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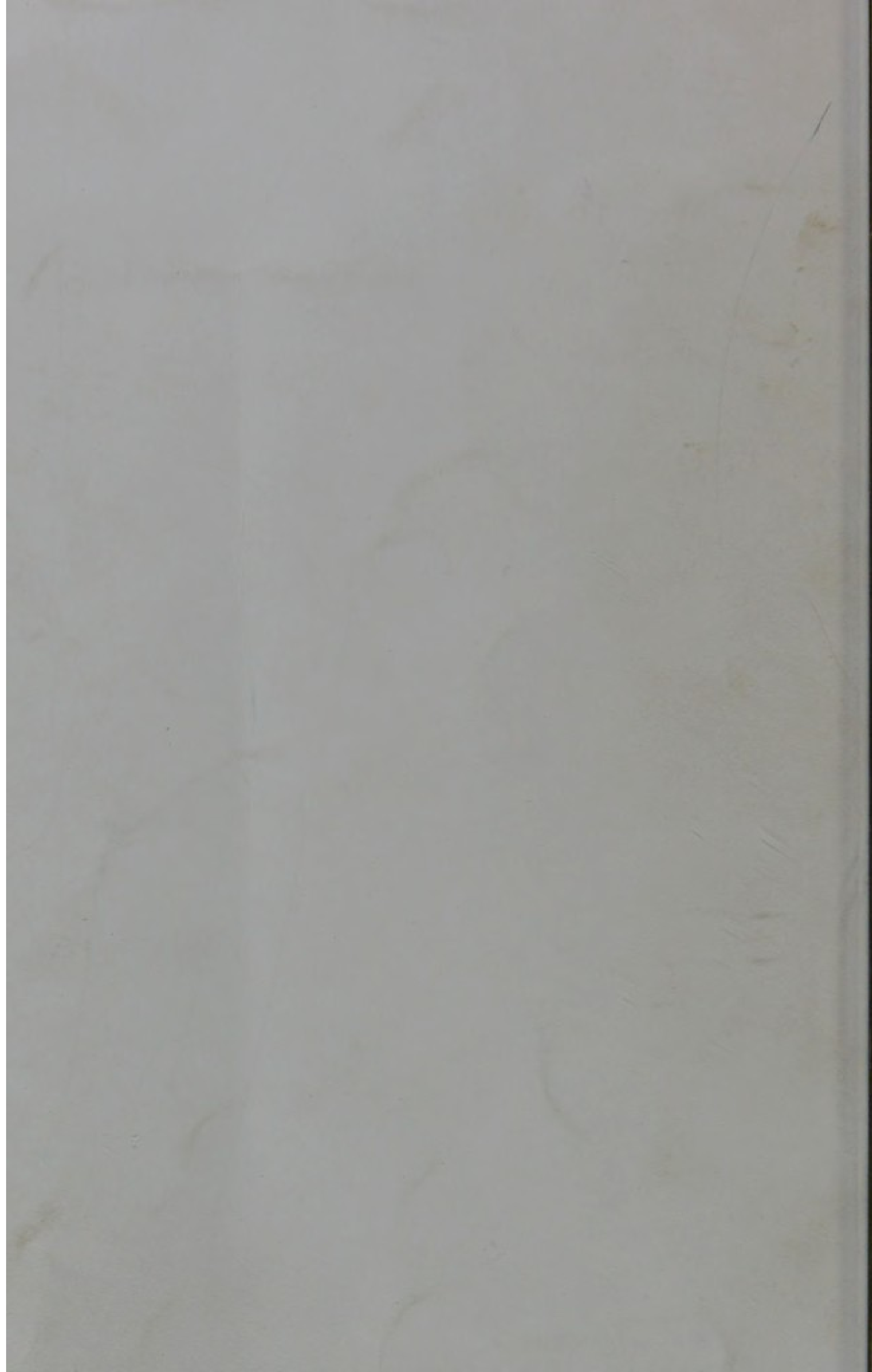

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THE HISTORY OF MEDICAL JURISPRUDENCE AND CRIMINAL PROCEDURE IN PRIMITIVE AND MEDIÆVAL TIMES.

(BEING THE INTRODUCTORY LECTURE OF THE COURSE OF FORENSIC MEDICINE IN ST. MUNGO'S COLLEGE.)

