A letter to the reform corporations on the necessity of electing medical coroners / by George Rogerson, surgeon.

A LETTER

TO THE

REFORM CORPORATIONS

ON THE

NECESSITY OF ELECTING

MEDICAL CORONERS.

BY GEORGE ROGERSON, SURGEON,

OF LIVERPOOL.

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A LETTER

TO THE

MAYOR, ALDERMEN, AND COUNCILLORS

OF

THE REFORM CORPORATIONS.

"This is not the cause of faction, or of party, or of any individual, but the common interest of every man in Britain."—JUNIUS.

GENTLEMEN,

The Municipal Reform Bill has, either directly or indirectly, placed in your power the local administration of justice, and the election of the officers who preside over its courts. Of these, the Coroner's Court is one of preliminary inquiry, and viewed in its relations to society, occupies a conspicuous and important rank. The judge should fully possess a competent knowledge of its duties, which principally consist in ascertaining the causes of unnatural death; for, from the deference paid to his opinion, he exercises over the mind of the jury an almost unlimited sway, so that his ignorance will, with equal facility, lead to the imprisonment of the innocent, and the escape of the guilty. This is no ideal picture. Innocent

men, owing to a lamentable ignorance of the causes of death, as shown by the records of jurisprudence, have been consigned to dungeons, dragged to the felon's bar, and branded with ignominy for life,—while the guilty have been thrown with impunity on society, examples of crimes unpunished, from the unintentionally ignorant administration of the law.

Highly responsible, then, is the execution of the trust reposed in you, and fully believing that the day is gone by, when adherence to antiquated customs prevailed over the improvements and advances of knowledge, I respectfully address you, that the Coroner's Court may be reformed by the application of that science, which alone can efficiently administer justice through the detection of the causes of death. The science is that of Medicine.

The Coroner's Court is one of the oldest judicial institutions of our country: its antiquity is very remote, and its origin is lost in the obscurity of our earliest national institutions; but its fundamental leading principles are established by the statute of Edward the First, entitled "de officio Coronatoris." Since this time, acts of parliament have only altered some of the details, and added to their number. The great principles, written in all the beautiful simplicity of our ancient laws, remain the same as defined by the statute of Edward; possessing, now, as then, equal legal force. The following extracts from this statute will clearly show the principles and duties of this Court.—"That the Coroner, upon information, shall go to the place where any be slain, or suddenly dead, or wounded,

* * * and shall inquire in this manner, to wit, if it concerns a man slain, whether they know where the person was slain, whether it were in any house, field, bed, tavern, or company, and if any and who were there."

"Likewise it is to be inquired who were and in what manner culpable, either of the act, or of the force; and who were present, either men or women; and of what age soever they be, (if they can speak, or have any discretion); and how many soever be found culpable by inquisition, in any the manners aforesaid, they shall be taken and delivered to the sheriff, and shall be committed to gaol; and, such as be founden and be not culpable shall be attached until the coming of the justices, and their names shall be written in the Coroner's rolls."

"If it fortune that any man be slain in the fields, or in the woods, and be there found; first, it is to be inquired, whether he were slain there or not, and if he were brought and laid there, they shall do so much as they can to follow their steps that brought the body thither; or of the horse which brought him, or cart, if perchance he was brought upon a horse or cart. It shall be inquired also, if the dead person were known, or else a stranger; and where he lay the night before." * * *

"In like manner it shall be inquired of them that be drowned or suddenly dead, and it is to be seen of such bodies, whether they be so drowned, or slain, or strangled, by the sign of the cord tied straight about their necks, or about any of their members, or upon any other hurt found upon their bodies; whereupon they shall proceed as

abovesaid, and if they were not slain, then ought the Coroner to attach the finders and all others in company."

"Also all wounds ought to be viewed, the length, breadth, and deepness, and with what weapons, and in what part of the body the wound, or hurt is, and how many may be culpable, and how many wounds there be, and who gave the wounds, all which things must be inrolled in the roll of the Coroners."

In addition to the inquests on persons slain, killed, drowned, or suddenly dead, mentioned in the statute, the provident jealousy of our laws directs an examination of all deaths whatever occurring in prison, that the public may be satisfied of the cause.

