

H. 315. It is not necessary to prove this — (

 (that is, the means of death described in the Ind^t)

 — strictly as laid; if it be found that the deceased

 was killed with any other instrument, or with a dagger,

 sword, staff, bill, or the like, capable of producing the

 same kind of death as the instrument stated in the

 Ind^t, the variance will not be material. But

 if the species of death be different, or if an indictment

 allege a stabbing or shooting, and the evidence prove a

 poisoning or starving, the variance would be fatal; as

 the same if the Ind^t state a poisoning and the

 evidence prove a starving. Thus, when an Ind^t

 stated that the defendant had accused, and struck &

 beat him upon the head, and thereby gave him divers

 mortal blows & bruises, or which he died, and it appeared

 in evidence, that the death was caused by the deceased

 falling upon the ground in consequence of a blow on the

 head received from the defendant, it was holden that the

 cause of the death was not properly stated. — The

 King vs Thompson, R & M 159 — And the same when an

 indictment charged that the defendant struck the deceased

 with a brick, and it appeared that he knocked the deceased

 down with his fist, and that the defendant fell upon a brick which

 caused his death. — The King vs Kelly, R & M 113 — But if

 the Ind^t allege a death by one kind of poison proof of

 death by another kind of poison is sufficient to support

 it.