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IT is not difficult to conceive a time in the history of man, and in his relation to the growth of social institutions, when medical knowledge, such as it was, would require to be brought to bear upon the effects of certain crimes with a view to the administration of justice and the detection of criminals, since passion and hate, jealousy and revenge have been constituent parts of his character since his appearance in the world. If we turn to the pages of the oldest book, the Bible, we shall find that the priest—who combined in his office the cure of bodies with the cure of souls, as well as the interpretation of the law—was instructed in these things. In Deuteronomy, chap. xxii., for example, instruc-

tions are laid down whereby the signs of rape upon a virgin may be recognized, and the kind of evidence is indicated which it was necessary a woman whose virginity at marriage was questioned should bring forward. The same kind of evidence was necessary in the old Norman law, and later, in Scots law, viz.: "The woman ravished go whilst the crime is recent to the next town, and there shew to honest men the blood, or other wrongs done her; . . . and thereafter to the sheriff" (Mackenzie, p. 84). We find also in Leviticus, linked alongside of such medico-legal questions, the principles of infectivity, isolation, and prophylaxis—a juxtaposition which obtains till the present hour. Kindred facts point to the connection of medical knowledge with the law among many ancient nations. In the ancient Egyptian code, for instance, it was enacted that no corporal punishment was to be inflicted upon a pregnant woman. It has been urged, also, with fair propriety, that the law of ancient Rome provided for the inspection of the bodies of those who met with a violent death, since Antistius, who examined the twenty-three wounds on the body of Cæsar, pronounced only one of them to be a mortal wound. This view, moreover, is somewhat confirmed by the enactments of the Justinian code in a like direction.

If we turn to the writings of the ancients—Hippocrates, Galen, and Celsus, for example—we find a medico-legal bearing in their remarks on wounds, on the differences between the lungs of a fœtus and of an adult, in the observations respecting the legitimacy of children born at the seventh month, and more especially on simulated diseases.

Among the customs, too, of ancient and, usually, barbaric nations, certain practices are to be found which have a medico-legal relation, based as they are upon physiological phenomena, then, likely

unknown, except in respect of their effects. We refer to ordeals for the detection of crime. Ordeals may be said to have been prevalent among many nations in primitive times, as far apart, geographically, as our own country and India. They were usually associated with religion, and were usually only effective as was the power of religion, or rather, of priestcraft, over the people. Among the Hindus, a very favourite ordeal was that of rice. Its use was as follows:—A crime having been committed, the suspected persons were apprehended and brought before the priest. Each suspect was given a certain amount of *dry* rice to masticate in a given time, after the expiry of which, each had to eject the *bolus* upon a piece of dry bark. The suspect whose rice came out dry, was condemned as the guilty party. This ordeal is evidently based on the fact that, from the fear of detection, and its consequent punishment, the nervous mechanism of the salivary gland had failed in its action, or rather, was inhibited, and saliva had not flowed into the mouth. A similar ordeal was existent in England in early Saxon times, viz.: that of the *Corsed*, or hallowed morsel. This small piece of bread, previously blessed by the religious functionary, was placed in the mouths of the suspects. If it was swallowed instantly and without apparent discomfort, by each suspect, they were deemed innocent; but if one had difficulty in swallowing it, he was deemed guilty. This test is evidently based on the same physiological principle. A second form of ordeal in India, based upon the relation of mind on body in the production of disease, from fear or otherwise, was that of causing the suspects to drink three draughts of water in which the images of the Sun God, or other revered deity, had been previously immersed. If within fourteen days thereafter, any suspect suffered any bodily harm, he was pronounced guilty; if not, innocent. When we

recollect the reverence of the Hindu for his gods, and the idea he entertained of their omniscience, it is not difficult to conceive the mental agony of conscious guilt bringing on bodily ailments.

In our own country before the end of the first decade of the thirteenth century, trial by ordeal was exceedingly common. According to the late Mr. Justice Stephen, England about that time, was divided into counties, hundreds, and townships, each of the latter being represented on public occasions for the administration of justice by the *reeve*, who was the prototype of the parish constable, and four men. The reeve of the shire came to be called the *shire-reeve*, which we have modernized into *sheriff*. When the king in those early days sent his justices into any county to do justice, all the principal persons of the county received them. To these persons was entrusted the duty of reporting the persons suspected of the commission of crimes, who, if not already arrested, were then taken into custody, and were in the absence of direct evidence, subjected to the ordeal of *fire* or *water*. According to Mr. Justice Stephen, "the ordeal of fire consisted in handling red-hot iron of a certain weight, or walking over red-hot ploughshares at different intervals. The ordeal of water—which strange to say, seems to have been more dreaded—consisted in being thrown into the water, when sinking was the sign of innocence, and swimming the sign of guilt. How anyone without fraud" adds the writer "escaped the one ordeal, or was condemned by the other, it is difficult to understand." In any case it would appear, whether he came through the ordeal safely or not, the suspect was banished. In the year 1213, however, these ordeals were abolished. In addition to the foregoing, there was the ordeal of boiling water. There existed in India, also, similar ordeals, viz.: that of boiling oil, hot clarified butter or *ghee*, and of the red-hot

iron. The ordeal of *ghee* appears to have been limited to the cases of suspected adulteresses. In India, as in England, these tests were superintended by the priests, and their methods of management were practically identical in both countries. From the nature of the ordeals it would be obviously absurd to expect that only a guilty person would suffer from handling a red-hot iron, or from walking over red-hot ploughshares. Consequently, it has been said, that when a man's innocence was to be established by the test, it was arranged by the priest who instructed him how to deal with the hot object by having wet hands, or feet, or by some like device as the case might be. Gilchrist, in his "History of Ordeals," p. 24, goes the length of saying that "we meet with no example of any champion of the Romish Church who suffered the least injury from the touch of hot iron in that ordeal. But when anyone was so foolhardy as to appeal to it, or that of hot water, with a view to deprive the church of any of her possessions, he never failed to burn his fingers and lose his cause."