The inquest must, in all cases, be taken on view of the body, "super visum corporis," for the corpse is part of the evidence before the jury, and in ancient times was placed before them during the trial.*

The duties of the Coroner's Court, on the authority of the above legal statement, consist in ascertaining the causes of sudden death, except in gaol, where all deaths, natural as well as violent, are examined, and the committal to prison of those who are culpable. The Court, then, is one of inquiry and all its inquiries are for the purpose of deciding questions of *facts, not of law.* They must dis-

* Other duties of this office may be mentioned, which are subordinate as inquiries about Tresor Trove, Royal Fishes, &c. The privilege of being a conservator of the peace in virtue of their office, chiefly to assist them in their duties, &c. By chance he may act in a ministerial capacity for a short time, simply as the sheriff's substitute. The great principle of the constitution of this Court is to make inquiries into certain deaths.

cover the *nature of the death*, and the instrument, animate, or inanimate, which destroyed life.*

The principal, and all the essentially important questions of fact, relate to death, which can only be decided, with a certainty of justice, from knowledge derived by an inspection of the body, and from evidence voluntarily adduced, and judiciously extracted.

The inspection of the body was regarded, by our ancient legislators, of such paramount importance, that the corpse was constantly exposed to view, and even in our day must be seen, to legalize the proceedings of the Court. What, then, is the information gained by this kind of inspection, which the wisdom of our ancestors, and the experience of ages, have found of such primary consequence, and manifest utility, in obtaining the ends of justice, and so absolutely necessary in promoting the Coroner's inquiry, even at the commencement? A view of the external surface of the body merely will lead a practised eye to trace the hand of violence, or suspect some "foul deed." A more minute examination will explain, if the death has been caused by the infliction of a wound, blow, or other injuries, either from number, extent, or on a part of the body essential to life. The fatal result will be equally exposed, if it has arisen from

* The Coroner's inquest is to ascertain truly the cause of the party's death, and is rather for information of the truth of the fact, than for accusation; it is not so much an accusation on an indictment, as an inquest of office to inquire truly how the party came to his death. On this account, it is the duty of the Coroner to receive evidence on oath, as well on behalf of the party accused as for the king, although, formerly, with the exception of cases of *felo de se*, a contrary practice prevailed.—Jervis. 2 H.P.C. 60, 1, 2; 1 Leach, 50.

the natural operations of disease, or if it has been hastened by any rude act. This inquiry, primary, and important as it really is, and as our laws have wisely made it, can be executed only by those who *intimately understand the laws of the animal economy,* and are profoundly acquainted with the numerous organs and functions of the human constitution,—with the different states in which they appear during health and disease, during life and death. Hitherto the inquiry is strictly *medical,* and the requisite information is afforded by anatomy, pathology, and surgery. By negligence, self-design, or guilt, destruction of life is frequently effected by drugs and poisons; of which the Coroner's inquiry can only be efficiently and justly prosecuted by discovering *the nature and properties of destructive substances, and their effects on living bodies.* This part of the inquiry is also strictly *medical,* and can only be attained by the aid of materia medica, chemistry, and toxocology. The various branches of a difficult, learned, and deeply interesting science, requiring years of labour and study fully to comprehend, are embraced in the elucidation of these questions, and are *absolutely necessary to forward the ends of justice.*

Having now ascertained the first principles governing this Court, the object will be to find a class of society who can best reduce these to practice, and carry them fully into operation.

Is a lawyer, whose business cramps his mind, in the study and perversion of precedents, acts of Parliament, judges' versions of them, and in mechanically copying

forms of law, best qualified to preside in such a Court? Decidedly not,—will be the immediate answer. His professional learning and habits of life never lead him to acquire the extensive knowledge of *medical science* which is requisite for the execution of these duties of the Coroner's Court. So defective do Attorney-Coroners find themselves on this point, that they are in the habit of carrying with them to inquests a small manuscript copy, neatly and closely written, containing a list of the most common poisons, the principal symptoms following their administration, and a short description of dangerous wounds, and of the appearances of the body from drowning, hanging, &c. How miserably defective must that inquiry be, when the highest authority and chief director of a Court is obliged to consult so imperfect a document, before he can proceed with, and continue an examination, which may put the life of a fellow being in jeopardy, and may perchance destroy, what may be dearer to him—his *reputation.* His medical ignorance necessarily prevents him from safely, justly, and properly conducting this inquiry.

