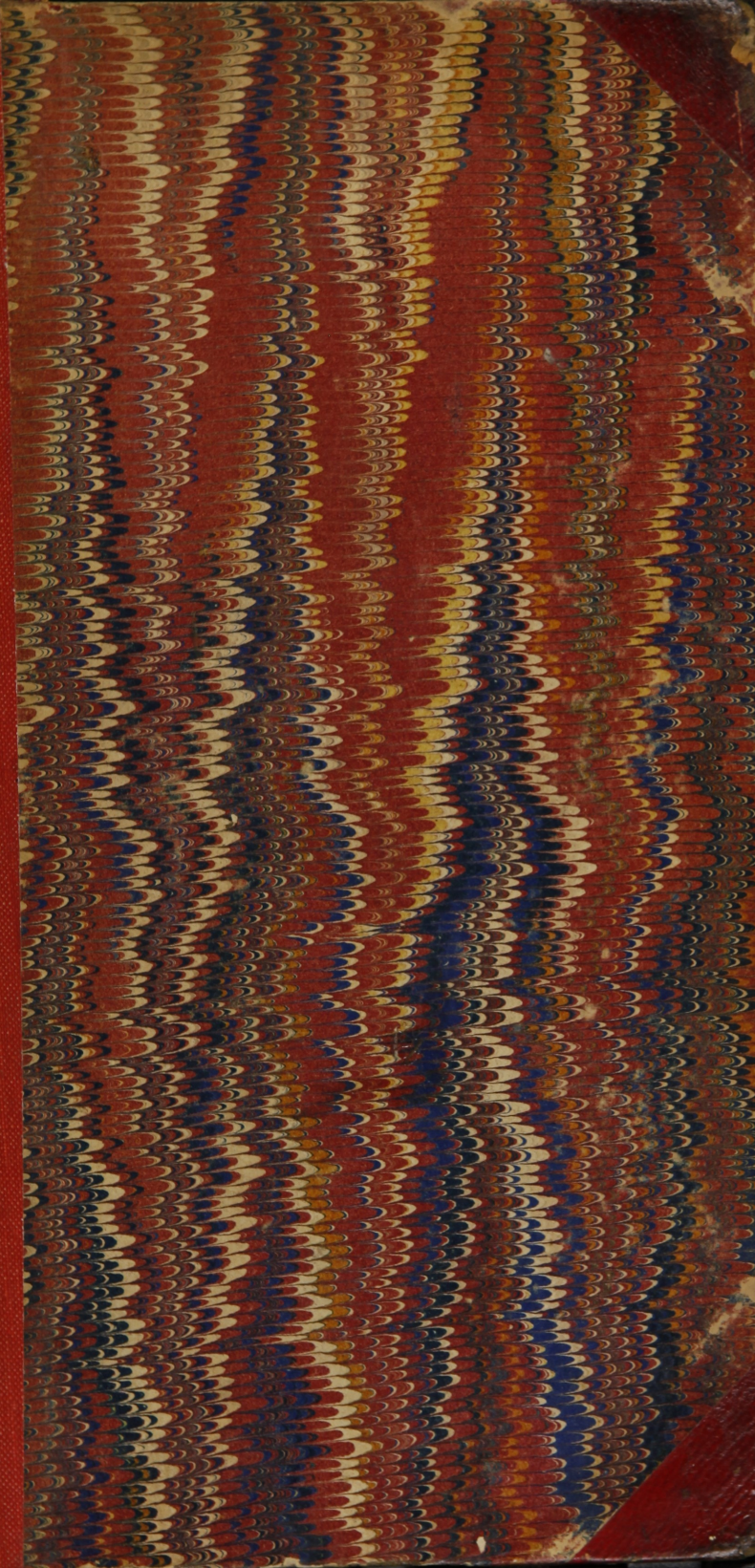


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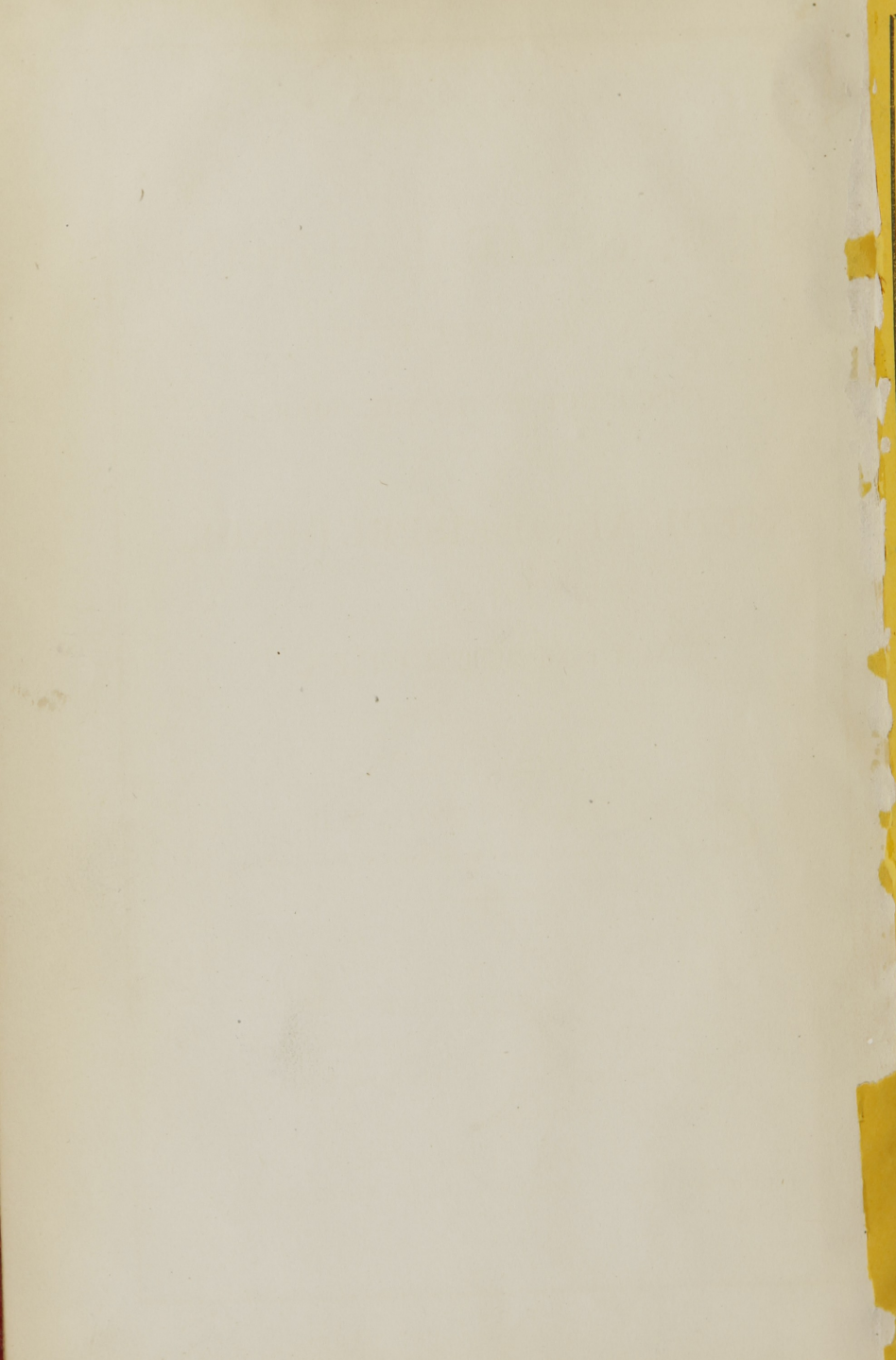
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IMPORTANCE  
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STUDY OF LEGAL MEDICINE;  
A LECTURE  
INTRODUCTORY TO THE COURSE  
ON  
MEDICAL JURISPRUDENCE,  
AT THE  
NEW YORK MEDICAL COLLEGE.

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BY JAMES WYNNE, M.D.,

Lecturer on Medical Jurisprudence in the New York Medical College.

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# IMPORTANCE

OF THE

# Study of Legal Medicine.

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BY JAMES WYNNE, M.D.

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The facts to which I shall invite your attention in the course of lectures it becomes my province to pronounce to you, possess an importance that cannot well be over-estimated, and demand at your hands the most careful and rigid investigation. Indeed it is quite possible that your character as medical men may be fixed, in the community in which you may take up your residence, by the extent of information you may possess in the first medico-legal case to which you are called, and in the absence of regularly established officers for this purpose, this may occur immediately upon your entrance into your professional career. "The duties of the physician or surgeon," remarks Beck, "are not bounded by his responsible and interesting attendance on the sick. He is often called upon to exercise other functions. His opinion is desired in cases of sudden death, of grievous bodily or mental injury, or on the nature of particular diseases and affections. This, indeed, is the natural result of a proper regard for the interests of society. Whenever the importance of equal laws becomes fully recognized in a country, and the necessity of distributing