In a volume published in Edinburgh in 1825, under the title of "Janus," there exists an article illustrative of the ordeal by fire as practised in the church, and in it the translation of a document found by Büsching, a German antiquary, in the charter chest of an ancient monastery in Thuringia, and which he published in a periodical called "Die Vorzeit," in 1817. This document describes the mode of carrying out the ordeal, and the ritual of the church used at the time.

In his notes to the "Fair Maid of Perth," Sir Walter Scott gives a very full quotation from the paper in "Janus," and, in the text of the novel, he incorporates both the ordeals of fire and of the bier.

Another ordeal used in the case where murder had been committed, was that of bringing the suspect to the dead body, and was called the "Ordeal of the

Bier." If the wound began to bleed afresh, the body to move, or foam to appear at the mouth on approach of the suspect, he was held to be guilty. That one or the other of those phenomena would appear in such circumstances, was a common belief among northern nations. Indeed, so late as 1688, we find this seriously put forward as evidence of guilt in a trial before the High Court of Justiciary at Edinburgh, of Philip Standsfield, for parricide. In the indictment against the prisoner, it was stated that he, while assisting another to raise the body of his father after it had been carefully cleansed of blood, observing blood to flow fresh from the wounds, in great consternation and fright, dropped his hold of the body and rushed out of the church, where the body was being inspected, crying "Lord, have mercy upon me." Sir George Mackenzie, the King's Counsel, stated these facts in his charge to the jury, remarking that, "Divine power which makes the blood circulate during life, has oft times, in all nations, opened a passage to it after death upon such occasions, but most in this case."

In early times the modes of trial depended upon the modes of accusation of the suspect. These modes were of two kinds, viz., accusation by a private person, and accusation by public report. The former mode prevailed most commonly, and it was technically called an "Appeal." The "Appeal" was in this wise. The injured person was bound to do all in his power to cause the arrest of the suspected party by raising a "hue and cry" over the country. If he could not be got, he was called to appear at five successive county courts, when, if failing to appear, he was outlawed. In very early times, to be "outlawed" practically meant that the accused could, when found, be put to death in a summary manner; later on, however, it was arranged that when captured he was held to be convicted. But if the accused, on the

other hand, answered to the summons, certain proceedings took place, which failing in settlement, often ended in *trial by combat* Trial by combat was, however, not permitted if the guilt of the accused was clear. At first, "Appeals" were allowable in many offences, but were, latterly, restricted to homicide, in which the heir of the murdered person had "a right, even after the person accused had been acquitted by a jury, to 'Appeal' or accuse him." Strange to say, this procedure existed up till the second decade of the present century, and it only ceased to be the law of England on the 22nd of June, 1819, by the passing of an act which declared that "appeals of treason, murder, felony, or other offences shall cease." The case which provoked the passage of this act was the famous trial of Ashford *v.* Thornton, which was tried before the Court of King's Bench in 1817, and is reported fully in Barnewall and Alderson's "Reports," Vol. I., pp. 405—461. The facts of this case are, shortly, these:—A girl—Mary Ashford—in Warwickshire, was found drowned in circumstances which cast suspicion on a man called Abraham Thornton. He was tried and acquitted by the jury, upon the advice of the judge. Instigated by public feeling, and aided by public subscriptions, the brother of the girl raised an appeal of murder against the accused. The accused was brought before Lord Ellenborough and three other judges, and, when asked to plead, said "Not guilty, and I am ready to defend the same by my body." at the same time throwing down a gauntlet of challenge. The accuser, however, refused to go on with his appeal, and in the following April—1818—it was withdrawn and the accused set free. In Scotland the last trial by combat was fought in 1597 by Adam Bruntfield who challenged James Carmichael for murdering his brother, and in the fight Bruntfield slew Carmichael. In November,

1600, an act "Anent singular combattis" was passed, by which duelling was legally prohibited in Scotland, except by permission of the monarch.

In the thirteenth century was introduced for the first time the practice of summoning, from the district in which the crime had been committed, twelve men to act as an "assize" in criminal cases. Their duty was to swear as to their knowledge of the facts of the case, and if they all swore one way their oath was decisive. At first, therefore, the jurors were but official witnesses; now they are the actual judges. When they became so, however, is a matter of doubt, but Mr. Justice Stephens states that by the sixteenth century they occupied the latter position.

