

The substance of the instructions given to the jury were as follows—upon the points raised by the prisoners' exceptions—was as follows:

- 1—That this form of indictment is good.
- 2—That such indictment is not rendered ~~invalid~~ ^{bad} by the ~~showing~~ ^{disclosure} upon the trial of the specific means of death.
- 3^d—That while, if the indictment had charged death by biting and tearing by dogs only, and upon trial it had been shown to have been by gunshot or other means, the indictment would have been bad, yet the same rule of variance does not hold in case case the indictment charges a murder by "means and weapons to the jurors unknown". ~~But~~ ^{Because} in the former case, the prisoner is put upon his guard and defence simply as to a certain specific means by which ~~death~~ is charged to have been caused, and is taken by surprise by evidence of a different ~~manner~~ ^{manner} of death—In the latter case, no such surprise can result from any manner of death which may be shown.
- 4—If the jury therefore were satisfied beyond a reasonable doubt, that the prisoners caused the death of the deceased with ^{the requisite} ~~malice~~ ^{intent} preference, either in a specific manner or by means not clearly shown, they should render a verdict of guilty—

4th - If this were not the ~~correct~~ true prin-
ciple upon which this form of indictment
is held good, a prisoner arraigned upon
an indictment of this character, might
almost invariably receive an ac-
quittal by directing attention to the
evidence which would establish
the way and manner and the specific
means of death - and thus ^{by still above} ~~clearly~~ clearly
establishing his own guilt, entirely ~~under~~
punishment.

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It is admitted that these cases establish the fact and the rule that ^{in some cases} it is ~~with the~~ the defendant's ^{has not the} right ~~to~~ ~~to~~ ~~to~~ demand that the manner of death shall be set out in the charge - Can a right be subject to exceptions? If so, who shall determine as to what are exceptional cases?

It seems to the court more correct to say that the right of the defendant is that the way and manner shall be either specifically charged or else charged as "unknown" by the Grand Jury - If specifically charged the proof must sustain the allegation. It is not a question as to whether the Grand Jury knew that death occurred by that particular means or not, but ^{whether death was occasioned by that means} ~~what~~ ^{is the} ~~fact~~ ^{fact} - When however ^{as in this case} the allegation is, "in some way and manner and by some means, to the jurors unknown" what is the question of fact which the petit jury must determine? Is it called on to say whether the Grand Jury did know the "way and manner" or not? Or are they simply called upon to say whether or not the defendant did "in some way and manner and by some means" murder the deceased? Evidently the fact in reference to which they must inquire is such as to

It is said to be the province of the jury to find the facts, but what facts? Those which pertain to the guilt of the prisoners and not those which pertain to the sufficiency or insufficiency of the indictment or the action of the Grand Jury on which it is based.

is adopted by the Counsel for the prisoners, in which the same manner means and instrument of death are in fact unknown to the Grand Jury. I differ with them as to the tribunal which is to decide upon the sufficiency of the indictment in this respect. It is in no way the duty of the Petit Jury to revise the acts of the Grand Jury. # It is their duty to decide upon the facts ^{affecting} the ~~case~~ relation of the prisoners to the crime charged. It is the duty of the Court to decide upon the sufficiency or insufficiency of the indictment, and the action of the Grand Jury thereon.

The jury are therefore instructed that this form of indictment is good and in this case sufficient. And if they are satisfied beyond a reasonable doubt that the prisoners at the bar did murder Thomas Price, it is their duty to render a verdict of guilty.

There being no exception as to the instructions given as to the ~~whole~~ testimony they are omitted.

Charge to the jury in
The State

Parker
Wilmer

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