impartial justice fully understood, it will soon suggest itself to the legislator that if evidence is required, it should be of the most unexceptionable and satisfactory character. When the controversy originated in mercantile disputes, the opinions of merchants were of course sought for, and depended on, and their customs and usages have indeed become a part of the statutes of various countries. So also when unexpected death followed from known or supposed injury, when the suspicion of violence entered into the list of causes, it was natural that sooner or later those should be called upon to testify, whose ordinary studies and pursuits best enabled them to decide.\* Such a conclusion appears to flow inevitably from the very principles upon which law is based. In this great and comprehensive department of human knowledge, man is regarded, not with a view to these physical characteristics, which it is the province of medicine to contemplate, but for the purpose of determining those moral tendencies that effect him in his relations to society, and hence he is considered not so much in his individual as his social capacity, and as constituting one of a community to which he is under certain obligations, and from which he derives corresponding advantages. Now, one of the chief objects of legal medicine is to aid the law so far as medicine and its collateral branches are concerned, in determining, whenever a violation of these obligations are suspected, the extent of the culpability of the individual, by a development of such circumstances as medicine alone is competent to unravel. Thus, when an offence involving a medico-legal question has been committed, the mere matter of fact may be as correctly stated by any intelligent observer as a medical man; but the many questions apparently trivial to others, which are nevertheless of great importance in the investigation of the case, together with the inferences to be deduced from them, peculiarly belong to the province of the medical jurist, whose previous studies and preparation of mind enables him to bestow upon them their just value, and bearing upon the case under investigation. "He is supposed, and rightly and justly supposed," observes Dr. Forbes Winslow, in reply to some strictures made by Mr. Warren, the eminent barrister, and author of the *Diary of a Physician*, in his review of Townsend's *Modern State Trials*, in Blackwood, in 1851, upon the value of medical testimony, as developed in the case of MacNaughton—"by education, study, reflection and enlarged experience, to be capable of enlightening the court and the jury upon matters upon which they are necessarily but

\* Beck's Medical Jurisprudence, vol. 2, p. 895.



superficially acquainted, and he is subpoenaed to give the benefit of his scientific knowledge in cases involving the questions of LIFE and DEATH."\* This position, assumed by Dr. Winslow for medical witnesses and medical experience, has usually been accorded to them by the most learned judges; thus, when a medical man at Lincoln flip-pantly replied to a question, by slighting the information obtained from medical writers, saying that the writers of books would advance anything, Chief Justice Dallas, with great propriety, severely reprimanded the witness, and declared that he would not sit in a court of justice and hear science reviled and the recorded researches of the medical world represented by ignorant tongues as leading to uncertainty.†

A surgeon is called to attend a person who has received a grievous wound; his chief business in this capacity is to ascertain the nature of the wound, so far as it offers hopes of remedial aid, and to apply such means as will most effectually secure a favorable termination; but in his capacity as a medical jurist, he will consider the circumstances and direction of the wound as affording a clue to the manner in which it was inflicted. Thus Fodère and Orfila have laid down the opinion, that where incised wounds are self-inflicted their direction is generally from left to right, either in a straight line, or obliquely from above downwards; and in the event of stabs and punctured wounds, from right to left, and from above downwards. In the case of left-handed persons these positions will be reversed. It often occurs that the circumstances exhibited by the wound are such as to leave great doubt as to the mode in which it was inflicted. Poiroux mentions the case of a laborer, who, when last seen alive, was conducting an ass loaded with wheat, near Castellana, in France; he was found dead at the foot of a precipice, beside the main road. The ass, who had fallen, was still living. The body of the man presented a number of irregular wounds and contusions, and a fracture of the under jaw and clavicle.

The general conclusion was, that the ass had stumbled over the rocks, and that the driver had lost his balance in attempting to recover him, and thus both fell over the precipice together. But a bonnet was discovered at the place of the accident, which did not belong to deceased, which led to a still further investigation, which resulted in the discovery of three or four incised wounds on the back of the head and neck, perfectly regular in shape, and evidently made by a sharp cutting instrument. Other wounds of the same description were found on the

\* Winslow's Psychological Journal, vol. 4, p. 574.

† London Medical and Surgical Journal, vol. 6, p. 421.

chest, but the hands and arms were uninjured, except a slight excoriation on the finger. The inference was conclusive, that he had been murdered before falling over the rocks. It was now remembered that a neighbor, of violent and revengeful temper, was on bad terms with the murdered man. These circumstances led to his arrest; he was tried, found guilty, and executed.\*

In the case of Donnelly, who was tried and executed for the murder of Moses, the question of suicide was raised, and rejected on account of the severity of the wound, which produced death by bleeding from the deep thyroid artery. Dr. Finnell in July last exhibited to the members of Pathological Society the cervical vertebra of a man who had come to his death in a precisely similar manner to Moses, but, as was alleged, by suicide. He was an intemperate man, and while laboring under delirium tremens is supposed to have arisen at night and plunged a shoemaker's knife into his throat with such violence that it was found impacted in the vertebra, and then returned to bed; in this state he was found in the morning by his wife, who was sleeping by his side. I have not sufficient evidence before me to determine whether the deceased died of a self-inflicted wound or otherwise.†

In medico-legal investigations too much caution cannot be observed, as illustrated by the following case: Mr. Prelet, who resided at Chambéry, died suddenly on the night of the 13th of January, 1842, after having supped with his nephew. He was buried on the 16th. Two days after the civil authorities received an anonymous note, declaring that Prelet had been poisoned by his nephew with prussic acid. On the receipt of this note, the authorities caused his body to be exhumed and subjected to an examination, with the view to ascertain the truth or falsity of this charge. The two medical men who were selected to conduct this examination, declared that they had discovered the prussic acid, which had been given to him in wine. Upon this testimony the nephew was condemned, but the defence obtained a stay of judgment in order to invoke the aid of the celebrated Orfila. This learned toxicologist, after a full investigation, decided that the patient had died of unequivocal symptoms of apoplexy, and that the medical men who had made the first examination were in fault in sup-

\* Poilroux *Med. Legale Criminelle*, p. 97.