Another curious feature of English Criminal Law was what was termed "benefit of clergy." From the early part of the thirteenth century up till the year 1827, almost every offence—even theft of a shilling—was punishable by death, but an accused person could claim "benefit of clergy." This privilege was curiously worked out. Mr. Justice Stephens notes that the legal participants of the privilege were, "first, the clergy, then every man who could read, unless he was twice married, or unless he had married a widow; then all people, men, whether *bigami* or not, or women who could read; then all people, whether they could read or not." In practice, therefore, the privilege operated upon all equally, in the direction of exempting them from punishment for their first offence. This applied not only to less serious crimes, but also to homicide. The only crimes at this time which, at common law, were exempted from "benefit of clergy" were high treason, arson, and highway robbery. This exemption apparently originated out of regard for the Church of Rome, because in popish countries the clergy were either partially or wholly without the jurisdiction of lay tribunals. When a layman claimed the exemption

he was branded on the left thumb with a red-hot iron, in order to prevent him fraudulently repeating his claim on a subsequent occasion. This privilege was abolished by the Act 7 and 8, George IV., Cap. xxviii., Section 6, and by it, also, capital punishment was only awarded, after conviction, for the crimes of treason, murder, piracy, and burning of royal dockyards or arsenals.

Down till the seventeenth century the interrogation of a prisoner, anent the crime with which he was charged, was a common practice in Great Britain, as it still is in continental countries; and, although torture of a prisoner, to compel confession of complicity in a crime, was never legalized in England, it was, nevertheless, considerably practised during the reign of Queen Elizabeth, and, upon occasion, even during the reign of Charles I.; and that it was practised in Scotland during Covenanting times is also abundantly clear. This must not be confounded with *peine forte et dure* of old English law, which was a sentence delivered by a judge in the case of a prisoner, charged with a grave felony, who refused to plead to his indictment. Refusal to plead was held then to be equivalent to contempt of court, and this severe sentence must be considered as the punishment for contempt, for it was ordained to be carried out until the prisoner answered to the indictment. This judgment, which is believed to have originated in the reign of Edward I., was abolished by the Act 12, George IV., Cap. xx. *Peine forte et dure* consisted in the prisoner being put in a low, dark dungeon, being laid naked on the floor on his back, and a weight of iron, as heavy as he could bear, placed on his body, while each day he was given three morsels of bread and three draughts of water, alternated, until he answered.

Probably enough has now been said to indicate the condition of the criminal law, the plight and position

of the prisoner in relation thereto, and the evolutionary changes which have taken place in respect of both, during the progress of centuries and up till the present time.

There is, however, one practice which is peculiar to Scots law in relation to the medical witness, regarding which a word or two must be said. Except in respect of certificates, the forms of which have been scheduled in Acts of Parliament passed since the Union, no medical certificate or report is legal in Scotland unless the certifier or reporter attests the facts therein contained "on soul and conscience." How far back into the centuries this practice extended, it is probably impossible to discover, but we find it to be the rule obtaining in the middle of the seventeenth century. In the appendix to the "Laws and Customs of Scotland in Matters Criminal" by Sir George Mackenzie of Rosehaugh, who was about this time King's Counsel, is "A Treatise of Mutilation and Demembration," in two parts, by Sir Alexander Seton, of Pitmedden. These works were printed together towards the end of the seventeenth century, for the copy in our possession bears the date 1699, and was published in Edinburgh. At page 29 of Part I., when dealing with the kind and extent of mutilation which existed in any given case, Sir Alexander Seton states that the evidence may be obtained from the injured party, from eye-witnesses, or "by the tryal of skilful Chyrurgions, who must declare their opinion upon *Oath*, before the judge and inquest; and as this is our dayly practice, so is it the custom of *Forraign Courts*, as *Caballus* testifies, where he cites *Angelus*, instructing judges to advise with skilful *Physicians* and *Chirurgions* in ambiguous cases, how far the member, ex. gr., the hand, is mutilated or debilitated . . . . and to record their *Opinion* or report among the *Acts* of the *Process*. And as *Caballus* relates

this as the advice of *Angelus*, so he says that he hath seen this frequently practised by judges, and that he himself has often practised the same; and particularly that he has seen many reports of skilful *Chirurgeons* concerning *Debilitation* or *Mutilation* of the hand," etc.

