CORONERS' INQUESTS

BY R. R. SHOLL, BARRISTER-AT-LAW

A GENERAL Meeting of the Medico-Legal Society of Victoria was held at the British Medical Society Hall, East Melbourne, on Saturday, November 23, 1940, at 8.30 p.m. His Honour Mr. Justice Lowe presided.

Mr. Sholl said: I propose in this paper to say something regarding the origin and history of the office of coroner; then to discuss the extent of his present jurisdiction and the question whether his office should be retained; if retained, whether the jurisdiction should be modified; and finally, if the office is retained, what amendments (if any) should be made in regard to the present procedure at coroners' inquests.

I. *Origin and History of the Office*

The first known report of any English inquest occurs in the Coroners' Rolls for the Country of Bedfordshire in July, 1265, and a translation may be found in the Selden Society's Volume of Select Coroners' Rolls.[1] It is there recorded that it happened at Barford on the morrow of St. James the Apostle in the 49th year of King Henry, son of King John (i.e., on July 26, 1265), that Henry, son of John of Brettville of Barford, who was 10 years of age, went at vespers into his father's yard to play, and fell into a ditch and was accidentally drowned. His father promptly searched for him and found him and lifted him out of the water and sought to save him; he did not succeed in doing this. Inquest was made, and the verdict was accidental death. It is clear, however, that the office of coroner was introduced as a Crown office by the Norman Kings at an earlier date than this. Writers on legal history differ as to the precise date. Some have suggested that he was an Anglo-Saxon official, but this idea is now generally rejected, and most writers

1. Selden Society Publications, vol. 9 (1895); Select Coroners' Rolls, 1265-1413, fol. 1.

ascribe the office to the Articles of Eyre of 1194, which provided for the election of coroners, who are there described as "custodes placitorum coronae." In Magna Charta in 1215 the coroner is referred to as "Coronator." The editor of the Selden Society's publication suggests that he really originated in the time of Henry I, nearly 100 years earlier.[2]

Whatever be the precise date of the origin of the office, it seems clear that in those early times the coroner was a very important official of the Crown, being in the county second only to the sheriff. A summary of his duties, gathered from the various books which deal with his early history, would include the following: He conducted enquiries into all deaths from violence or accident, or deaths in prisons. In the 14th century some of the records show that there were a great many deaths in prison, and the juries' verdicts indicate that these unfortunate individuals frequently died of hunger and thirst.[3] He conducted inquiries into allegations of rape or arson, and sometimes of theft, and heard "appeals," i.e., accusations, of felony, either by ordinary accusers, or by criminals, some of whom had fled to sanctuary; one of these appeals by criminals records that the accuser began by confessing himself to be a thief, robber, and murderer, and then informed against his former colleagues "with much joy,"[4] a phrase which reminds one of recent trials in Russia. This interesting aspect of the coroners' jurisdiction, so far as sanctuary was concerned, came to an end with the abolition of that institution in 1623.[5] Until deprived of the power by Magna Charta, the coroner had the right actually to determine certain of these pleas of the Crown, or criminal trials.[6] He also had to inquire as to, and preserve for the Crown, the . . . forfeited chattels of persons suspected of felony, though this forfeiture

2. Select Coroners' Rolls, introduction, pages xv. seq.; Jervis on Coroners, 7th Edn., 1927, pages 1 seq.; Carter, History of English Legal Institutions, 4th Edn., 1910, cap. xx.
3. Select Coroners' Rolls, pp. 79-81.
4. ib., 129.
5. Jervis, p. 5.
6. Re O'Callaghan, 24 V.L.R., at p. 964.

was abolished as early as 1483,[7] but he continued to act in the same way in regard to the forfeited chattels of persons convicted of felony until 1870.[8] He also pronounced judgments of outlawry, and was charged with the duty of obtaining for the Crown the goods of outlaws. He also had to obtain for it inanimate objects responsible for deaths, known as *deodands*, or their value. It is recorded that in this way the Crown regularly acquired many interesting articles such as horses, boats out of which persons had been drowned, windows from which they had fallen to their death, and even external stairways of houses; or else acquired the value, the articles having been forfeited meanwhile to the county.[9] *Deodands* were abolished by Act of Parliament in 1846, and one writer on legal history has remarked that it was fortunate that this Statute preceded the advent of golf clubs.[10] Other duties of the medieval coroner were to inquire into and secure for the Crown wrecks, royal fish (whales and sturgeons), and treasure trove. Except for the actual trials he conducted before 1215, the coroner, in cases where he found persons to be presumptively guilty of crime in connection with the subject of his inquest, made (and still makes) an actual "finding" of their guilt, but committed them for trial at the next eyre to be held by the King's itinerant justices, and kept his rolls or records for the information of such justices. The office was apparently not popular, for no doubt the Crown insisted on good service, and the coroner as a form of revenue gatherer was probably unpopular with the people. In fact, one of the privileges sometimes granted by the Crown in those days to a favoured subject was the right "of not being a coroner."[11] This attitude apparently changed in the course of five or six centuries, because it is recorded in the latest edition of *Jervis*, the standard text-book on coroners, that towards the close of the 19th century, one election as coroner in

7. ib., p. 14.
8. ib., p. 15.
9. ib., p. 9.
10. Carter, p. 197.
11. Select Coroners' Rolls, introduction, p. xxi.

London cost the successful candidate as much as £6,000 in expenses.[12]

In the course of centuries the coroners' powers were gradually reduced, but in relation to violent accident or unnatural deaths his jurisdiction has continued almost unchanged through 7½ centuries to the present day. From time to time the coroner appears in the law reports in connection with various derelictions of his duty; for example, in the reign of William III we find the Court of Kings Bench granting a criminal information against him, because, when a man had made a will and then committed suicide, the coroner took some of the jury off the panel in order to get the remainder to return a verdict of unsound mind. *Chief Justice Holt* said, "Though this coroner be a weak silly man, yet that is no reason why there should not be an information against him, for such men must learn that they must not thrust themselves into office.[13] There is a great deal more heard of coroners in the 19th century. In 1833, the recently formed police force, then known as "Peelites," attempted to disperse a meeting in London, and one of the police was killed. After a five days' inquest the jury was unable to agree, whereupon the coroner said "they would agree when they became a little more hungry." This they did, and returned a verdict of justifiable homicide, on the ground that the Riot Act was not read, that the Government had not taken proper precautions to prevent the meeting, and that the conduct of the police was ferocious, brutal and unprovoked. The coroner refused to accept the verdict, but finally agreed to accept that of justifiable homicide and struck his pen through the rest, and the inquest terminated at 11 p.m. amidst scenes of great enthusiasm in the street outside. In the ensuing months the Press raised funds for the jury, the foreman was presented with a silk banner, the jury were taken on a marine excursion, and in the following year a banquet was held at which the jury were presented with silver cups, inscribed "as a perpetual memorial of the

12. Jervis, p. 15.
13. R. v. Stukeley (1702), 12 Mod. 493.

glorious verdict of justifiable homicide," and each juror was given a medal inscribed: "In honour of men who nobly withstood the dictation of a coroner, and by the judicious, independent, and conscientious discharge of their duty, promoted and continued reliance upon the laws, under the protection of a British Jury."[14]

Another inquest of last century, of more peculiar interest, perhaps, to this Society, occurred in Melbourne in 1875. This was the inquest on a man named Berth, who died in the Melbourne Hospital on December 5, 1875, after an operation of lithotomy performed upon him by Mr. James George Beaney, then a leading surgeon of this city. A detailed account of this inquest, accompanied by a discussion by one of Beaney's friends of the merits of the case, extracts from the Press comments of the day, and a report of a public lecture delivered by Beaney in the following year in order to castigate those of his opponents in the profession who had brought about the inquest, were privately printed in 1876.[15] I have a copy of each, and I know of a few others still in existence in Victoria. At the operation, Beaney, after a great deal of trouble, succeeded in removing a very large stone, weighing 6½ oz., from the bladder of the patient. It was larger than any practitioner of those days had actually seen removed, and was extracted by what was then known as the modified or Lloyd's operation. The patient died of peritonitis three days afterwards, and was duly buried. Beaney was a well-known figure, still remembered by some of the older men in Melbourne. He was at that time 44 years of age, a bachelor, and at the height of his practice. He had come to Melbourne from Kent at the time of the gold rush, spent some time dispensing for a chemist in Bourke Street, went back to Edinburgh, went to the Crimean War as an assistant surgeon in the army, spent some years as a ship's surgeon on the American run, and finally came to Melbourne again in 1857.[16] The Sydney *Evening News*