† Had this case been on record at the time of Donnelly's trial, it would have furnished his counsel with a formidable argument to sustain the theory of the suicide of the deceased. In the Burdel murder suit, the character of the wounds, as developed by the testimony of Prof. Carnochan, Dr. Francis, and others, doubtless exercised a material influence over the minds of the jury.

† *American Med. Monthly*, vol. 10, p. 62.

posing that they had detected prussic acid in the parts of the body subjected by them to chemical analysis. The nephew was accordingly acquitted.\* Mistakes in cases of poison are of frequent occurrence, owing to the great skill often required to detect them; and no one who has not a thorough acquaintance with the different tests, should give an opinion involving the life of a fellow-being, without obtaining such aid as to remove as far as possible the doubt which too frequently envelopes the case.

Different codes for the conduct of medico-legal investigations exist in different countries. Among the most celebrated of these is the criminal code formed by the Emperor, Charles V., at Ratisbon, in 1532, which was speedily followed by the adoption of similar ones in France and other European countries. The Prussian code requires the States Physician to make post-mortem examinations, and institute such medico-legal investigations relative to lesions and injuries to living persons, or affections of mind and body of those presented to his consideration, as the nature of the case may warrant.† In order to fit those who are hereafter to assume these duties, a school of medical jurisprudence is established, in connection with the University of Berlin, over which Dr. Wagner presides, and in which Dr. Casper, the eminent statistician and writer on forensic medicine, is a professor. The care taken to exercise the pupils in the practical branches of their art is evidenced by the great number of cases of post-mortem and other examinations recorded in Dr. Casper's work, over which he exercised a personal supervision.

“A supreme medical and sanitary council or college exists in the capital of each kingdom or state, forming part of the ministry for the interior, and is presided over by the Minister of Public Instruction. The central council at the seat of government superintends all medical affairs, and has the supervision of all the provincial and district medical colleges or sanitary boards. To take an example: the supreme Medical Board of Berlin consists of certain members, appointed for three years, and eligible for re-appointment. Of these, the majority are medical men; the following nine well-known names being those of the medical members of the supreme college of medical and sanitary affairs in Berlin: Klug, Köner, Horn, Link, Kluge, Wagner, Mitscherlick, Casper and Froriep.”‡ The most active agent of these

\* *Annales d'Hygiène et Méd. Lég.*, vol. 26, p. 397; vol. 29, p. 103.

† *London Medical Gazette*, vol. 13, p. 952.

‡ *British and Foreign Medico-Chirurgical Review*, vol. 18, p. 367.

councils is the *stadt-physicus*, or state physician, to a portion of whose duties allusion has already been made. He is, in fact, the special agent to whom is confided the investigation of all medico-legal questions, and is always liable to the call of the legal tribunal having cognizance over these subjects.

Should the case involve any complications, or be shadowed with doubt, the report of the examining physician, together with all other depositions, is forwarded to the Provincial Council, which, if unable to solve the question, refers it to the still higher authority of the Supreme Council at Berlin.

“The forensic duties of the *physicus* are under the direction of the supreme judicial courts and of the police authorities of the district, or a local magistrate. With the assistant forensic surgeon, the *physicus*, in the event of a sudden or violent death, is required to repair, without loss of time, to the spot where the body is to be examined. The judicial inspection is required to be made according to special instructions issued to that end. In cases of poisoning or adulteration of food, the *physicus* shall very carefully and scrupulously investigate the case, with the assistance of a qualified apothecary; a conjoint report shall be signed by these three officers, viz., the *physicus*, the surgeon and apothecary; not only [to verify the truth thereof, but also to divide the responsibility of the consequences that may thence follow.”\*

In Austria “a code of regulations is published, by which all medico-judiciary investigations are to be conducted throughout the empire, and reports to be drawn up. Public inspections are also made on the dead bodies of those found in suspicious circumstances, and which, not being recognized at first, are carried to the dead-room in the general hospital. Due notice is given to the students at what hour such inspections are to take place, and they have thus an opportunity of seeing those regulations put into practice, which they will one day be called to fulfill.”†

The Criminal Code of France (Art. 44) provides, that in case of a violent death, or of one to the cause of which suspicion may attach, the Procurer shall call to his aid one or two *officiers de santé*, who shall make to him a report on the condition of the body and the cause of death.

The Police Ordinance of 1822 provides, that whenever a person

\* British and Foreign Medico-Chirurgical Review, vol. 18, p. 370.

† Quarterly Journal of Foreign Medicine and Surgery, vol. 1, p. 40.

shall be found wounded in the public highway; or in the water in a state of suffocation; or asphyxed from the effect of mephetic gases, he shall be transported to the nearest hospital or place convenient, and a skillful person employed to attempt his resuscitation, or make an examination and report of the circumstances of the case if death prove inevitable. The *officier de santé* here alluded to corresponds to the apothecary in England, and occupies a position inferior to that of the medical man in Europe, or the better class of the profession in this country.

