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## CORONERS - INQUESTS - RIGHT TO EXHUME BODY AFTER BURIAL

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CORONERS — INQUESTS — RIGHT TO EXHUME BODY AFTER BURIAL —  
Two weeks after burial of deceased, report was received of analysis of contents of the stomach, indicating death by poisoning. The coroner desired to hold an inquest for further investigation five weeks after burial, and sought to exhume the body for that purpose. The husband of the deceased sought to enjoin the exhumation. *Held*, the body may be exhumed. *Sejrup v. Shepard*, (Minn. 1937) 275 N. W. 687.

While exhumation is, generally speaking, abhorrent to the law, every disinterment is not wrongful, even at common law<sup>1</sup> and exhumation has been ordered by equity when it appears the ends of justice will be served.<sup>2</sup> In such

<sup>1</sup> *Grinnan v. Lodge*, 118 Va. 588, 88 S. E. 79 (1916); *Thompson v. Deeds*, 93 Iowa 228, 61 N. W. 842 (1895); *Secor v. Secor*, 18 Abb. N. C. (N. Y.) 78 (1870); *Cooney v. English*, 86 Misc. 292, 148 N. Y. S. 285 (1914).

<sup>2</sup> "Courts have never hesitated to have a body exhumed when the application under the particular circumstances appeared reasonable and was for the purpose of eliciting the truth in the promotion of justice." *Painter v. U. S. Fidelity & Guaranty Co.*, 123 Md. 301 at 308, 91 A. 158 (1914); *Gray v. State*, (Tex. Cr. App. 1908)

cases it is thought that the interest of the state in punishing crime outweighs the natural desires of relatives and the obvious policy against violating the sanctity of the grave.<sup>3</sup> In regard to the holding of an inquest, a general rule cannot be laid down, since the field is largely statutory, but it would seem that the coroner must have valid grounds for supposing that the deceased met an unnatural death.<sup>4</sup> But there is a presumption that the coroner acts in good faith, and that the inquest is justified, although such presumption is, of course, not conclusive.<sup>5</sup> Most statutes speak in general terms,<sup>6</sup> and therefore it would seem that a coroner must necessarily be vested with discretion in determining whether or not an inquest will be held.<sup>7</sup> Because of the suspicious nature of the report of the analysis of the contents of the stomach,<sup>8</sup> it would seem that an inquest was justified in the principal case.<sup>9</sup> Since the presence of the body at the inquest was contemplated by the statute,<sup>10</sup> it would seem that exhumation should be allowed. It is clear, however, that the fact that the body has been buried is a factor in determining whether an inquest shall be held, as is the value of the evidence to be secured thereby, and the court so indicates.<sup>11</sup>

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114 S. W. 635, 22 L. R. A. (N. S.) 513; Grangers L. Ins. Co. v. Brown, 57 Miss. 308 (1879); Mutual L. Ins. Co. v. Griesa, (C. C. Kan. 1907) 156 F. 398. See also Wehle v. U. S. Mut. Accident Assn., 153 N. Y. 116, 47 N. E. 35 (1897); Koerber v. Patek, 123 Wis. 453, 102 N. W. 40 (1905).

<sup>3</sup> JACKSON, *THE LAW OF CADAVERS* 97 (1936); Moss v. State, 152 Ala. 30, 44 So. 598 (1907); State v. Wood, 127 Me. 197, 142 A. 728 (1928); Salisbury v. Commonwealth, 79 Ky. 425 (1881); Perth Amboy Gas Light Co. v. Kilek, 102 N. J. Eq. 588, 141 A. 745 (1928). "The dead are to rest where they have been laid unless reason of substance is brought forward for disturbing their repose." Cardozo, J., in Yome v. Gorman, 242 N. Y. 395 at 403, 152 N. E. 126 (1926).

<sup>4</sup> Clark County v. Harris, 124 Ark. 59, 186 S. W. 290 (1916); Rex v. Justices of Kent, 11 East 229, 103 Eng. Rep. 992 (1809); Albaugh-Dover Co. v. Industrial Bd., 278 Ill. 179, 115 N. E. 834 (1917); Coty v. Baughman, 50 S. D. 372, 210 N. W. 348, 48 A. L. R. 1205 at 1209 (1926); Sandy v. Morgan County, 171 Ind. 674, 87 N. E. 131 (1909).

<sup>5</sup> Clark County v. Calloway, 52 Ark. 361, 12 S. W. 756 (1889); Floyd County v. Miller, 4 Ga. App. 1, 60 S. E. 825 (1908); Palenzke v. Bruning, 98 Ill. App. 644 (1901); Lancaster County v. Mishler, 100 Pa. 624, 45 Am. Rep. 402 (1882); Rex v. Justices of Kent, 11 East 229, 103 Eng. Rep. 992 (1809).

<sup>6</sup> See 31 L. R. A. 540 (1896).

<sup>7</sup> Morgan v. San Diego County, 3 Cal. App. 454, 86 P. 720 (1906); Finarty v. Marion County, 127 Iowa 543, 103 N. W. 772 (1905); Baisliniere v. St. Louis County, 32 Mo. 375 (1862); Lancaster County v. Holyoke, 37 Neb. 328, 55 N. W. 950, 21 L. R. A. 394 (1893).

<sup>8</sup> The report indicated the presence of strychnine in the body.

<sup>9</sup> The Minnesota statute requires an inquest on the dead bodies of such persons "only" as are supposed to have come to their death by violence. Minn. Stat. (Mason, 1927), § 946.

<sup>10</sup> Minn. Stat. (Mason, 1927), §§ 949, 951, 953.

<sup>11</sup> "We do not mean to hold that coroners may exhume bodies indiscriminately, even for the purpose of holding an inquest. It might appear that because of the passage of time or because of other factors tending to destroy the evidences of the cause

of death, the inquest would not accomplish its purpose, or sufficient cause did not exist for holding the same, or because of considerations of public health and welfare, it would not be advisable to permit the exhumation of a dead body. In such cases, or in any other case where a proper showing were made, an injunction to prevent such exhumation should, and undoubtedly would, issue. However, this is not such a situation.”  
275 N. W. at 688.