14. Jervis, pp. 249-251.
15. Lithotomy, its successes and its dangers, Anon., Melbourne, 1876; Doctors Differ: a lecture by Mr. J. G. Beaney, Melbourne, 1876.
16. Argus, July 1, 1891.

of January 10, 1876, said of him: "For years Dr. Beaney has been the envied head of the surgical profession here; his income has touched £12,000 per annum. His diamonds, his generosity and his success, have been the talk of Victoria."[17] One rival of Beaney's was Dr. Barker, a surgeon who had on a prior occasion defeated him at the poll of subscribers for the election of honorary surgeons at the Melbourne Hospital, but whom Beaney in 1875 had just defeated in another election. After the death of Beaney's patient an anonymous correspondent of the Melbourne *Argus,* in a letter signed "A Practical Surgeon," accused Beaney of malpractice, and of having caused the patient's death by obstinate efforts at removing the stone intact for the purpose of self advertisement. He stated that a cast of the stone was on view at a bookseller's in Collins Street East as an advertisement for Mr. Beaney's great operative skill, and alleged that Beaney had refrained from calling a consultation with the other honorary surgeons of the hospital.[18] Upon publication of the letter, the Crown Law Office, possibly as a result of pressure from people who were anxious to see Beaney attacked, ordered an inquest, which was held in December, 1875, by Dr. Youl, who was for many years city coroner, and of whom Dr. Mollison has related some anecdotes in an address to this Society.[19] Beaney was represented by J. L. Purves, afterwards the celebrated Q.C., who was then 32, a successful barrister, and a Member of Parliament for Mornington.[20] After the jury had viewed the body, which had been exhumed for the purposes of a post mortem, after being 15 days buried, and which had to be washed with a hose, the inquest opened with a calling of Doctors Neild and Barker, who had conducted the post mortem. Dr. Neild had been a chemist in Melbourne, a reporter on the Melbourne *Age,* well-known dramatic critic for the *Examiner,* which afterwards became the *Australasian,* and from 1864 he had resumed the practice of

17. Lithotomy, p. 129.
18. Lithotomy, Introduction, pp.xv-xvi.
19. Proceedings of the Medico-Legal Society of Victoria, vol. 2, p. 63 at p. 82 (1935).
20. Mennell, Dictionary of Australian Biography, 1855-1892, p. 380.

medicine, became editor of the *Australian Medical Journal*, president of the Medical Society of Victoria, lecturer in forensic medicine, and a writer of novels and plays.[21] It turned out that the persons whom the coroner had approached to do the post mortem had declined to do it, and these two gentlemen were the only two who would agree to act. They, in effect, alleged that the neck of the bladder and a considerable portion of the surrounding tissues were entirely missing, and that the obvious course would have been to crush the stone with a lithotrite on discovering its size. In those days the suprapubic operation was regarded, Sir Alan Newton tells me, as very dangerous, and was little practised. A great deal of medical evidence was given, including that of a young doctor who had had to leave in the middle of the operation "to go and get his diploma from the University," and finally, after addresses by Mr. Purves and the coroner, the jury made the following finding—"That the deceased died in the Melbourne Hospital on the 5th instant. We are of opinion that evidence has not been brought before us to prove Mr. Beaney guilty of culpable negligence at the operation. Still we are of opinion that had a consultation been held by the honorary surgeons, in all probability other means might have been used in extracting the stone, and we enter our protest against the rules of the Hospital being broken."[22] The anonymous surgeon who edited the published report of the inquest violently attacks the supposed disloyalty of the resident staff to Beaney, and attacks the Crown Law Department and the coroner for getting personal enemies of Beaney to conduct the post mortem examination. He contends that professional men should not be put on their trial in such a way upon an allegation of criminal negligence. "How," he says, "it must steady the nerve and knife of a surgical operator to have an imaginary halter dangling before his eyes . . . the result to the public in such a state of affairs would be as satisfactory as the old practice of shooting unsuccessful admirals and

21. ib., pp. 341-343.
22. Lithotomy, p. 111.

generals."[23] Dr. Beaney, in a commentary of his own, criticizes Dr. Neild, whom he describes as a mere "newspaper reporter." The Sydney *Evening News*, in a comment which may be regarded as slightly partisan, said of Beaney's demeanour throughout the matter: "He met his old and new enemies in his usual bold, open, freehanded way; they might scheme, but he laughed at all; waited till the charge was brought by some anonymous scribbler, met it fairly, was acquitted freely, and returned with unruffled brow and cool steady hands to his houseful of patients, the only sign of annoyance to be found in him being a good humoured laugh, a sort of 'never mind old boy, try a glass of champagne'."[24] This last remark had obviously been addressed, I should say, to the author of the report. The Melbourne *Medical Record* contented itself with the bare observation that Dr. Neild was the coroner's pet, and the henchman of the Medical Society; that his evidence was not worth a twopenny ticket; that Barker's evidence was worth just as much; that Dr. Webb, who had assisted at the operation, had behaved so scurvily that he was beneath the contempt of any right-minded man; that the coroner was, as always, a humbug; that the doctors who had carried out the inquest were, one of them, prejudiced, and the other incapable, and that the whole inquest was a mixture of bunkum and bosh.[25] Beaney having subsequently been presented by the Lord Mayor with a silver inkstand to mark his victory at the inquest, delivered a lecture under the auspices of the A.N.A. on February 12, 1876, entitled "Doctors Differ." He purported to describe the medical community in the supposed Scottish town of Kennaquhair, which was obviously Melbourne. He described one medical man, obviously Neild, who "eked out his scanty earnings as a doctor by writing for the newspapers," and whom he described as "a splenetic little Irishman with a fondness for private theatricals, and a great liking for pretty actresses." Another he described, and it was

23. Lithotomy, Introduction, p. xii.
24. ib., pp. 129-130.
25. ib., p. 130.

obviously Barker, who was so much in the habit of saying "sir" to everybody, that he used to say "sir" to the matron of the local hospital. Another doctor, he said, had recently operated on a female patient for ovarian tumor, but had found that she was on the eve of making an addition to the population of Kennaquhair. When doctors differed, he said, the result could be expressed in the well-known epigram of Dr. Garth:

> Like a pert sculler, one physician plies,
> And all his art, and all his skill he tries;
> But two physicians, like a pair of oars,
> Conduct you faster to the Stygian shores.[26]

No action for defamation followed this remarkable lecture, and Beaney lived another 16 years in Melbourne. When he died in 1891, Dr. Youl was still city coroner, and the *Argus* which records Beaney's death contains a report of an inquest held by the learned doctor on a pedestrian who had been knocked down and killed by a hansom cab. It must be many years since an allegation of death by negligence at an operation has been inquired into at an inquest in Victoria.

Before I leave the subject of curious inquests, I should not omit the inquest on a Peruvian mummy, held in London in 1899.[27] A certain Mrs. Annie Aitken, with the assistance of one Captain Fox, of the s.s. *Gulf of Corcovado,* succeeded in acquiring a mummy of the Royal line of Peru, a sun-dried specimen, which according to evidence subsequently given in an action brought by the lady against the London & North Western Railway Company for the negligent carriage of the mummy, was not easily obtainable, and which she had been trying for three years to get. She consigned it for carriage to Liverpool and then by the L.N.W.R. and its agents to a museum in Belgium. On the arrival of the mummy at the Broad Street Railway Station in London the case was opened. The police were called in, they communicated with the coroner, and a certain doctor had the body removed to the mortuary. He stated in evidence in the civil

26. Doctors Differ, pp. 10-21.
27. Times, London, Dec. 11, 1901, p. 13; Dec. 12, 1901, p. 14; Carter, p. 195(n).

action that he "subsequently became aware" that it was a mummy. The coroner for the North-Eastern District of London insisted on holding an inquest, at which the jury brought in the following verdict: "That the woman was found dead at the railway goods station on April 15, and did die on some date unknown in some foreign country, probably South America, from some cause unknown. No proofs of a violent death are found. The body has been dried and buried in some foreign manner, probably sun-dried, and cave-buried, and the jurors are satisfied that this body does not show any recent crime in this country, and that the deceased was unknown and about 25 years of age." The remains of the mummy were forwarded to Belgium, where they were buried by order of the police, and the representative of the museum, with Gallic courtesy, sadly wrote to Mrs. Aitken: "I shall never think on the mummy without thinking with affection and gratitude on you as the best lady I have met with in my life." It is satisfactory to note that in her subsequent action against the railway company the plaintiff recovered from another British jury £75 damages for the negligent carriage of the deceased, and this, despite the evidence of an auctioneer who said that he frequently sold mummies, both Egyptian and Peruvian; that Peruvian mummies were not embalmed; and that he had recently sold one for 27 guineas, which was an exorbitant price, as the reserve had been 5 guineas. The jury altogether declined to accede to the defence of the railway company, which pleaded that "if the plaintiff had been deprived of the mummy as alleged, or at all, this had been caused solely by an inherent defect in the so-called mummy, to wit, decomposition, not attributable to any act or omission on the part of the defendant."[28]