It becomes the duty of the authorities to procure "*experts*" in many cases. These are not a distinct class of practitioners, but are generally selected from those who have bestowed particular care and attention upon questions of this nature. The opinion of an expert may be demanded either by the judge or the accused, before the passage of judgment, not unfrequently as in the case of Prelet, already cited, with the effect of reversing the sentence of the court. "The experts thus called into consultation do not necessarily reside in the locality where the alleged crime was committed, but may, if advisable or necessary, be summoned from a distance. Or it may happen in more grave cases, such as poisoning, assassination, &c., that there may be a difference of opinion among the experts who have investigated the affair upon the spot. Under these circumstances the magistrate addresses to the local *juge d'instruction* a *commission rogatoire*, by which he is authorized to require the opinion of certain "*experts*," the choice of the latter being frequently left to his discretion. The limits of the "consultation" are much less restricted than are those of the "reports," which consist simply of a statement of the facts and the conclusions. In the consultation, every fact must be discussed and fully commented upon, the commentary being strengthened by all suitable arguments, and illustrated by reference to the statements and opinions of authors. The names of the previous reporters are in all cases concealed from the consulting experts, lest the authority or the insignificance of a name should exert its undue influence upon their judgments."\*

These reports constitute the ground of action, determining the abandonment or the continuance of the case; and in the latter instance assume the position of witness, usually with the effect of determining the issue of the cause.

The Sardinian Sanitary Board forms a part of the machinery of the

\* British and Foreign Medico-Chirurgical Review, vol. 18, p. 377.

government, and consists of a Supreme Council of Health, and a Provincial Council for each town or district. The Supreme Council is composed of regular and honorary members, and is presided over by the Minister of the Interior. The Advocate Fiscal General, corresponding to our District Attorney, is likewise a member of this board. The whole board is composed of fifteen members, embracing some of the most eminent medical men in Turin, among whom are Ribeny, physician to the king, Maffene, Giraldo, Sperino, and Abbene. Each Provincial Council consists of one physician, one surgeon, and one pharmacist. The municipal authorities appoint a medical man, who visits every deceased person, and from personal inspection ascertains the cause of death. If it be from ordinary disease, he gives a certificate, without which no burial can take place. If the case involves suspicion, he reports the facts to the local Advocate Fiscal, and if needs be the Provincial Council is called upon to investigate the matter. In cases of doubt the act of the Provincial Council, as well as the whole subject, is referred to the Supreme Council at Turin, who appoint a commission of experts to investigate carefully the whole matter. The caution with which these investigations are made acts as a salutary restraint in the prevention of crime involving the destruction of human life.

In England and in the United States these important duties, which involve so complex a machinery, and are prosecuted with such care and ability in most European States, are placed in charge of a coroner, who possesses the power to summon a jury and compel the attendance of witnesses. That this office is frequently confided to incompetent hands, in both countries, does not admit of doubt. "It would seem indispensable," remarks Beck, "that he (the coroner) be properly versed both in legal and medical knowledge, required from time to time in the discharge of his office. It cannot be denied that a full and satisfactory medico-legal examination is avoided as often as public sentiment will permit, and, even when judicially ordered, its proper objects are often thwarted or not fully accomplished. The consequences may be seen in the results of many of our criminal trials. The public mind may be deeply and permanently impressed with the guilt of individuals, yet the imperfection of the early examination has been such as to leave no option with the jury, but to release the accused."\*

A report from the Select Committee of the House of Commons,

\* Beck's Med. Jurisprudence, vol. 2, p. 897.

recommending the appointment of public prosecutors, whose functions should be somewhat analogous to those of District Attorneys in this country, was made in 1856, which it was supposed would cover this ground. The testimony elicited before the committee showed many evils in the present system. Lord Brougham declared it ineffectual in its provision for the prosecution of offenders, and stated that a wealthy person may not only tamper with the prosecutor, but buy off the prosecution. The committee derived their chief information from persons familiar with the jurisprudence of Scotland, Ireland and the United States, in the latter of which they obtained valuable aid from Judge Davies, the present distinguished Justice of the Superior Court, at that time on a visit to Europe. The testimony of Mr. Davies showed that each of the 56 counties in this state has a special public prosecutor, called District Attorney, who is amenable to the Attorney General of the State. Yet the recent trials for capital offences, and the large number of flagrant crimes which have gone unpunished of late years, show how ineffectual this system is for the detection of crime and the preservation of order. So far as the recommendations of the committee go, they do not contemplate that incipient mode of detecting crime, which it is the peculiar province of the laws of Continental States to develop, and upon which the future conduct of the case generally depends.

Surgeon Craig, in a pamphlet on the Law of the Coroner, and on medical evidence in the preliminary investigation in criminal cases in Scotland, published in 1855, shows that the office of the Procurator Fiscal has no more influence over these important preliminary investigations, than that of the District Attorney in this country, but that the case is left to an ignorant constable to conduct.