Nor is a gentleman unconnected with the liberal professions, on account of his literary and scientific education and his general information, the best adapted for this office. The science of medicine, the various branches of which must be known to institute an efficient examination, has been cultivated and pursued exclusively by a distinct class of society, who alone are able to investigate and discover the *causes of death,* and to duly estimate all evidence bearing on them. The numerous and respectable body of

medical practitioners qualified by their education, practice, habits and thoughts, which are obliged to be constantly directed towards medical knowledge, are comprised in this class.—They, alone, are able to carry into effect the intentions of the law, as Coroners,—the *presiding and recording inquirers;* to take every advantage of this "view of the body," to discover suspicious and unnatural appearances and the necessity of obtaining the aid of a scientific witness to prosecute the inquiry, and to know that he performs his duty ably and properly for the benefit of the jurors—the *deciding inquirers.*

An objection, deceptive without the merit of plausibility, may be offered against the absolute necessity of appointing Medical Coroners. "These inquiries, important and necessary as they must be admitted, can be obtained from a medical witness." A Coroner is present at every inquest; a medical witness sees very few of them, and at the majority of these few, the assistance of a medical practitioner is, according to the present practice, required only on account of some glaring suspicion, or strong communication, which stupidity itself could not overlook. Are the great majority of deaths on which inquests are taken, and the cause of which are unenlightened by medical witnesses, invariably unattended with suspicious circumstances? A great number of sudden deaths, requiring inquests, are suspicious, and a medical Coroner, who, by the nature of his profession, is best acquainted with the *causes* and *appearances of death is enabled at once to decide on the truth or falsity of these suspicions, and on*

the necessity of instituting a rigid examination by a medical witness. A Coroner, with a smattering of knowledge, or with a total ignorance of medical science, will most certainly commit errors. One fact is said to be worth a thousand reasons, and among the number supporting the truth of this last position, I will offer the following, related by the late Mr. Hunt, which occurred during his confinement in Ilchester gaol. "A prisoner died at eleven o'clock in the morning, and on his body an inquest was held by a non-medical Coroner, under whose direction a verdict was returned of accidental death. It was afterwards proved on oath, before the Commissioners of Inquiry, that the unfortunate man was killed by a blow inflicted by one of the turnkeys, who had chained him by the neck to the wall for rioting and drunkenness, and was irritated by his abusive language." An error so egregious as this could not occur with a *medical* Coroner, for the view of the body required by our laws would soon inform him of the necessity of directing this inquiry to be prosecuted by anatomical examination and further verbal investigation. Mr. Hunt, in a speech which he delivered at a meeting of Middlesex freeholders, for the election of a Coroner,* said, "he had been impressed with the necessity of extensive medical education in a Coroner, and had had

* The following letter was written by Joseph Hume, Esq. M.P. for Middlesex, to Thomas Wakley, Esq. surgeon, M.P. for Finsbury, who was then a candidate for the Coronership of Middlesex, on the expressed principle of that office being essentially medical :—

"Arbroath, Aug. 26th, 1830.

"Dear Sir,—I am favoured with your letter announcing your intention to

abundant opportunities of seeing and lamenting the want of it. And, that, the election of a medical Coroner for the county of Somerset was the *first step towards an investigation of the abuses in Ilchester gaol.*"*

If a medical practitioner must appear in the character of a witness only, the jury will be always deprived of the advantage of receiving a clear and valid statement on the

offer yourself a candidate for the office of Coroner for Middlesex, now vacant, and hasten to assure you that that office generally has been filled by persons not calculated to perform the duties required of it.

"I consider that no man should fill the office of Coroner who has not attended a course of medical jurisprudence, and if to that important branch of education, a general medical education is superadded, the public would have a better chance of the protection which it is the intention of that office to afford the community.

" In appointing a judge to any court, it is considered necessary by the minister who has the appointment, to ascertain whether the person applying has been educated so as to fit him for performing the duties of the court; and a properly forwarded complaint would be made against the minister who would venture to appoint an uneducated, and, consequently, unfit person to any court. The coroner is the head of a court, and has the direction of that examination which shall enable the jury to determine whether the deceased has died a natural or violent death, and the want of that education which I have pointed out, must often be attended with very mischievous effects to society.

" I have known inquests, where, as appeared to me, innocent persons have been arraigned for supposed injury to the deceased, and I have seen others where the clearest case was made out against individuals, who were allowed to escape.

" With these opinions, I am glad that a properly educated gentleman has offered himself for the office of Coroner, and I hope the freeholders of Middlesex will take these matters into consideration, and by a proper selection afford that hope of protection which the office ought to hold out.

" I should be glad to aid in any way the committee that has been formed to promote your election, and only regret I am not in Middlesex to assist their efforts.

" I am, your obedient servant,

" To T. Wakley, Esq." " Joseph Hume.