This inquest could hardly have been held in America, where the law is that remains long dead or decomposed do not constitute a dead body. In the State of Georgia there is a reported case in which a coroner brought an unsuccessful action against the county to recover his fees for holding an

28. Times, Dec. 11, 1901, p. 13.

inquest on, and burying, part of a skeleton found on the bank of a creek.[29] It is perhaps worthy of remark that in the same enlightened democracy it has been held that parts of the body removed by surgical operation do not constitute dead bodies for the purpose of the law, except in the more enlightened communities of North and South Dakota, and Oklahoma, where the courts decided otherwise, and in those communities and New York, where Acts of Parliament have been found to be necessary in order to give a person the right to say how parts of his body removed during operation are to be disposed of.[30] It is interesting to speculate what activities on the part of surgeons may have led to such legislation. One further interesting matter discussed in America has been the question whether a stillborn child is a dead body for the purpose of the law relating to inquests and otherwise. The weight of opinion is that after the seventh month of pregnancy it is.[31] In British countries it is not so regarded.[32]

Before I leave the history of this interesting office, I may add that among the various acts of misconduct by coroners which have been from time to time punished by the courts, one finds recorded the following, namely, recording a verdict of accidental death, and then committing a person for murder,[33] entering the jury room and taking the verdict privately there,[34] being so intoxicated as to be unable to proceed,[35] refusing without adequate reason to hold an inquest,[36] and holding an inquest without adequate reason.[37]

II. *Present Jurisdiction; whether the Office should be Retained, and if so, on what Conditions*

In 1908 a Departmental Committee reported in England that it was astonished at the good work done by coroners

29. Weinmann, Survey of the Law relating to Dead Human Bodies in U.S.A., Bulletin No. 73 of the National Research Council, 1929, p. 9.
30. Weinmann, p. 10.
31. ib., pp. 11 seq.
32. Smith, Coroners' Manual for South Australia. Australia and England, 1904, p. 6.
33. R. v. Scory, 1 Leach 43.
34. Michelstown Inquisition, 23 L.R. Ir. 279.
35. Re Ward, 30 L.J. Ch. 775.
36. Re Hull, 9 Q.B.D. 689.
37. 1 East P.C. 382.

with out-of-date and imperfect machinery. The discharge, the committee said, of the frequently very painful duties of coroners was effected with little friction, and this was attributable to the good sense, tact, and good feeling shown by the majority of coroners in their dealings with the public.[38] The same might truly be said of the system in Australia.

In England, the jurisdiction of coroners at the present time no longer includes any jurisdiction in respect of felonies other than death, and in London certain cases of arson;[39] his jurisdiction in regard to royal fish, wreck, other felonies, and the goods of felons was expressly abolished in 1887.[40] He still has jurisdiction in that country in, and is bound to hold an inquest in, cases where he is informed that the dead body of a person is lying within his jurisdiction and there is reasonable cause to suspect that such person has died either a violent or an unnatural death, or has died a sudden death, of which the cause is unknown, or that such person has died in prison, or in such place or under such circumstances as to require an inquest in pursuance of any Act.[41] By an important modification, however, effected in 1926, the coroner, if informed before verdict that some person has been charged before examining justices with the murder, manslaughter, or infanticide of the deceased, must adjourn the inquest until the conclusion of the criminal proceedings; thereafter he may resume the inquest, but not so as to record any finding inconsistent with the result of the criminal proceedings.[42] This provision has greatly reduced the number of inquests in which the Coroner's Court makes a finding by inquisition of murder, manslaughter, or infanticide against a named individual.[43] In England the jurisdiction in treasure trove still remains,[44] but the coroner's principal

38. Law Times Journal, February 29, 1936, p. 163.
39. Jervis, p. 252.
40. Coroners Act, 1887, section 44.
41. Coroners Act, 1887, section 3.
42. Coroners Act, 1926, section 20.
43. Report of the Departmental Committee on Coroners, 1936 (Cmd. 5070), cap. V, para. 86.
44. Jervis, p. 106; Coroners Act, 1887, sec. 36.

duty now is to enquire into deaths where no person has been charged with one of the three offences mentioned. In Victoria the coroner's jurisdiction is as laid down in the Coroners Act, 1928, and is in the main similar to his jurisdiction in the other Australian States and in New Zealand. It is, first, to hold an inquest concerning the manner of the death of any person who is slain or drowned, or who dies suddenly, or in prison, or while detained in any hospital for the insane; secondly, to hold inquests into the cause and origin of certain fires.[45] Section 7 of the Victorian Act provides that the coroner shall have in respect of all inquests all the powers, authority and jurisdiction which belong by the common law to the office of a coroner in England, except so far as varied by or inconsistent with the Act. I should have thought that this section did not enlarge the catalogue of powers given in the earlier section of the Act,[46] but in a work published by a former city coroner of Adelaide in 1904, the late Dr. Smith, the view is expressed that the latter provision preserves the jurisdiction with regard to treasure trove and outlawry, though the latter is obsolete;[47] and the present City Coroner of Melbourne, Mr. Tingate, P.M., who has been kind enough to give me much useful information with regard to matters of coroners' practice, tells me that that is the view, at any rate as to treasure trove, generally taken in Victoria. Under the Victorian legislation there is no provision corresponding to section 20 of the English Act of 1926, and the coroner or jury in Victoria must expressly find who the deceased was; who, when, and where he came by his death; and if he came by his death by murder or manslaughter, the persons (if any) found to have been guilty of such murder or manslaughter, or of being accessories before the fact to such murder.[48] The Act contains detailed provisions for the apprehension and

45. Coroners Act, 1928, section 6.
46. The decisions in Casey v. Candler, 1874, 5 A.J.R. 179, and re O'Callaghan, 24 V.L.R. 957, do not appear to be inconsistent with this view, but merely to decide that the Coroner's Court is a court of record.
47. Smith, op. cit., p. 7.
48. Coroners Act, 1928, section 9.

commitment of the accused in such circumstances as upon an ordinary commitment for trial by justices.[49]

It is worthy of serious consideration whether the office of coroner, despite its long and honourable history, and despite its efficient and capable administration by senior police magistrates, still serves any purpose sufficiently important to justify its retention, or whether the work which the coroner at present does could not be done equally well, or better, by leaving matters involving criminal charges to the ordinary procedure as administered by the police, the justices, and the police magistrates in their ordinary jurisdiction, and by relegating enquiries into deaths under other circumstances to medical investigators charged with the duty of inquiring privately and reporting their findings to the police or the Crown Law Department. In England a Departmental Committee presided over by *Lord Wright* sat in 1935 and 1936 to consider the whole question of the coronial system. The report of the committee, published in 1936, contains a very full account of the history and administration of the system in England.[50] The committee came to the conclusion that it was not practicable or desirable in the present organization of the legal system in England to recommend the abolition of the office.[51] The committee pointed out that in Scotland there is no such system, enquiries into deaths being made by the official known as the procurator fiscal as an adjunct to his duties as public prosecutor. That officer conducts his enquiries in private, except in certain industrial cases, or on receipt of special instructions from the law officers, and the system works without prejudice to any accused person, or any shock to the relatives of deceased persons.[52] The committee further points out that in some American States investigations by medical officers, with subsequent action if necessary by the police, the district attorney, and the magistrates, have been in use but they offer no comment

49. ib., sections 10-16.
50. Report of the Departmental Committee, caps. I and II.
51. ib., cap. III, and recommendation No. (1).
52. ib., and see Jervis, pp. 259-261.

upon their efficiency or otherwise. They recommend against the adoption of the Scottish or American systems because the police system in England is not a uniform state system, being, of course, based upon a county organization. A writer in the *Law Times Journal,* commenting upon the report, finds further reasons for the retention of the coroner's inquest, his view being that it results in the saving of life, that it provides a first guard against murder, and that it provides a record of evidence within a few hours or days of relevant events before witnesses have come in contact with each other, or with lawyers, or with interested parties. In addition, says the writer, the medical world is almost exempt from criticism, except in the Coroner's Court.[53]