"In all cases of sudden death," he says, "the district constable repairs to the place where it has occurred, collects information, and sends off a report immediately to the superintendent; and in cases of rape, child-murder, or concealment of pregnancy, the *constable* is to ascertain, with precision, all appearances exhibited, such as marks of feet, blood, &c. &c. If there be any circumstance calculated to raise ground of suspicion as to the death, such as external marks of violence, bruises, fractures, &c., the constable is to apply to the nearest medical man, without delay, and after examination is to obtain a certificate and forward it immediately to the superintendent. In all cases of serious assault, the constable, without delay, procures the assistance of the nearest medical man, and sends off a report, as above described, and instructions are given as to what circumstances the medical man is to certify.

“Upon receiving such a report, it is laid by the superintendent before the procurator fiscal of the county, who either acts upon his own responsibility, or occasionally takes a fresh precognition, and prepares a case to submit to the crown agent, to whom the police reports are frequently sent, and whose instructions are thereafter acted upon.”

It is earnestly to be hoped that the day is not far distant when both England and the United States, profiting by the enlightened example of France, Austria, Prussia, and Sardinia, will so amend their codes of Criminal Jurisprudence as to place these important preliminary investigations in the hands of competent and able officials, whose high character will be a guarantee for the faithful performance of their responsible duties, and that men equally skilled in medico-legal researches with MM. Gaultier de Claubry, Chevallier, Tardieu, Orfila, Wagner, and Casper, may be selected to act as experts.

As the law now stands, the coroner may summon any medical man to appear before him and give evidence as to the cause of a sudden death. It may chance that a medical man may pass through life without being so summoned, but it will not do to rest upon so vague a probability, and remain unprepared for an emergency which is possible to arise at any instant, and may place the practitioner, if unprepared, in the most unpleasant position.

In a preliminary examination before a coroner, in the case of a sudden and unexplained death, the medical witness will find that an accurate knowledge of anatomy is absolutely necessary to guide him in his investigations. This examination should be thorough, and no desire to avoid labor, or discouragement from the coroner or his jury, should prevent the medical man from prosecuting his investigations to a sufficient extent to enable him to speak positively as to the nature of the lesions he chances to discover. This is often a tedious business, especially to the coroner and his jury, who look upon the examination in too many cases as a mere matter of form, and are anxious to hurry through it and return to their usual avocations.

The necessity of a post-mortem examination is illustrated by the following case:

“Three men were tried on a charge of manslaughter. The prisoners and the deceased had been drinking together at a public house, when a quarrel arose, which ended in a battle between the deceased and one of the prisoners. The other two acted as seconds. The fight had continued for some time, when the deceased was knocked down by a severe blow on the head, and did not afterwards speak. A surgeon was sent for, but before his arrival the deceased had ex-



pired. On this trial the witness stated that he found a considerable bruise behind the ear, in the region of the mastoid process, accompanied by extravasation of blood. On being cross-examined, he admitted that he did not open the cranium, the coroner having told him that it was unnecessary. He ascribed the death of the deceased to a pressure of blood upon the brain, which, in his opinion, might have become extravasated by a blow or fall, or from extraordinary excitement. The deceased was of an apoplectic diathesis. The learned judge observed to the jury, in summing up, that the medical evidence was not sufficient to determine whether the deceased had died from the violence employed by the prisoners or from after causes. An acquittal instantly followed.\*

"We cannot," (remarks the *Edinburg Med. & Surg. Journal*, vol. 14, p. 468,) "omit this opportunity of expressing our disapprobation of the conduct of coroners, who presume to interrupt the medical practitioner, called upon to examine the cause of death under suspicious circumstances; and of informing practitioners in general that as soon as the body is delivered over to them for that purpose, they are to proceed deliberately with their examination until they are satisfied. Upon this subject we quote with great satisfaction the opinion of the enlightened judge who now presides over the criminal courts of this division of the empire. Dr. Cleghorn, of Glasgow, having been examined on a trial for poison, the Lord Justice Clerk, after highly complimenting the learned professor on his luminous evidence, took occasion to impress strongly on all magistrates and the public officers present the absolute necessity of having the body of the deceased opened and examined by a medical man, in every case of suspicious death."

You cannot be too strongly imbued with the importance of a thorough acquaintance with that part of chemistry which is brought into play in toxicological examinations. The tests in cases of poisoning should be as familiar to you as the antidotes necessary to counteract the influence of poisons in the living subject. The opportunities that will be given to you to become thoroughly acquainted with this subject, by the able lecturer who fills the chair of chemistry in this institution, are such as are seldom met with in this country, and should not be neglected. The celebrated Dr. John Hunter, whose case is quoted by Sir Astley Cooper and Beck, as a lesson to all medical men, "regretted that he had not made more experiments on the subject of poisons, before giving an opinion in a court of justice."

\* Taylor's Jurisprudence, p. 265.