* Lancet for 1829 and 1830.

medical topics of the inquiry, and the advice of the Coroner on any doubt arising in their minds on questions connected with death, for *it is preposterous to expect that a Coroner can give a true opinion, or state a correct explanation on subjects of which he is ignorant.*

A most material part of the evidence which relates to death and its cause, I have proved to be exclusively medical, to be appreciated only by practitioners in medicine, and explained to a jury, clearly and justly, by a medical Coroner. The remaining part must be derived from oral testimomy, a term which I here use in contradistinction to that kind of evidence gained by the Coroner and jury themselves, from the view and inspection of the body and other attending circumstances, or, if I may so denominate it, the body evidence. The oral testimony will assist and confirm the body evidence, and will discover the offending cause, the guilt and its degree, and the culpable agent or instrument.

In the first of these divisions the greater and most interesting portion of the oral evidence relates, if the corpse was accidently discovered, to the state in which the body was found, the appearances, external and internal, and other attending circumstances: and to the symptoms, to the wound, blow, &c. if an injury; to the substances administered, if poison; and the conduct of those who are present. The striking character of this evidence is medical in whatever point of view it is regarded; whether it originate from the mere observers and attendants, or from persons of a scientific character. In order then to pursue this inquiry

with the greatest prospect of arriving at a correct conclusion, the Coroner should possess sufficient knowledge to analyze the whole evidence from *medical* and unprofessional witnesses; to point out its validity or the degree of credit due to it, and its discrepances: to seize and connect all the different strong points of the testimony; and to question on matters which very frequently demand a profound acquaintance with anatomy, surgery, chemistry, and with the nature and effects of deleterious substances. This duty of an inquest can only be executed by a medical Coroner; otherwise justice will be frequently frustrated.

General truths acquire additional force by the illustration of example; and the inability of non-medical Coroners to estimate the validity of evidence, and conduct an examination relating to scientific questions on death, is shown by the "CASE of the unfortunate Eliza Jennings. It was stated that the knife, which was a steel one, and which she had used to cut a pudding, was made black by that act, and that, therefore, the pudding contained a combination of arsenic. This, too, was asserted by a medical witness, and was the strongest evidence against her; but this combination of arsenic could not blacken steel. The Coroner knew not this chemical fact, and could not therefore discover the necessity of other and better evidence on this point, nor explain to the jury the value at which it should be estimated. The non-medical Coroner knew not the error or truth of the opinion, on the blackening of steel by this preparation of arsenic."

Examples of this kind of abuse of justice from ignorance of the degree of the validity of scientific evidence, of the kind necessary for a perfect investigation, and of the method of conducting it, are so numerous and common, that they are, with no great difficulty, discovered near every one's door. "In Liverpool, Mrs. ——— died in child-bed—after an illness of eight days. Instruments had been used to effect delivery. An inquest was held on the body, and a verdict of manslaughter was recorded against a young gentleman, (a medical assistant,) who was publicly sent to the county gaol at Lancaster, pinioned to a common felon. The evidence implicating this young gentleman consisted in statements, showing that he was present from an early period of the labour, and when instruments were used by others, that he *interfered* too much, which evidence was only hearsay, related to another by the suffering lady herself; and that he was seen in an anteroom with instruments in his hand, when he replied in the affirmative to one asking, if he was going to use them."

With this evidence, defective, presumptuous, unsatisfactory, and of secondary consequence, were the Coroner and his legal officer content, and, in consequence of their incompetency from want of medical knowledge, they could neither assist the jury nor promote the investigation, by ascertaining the nature and extent of the "*interference*" and the part he *interfered* with, which were the head and front of his offence, and what was the consequence of that interference, and what use he made of the instruments. Highly important and absolutely necessary as these points

of the investigation were, the Coroner, through ignorance of medical science, could neither question nor appreciate, though witnesses were present, from whom the inquiry might have been made. Upon this evidence, defective, and miserably managed, was this young gentleman singled out as the only victim, and he appears to have been made the principal in the first degree of guilt, which was more strange and surprising than all other errors. He was subsequently discharged on the surrender of his bail without redress.

These instances will suffice to convince on the least reflection, that many evils arise from the want of medical knowledge by the Coroner; and that in such a court, justice is administered as much by blind chance, as by wisdom and certainty.

The nature and degree of guilt, being, with some exceptions, questions of fact for the jury, embrace a complicated range of inquiry, and arise in a Coroners' inquest from the evidence produced. I will allude to as many of those questions as the limits of a letter will allow me.