In Victoria, however, there is a State police system, and there is already in existence a perfectly efficient method whereby the police can charge an accused person with murder or manslaughter before the ordinary tribunals. The coroner's office arose and existed, and filled a genuine need, centuries before the introduction of a police system, which has developed only in the last hundred years. With regard to deaths involving no present charge against any person, particularly deaths by accident or suicide, I venture to question whether anything is gained by the holding of a public inquiry. It seems well worthy of consideration whether there is anything to prevent the adoption of a system of reports by medical examiners to the police and the Crown Law Department, followed by proceedings under the criminal law, if the authorities decide to institute the same. In fact the police do now investigate any suspicious cases, and we already have provision in the case of industrial accidents for investigations by departmental inspectors under such legislation as the Coal Mines Regulation Act, the Explosives Act, and so on. It is a common observation that deaths from certain accidents, such as air accidents, result in the holding of several overlapping inquiries, and it is an equally common observation that inquests into

53. Law Times Journal, Feb. 22, 1936, p. 145.

deaths by mere accident, despite the most tactful and considerate administration of their powers by coroners, result in a good deal of harrowing of the feelings of the relatives. Three American States at least have adopted the system of medical examiners instead of coroners, e.g., Maine, Massachusetts, and Rhode Island.[54]

If on the other hand reason exists for retaining the office, consideration must be given to the recommendations of the English committee. So far as those recommendations relate to the status and jurisdiction of coroners, they may be dealt with under the headings of qualifications, murder and manslaughter cases, deaths under anaesthetics or during operations, investigation of questions of civil liability, and the power to dispense with inquests.

So far as the qualifications of coroners are concerned, the English committee recommended that the coroner should be a solicitor or barrister only, subject to a retiring age.[55] The commentator in the *Law Times Journal*, however, advocates the continuation of the system of medical coroners and goes so far as to say that if the coroner is not a medical man, properly able to appreciate post-mortem reports, the chances of successful murder are increased, and he objects to the epigram of a London wit, who said of the London County Council regulation requiring a coroner to have both medical and legal qualifications, that it secured the appointment of a second-class man.[56] In Victoria we already have in vogue the practice of appointing police magistrates, who by a recent Act are subject to retirement at 72.[57] I do not know of any movement in Victoria for the restoration of medical coroners, though the matter rests under the Act with the Governor in Council.[58] There may be some ground for complaint occasionally in country places with regard to the qualification of justices holding inquests under the Justices Act, or those of deputy coroners, though not

54. Weinmann, pp. 37 seq.
55. Report of the Departmental Committee, cap. XIII, and recommendation No. (26).
56. Law Times Journal, Feb. 29, 1936, pp. 164-165.
57. Act No. 4356, section 4 (1935).
58. Coroners Act, 1928, section 4.

perhaps to the extent suggested by an observation of Mr. Villeneuve Smith, K.C., in the High Court with respect to a country coroner in South Australia. When asked by that court whether a certain finding was in writing, Mr. Villeneuve Smith replied: "Oh yes, your Honours, this coroner could write." Those interested in a criticism of the irrelevancies sometimes perpetrated by medical coroners will find an amusing, if imaginary, example in A. P. Herbert's essay *Why is the Coroner?* printed in his *Uncommon Law*.[59]

Dr. Busy, the coroner of Bathbone, is investigating the death of a sleep-walker, found dead beneath his bedroom window. George, the deceased's son, aged 22, having been sworn—

The Coroner: What time was it when you say you found the body of your father?

George: As I approached the house I heard the clock strike two.

Coroner: Why were you returning home at two o'clock in the morning?

George: What has that got to do with it?

Coroner: Answer the question, sir; it is my duty to elicit the truth.

George: About my father's death, yes sir, but not about my evening out.

Coroner: So you had had an evening out? Were you sober?

George: Yes, I'd been out to supper, dancing; you can't dance drunk.

Coroner: You had been out to supper! With a woman?

George: Of course; do you suppose I should dance with a leopard?

Coroner: No impertinence, please. What is the woman's name?

George: Mind your own business.

Coroner: At this moment, sir, it is my duty to mind yours. I must ask you for the woman's name.

59. A. P. Herbert, *Uncommon Law*, page 261.

George: Pratt.

Coroner: Miss or Mrs.?

George: Mrs.

Coroner: So you were having an evening out with a married woman. Was her husband aware of this?

George: Really, sir, what has all this got to do with—

Coroner: Answer the question.

George: Probably not.

Coroner: Probably not? You mean that you and this woman are deceiving the husband?

George: No, I don't; I mean they don't live together any more.

Coroner: Divorced?

George: Practically.

Coroner: Practically divorced? Then the husband has obtained an order nisi?

George: No, you fool, she has.

Coroner: Oh, so you returned home at 2 a.m., after dancing with a successful petitioner for divorce whose decree has not been made absolute?

(The coroner here ordered his officer to communicate with the King's Proctor.)

Coroner: Is this the Mr. Pratt who went bankrupt not so long ago?

—And so on.

With regard to the limits of the coroner's inquiry, the English committee recommended that it should be restricted to an investigation how, when, and where the death occurred, this investigation being clearly distinguished from any trial of liability, whether civil or criminal; that the coroner should no longer have power to commit any person for trial on inquisition on a charge of murder, manslaughter or infanticide; that the inquisition should not name any person as guilty of any of these offences; that in any case in which questions of criminality might still be involved the laws of evidence should be observed; and that where any person is suspected of causing the death, he should

not be called or put on oath unless he so desires, and should not be cross-examined. And the committee further recommended that the coroner should be obliged to adjourn an inquest from time to time if requested to do so by a chief officer of police.[60]

If coroners are to be retained in Victoria, I would submit that these recommendations might well be put into force here. A. P. Herbert points out that a coroner's inquest may result in a wrongful accusation; it usually generates a cloud of prejudice; and frequently the reputation of innocent persons is affected.[61] The committee observed that in England where a person has not yet been charged an inquest, though preserving the appearance of an investigation, results in evidence being built up very often to make a case against a particular individual; that the real object of the evidence may be to elicit his guilt; that the enforcement of the rules of evidence applicable in criminal trials depends merely on the discretion of the coroner; that the person concerned may be cautioned, but his objection to give evidence then puts him in an unfavourable light; and that the finding or inquisition of the coroner or coroner's jury purports to record an actual verdict of guilt.[62] In Victoria, where the bringing of a charge does not terminate the inquest proceedings it may further be added that the accused may be present in custody at what is nothing more than a committal proceeding under another name, but where the ordinary rules of evidence, which would apply in any other court, do not apply. What reason is there for preserving a position where a person accused, or likely to be accused, of the most serious of crimes is less favourably situated than in the case of less serious accusations? Sir Archibald Bodkin, a former Director of Public Prosecutions in England, in an addendum to the committee's report, considers that an inquest may result in the discovery of evidence not previously available. But this one ventures

60. Report of the Departmental Committee, caps. V, VI, VII, and recommendations Nos. (1), (5), (6), (7), (8) and (9).
61. *Uncommon Law*, p. 264.
62. Report of the Departmental Committee, cap. V.

to doubt, and there would appear to be no valid reason why in the case of the death of an individual the appropriate police authorities should not be left, as in any other case, to make the enquiries which they always do make, and to decide, on the expert advice available to them, whether to charge or not to charge a particular person or persons in respect of such death before the ordinary tribunals. In motor accident cases, the police would probably prefer such a position, for juries seldom convict of manslaughter in such cases, and a verdict of death by misadventure does not assist any subsequent prosecution for a lesser crime.

With regard to deaths under anaesthetics or during operations, the practice in England is apparently very varied. Some coroners hold inquests and some do not; some do not regard local or spinal administrations as anaesthetics at all; and anaesthetists as a body object to the holding of any such inquests. The committee recommend an express statutory provision that where the coroner, after a report, and, if necessary, a post-mortem examination, considers that reasonable care has been shown, an inquest need not be held, but that the coroner should have regard to the views of relatives.[63] This, I understand, is actually the practice at present followed by the City Coroner in Melbourne.

I doubt if anyone will disagree with the English view that questions of civil liability should not be debated at inquests, but I am unable to see how any substitute can be found by legislative provision for the discretion of the coroner. If interested persons are allowed to be represented, as is only proper if inquests are to be held at all, it seems impossible to exclude proper enquiry into and comment on the relevant facts. If the inquiry is limited, however, to the question of how, when, and where the death occurred, excluding any finding of liability, this difficulty would largely, if not entirely, disappear.

