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Authority of Coroner to Order Autopsy, at Common Law and under South Carolina Statutes

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NOTES

AUTHORITY OF CORONER TO ORDER AUTOPSY, AT COMMON LAW AND UNDER SOUTH CAROLINA STATUTES

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Synopsis

As this study will develop, Coroners had authority at the common law to order autopsies in proper cases, but this statement finds support, not expressly in early English statutes, nor in English decisions, but in cases decided in this country. There is a principle, perhaps universally recognized, that the common law is not fixed and inflexible, but is adaptable to change and the progress of advancing civilization. One of the cases reviewed applied this principle to reach its conclusion.

South Carolina decisions in point are lacking.

Except for comparatively recent statutes there was no specific authority granted, by statute, to the Coroners of this state to order autopsies; however, as early as 1851 provision was made for payment to physicians performing dissection in post mortem examinations ordered by Coroners,—a strong indication that Coroners did make such orders, justified by common law.

The recent statutes, just mentioned, hereinafter quoted, make provision for chemical analysis at Clemson College. The effect of that provision is considered.

Common Law; Early Statutes

In many decisions reference is made to the statute of 4 Edw. I Stat. 2 "De officio Coronatis" enacted in 1276.[1] The principal pertinent provisions thereof are:

> The Coroner shall go to any place where any be slain or suddenly dead and inquire: "If they know where person was slain, whether it were in any House, Field, Bed, Tavern or Company, and who were there: Likewise it is to be inquired Who were capable either of the Act or of the Force, and who were present . . ."
>
> II. "In like manner it is be inquired of them that be drowned or suddenly dead, and after such bodies are to be seen, whether they were so drowned or slain . . ."

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1. 1 THE STATUTES AT LARGE 110 (Pickering 1762).

This statute is said to be merely declaratory of the common law as it had existed for hundreds of years. It does not mention autopsies, and in fact I do not find any statutory provisions in England for autopsies until the Coroner's Act of 1887, 50 Vict. Ch. 71; The Law Reports, The Statutes, 1887, pp. 348, 355.[2]

In South Carolina a statute ratified 9 April, 1706,[3] was substantially the same as the statute of 4 Edw., *supra.* Included in section IV, on the subject of the Coroner's charge to the jury is:

> ". . . and if he died of his own felony, then to inquire of the manner, means and instrument, and circumstances concurring."

This statute was discussed in *Giles v. Brown*[4] from which these excerpts are taken:

> "Coroners were very ancient officers at the common law . . . . The judicial power of a coroner is first to inquire into or concerning the death, when anyone is slain, or dies suddenly . . . . They are also to make inquiry of the accessories . . . and indeed of all things which occasioned it . . . ."
>
> "In South Carolina, coroners are appointed under, and by virtue of an act passed so long ago as the year 1706, . . . whose powers and duties . . . are exactly the same as those prescribed by the common law, in the manner above set forth."

The next enactment in this state was a comprehensive Coroner's Act containing this:[5]

> "XIV. If the jury so charged, find that the deceased came to his death by his own felony, they shall further inquire into the manner, means and instrument, and into all circumstances of the death."

The first reference to a post mortem examination in our statutes is contained in an Act found in XII Stat. 117.[6] This makes provision for the payment of fees of physicians who may be called to make a post mortem examination. A $10.00 fee is provided when there is *no dissection; dissection before interment* $20.00 etc.

2. See also, 8 HALSBURY, THE LAWS OF ENGLAND § 615 (1909); 8 HALSBURY, THE LAWS OF ENGLAND § 1054 (2d ed. 1932); 16-17 GEO. V. ch. 59; 1926 STAT. 504.
3. 2 STAT. 269.
4. Giles v. Brown, 1 Mill Const. (3 S. C. L.) 230 (1817).
5. XI STAT. 55 (Approved 21 December 1839).
6. XII STAT. 117 (Approved 16 December 1851). See also XVI STAT. 389 § 11 (Approved 26 February 1873); XVI STAT. 630 § 15 (Approved 22 March 1878); XV STAT. 993; G.S. §§ 621, 2442; S. C. CODE § 3125 (1902); S. C. CODE §§ 17-13, 17-114, 27-634, 27-635 (1952).