Seton, however, goes on further to say: "The *Justices*, with us, do never accept of the single *Testimonies* of Physicians and Chirurgeons, but oblige them to depone or declare upon *Oath*, notwithstanding they have often contended that the oath *de fideli administratione*, they gave at their *Admission*, was sufficient for all; and for the same cause the *Justices* do reject *Testificats* subscribed by them, unless bearing upon *Soul* and *Conscience*. So they did, 7 *Novem.*, 1621, *Williamson* against *Paton;* and 15 *Decemb.*, 1630, *Barclay* against *Kennedy* in *Mayboll*, in which last case, the *Testificat* was subscribed by the *Deacon* of the *Chirurgeons* of *Edinburgh* and other two of the trade. And the like objection was made 12 *January*, 1642, against a *Testificat* produced by *Taylor* against *Norie* to prove the Lybel, notwithstanding it was written by the *Clerk* of the *College of Chirurgeons*, and subscribed by four of them; and that this is agreeable to the opinion of the D.D. of Law and Practice of *Forraign* Courts" he shows by citing many judgments of such Courts, and by the fact that it "was expressly enacted by a constitution of *Charles* the Fifth, Artic. 149. . . . . and there should be at least two of them, if they can be had." He further says that there are some cases wherein physicians and surgeons are not obliged to swear, (1) if they are assumed by the judge; (2) if they are chosen by mutual consent of parties; and (3) if they are appointed by public authority for such business and sworn at the beginning. He adds for the benefit of practitioners of law, "Advocats who plead these

cases may likeways see how necessar it is for them to study the *Quæstiones medico-legales*, without which it is not possible for them to understand some Texts in Law . . . . thinks it may be useful also for judges to understand these things, that they be not easily deceived by the Reports of corrupted Chyrurgions," and, adopting the teaching of *Paulus Zacchias* on this subject, "lays before them the 18 *Aphoris.* of *Hippoc. de vulneribus lethalibus*, sect. 6, and the words of *Celsus*, lib. 5, Cap. xxvi., as a particular case to be understood." Respecting the need, then, for testification upon soul and conscience, we may safely conclude that it was in use in Scotland at the end of the sixteenth century, and in general adoption at the beginning of the seventeenth.

The office of Coroner.—This sketch would be incomplete without some notice of the Coroner, his office, and his court. Coroners were originally important functionaries with a large range of duties. They were, in short, the chief conservators of the king's peace, and because they were principally concerned with the pleas of the Crown (corona) at Common law, they received their name. Considerable dubiety exists as to the time when the office was created, and as to whether the name indicates an office which was but a development of another office under another name, or was a distinct creation by an Act of King or Parliament. In Woodman and Tidy's work on "Forensic Medicine," page 996, a quotation is made from the "Dictionnaire d'Anecdotes," which was published in Paris in 1766, of the case of a woman, "a pretty citizenness of London," who had wedded seven husbands. Six of them had died. The seventh, suspecting some foul play, feigned drunkenness shortly after marriage, and saw her melt a lead button and approach him as if with the intent to pour it into his ear, when he seized hold of her, and handed her over to justice. The

bodies of the former six husbands were then exhumed, and lead was found in their ears and brains, whereupon she was condemned to death. "Hence," concludes the anecdote, "the origin of coroner's inquest in England."

This incident is said to have taken place during the reign of Edward I. Whether this is correct or not we are not prepared to say, but that the office of coroner did exist during the reign of that monarch is abundantly clear from the fact that an Act was passed—3 Edward I.—inflicting penalties on him who held the office of coroner for dereliction of duty, concealing a felony, or shielding criminals, which proves that the office is a very ancient one. By the Act 14 Edward III., no one could hold the office under the degree of a knight, and unless he held in the county "sufficient land in fee to answer all manner of people" (Stephen's Book of the Constitution, page 23). Now, however, it is sufficient that the person appointed should possess land sufficient for the degree of a knight, which is to the amount of twenty pounds per annum. The Lord Chief Justice of the Queen's Bench is the chief coroner of England.

In ancient times, the duties of coroner were alike abundant and onerous, as they are still. Not only had he and his jury to view the bodies of those who had met with a violent or unnatural death, but he had to inquire after treasure trove for the Crown, and to look after those who lived riotously and haunted taverns. Besides all this he had, upon occasion, the authority of a sheriff, to attend to the execution of the king's writs, and to be present at the county court to pronounce sentence of outlawry when a person charged with crime had failed to answer to the fifth call made at five separate assizes. His fees are regulated by the Acts, the 3 Henry VII. and the 25 George II., with certain exceptions,