The last amendment which I propose to discuss under the

63. Report of the Departmental Committee, cap. X, and recommendations Nos. (10) and (11).

heading of jurisdiction as distinct from procedure is in relation to the discretion to dispense with the holding of an inquest. Technically, the coroner would not appear to be bound under the Victorian Act to hold an inquest,[64] but in practice he always does so where the case falls within the words of the Statute. The English committee's recommendation is that the coroner should have a discretion to dispense with the holding of an inquest in the case of deaths due to simple accidents and chronic alcoholism, and deaths under anaesthetics, or during operations, but that he should be obliged to hold an inquest in any case of suspected industrial disease.[65] I do not see the justification for the last suggestion, but in many American States the coroner is given a discretion as to holding inquests, and indeed a wider discretion than is suggested in England. In Georgia, no inquest is held where the death was caused by violence, accident, or act of God, in the presence of witnesses, unless some person makes an affidavit of facts raising a suspicion of foul play. In Maryland, an inquest is not held where the death was due to accident, mischance or other cause unless it happened in a gaol, or there is a strong probability or reasonable belief that the deceased died by felony. In Kentucky, it is held on request, or when there is reason to believe that a crime has been committed; and in Louisiana and Minnesota where there is reason to suspect unlawful violence; and in the State of West Virginia, whose mountains are made famous in song, an inquest is held only where the coroner has good cause to believe that the death was due to an unlawful act.[66] If the coronial inquest is to be preserved at all, there seems little reason to perpetuate the practice of holding such an inquest in cases where it is obvious that the medical evidence will determine the cause of death and no proceedings are likely to be taken against any person. And if cases where proceedings against any person are likely are also excluded,

64. Coroners Act, 1928, section 6.
65. Report of the Departmental Committee, caps. IX and X, and recommendations Nos. (10) and (11).
66. Weinmann, pp. 37 seq.

one is left only with cases where the cause of death is unknown. Hence the jurisdiction to dispense with an inquest may well lead to the same result as the proposal to abolish the office of coroner, but if the office is retained a discretion to dispense with the holding of inquests in proper cases seems a necessary adjunct.

III. *Suggested Procedural Amendments, if the Office Remains*

These may be considered in relation to suicides, the requirement of viewing the body, the use of juries, the procedure at the actual hearing, and the prohibition of reports of proceedings before coroners.

In Victoria the verdict of *felo de se* is still recognized by section 17 of the Act of 1928, but that section prohibits the giving of any directions for the private interment of the remains, provides that such interment shall not necessarily take place between 9 and 12 at night, and enjoins the coroner from prohibiting any of the rites of Christian burial. Until comparatively recent times the verdict of *felo de se* was followed by the forfeiture of the suicide's goods to the Crown, and his body was buried at the cross-roads without religious ceremony and a stake driven through his body. Hence the sad fate, described by Thomas Hood in 1826, of the unfortunate Ben Battle, who—

> ". . . round his melancholy neck,
> A rope he did entwine,
> And for his second time in life,
> Enlisted in the Line.
>
> A dozen men sat on his corpse
> To find out why he died,
> And they buried Ben in four cross-roads,
> With a stake in his inside!"[67]

This cheerful practice had just been abolished by Statute in 1823.[68]

67. Thomas Hood, "Faithless Nellie Gray" (1826); cf. 4 Bl. Com. 190; Jervis, pp. 186 seq., esp. at p. 191.
68. 4 G. IV, cap. 52.

There seems to be complete unanimity among modern commentators that the publicity at present given to inquests on suicides, if such inquests continue to be held, should be restricted. Serious harm may be done to living persons, and medical men seem to be of opinion that the publication of details of the means used frequently leads to a series of imitative suicides. Finally, the penalties formerly associated with a verdict of suicide, and the obloquy still associated with such a finding, have led to the common verdict of suicide while of unsound mind, which according to English statistics is recorded in 98 per cent. of suicide cases. The English committee's recommendation is that the verdict in its present form should be abolished, that there should be no enquiry as to any state of mind, that the finding should simply be that deceased died by his own hand, and that the publication of details should be limited to the name and address of deceased and the verdict.[69] I venture to think that it is unlikely that anyone would find reason to oppose such long overdue reforms.

A reform which appears to me to be almost as long overdue, and which is now advocated in England, is the abolition of the requirement that the coroner or the jury shall necessarily view the body.[70] Although no longer necessary in a number of American States,[71] such a view is still compulsory in Victoria, except in certain cases, such as the quashing of one inquest and the holding of another,[72] and a few years ago an inquest was quashed in Queensland, though there was no such statutory provision, on the ground that the common law required a view which had not been had.[73] The risk of the coroner being tricked into a fictitious inquest seems so remote, provided reasonable evidence is forthcoming of the existence of the body, that the "view," occasioning the expenditure of time, and sometimes of money, and which in the case of a jury at any rate may

69. Report of the Departmental Committee, cap. IV, and recommendations Nos. (2), (3) and (4).
70. ib., cap. XII, and recommendation No. (18).
71. Weinmann, pp. 37 seq.
72. Coroners Act, 1928, sections 9, 10, 23.
73. 3 A.L.J. 417.

also occasion distaste or distress, should be dispensed with. One example of the way in which the requirement of a view may operate to stifle an inquiry was the Sydney "Shark Arm Case."

For similar reasons of economy of time and money, the practice of having coroner's juries at all might well be discontinued. I should be interested to hear whether any gentleman present can suggest any reason for retaining such a jury. It is true that in mining cases there are statutory requirements regarding juries, and that half the jury shall, where possible, be practical miners,[74] but there is in any event in such cases a report from, and usually evidence by, a mining inspector, and he is entitled to appear and elicit evidence.[75]

So far as the actual procedure at inquests is concerned, one question frequently debated is whether the coroner should be bound by the laws of evidence, or should continue to be entitled, as he now is, to exercise his long-standing privilege of allowing any evidence likely to assist him in the conduct of his enquiry, whether strictly admissible or not. Believing as I do that our laws of evidence are obsolescent and urgently in need of a comprehending amending statute to bring them into line with the requirements of present day life and commerce, I believe also that it would be a retrograde step to restrict the coroner to the present laws of evidence. It is a sufficient commentary upon those laws to point out that in two branches of legislation particularly concerned with the needs of modern society, industrial arbitration and workers' compensation, the legislature has had to go out of its way to provide that tribunals may ignore the laws of evidence in order to do justice.[76]

The last matter of procedure which calls for comment is the desirability of limiting the reporting by newspapers of proceedings at inquests. Although the coroner has a

74. Coal Mines Regulation Act, 1928, section 50; Mines Act, 1928, section 444.
75. ib.
76. Commonwealth Conciliation and Arbitration Act, 1904-1934, section 25; Victorian Workers' Compensation Act, 1937, section 8.

certain power at common law to exclude the public in a proper case,[77] and although in uncompleted proceedings he can pronounce it improper to publish a report of them at that stage,[78] these are imperfect powers, and it would appear that the real remedy for the prejudice which may be done to accused persons in cases involving some criminal charge, assuming such cases remain within the coroner's jurisdiction, is in the direction of prohibiting the publication of reports of such proceedings, or at any rate of prohibiting the publication of any of the evidence. Legislation along these lines has been advocated in regard to coroners by a recent writer in the *Australian Law Journal.*[79] The Director of Public Prosecutions in England has publicly stated that he is gravely concerned about the newspaper reporting of preliminary court proceedings resulting in the committal of an accused person for trial. The public, and even the press, have survived the imposition of restrictions upon the publication of evidence in matrimonial causes.[80] Nevertheless, the English Departmental Committee on Coroners declined to make any recommendation to limit publicity, except in the case of suicide.[81] In this I venture to suggest that the committee was wrong. One would like to see a prohibition of the publication of evidence in any committal proceedings, and not only in inquests resulting in committal. I venture to think that such a restriction would be like the Cardinal's Curse in the Jackdaw of Rheims, and that what would give rise to no little surprise would be that nobody would seem one penny the worse. After all, it is apparently within the last century that it has been permissible to publish any such preliminary proceedings. In 1811 the printer, publisher, and editor of a newspaper called *The Day* were found guilty of criminal libel in having published an account of preliminary proceedings before the Lord Mayor of London upon the committal of a certain Captain Stephenson. This

77. Garnet v. Ferrand, 6 B. and C. 611.
78. Wrongs Act, 1928, section 4.
79. R. Frisby Smith, "Evidence before Coroners," 10 A.L.J., 54.
80. Victorian Judicial Proceedings (Regulations of Reports) Act, 1929.
81. Report of the Departmental Committee, cap. XII.