It will be borne in mind that there was a complete absence of *statutory* authority in South Carolina for a coroner to order an autopsy until 1906[7] and yet, as shown, in 1851 fees for post mortems were provided by statute. Certainly the inference is to be drawn that the common-law authorized autopsies, and the fee statutes were merely in aid of the common-law authority.

In the digests of English case law I find no decision to the effect that Coroners have, or have not authority at common law to order autopsies.

Oddly enough it is an American case that is cited in a note to the effect that the Coroner has such authority in Schwarswoods Blackstone's Commentaries:

> "The office and power of a coroner are also, like those of the sheriff, either judicial or ministerial; but principally judicial. This is in great measure ascertained by statute 4 Edw. I* *de officio coronatis;* and consists, first, in inquiring, when any person is slain, or dies suddenly, or in prison, concerning the manner of his death . . . ."[8]
>
> "In making an inquisition of death, the coroner as a public agent, has authority to order a post mortem examination by medical men, at the public charge."[9]

Application of the Common Law; American Decisions

The absence of English decisions on the subject is by no means an indication that the authority did not exist at the common law; or that the common law principles are so inelastic in application as not to cover now a situation that was unknown at the common law.

> "The common law does not consist of definite rules which are absolute, fixed and immutable like the statute law, but it is a flexible body of principles which are designed to meet, and are susceptible of adaptation to, new institutions, conditions, usages, and practices, as the progress of society may require."[10]
>
> ". . . The capacity of common law for growth and adaptation to new conditions is one of its most admirable features. It is constantly expanding and developing in keeping with advancing civilization and the new conditions and progress of society and adapting itself to the gradual change of trade, commerce,

7. 25 STAT. 132, now S. C. CODE §§ 17-116, 17-117 (1952).
8. 1 SCHWARSWOODS, BLACKSTONE'S COMMENTARIES 347-348 (1865).
9. 1 *Id.* at 348.
10. 15 C.J.S. 613.

arts, inventions, and the needs of the country . . . ."[11]

"To the taking of every inquisition *super visum corporis* perhaps without exception, a *post mortem* examination is indispensable . . . ."

"The coroner in this case, had as much authority to order a *post mortem* examination at the public charge, as the court had to order lodging and boarding for the jury in the *Commissioners v. Hall.* Each was employed in taking an inquisition of death, and each had the collateral power in things incidental to his office."[12]

In *County of Northampton v. Innes,*[13] the court said:

"The statute of Edward the 4th, regulating the duties of the coroner in respect to an inquest *super visum corporis* is in affirmance of the common law, one of the great advantages of which is its constant adaption to the progress of business, the advance state of the sciences and the habits of the people. In this enlightened age, a coroner who would consign to the grave the body over which he had held an inquest, without availing himself of the lights which the medical science has placed within his reach, would in most cases fall short of what his official duty requires. A thorough examination, aided by professional skill, is in general absolutely necessary to the proper administration of justice. Without such examination, groundless suspicion may be entertained, and prosecutions commenced, at once cruel to the objects of them, expensive to the county, and wasteful . . . . There can be no doubt of the duty of the coroner to require such aid as was given in this case . . . ."

* * * * * *

"Where there is nothing to indicate that the coroner is transcending his authority, the presumption is certainly in his favor, and that he is acting within the scope of his powers, and in the line of his duty . . . . But it is suggested that the coroner may abuse the trust reposed in him. That may be said of every agent, public or private; and, if sound as an argument, would be a reason for abolishing all agencies, trusts and offices . . . . An occasional abuse may exist, but this is an incident of social life which may be submitted to, or corrected in the usual way.

11. 11 AM. JUR. C. L. § 2.
12. Alleghaney County v. Watt, 3 Pa. 462 (1846).
13. County of Northhampton v. Innes, 26 Pa. 156, 157 (1865).

> . . . If the coroner is not to be trusted with this particular duty, who is?"

(The foregoing was an action for compensation by a physician for making a post mortem examination at the coroner's request. "This was done without making discovery that she had died by other than natural causes.")

In *St. Francis County v. Cummings,*[14] the sole question was whether the county was liable for the payment of a fee for the performance of an autopsy at the instance of the coroner.