such, for example, as where he holds office in populous places which do not contribute to county rates. In such cases his appointment may be made, and if made, his salary shall be paid by those appointing him, which they are entitled to do by the Act 7 and 8 Victoria, Cap. xcii. In inquests wherein the evidence shows that the death has been criminally caused by known persons, the coroner is bound to certify accordingly to the assizes, to reduce the evidence to writing, and to bind over witnesses to give attendance and evidence at the trial. The coroner's court can inquire of "accessories before the fact," but not of "accessories after the fact," since the latter belongs to the court which tries the prisoner. It is, however, competent for the coroner, under the Act 22 Victoria, Cap. xxxiii., to admit to bail persons who are charged with manslaughter. Respecting the utility of the coroner's office for the purposes for which it is intended, much division of opinion prevails; but it would appear that this difference of opinion does not so much depend upon the utility of the office, if the duties of it are performed adequately, as upon the interpretation of the duties of the office held by individual officers. There can hardly be any doubt that, when properly exercised, the function of the coroner, in reviewing the cause of all deaths which are uncertified, is of great value: and not a little evidence was given before a recent Parliamentary Committee on Certification of Deaths, which indicated that, in Scotland at least, the duty was imperfectly fulfilled by those charged with the duty—Procurators-Fiscal—and that some change was necessary in the machinery of the law in this regard. We had the honour, with others, of submitting the view, subsequently adopted by the Committee in their report, that the duty of inquiring into the cause of uncertified deaths should devolve upon the Health Depart-

ment of each county and city, and that the officers appointed for this duty should have a free hand in ordering whatever procedure was necessary for ascertaining the cause of death, but that, wherever *culpa* appeared against any one, the case should be handed over to the public prosecutor to be dealt with. The opinion in favour of public inquiry, instead of a private one, at the hands of the Procurator-Fiscal, is spreading in Scotland, and already the inquiry into the cause of death of those who die in prison, or from accident in public works, etc., is held in public before the sheriff.

Corresponding with the advancement of science and medicine, immense strides have been made in the domains of psychology and toxicology. One of the great blots of the seventeenth century was the hunt after so-called witches. It is impossible almost, without special study of the subject, to realize the precarious life the eccentric and the mentally weak lived during these times. Such persons were apt to be charged as witches, and, as such, to suffer the pains of doom. Witch hunting, indeed, seems to have been a mania of both criminal and ecclesiastical authorities over a long period of time, before superstition had given way to reasoned observation and facile credulity to common sense. One has only to carefully consider the literature of the seventeenth century to satisfy oneself of this. Probably the reader would be satisfied by a perusal of Sir Walter Scott's "Letters on Demonology and Witchcraft," which deal with the historical side of the subject, and of Sir George Mackenzie's Chapter on Witchcraft in the volume quoted (*vide ante*), which looks at it from the purely legal side.

Witchery seems to have been prevalent in many countries, and from very early times; in fact, it may be said to have existed (in the imagination of the church and of the law) in every country which had

attained a certain degree of civilization. There can hardly be a doubt that its presence was based upon Biblical writings, notably the texts—Exod. xxii., verse 18—"Thou shalt not suffer a witch to live," and Leviticus xxix., 27, wherein it is ordained that a woman that hath a familiar spirit shall surely be put to death by stoning. These scriptures form the basis of the action of the canonical law, and are quoted in Mackenzie's work. References to witchcraft are also to be found in the pages of some of the classic Latin writers. Tacitus, for example, in the second book of his Annals, informs us that Publius Marcius and Pituanus were put to death for this, and Valerius Maximus (book 6, chapter 3), that Publicia and Lucinia, with seventy other Romans, were hanged for the crime. It would appear, however, as if there had been exceptional activity against witchcraft in the earlier years of the seventeenth century, in Great Britain.

The Act upon which the law in Scotland was set in operation against witches was that of Queen Mary, 9 Parl., 73 Act, and the punishment was death—"to be worried at the stake and burnt." In England, the crime was, at first, punished by death or exile, but latterly was regulated by the Act I., Jacobus, wherein it was laid down that the practisers of sorcery, witchcraft, or kindred crimes, being lawfully convicted, "shall for the said offence suffer imprisonment by the space of a whole year, without Baile or Mainprise. Once every quarter of the year these mountebanks are to mount the pillory, and to stand thereupon in some Mercat town six hours, and there to confess his or her Errour or Offence." This Act points to the existence of a more rational view of witchcraft at an earlier period in England than in Scotland.

Sir George Mackenzie, in a chapter which deals fully with the law and its practice against witches,

appears to have little sympathy with much that was then deemed to be witchery. He informs us that the best sign whereby to identify a witch was the "Devil's mark, but it is not, *per se*, found relevant, except it be confest by them, that they got that mark with their own consent," and that "the mark is discovered amongst us by a pricker, whose trade it is, and who learns it as other trades; but," he adds, "this is a horrid cheat, for they alledge that if the place bleed not, or if the person be not sensible, he or she is infallibly a witch." He records several cases of the accusations against so-called witches; for example, "John Brough was convict for witchcraft, *in anno*, 1643, for curing beasts by casting white stones in water, and sprinkling them therewith; and for curing women by washing their feet with south-running water, and putting odd money in the water;" and the case of Katherine Oswald, in 1629, "it being libel'd against the said Katherine that by her witchcraft she caused a cow give blood instead of milk, and caused a woman fall and break a rib in her side." These cases, however, form but the simplest of the accusations. Among the many ways by which witches vexatiously disturb mankind, he instances the method of making images of clay or wax, "and when the witches prick or punse these images the person whom these images represent do find extream torment, which doth not proceed from any influence these images have upon the body tormented, but the devil doth by natural means raise these torments in the person tormented at the same very time that the witches do prick or punse, or hold to the fire these images of clay or wax." In this connection he tells us that about the time he writes (1699), some witches in Inverness had confessed to this practice. It is but a truism to say that history repeats itself or that superstitions die hard, but a