gentleman was sent for trial on a charge of having criminally assaulted a lady passenger on the high seas on the journey home from the West Indies, when the inclemency of the weather unfortunately prevented her from returning to her own vessel after a luxurious entertainment of the passengers of the convoy upon the Captain's vessel. The defendants in the case referred to made the more certain of their conviction, however, by stating in their newspaper that the circumstances of the case were disgraceful to the captain, and by stating that one of the passengers "had prevented the perpetration of the vile and dishonourable intentions of the defendant, from whose loathsome embrace he had extricated the almost senseless victim." The reported added the observation that "the prosecutrix was a woman of interesting and intelligent countenance, about five and twenty years of age, while the captain had nothing either captivating or prepossessing in his appearance, being aged about thirty."[82]

In 1818 the Court of Kings Bench declared that the publication of evidence given before a coroner's jury where a person was accused of murder was unlawful, even though the statement was correct and there was no malicious motive. The case arose out of a riot at Brighton, when the High Constable called out the militia and ordered it to charge the crowd. One of the High Constable's assistants was killed in mistake by one of the soldiers, and the newspaper criticised what it called the imprudent conduct of the High Constable. But the court held that, apart from that comment, it was "highly criminal" to publish before trial an account of what took place before the coroner.[83] Doubts, however, arose during the course of last century as to the absence of the right to publish evidence in these and similar cases,[84] and in 1888 the Legislature in England

82. R. v. Fisher, 1811, 2 *Camp.* 563; *Times*, February 18, 1811. The report in the *Times*, however, states that the examination was a private one, and I notice that in the *Times* of that year there are a number of reports of preliminary hearings at the Guildhall and Mansion House. See 11 R.R., at p. 799; and R. v. Parke, *1903*, *2* K.B., at p. 438.

83. R. v. Fleet, 1818, *1 B. and A.* 379.

84. R. V. Parke, supra.

gave statutory protection to fair and accurate reports of contemporary proceedings before courts exercising judicial authority.[85] This provision was adopted in Victoria, the Coroner's Court being expressly referred to.[86] Despite this vindication of the freedom of the press, it would appear that in the last quarter of a century the growth of sensational journalism and the concentration of its attention on those three theatres of human drama, the Criminal Court, the Divorce Court and the Coroner's Court, has led to the commencement of a reduction of the right of the press to report judicial proceedings. Democracy has realized that the desirability of the freedom of the press depends upon the nature of the press.

BIBLIOGRAPHY

1. Selden Society's Publications, Vol. 9 (1895); Select Coroners' Rolls, 1265-1314.
2. Carter, History of English Legal Institutions, 4th Edn., 1910, Cap. XX.
3. Jervis on Coroners, 7th Edn., 1927.
4. Quick & Berriman, The Victorian Magistrate, 1924, Cap. XXIV.
5. Smith, Coroners' Manual for South Australia, Australia, and England, 1904.
6. MacNevin, N.S.W. Coroners' Manual, 1895.
7. Victorian Crown Law Department, Acts and Instructions for Coroners, 1867.
8. House of Commons Reports of Commissioners, etc., Vol. VIII, 1935-1936, Part 2; Report of Departmental Committee on Coroners, January, 1936 (Cmd. 5070).
9. Weinmann, Survey of the Law concerning Dead Human Bodies in U.S.A., Bulletin No. 73 of the National Research Council, 1929.
10. Lithotomy, its Successes and its Dangers, Anonymous, Melbourne, 1876.
11. Doctors Differ, a Lecture by Mr. J. G. Beaney, Melbourne, 1876.
12. Law Times Journal, Feb. 16, 22 and 29, 1936; Articles on Report of Departmental Committee on Coroners.
13. Times, Dec. 11 and 12, 1901 (Report of Peruvian Mummy Case).
14. R. Frisby Smith, Evidence before Coroners, 10 A.L.J. 54.
15. A. P. Herbert, Uncommon Law, pages 261 et seq.

85. Law of Libel Amendment Act, 1888, section 3.
86. See now Wrongs Act, 1928, section 4.

DISCUSSION

Mr. P. D. Phillips: We have listened to a paper which combines a wealth of historical learning, a great deal of humour, both native and acquired, and a series of almost devastating proposals for reform emanating from a lawyer. My difficulty is that if I occupy any time I shall be in marked contrast with the humour of the lecturer. Far be it from me to deter any lawyer making any proposals for reform, but I do have one serious criticism to make of Mr. Sholl and that is in regard to his present-day reference to the laws of evidence being in a state of obsolescence—I offer him by way of suggestion the word "obsolete." One or two things did strike me, and one was the comments on the very interesting inquest on Robert Berth. There were some highlights about the whole proceedings, and Mr. Purves' cross-examination of Dr. Neild was amusing and I think that was part and parcel of a long guerilla warfare between Purves and certain members of the medical profession. Neild declined to give any evidence which he said was surgical, he being a "mere physician," and when Purves asked him what in his opinion was the cause of death he would not answer. That was the more curious because the inquest was being held really to determine what was the cause of death, but throughout the inquest the last question with which the coroner or the jury was concerned was what was the cause of death, and I think you will find that the jury actually came back and said they were unable to determine the cause of death; but that was a matter of no interest to anybody at all; the question was whether he had been guilty of negligence. Neild refused to give what was the cause of death, although Purves pressed him, and the coroner intervened and said he would not have his witnesses bullied, that it was quite an improper question, and he would not allow Neild to answer it. Then Purves said, "You know what was the cause of death, don't you, Doctor?" He said, "Yes, certainly, but I will not tell the jury."

I do not know whether any other legal members agree with me, but I, in common with most of the other members of the Melbourne Bar, was brought up on a diet of Purves stories. He was always held up to us to represent a stature which the meagre figures of modern days could not equal, and I have always thought that the stories of Purves simply recorded the attitude of an overbearing individual to whom the judges adopted an attitude which they do not

adopt in these days. These proceedings give an impression of Purves in his early days, and from the case you are left with the impression of an extremely able man who at that time was about 30 years of age. He said to the jury in the course of that trial that he had been given his brief but two days before the inquest, and he also stated that he had had no brief at all. It is difficult to read the proceedings without being impressed with the remarkable grip he had of all the medical details, and anybody who has had, in a hurry, to accustom himself to the strange and unfamiliar language involved in anatomical details and in describing accurately the location of organs of the body with which we are quite unfamiliar will appreciate how quickly he got hold of the facts, particularly as a good deal of the cross-examination involved asking the witnesses to consider what particular form of operation could have been adopted and whether there were not matters connected with the operation which Dr. Beaney was justified in avoiding. All that involved a very accurate knowledge of the exact risks involved in the alternative operation, and the situation of the organs themselves, and I thought that for a man who had had two days to work this up and who apparently had had no previous knowledge of the subject, the whole thing showed what a quick student and really able cross-examiner Purves was.

Another one of Mr. Sholl's suggestions I would agree with is the proposal for abolishing the coronial inquest, at any rate in its present form, and I wonder whether the kind of investigation which he referred to would be more effective or really promote justice in the way he has in mind. If one were to investigate the present evils of coroners' inquests and could eliminate certain things, one might say, "If we cannot abolish the inquest, at any rate we have got rid of certain evils." I am not sure that the result of that might not be to make certain inquests conspicuously unjust although the general run of inquests had ceased to be so. For instance, an inquest on a person who has died and who is thought to have been poisoned, and who has been living under conditions under which the only other person who had access to him was a named individual, the avoiding of mentioning names and the avoiding of making charges would have no effect in cases like that, and the method of avoiding those dangers in the ordinary run of practice would only throw into relief the inquests where such a danger does exist. I do not think

there is any half-way house between taking the risks and the virtues of the existing system or abolishing the inquest as determining *prima facie* guilt as it is at present. If you had a case where there has been a crime committed in which only one person has had the opportunity or access to the deceased, all the other possible requirements would make such cases even more unjust because they would not protect the individual in those cases, and the very protection which they have provided in other cases would throw that situation into even clearer relief. That seems to me to provide some reason for doing away with coronial inquests of this kind. At any rate, if the Government won't amend the law, it could do much to improve the Morgue as a building and as a court.

The President: Perhaps the City Coroner, Mr. Tingate, will enlighten us with his views.

Mr. Tingate: I first of all would like to thank Mr. Sholl for his lecture. As Mr. Phillips said, it has been most amusing and enjoyable as well as instructive, and notwithstanding the fact that he is suggesting putting me out of a job, I still thank him. It represents a great deal of work on his part, I am sure, and we all appreciate it. There are a few things I would like to refer to. One is the remarks of Mr. Phillips in reference to our buildings. It is perhaps a matter of satisfaction that within the last few years large sums of money have been spent down there and the building has been improved considerably. No doubt many of those present will remember the old witness box, but that disappeared some time ago and we now have a modern up-to-date witness box.