Calling attention to a statute saying that "the coroner" shall cause to come before the jurors all suspected persons . . . and all proper means shall be used to ascertain the truth," the court continued:

> "It sometimes occurs that the cause of death can only be ascertained by skillful physicians, and by them only by making an autopsy. How can the coroner discharge the duty imposed on him in such cases? . . . The coroner is not expected or required to make the autopsy with his own hands . . . . Yet he is authorized to ascertain the truth concerning the death. The conclusion is unavoidable: he must, in such cases, employ a physician to make the autopsy and ascertain the cause of death, as in that case this would be the only proper means by which the truth could be ascertained. By the imposition of the duty upon him he is authorized to do all things whatsoever reasonably necessary to discharge that duty."

A public officer such as a coroner may be empowered by statute, as he is in most states, to have an autopsy to determine the cause of the death. The relatives' right to possession of the body is subordinate to this.[15]

In *Greene v. Monroe County,*[16] the question was whether under a statute, a physician could get compensation for performing a post mortem or was limited to a witness fee. The court decided that the latter was true, but the opinion commences thus:

> "The remarkably ingenious and able argument of counsel for appellant places beyond doubt, if any there were, the common law power of the coroner to bind the county for reasonable compensation for the services of a physician or surgeon rendered in a case necessary to the due administration of public justice in

14. St. Francis County, 55 Ark. 419 (1892).
15. JACKSON, THE LAW OF CADAVERS 165 (2d ed. 1937).
16. Greene v. Monroe County, 72 Miss. 306 (1894).

making a *post mortem* examination. And if the question were one at common law, the argument would avail to carry the case."

In *Sturgeon v. Crosby Mortuary*,[17] it was held that county attorney, as successor to powers and duties of coroner, had the right to order an autopsy, without consent, when necessary. The statute of 4 Edw. and subsequent legislation relating to coroners is reviewed.

". . . an autopsy is required and justified when necessary to determine that the cause of death of a human being who had departed this life did not involve unlawful means, and when necessary to secure the information that will enable the county attorney to fully perform the duties enjoined upon his office in reference thereto. It is in all respects a matter of public interest in which public safety is necessarily involved.

"Under these conditions, the county attorney may legally order an autopsy to be made, when, in his judgment, that is the appropriate means of ascertaining the cause of death, and he may do so without consent of the family, for such power is incident to the county attorney's official duty."

There are no South Carolina cases in point.

The index to Legal Periodicals was examined from volume I to date. No monographs or articles even closely touch the subject under inquiry.

Texts

Based to a great extent upon the decisions already reviewed, *supra*, various texts contain favorable language on the point.

"The autopsy or post mortem is regarded by some courts as an integral part of the inquest."[18]

"cc The Autopsy — The coroner may cause a post mortem examination, in the nature of an autopsy, to be made where a superficial view of the body is insufficient to determine the cause of death, and where the circumstances, in his discretion, warrant a thorough investigation. In such cases he may employ an expert to examine the body."[19]

17. Sturgeon v. Crosby Mortuary, 140 Neb. 82, 299 N. W. 378, 383 (1941), citing 13 C.J. 1250. See Clark County v. Kerstan, 60 Ark. 508; Dearborn County v. Bond, 88 Ind. 102 (1882); Jay County v. Gillum (1883); DuBois County v. Wertz, 112 Ind. 268; Farrell's v. Road's, 57 Ga. 347 (1876); Lancaster County v. Dern, 2 Grant. Cas. 262 (Pa. 1852).

18. 2 ANDERSON'S, SHERIFFS, CORONERS AND CONSTABLES § 749 (1941), citing: Coty v. Baughman, 50 S. D. 372, 210 N. W. 348 (1926); Note, 48 A.L.R. 1205.

19. AMERICAN AND ENGLISH ENCYCLOPEDIA OF LAW, 7 Coroners 608 (2d ed. 1898).

"A coroner may order an autopsy to be made, when in his judgment that is the appropriate means of ascertaining the cause of a person's death, and this he may do without the consent of the family of the deceased, for such power is incident to the coroner's official duty."[20]

* * * * * * *

"A coroner may lawfully order a post-mortem examination where death has resulted from an injury which seems to him insufficient of itself to cause death . . . ."[21]

Opinion of Attorney General of South Carolina

The following opinion of the Attorney General is not directed to our question to which it is only distantly related. It is included as being of passing interest:

"Coroner has Authority over Disposition of Dead Bodies Supposed to Have Come to Violent or Untimely Death"

July 12, 1926

"Mr. T. E. Bailey
Union, S. C.