remarkable illustration of both is exemplified in a case which within the last few years was brought up in open court in the very same town of Inverness, and in which one woman was accused by another of practising this form of witchery against her by forming an image of clay to represent her body, and by inserting needles into the image at periodic intervals, with the object of inducing injury to her body.

Belief in witchcraft was not confined, however, to ecclesiastics and lawyers, it was shared also by the medical profession, and even by those most reputed for learning. Sir Thomas Browne, a famous physician of the seventeenth century, on one occasion was called upon to give evidence in the case of two persons who were being tried at Bury St. Edmunds, before the Lord Chief Baron, Sir Matthew Hale, on the charge of bewitching the children of a Mr. Pacey, "and causing them to have fits." His evidence is worthy of attention, inasmuch as it may be deemed the reflex of the best medical opinion of that time. He swore in the witness box "he was clearly of opinion that the fits were natural, but heightened by the devil, co-operating with the malice of the witches, at whose instance he did the villainies," adding "that in Denmark there had been lately a great discovery of witches who used the very same way of afflicting persons by conveying pins into them." The historian of the case goes on to say that this statement of Sir Thomas Browne, made that good and great man, Sir Matthew Hale, doubtful, and he would not as much as sum up the evidence, but left it to the jury, with prayers, that the great God of Heaven would direct their hearts in that weighty matter. The jury returned a verdict of guilty, and the prisoners were executed.

From what has been said of the belief in paction with the devil, illumination is thrown upon the then

prevalent treatment of the insane—confinement in foul, insanitary places, and in chains, accompanied, at times, with treatment even of a more revolting character.

Progress in toxicology, too, has made rapid advances since the last century, *pari passu* with the knowledge of chemistry and pharmacology. As far back as the sixteenth century it was the practice, in Scotland, to call the aid of physicians in supposed cases of poisoning. Says Mackenzie, page 35, in a chapter on "Poyson," "the body must in this case be sighted by Physitians, and the poisonous quality must be proved"; and, again, "the judgment of physicians ought to be asked where the design is not known." We may smile at the kind of evidence which was deemed satisfactory of the administration of poison in the middle of last century, but it must be borne in mind that it but reflects the upper limit of medical knowledge of the time.

Sir Anthony Addington was one of the chief medical witnesses in a case of fatal poisoning, in Oxford, in 1752, the accused being a woman, Mary Blandy by name. On being interrogated as to the condition in which he found the patient, Dr. Addington replied as follows: "He was in bed, and told me that after drinking some gruel on Monday night, August the 5th, he had perceived an extraordinary grittiness in his mouth, attended with a very painful burning and pricking in his tongue, throat, stomach, and bowels, and with sickness and gripings; which symptoms had been relieved by fits of vomiting and purging." The witness was of opinion that these symptoms were not due to any physick, but that the cause of the death was poison, and that the poison administered was white arsenic, for the following reasons: "1. This powder has a milky whiteness, so has white arsenic. 2. This is gritty, and almost insipid, so is white arsenic. 3. Part of it swims on the surface of cold water, like a pale sulphurous

film, but the greatest part sinks to the bottom and remains there undissolved; the same is true of white arsenic. 4. This, thrown on red-hot iron does not flame, but rises entirely in thick white fumes, which have the stench of garlick, and cover cold iron held just over them with white flowers; white arsenic does the same. 5. I boiled ten grains of this powder in four ounces of clear water, filtered the decoction, and divided it into five parts, which were each put into a glass. To one, was added a few drops of spirit of sal-ammoniac; into another, some of the lixidium of tartar; into the third, some strong spirit of vitriol; into the fourth, some spirit of salt; and into the last, some syrup of violets." From these experiments he concluded that the powder administered was white arsenic.

It is at once apparent from the foregoing that the physical tests employed have not essentially been improved upon up till now, but that the analysis failed from the chemical side, from the point of view of to-day, by reason of the then limited state of chemical knowledge. We have but to contrast the medical evidence given in the Lamson and other recent cases, to realize the great advancement made. A few concluding words may now be said regarding the History of Forensic Medicine.