In this class of cases it is always important to obtain the opinion of experts, whose studies and facilities for analyses give great and deserved weight to their opinions. The science of analytical chemistry is here of chief importance, and such men as Booth, of Philadelphia, Piggott, of Baltimore, J. Lawrence Smith, of Louisville, Blaney, of Chicago, and Campbell, Morfit, and Doremus, of this city, whose lives are devoted to this pursuit, and in which they have obtained deserved reputation, cannot be too widely known.

At the moment of making the examination, and for some time afterwards, the facts connected with the case are so vividly impressed upon the mind of the medical witness that he fancies there is no possible danger of their ever becoming less distinct. This may continue for some weeks, but it not unfrequently happens that months may transpire before he is called upon to give evidence in a court of justice. During this time other matters may have intervened to call off his attention, and when he comes to review the case in his own mind at, or immediately before, taking his place at the witness stand, he finds that his memory furnishes him with a confused and indistinct picture of things which he supposed were firmly fixed in his mind. He therefore speaks with doubt and hesitancy of the facts which are most important to the case, and under a thorough cross-examination by an astute advocate is often shown to possess too faint a knowledge of the facts to give to his testimony the weight it merits, or to bestow on himself that standing in the opinion of the court and spectators which as a scientific man he feels that he is entitled to. No one should, therefore, trust in an important case exclusively to his own memory, but take notes at the moment, which are admissible as evidence, so far as they are used merely as a means of assisting the memory, and not as a basis for the evidence given. In order to render these notes of any value, they must be taken at the time of the occurrence of the facts, and not afterwards. "On the trial of Sir A. Gordon Kinlock for the murder of his brother, the medical witness was about to give his evidence respecting the wound of which the deceased had died, from notes made some time after the event, when he was stopped by the Lord Advocate, who explained to him the law on the subject."\*

In the narrative of facts the simplest and most concise language should be used, and great caution observed not to express opinions which cannot be sustained. Indeed all opinions not suggested by the facts are not only out of place, but worse than useless. A medical witness who is pressed for an answer in regard to an opinion upon

\* Taylor's Medical Jurisprudence, p. 15.

which he is not positively sure, need not fear to lose cast by hesitating to reply until he shall have had time to examine the whole bearings of his answer, and to be fully assured of the certainty of its correctness. During the examination of Dr. Delafield before the Surrogate in the Parish will case, that eminent medical man did not hesitate to inform the court that the question propounded to him by the counsel was one that required time for consideration before a reply could be given. This time was awarded.

The testimony of medical men, in cases of real or supposed insanity, is often required, and frequently under circumstances calculated to place the witness in the most awkward position, unless he shall have previously fortified himself by a thorough foundation laid in a study of the psychological phenomena of insanity beforehand. It is not always easy to say what is or is not insanity. Let me present you a portrait drawn by Knaggs, in his work on unsoundness of mind:

“There was an old man well known in London during the last century, who was of an ungainly appearance, and subject to occasional attacks of hereditary melancholy; so inconsistent was he in his habits, that sometimes he practiced great abstemiousness, and at other times devoured large meals with brutish slovenliness and voracity; sometimes he would persist in drinking nothing but water, but occasionally drank wine by tumblersfull; his income was far from large, and not of a certain amount, yet he kept a set of old men and women about his house, whose bickerings and disagreements now and then drove him out of doors; he was in general very loquacious, but has been known to sit in company and drink a dozen cups of tea without speaking a syllable; when not engaged in discoursing, it was his custom to keep muttering to himself; in walking he performed strange gesticulations, and would not go in at a door unless he could effect his entry in a certain preconceived number of steps, and so as to introduce himself on a particular foot—turning back and recommencing until he succeeded as he desired; there was a row of posts near his house, which he would not pass without touching singly, and if he omitted one in the series he retraced his steps to remedy the neglect; he hoarded up orange skins for some mysterious purpose he would never divulge; he suffered remorse of conscience for having taken milk in his coffee on Good Friday; he believed in ghosts, and went ghost hunting in Cock Lane; and maintained that he heard his mother calling for him by name in the other world. Yet Dr. Johnson was so far from insane, that by common consent he was regarded as the most vigorous thinker and greatest sage of his time.”\*

\* *Unsoundness of Mind*, by Knaggs, p. 46.

The occasions when medical evidence is required in courts of law, in reference to insanity, are thus laid down by Dr. Forbes Winslow, in his Lettsomian Lectures delivered before the Medical Society of London, in April, 1852:

“1st. Cases in which the plea of insanity is urged in the extenuation of crime.

“2d. Cases where attempts are made to invalidate the legal operations of testamentary dispositions of property on the ground of mental incompetence.

“3d. When legal proceedings are instituted to invalidate a marriage contract on the plea of insanity and imbecility.

“4th. In commissions *de lunatico inquirendo*.

“5th. Cases in which medical men are called upon to certify to the existence of insanity, justifying an interference with the person of the lunatic.”