Murder is defined to be, " when a person of sound memory and discretion unlawfully kills any reasonable creature in being, and under the king's peace by any means with *malice aforethought,* either express or implied,* and it is a general rule that the law infers malice from the very *fact of killing.*†

Examinations, in a great measure relating to the ope-

* 3 Inst. 47. † Fost. 255.

rations of the mind, whether in a state of disease or of health, occupy considerably the attention and practice of medical men, and their knowledge will therefore admirably qualify them to make the inquiry, and value any evidence, if the person killing be of "*sound memory and discretion,*" or if the act "be *the dictate of a wicked and depraved heart.*"* The great distinction between this and other species of homicide is the "malice aforethought." The determination of this point from the evidence, and a clear explanation for the jury, will rarely, from the facts adduced, offer much difficulty to any Coroner of clear reason and common sense. A medical practitioner, however, must always, in these cases, be an excellent judge, since his practice gives tact and experience in valuing the acts, words, and manner of patients, with reference to the mind under every state, direction, and degree of excitement.

If there be *no* "malice aforethought," what class of society, from education and habits of life, are likely to furnish the best judge to conduct an inquiry so as to ascertain if the offence be manslaughter, excusable homicide, or justifiable homicide.

In manslaughter, the offence arises from death caused by a sudden transport of passion; by the commission of some unlawful act; or some lawful act, criminally or improperly performed: thus constituting killing upon provocation; in mutual combat; by correction; in defence of

* 4 Com. 198.

property; without intention; by and of officers and others. The inquiry can be made, and the evidence duly appreciated, properly extracted, and fairly stated, in the majority of cases, without medical or legal information. In the minority, some degree of legal knowledge is required to be sometimes explained for the guidance of the jury: as, for example, killing by officers. The manner, however, in which this has been conducted by Attorney-Coroners reflects little credit; for the blood shed at Peterloo cries not in favour of the Oldham inquest. The legal part, confined and narrow, is taught to the medical profession in a system of medical jurisprudence; and the legal distinctions are, so far as a Coroner's inquiry is concerned, in general, only nice applications of general principles, which oftentimes command our admiration at the clearness, justness, and acuteness of the understanding of the judge who observed them. The legal inquiries of the Coroner's Court are not obscured with difficulties of law, which are, as they ought to be, few and simple. These remarks are applicable to all kinds of homicide, and medical ability is not unusually required to discover the real or unreal mental legality (if I may so express it) of the offender.

The last division, which I shall concisely examine, refers to the culpable agent or instrument. Besides discovering the offenders, it involves the consideration of their degree of guilt, as principal, aider or abettor, and accessory before the fact; and of his legal capacity to commit crime. The first portion embraces mostly matters of fact and some slight legal information; and the second, to ascertain and

judge if the culpable agent be an infant in age as much in mind as body, be lunatic, or insane naturally, accidentally, or *affectedly*, demands a knowledge of medicine. The subject of deodands and forfeiture is connected with the offending agent; but its discussion is not of sufficient consequence to occupy the pages of a letter.

I have briefly and impartially pointed out the principal knowledge necessary for efficiently conducting the Court of the Coroner, which is in its nature essentially medical. The requisite legal information is soon gained by any rational individual, for the examinations seek into MATTERS OF FACT RATHER THAN OF LAW. The Court is not one for the decision and examination of points of law, and for the awards of punishment, but of preliminary investigation and inquiry on *violent, sudden, and unnatural deaths, and deaths in prison, and their causes.* The requisite medical information, then, must be profound, including a wide range of science, Anatomy, Pathology, Surgery, and the effects of Drugs and Poisons; and can only be learnt by years of study and practice.

The facts and evidence elicited during the investigation, are, in the first place, wholly and decidedly medical, and in the second which refers to the kind and degree of offence and offender, partially medical, slightly legal, and partially general; meaning thereby, conduct, character, society, and other circumstances. Under every consideration, the evidence given in this Court must therefore be appreciated, conducted, elucidated by additional facts, the want of which must be best ascertained, and, finally,

stated to the jury, with the greatest effect, knowledge, and justice, by a Coroner who is a medical practitioner.

I have briefly mentioned these duties and knowledge required from a Coroner; for the medical profession, till within these few years, have not publicly proclaimed their peculiar fitness for prosecuting the inquiries of the court, and because I firmly believe that a Reform Council will gladly seize the best means of insuring justice; will never sacrifice her sacred cause at the shrine of party, faction, and patronage; nor throw personal liberty and reputation at the feet of ignorance clothed with legal power.

I am, Gentlemen, yours respectfully,

GEORGE ROGERSON,

Member of the Royal College of Surgeons in London.

Feb. 11*th*, 1836.

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