The earliest writings on medico-legal subjects are undoubtedly those of Hippocrates, as, for example, his eighteen aphorisms "De Vulneribus Lethalibus"; and those of Galen and Celsus. The honour of invoking the aid of medicine for the purposes of the law in mediæval times, must, however, be accorded to Germany; for in 1507, the Bishop of Bamberg proclaimed a penal code, drawn up by Baron Schwartzemberg, in which the aid of medical science was to be called in suitable cases. But this was not fully established until Charles the Fifth, at the Diet of Ratisbon—1552—drew up his criminal code known

by the name of the "Constitutio Criminalis Carolina," from which we have already quoted as to oaths from Sir Alexander Seton. In this code it was enacted that medical men were to be consulted in every case of violent death, or in deaths by poison, hanging, drowning, etc.; in cases of pretended pregnancy, and the simulation of disease. Probably the first course of lectures to be delivered on the subject was that by Michælis, of Leipzig, in 1650. Among the other writings in Germany of last century were those of John Bohn, who published, in 1689, a work entitled, "De Renunciatione Vulnerum," and later, another work, with the title, "De Officio Medici, duplici, clinico et forensi"; in 1725 a work consisting of six quarto volumes, by Alberti, of Halle, and in 1782 a volume of lectures on "Juridical Medicine" by Haller.

Turning to France, we find that medicine was linked with the law during the reign of Francis I., although not generally until the reign of Henry IV., who, in 1603—some say 1606—gave letters patent to his first physician "empowering him to appoint two surgeons in every city and large town, to examine and report on wounded or murdered persons." In 1667 Louis XIV. issued a decree that every physician engaged in such a case should be accompanied by a surgeon. The year 1575 saw Ambrose Parè—the father of French surgery—publish a work in which the subjects of monsters, simulated diseases, and the method of drawing up medical reports were treated. In 1598 Pineau (Severin) published, in Paris, his work "De Notis Integritatis et Corruptionis Virginum." These works remained long as standards in France, and were supplemented by the works of Gendri, of Angers, in 1650, Blegni, of Lyons, in 1684, and of Deveaux, of Paris, in 1693. In 1788 Louis published a work on "The Certainty of the Signs of Death." He also

wrote on drowning, and the differential diagnosis of homicidal and suicidal hanging. Then followed Lorry, Salin—in toxicology—Lafosse, Chaussier, and Mahon, the last two of whom published the "Encyclopédie Methodique." Foderè borrowed largely from these in his works published in 1796 and in 1813.

In Italy, Fortunatus Fidelis seems to have been the first writer of note. He published, about the middle of the sixteenth century, at Palermo, a work, in octavo, entitled "De Relationibus Medicorum." He is largely quoted by Seton in his treatise of Mutilation and Demembration (*op. cit.*), by whom he is called "a learned physician." In 1601, Frederic Bonaventura, a physician of Urbino, also wrote on medico-legal subjects. But the most important work of all, one which formed the principal text book of doctors of law at home and abroad over a long period, and upon which many decisions were based, was that of Paulus Zacchias, physician to Pope Innocent the Tenth, entitled "Quæstiones Medico-legales," a work which, as Traill says, "will ever be regarded as a landmark in the history of legal medicine, and which by its learning and its sagacious inventions in an age in which chemistry was in its infancy, and physiology very imperfect, places the medical acumen of the great Roman medico-jurist in a very favourable point of view." The "Scriptura Medico-legalis" was published in 1746, by Beccaria, of Bononia.

It is very interesting to note that the first notice of the hydrostatic test as applied to the lungs of the new-born was made by Thomas Bartholin, a Danish physician, in 1633; and that Swammerdam in 1677 gave it still more attention in his writings, while it was practically used for the first time by Jan Schreyer in 1682. The other lung test, based on the difference of ratio between the weight of the fœtal lungs and body before and after respiration, is associated with the name of Plouquet of Turin, who

first proposed it. It is now, however, completely disregarded as totally unreliable.

In Great Britain—certainly in Scotland—medical experts were called in to aid the exponents of the law, at least since the beginning of the seventeenth century, and much reliance was placed on their testification. Speaking of what ought by the law to be reckoned as mortal wounds, Sir George Mackenzie (page 62, *op. cit.*) remarks, "generally this is referred to the arbitriment of the judge, who is in this to follow the opinion of physicians, or of one physician, if more were not present;" and he quotes cases to show how this practice was carried out. Writings on medico-legal questions in this country during the eighteenth century were but desultory. It is true many valuable papers were published; but no single volume, devoted solely to the subject, appeared till Dr. Samuel Farre published, in 1788, his "Elements of Medical Jurisprudence; or a succinct and compendious description of such tokens in the human body as are requisite to determine the judgment of a coroner and courts of law, in cases of divorce, rape, murder, etc., to which are added directions for preserving the Public Health." This, however, is not looked upon by many as an original work, but as a free translation of some foreign treatise.

We have purposely avoided trenching upon the history of the subject in the present century, because that would demand a separate chapter for itself.

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