 . 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.[1]

Dated at this day of A.D. 18 .

C. D.

[1] 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.

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 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 building*) 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. 18 , 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. 18 .

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. 18 .

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., 18 . 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. 18 , 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. 18 , to the day of A.D. 18 , (*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. 18 .

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 Lady the Queen, 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 Lady Victoria[1] before C. D., Esquire, one of the coroners of our said Lady the Queen 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. 18 , in the said year of the reign of our Sovereign Lady Victoria, 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

[1] See note 1, p. 384.

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 Lady the Queen, into the cause or origin of said fire, 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 p.* 398).

N. B.—Any other forms required in relation to fire inquests can be adapted from the corresponding forms relating to ordinary inquests.

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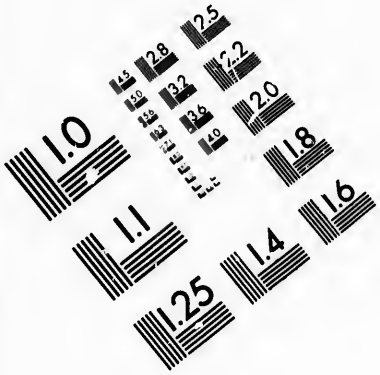

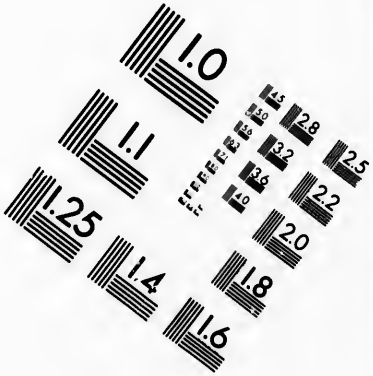

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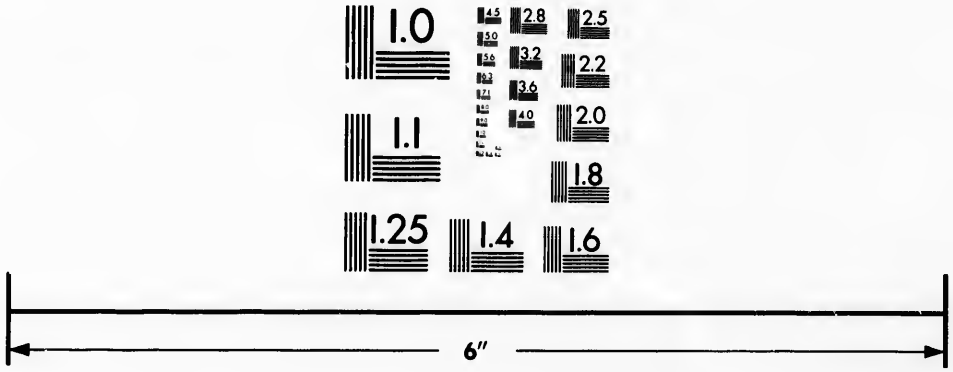

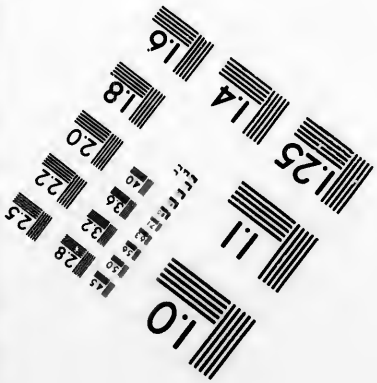

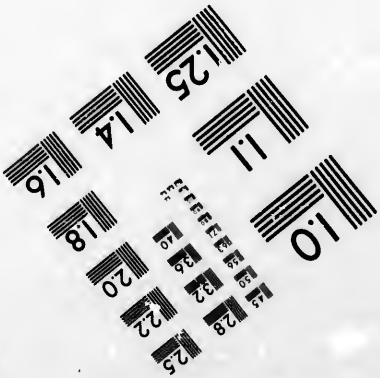

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