In regard to several of the matters Mr. Sholl mentioned, I think the greatest cause of criticism of the Coroner's Court is the way in which the press publish details in a sensational manner, with the result that people may be criticised unfairly and injustice caused in that way; but whether that is an evil on the part of the Coroner's Court, or whether the blame lies elsewhere, I am not going to say, but I think that that really is the main cause of complaint. I feel, however, that the Coroner's Court does serve a very useful purpose. Improvements in methods come under discussion down there, and as a result recommendations sometimes are made which result in the saving of life. I think that is one of the aspects that should be considered in favour of the Coroner's Court.

In regard to suicides, I find that my predecessors, in

Melbourne at any rate, for many years adopted a practice of finding in suicide cases that the person died by his own hand whilst of unsound mind; but, if I find that a person died by his own hand, I require very clear medical evidence before I bring in such a finding. My own idea is that a verdict of death by a person's own hand is quite sufficient.

In regard to the burying of suicides at the cross-roads, it is interesting to know that there is now a section in the Act which directs that no such practice should be carried out in Victoria. One of my predecessors many years ago discovered that although that provision had been eliminated from English law, the legislation had not been adopted here. At the first available opportunity when he discovered that somebody had committed suicide he ordered that the body should be buried at the cross-roads with a stake through it. It caused such consternation at the time that I understand the section abolishing the practice was the result of it.

In regard to suicides' letters, we have a great many letters written by people who intend doing away with themselves but it is my practice—there again following the practice adopted for many years—to read the letters and in only very few instances are they ever published or even allowed to be seen by the press.

Mr. Sholl referred to a statement by a judge who said that no doubt by holding coroners' inquests certain evidence might be obtained which would point to the guilt of some person. That puts me in mind of a case that I had before me in which a house was burnt down and in which the insurance company felt that possibly, and very probably, the house was deliberately burnt down. I was asked to hold a fire inquest, which duly came on, and it took a couple of days. During the course of the proceedings I did not find out who had set fire to the house, but I did find out that a gentleman giving evidence was a bigamist, and as a result of matters then elicited he was convicted of bigamy!

In regard to the methods by which medical reports can be obtained, as well as other reports, and submitted to the Crown Law Department and thereby avoiding inquests, I think that much on those lines is already being done and that the coroner follows out that procedure in many cases. For instance, in cases of sudden death written reports are obtained, and failing that we call in Dr. Wright-Smith or Dr. Mollison. On these reports often an inquest is avoided.

In regard to the question of whether the coroner's

jurisdiction should be abolished, recently I read a lecture on "London's Coroners." In the lecture the lecturer said that criticism of coroners in England was brought about by the men who filled the positions not being capable of adopting a sufficiently reasonable attitude in holding inquests, and he said that were common sense used very frequently there would be no evils at all. Having in mind a case where there might be a committal for trial, the coroner, of course, has jurisdiction to enquire into the matter from all angles and to obtain evidence of all kinds either admissible or inadmissible in criminal proceedings, but I think, if the coroners, as I know they do in Victoria, reject such evidence which would be inadmissible at a man's trial, much of the cause of comment could be avoided altogether.

Dr. Upjohn: I, like the other speakers, have been very interested and at times amused by the lecture. I was reminded of a suicide I remember about 30 years ago when I was a resident at the Melbourne Hospital. The findings at the inquest before the coroner were very widely published. It was a case of suicide by poisoning by the use of soaked wax match heads. There was immediately a perfect epidemic of poisoning by match heads; it became a favourite method amongst servant girls and others to soak wax matches in water and to drink the poison, with the result that phosphorus poisoning became such a common practice that representations were made by the medical authorities suggesting that the publication of the details of suicide by the use of match heads be stopped, and this was carried out with the result that the number of suicides by match heads became negligible.

Another popular method was drinking Condy's Crystals. The details of such suicides also were widely published, with the result that there were very many suicides by that method until the reporting of such cases was stopped. Nowadays there does not seem to be quite so much of this, except that there was a little recrudescence of it a little while ago in connection with the newer methods of death by suffocation in motor cars. I do not suppose those people who have committed suicide by that method would have been entirely deflected from suicide through being ignorant of the means by which it could be done, but certainly in some of those earlier cases the publishing of the details of suicide by this method did lead to the method being adopted by many others who committed suicide.

Reference was also made in regard to enquiries into deaths by anaesthetics. I can remember when chloroform was very widely given as an anaesthetic and there was quite a number of deaths occurring in public hospitals, and in many cases the comments which were made in the Coroner's Court were devastating, and very seriously affected the younger medical men who were doing their duty as well as they were able to. The criticism was very unfair at the time, and although, so far as I know, no person was committed for manslaughter, still the references and statements that were made in the press threw such doubt on their competence that it made the work very difficult indeed. I can remember that sometimes the practitioners were very reluctant to act as anaesthetists in some of those very difficult and moribund cases that came to the Melbourne Hospital. It amounted to such a reign of terror that they were really afraid to act, and in many instances they declined to give the anaesthetic, and, not in many instances, but in some instances at any rate, they refused to give anaesthetics simply because there was this fear at the back of their minds of something happening and their having to face the possibility of these unfair comments.

Mr. Book, K.C.: Might I be permitted to express my thanks to the lecturer for what has been to me, and I am sure to all of us, a very interesting and instructive paper. The criticisms which the lecturer has levelled against the system that exists at present have appealed, I think, to most of us, and certainly I am in agreement with a great deal of what he has said so far as the criticism relates to matters of principle. However, from my own experience, I would be sorry to see the coroner's office abolished. I think that, like most legal and perhaps medical affairs, it is open to improvement. One matter which suggests itself to me as being a matter which could be improved is that at present we often find that where an inquest is held in the country districts of Victoria, it is held not by a police magistrate, and certainly not by a gentleman with the experience of our City Coroner, but it is held by a Justice of the Peace; and particularly in motor car cases we find that the justice who hears the inquest and perhaps commits the motorist for trial has obviously no idea at all of the distinction between civil negligence and criminal negligence, and I certainly think it is very much more desirable that the coroner's office should be held everywhere at any rate by

a police magistrate or by somebody who is familiar with those principles and, if possible, by somebody who has had considerable experience in dealing with that aspect of the criminal law.

Another matter I would like to refer to is in connection with the duty that has now passed upon the coroner where he finds that a *prima facie* case has been made, either of murder or manslaughter, against the person who is in court, whether he has been charged by the police or not, a duty which is cast upon the coroner in such cases not only to commit that person for trial, but also to make a definite finding that he or she has been guilty of murder. It seems to me that that is quite incompatible with the ordinary principles of British justice, and in ninety-nine cases out of a hundred which come before the coroner where a person is committed for trial on a criminal charge the defence is not really heard at all. The defence, of course, has a right to be heard, but where a charge has been laid it is almost an invariable custom that the man or woman concerned, suspected and perhaps charged is quite rightly advised to reserve his or her defence; and, therefore, we have the curious spectacle of a coroner hearing just one side of the matter and not hearing the defence at all, bound by law, if he finds that a *prima facie* case exists, to commit him or her for trial and finding that individual guilty of murder or manslaughter. It seems to me that the power of committal could well be retained by the coroner, but some provision should be made which renders his finding no more than a finding of a justice in the Court of Petty Sessions, stating that a *prima facie* case has been made out sufficient to warrant the person being placed upon his trial before a jury. I think, however, that it is quite a good thing that these matters should come in the first place before the coroner because we have, and again I speak particularly of motor car cases, instances where people day after day and week after week are committed for trial on charges of causing death by their criminal negligence, and it is very desirable that those should be heard by a man who, like the City Coroner, has from day to day and month to month and year to year considerable practice in dealing with those cases.

I do agree with every word that Mr. Sholl has said about the advisability of restraining the publication of proceedings as far as the relevant enquiry is concerned in respect of matters where a man is committed for trial, and I can

see no logical distinction between those matters and matters in the Courts of Petty Sessions where people are committed without trial on any charge whatever. If such publicity were restricted it would certainly be a source of great gratification to my learned friend Mr. Barry and to myself, and perhaps to His Honour, the learned President of this Society, because it would free us from the responsibility which usually devolves in such cases on one of the three of us, principally in murder trials, of giving the jury a warning that they must disregard anything they have heard or read before coming into Court. It seems to me that there is no logical reason why the panel of jurymen, which means almost the entire public, should not be prevented from having any knowledge of matters which subsequently they have the duty of judging solely on the evidence.