Dear Sir: Replying to your letter of the 14th ult. I advise that the Coroner of the County is by law given unlimited authority in the matter of what shall and what shall not be done in regard to dead bodies supposed to have come to violent and untimely death found lying in his County, and it would be proper to secure his permission before the body is removed from the place where the violent death may have taken place. It is oftentimes a very material fact as to just where and how the body was lying when first found, and the law contemplates that a dead body shall not be moved until some officer of the law, in this case the coroner, has investigated the situation and viewed the body as it fell in death.

Yours very truly,

s/ John M. Daniel
Attorney General"

20. 13 C.J. 1250.
21. 13 AM. JUR., CORONERS § 14, Young v. College of Physicians & Surgeons, 81 Md. 358, 32 A. 177 (1894); 31 A.L.R. 540; 52 A.L.R. 1450.

"The coroners in this State and any other persons acting as coroner in holding an inquest under the laws of this State, whenever, upon the holding of any inquest, there is ground sufficient to cause a majority of the members of the coroner's inquest to believe that the deceased came to his death by means of poison, shall carefully prepare the body or parts of the body as directed by the authorities of The Clemson Agricultural College of South Carolina and carefully send the same promptly to the authorities of said college. To this end the authorities of said college shall prepare, print and mail to the clerks of court full instructions as to the proper preparation and shipment of such bodies or parts of bodies, as the case may be, for chemical analysis. Such instructions shall be delivered by the clerks of the coroner and to each magistrate in each county."

"The authorities of said college shall have made by the proper department thereof a chemical analysis of all bodies or parts of bodies, as the case may be, so sent to them by any coroner or other person acting as coroner in this State and shall report the result fully to the coroner or acting coroner with all convenient speed.

"The chemist who conducted or performed such analysis or a competent assistant who was present aiding therein, upon notice from any solicitor, shall attend the trial of any case involving the issue as to the cause of the death in question. For such attendance and testimony in the case he shall be entitled to mileage going and returning and a per diem for the actual number of days of such attendance, to be paid for by a witness' pay certificate issued in the usual way."[22]

Assuming the correctness of the view that the common law authorizes a Coroner to order an autopsy, in proper cases, without consent, the question could arise whether liability in favor of a deceased's family would exist, if for example, tissues were sent to the Medical College in Charleston instead of Clemson College without consent.

Two approaches to a conclusion of non-liability on that point appear open.

Reliance could be had upon the idea that the dominant provision of the statutes is that an autopsy shall be made under certain circumstances; that competent chemical analysis shall be made, and that a departure from the procedure established by the statute would be inconsequential and would not make a necessary autopsy and examina-

22. S. C. CODE §§ 17-116, 117, 118 (1952).

tion unlawful, provided, of course, the purpose of the statute was served.

It could also be argued that the statute did not effect a change in the common law, but serves only to supplement it, under principles affirmed by our courts:

> "Regarding the presumption against change of the common law by a statute, it is stated in 25 R.C.L. 1054, that it is not presumed that the Legislature intended to abrogate or modify a rule of the common law by the enactment of a statute upon the same subject; that it is rather to be presumed that no change in the common-law was intended unless the language employed clearly indicates such an intention; that the rules of the common-law are not to be changed by doubtful implication, or overturned except by clear and unambiguous language."[23]

Conclusion

On the basis of the foregoing, it appears that a Coroner's order for an autopsy, justified by the circumstances, would be within his authority.

Obviously, consent of the surviving spouse, or next of kin, as the case may be, is the sure way of avoiding questions.[24]

23. Nuckolls v. Great Atlantic & Pacific Tea Company, 192 S. C. 156, 161, 5 S. E. 2d (1939), cited with approval in Coakley v. Tidewater, 194 S. C. 284, 9 S. E. 2d 724 (1940).

24. Simpkins v. Lumbermens Mutual Casualty Co., 200 S. C. 228, 20 S. E. 2d 733 (1942).