Each of these subjects will be considered in subsequent lectures. For the present it may suffice to say, that cases in which testimony is required, especially where insanity is alleged in excuse for crime, have largely increased of late, owing to the views which some of the ablest recent writers on mental diseases have taken in regard to moral insanity, correct enough when confined within their legitimate sphere, and exhibiting both enlarged philosophical research and philanthropic sentiments, but frequently perverted from their original purpose to shield the worst of criminals from the punishment their crimes so deservedly merit.

The term of moral insanity was first introduced into the psychological nomenclature by Dr. Prichard, and derived great weight from the high authority from which it emanated.

Dr. Winslow says, “The phrase is generally repudiated in our courts of law; it has given rise to much caviling and disputation, and its adoption has unfortunately exposed the profession to great odium and obloquy, and has, I think, very materially damaged the moral weight of medico-legal testimony. It has been asserted that the term is used with the view of protecting the criminal from just punishment, and of shielding vice, extravagance, malignity, debauchery, cruelty, crime, and brutality from the natural emotions of horror and disgust, with which such actions should be contemplated by every right-thinking and well-constituted mind.”\*

That this assertion is not without its force, the criminal records of the last few years bear ample testimony. This was the plea urged in

\* Journal of Psychological Medicine, vol. 7, p. 427.

extenuation of the crime of homicide in the cases of Palmer and Dane, in England, and of Huntington, in the case of forgery in this country. Medical men should be exceedingly careful how their sympathies lead them to the adoption of these views in criminal trials. They should remember that insanity may be easily simulated and carried out with such tact as to require the utmost ingenuity and perseverance to discover the deception.

“I cannot conceive a position of graver responsibility,” remarks Dr. Winslow, “than that assumed by a medical witness, when called upon in a court of justice to give evidence in criminal cases; let me earnestly entreat him, before discharging these solemn duties, to make himself master of all the facts of the case. He should not assume for granted the representations of those anxious to establish the insanity of the criminal; were he to do so he would occasionally be sadly deceived. He should never forget that he has a *public* as well as a *professional* duty to perform, and he is bound as a citizen of the state as well as a member of an important and learned section of society, to protect himself from the possibility of being deceived as to the facts of any given case presented to him for his opinion. He must not permit his feelings to overpower and interfere with the free and unclouded operation of his judgment; under these circumstances, every possible influence will occasionally be exercised to induce the witness to adopt a view favorable to the prisoner.”\*

The safety of society requires that the guilty should be punished. After the commission of the first great crime the perpetrator goes abroad not only a guilty, but a dangerous man.

The case of John Lynch, detailed in a letter addressed to Mr. Gladstone, M. P., by Mr. Justice Thery, and published in 1850, furnishes an exemplification of this point. This man was brought to trial in 1835, with others, for murder. A material witness, who was to prove that Lynch was seen on the day of the murder near the spot, was brought into court in such a state of intoxication as to render his testimony valueless, and the prisoner was acquitted. Six years afterwards this same Lynch was tried for a murder perpetrated under circumstances of great enormity, convicted and executed. Before his execution he made a confession, in which he stated that in the interval between 1835 and 1842, when he was executed, he had committed no less than ten distinct murders. In one case, he says, that after murdering the mother and her son, “none remained but a little girl. The poor little thing had never done me any injury, and I was really sorry for her. I went into

\* Dr. Winslow's Lettsomian Lecture.

the hut where she remained, and I said to her—Now, my little girl, I will do for you what I have not done for the others, for you are a good girl, and shall have ten minutes to say your prayers." Here, says the magistrate, Lynch paused, as if he had a difficulty in going on; I supposed it might be a feeling of remorse, and I could easily imagine that the scene of the child begging for life must have been a most pitiable one. I therefore ended the pause by saying: "In short you killed her with the axe," to which he replied, that he did. It is unnecessary to proceed with the relations of this cold-blooded villain, or bring before you the revolting spectacle of his unoffending victims. He may have had a homicidal mania, and perhaps in a refined capital might have escaped on account of the very enormity of his crimes. But it appears to me that this kind of insanity is best treated by hangman's noose and the gallows drop. It is a mistake to suppose insanity developed in the repeated commission of crime. "If people knew," Lynch says, "how easy a thing it is to take away life, these things would happen oftener."

From the frequency of this kind of crime, of late, we are led to the belief that there are many others who have found how easy a thing it is to take away life; and it is possible for either of us to be jostled, in the thoroughfares of this great city, by those upon whose conscience rests a deed of blood. But although the guilty often escape punishment, it is nevertheless true, that, in a larger proportion of cases,

"Murder hath speech, and will declare itself  
With most miraculous organ."

In cases like these the medical man not unfrequently furnishes the chief link in the testimony upon which the criminal is convicted. "It is such duties," say Sir John Forbes, "ably performed, that raise our profession to an exalted rank in the eyes of the world; that cause the vulgar, who are ever ready to exclaim against the inutility of medicine, to marvel at the mysterious power by which an atom of arsenic, mingled amid a confused mass of ingesta, can still be detected. It does more—it impresses on the minds of assassins a salutary dread of the great impossibility of escaping discovery."\*

\* Quarterly Journal of Foreign Medicine and Surgery, vol. 4, p. 45.