Dr. Dickson: As one who has had some years' experience in the country, I would like to amplify what Mr. Book has said on the whole question of coronial enquiries in country districts. I have been, unfortunately, associated with quite a few, and I think that if the system is to be maintained, as it will be for some years at any rate, there are very many defects which should be remedied. In these days of rapid transport there seems to be no reason why a doctor practising in a somewhat isolated country town should be called upon to perform post-mortem examinations. Most country practitioners have had no experience in the actual technique of such an examination, and do not possess the necessary equipment, and, in addition, mortuary facilities are entirely non-existent in country towns, apart from the fact that trained assistance also is lacking. The usual experience is that a body is recovered from the river and removed to the local police station. You are then called upon to perform a post-mortem examination. It is probably three or four years since you have done one, the lighting is usually quite inadequate, the police sergeant, being experienced, may "last the distance," and the junior policeman, who comes in to see the fun, does not, and he goes out early in the proceedings. I suggest that until adequate mortuary facilities and trained pathologists are available, such bodies should be sent to Melbourne for post-mortem purposes. I think it is very unfair, both to the medical men concerned and to the interests of justice, that the present practice should be continued.

Another question which was referred to was in regard to the conduct of enquiries by local justices who have had

no experience, and perhaps I may relate instances which did not happen to myself but to my colleagues in town. An elderly man, a bachelor, who has lived with relatives, was found dead in bed at 6 o'clock in the morning. The story was that he was up during the night roaming about the house and when he was called to breakfast he did not respond and his body was found. My colleague, who had not attended him for some years, was called out and pronounced life extinct. The local justice conducted the enquiry. No post-mortem examination was made, and my colleague was asked did he know the cause of death, and he said he did not. The coroner said, "Do you think it might have been heart failure?" He replied, "I have not the faintest idea." So the coroner brought in a verdict of heart failure and that man was buried.

In another case an elderly man of 80 years who had always been active and had for 60 years attended the opening of the duck shooting season, on this occasion was seen to enter a punt alone and go out on the swamp. Some few hours later the punt was discovered upturned and he was missing. His body was recovered and brought to his home. I was asked to see the body. He was obviously dead. I was not asked to make a post-mortem. I did not visit the inquest and what he died from I do not know yet.

Another question is how far the coroner should go, and this again is a position which causes some resentment. I happened to be attending a girl who, quite unexpectedly, drank a large quantity of oxalic acid. I saw her soon afterwards and did what I could for her and sent her to a cottage hospital 30 miles away. She died a few days afterwards. She died undoubtedly of oxalic acid poisoning. The local coroner, who was a baker, opened the enquiry, adjourned it and called me. I travelled 30 miles and he then wanted to obtain from me a very detailed history of why this girl might have suicided, and all her past life. There were certain facts connected with the case and I could see no particular reason why those things should have been disclosed, and I pleaded privilege. The coroner did not know much about it, but the police sergeant said I could not plead privilege. I said I could, and a deadlock developed, and the coroner decided to bring in a verdict of death from oxalic acid self-administered, which seemed sufficient. I do suggest that untrained authorities should be debarred and that all these matters should be handed over to trained magistrates, and particularly that no post-mortem examina-

tions should be done unless there are proper facilities available.

Dr. Ostermeyer: I should like to express my appreciation of Mr. Sholl's exposition in regard to coroners' courts, and the law and procedure relating to them. The legal aspects have been emphasized to-night and also medical post-mortems, but there is another feature with which we are concerned, and this was brought home to me professionally when there was an alteration in the registration of births and so on, which only came into operation a few years ago. I got a copy of the amending Act at the time. There was an extraordinary position in Victoria because, until September, 1938, when a patient died the doctor need not furnish a certificate of death. It was absolutely optional until the amendment of the Act. If a patient dies through poisoning the doctor has to report to the police now, but then he had no legal obligation to report. It has only been law in Victoria under two years. I was staggered to find that that was the case; that up till then there was no legal obligation.

A medical certificate also involves a knowledge of causation. It is a very onerous duty for any conscientious man, and the more conscientious he is the more burdensome it is. All these burdens are on the medical man. You cannot put heart failure in a certificate now. You have to give the cause of death. The cause of death might be anything. If he did not die from one thing he died from another, or he may have died from a number of things, and that brings in the legal aspect of causation. Medicine and the law are necessarily apart. The suggested reform is an admirable thing, and in my opinion it is long overdue. We in the medical profession are under a legal obligation to report these things, which was not the case two years ago.

Dr. E. Jones: I have listened with a great deal of interest to-night to the very interesting lecture that has been given, and I should like to put to you some of the things in connection with which I think a modified procedure in the Coroner's Court might be worth considering. I look at the matter from the point of view of the Lunacy Department. The Coroner enquires into the case of everybody who dies in a lunatic asylum. The death of every patient has to be reported to the Coroner, and in this State it is the custom for the Coroner to order a post mortem examination whether it is necessary or not in each case. The Coroner is only appealed to when the head of the Department considers there is something which it is necessary to enquire into as

to the cause of death. That is of very vital interest to the medical officers of the Department that they should make all the examinations wherever it is possible. That unfortunately means the making of a great many examinations that are not worth while and it also means the making of examinations of the dead bodies of people of certain religions, and in some cases there is the strongest objection to that procedure. In many of those cases there is no necessity whatever for an examination.

Voluntary patients in mental hospitals provide another problem. When I, with the assistance of our legal officers, prepared a clause for the Act, I thought I had made it clear that the patient should be subject to personal examination. Under the Act voluntary patients have their civil rights, and unnecessary post mortem examinations can be prevented without any difficulty at all, because I have on several occasions found that the post mortem examinations were not necessary.

One has had interesting experiences with coroners' courts in connection with patients who died. I remember in one particular case an epileptic patient swallowed a horse chestnut; an operation was performed and after a good deal of trouble the chestnut, which was swollen, was extracted, but the patient got bronchial pneumonia later and died. In that case the death was reported to me. I reported the death and the Coroner duly held an enquiry and brought in a verdict that the patient died from swallowing a horse chestnut, which, of course, was exactly what he had not done.

I suggest for Mr. Sholl's consideration that whilst post-mortem examinations in mental hospitals are essential in quite a large number of cases, there is also quite a number of cases in which it is quite useless to hold these examinations.

The President: It strikes me that the retention or otherwise of the coronial office depends very much on the way in which the functions of that office are discharged, and I am reminded by the Legal Secretary of this Society that the present occupant of the office of City Coroner is discharging his duties in a way which commends itself very much to the members of the legal profession. And on their behalf the Secretaries desire me to express their appreciation of that method of discharge by the present City Coroner. The medical profession, too, through Dr. Wright-Smith, desire me to say that they join also in the expression of the

appreciation of the discharge of the City Coroner's duties.

I should like to refer to the history of the coroner's office. It goes back, as the lecturer has pointed out, at least to Norman times. There is some doubt as to whether it does not extend even further, but there is one aspect of the duties of the office that I feel is a matter of congratulation at the present day. There was a very old legal work, "The Mirror of Justice," which tells us that one of the justices in the earlier days, taking the verdict of the coroner that so-and-so had been guilty of wilful murder, directed that the sentence be carried out, and the man was executed. There followed a very unfortunate consequence to the Judge, because he himself was executed for directing the carrying out of that sentence.

Some mention was made by Mr. Sholl of the old form of verdict, that a person was guilty of self-murder while insane, and it is worth while, I think, to recall to our attention that that pious form of verdict returned by the coroner's jury was due to the old practice that a person whose death occurred in those circumstances was denied the privilege of Christian burial; and, to avoid that, coroners' juries brought in a verdict of suicide whilst insane. Where the person was found insane, then that denial of the privilege of Christian burial did not follow.

Mr. Phillips remarked on a trial which the learned lecturer referred to, and in it he found cause for appreciation of the services of an advocate of the past days, Mr. Purves. That reminds me that I have read somewhere, and I would like members to verify it, that Mr. Purves, after leaving Victoria, went for some time and studied in Germany, and, if my memory does not completely lead me astray, that he did at least one or two years of a medical course. That would explain his ready appreciation of the medical aspects of the particular enquiry upon which he was engaged, which so excited Mr. Phillips' admiration.

Dr. Latham: As the mover of a vote of thanks to our lecturer at this late hour, you will not expect any serious contribution from me to the discussion. I am sure that we have found it a most profitable and enjoyable evening, and I hope the rest of our members will have the opportunity of perusing the lecture in due course. I have been most interested in the historical part of the lecture. We have known that coroners have been officers right back in ancient times, and it is very interesting to have it pointed out how far back the office goes. I was interested to learn

about the deodands which were the prerogative of the coroner, and in connection with escheats it appears that their moral characteristics were such that "cheats" has become traditional.

The Beaney references remind me of the fact that added to the character of Beaney emerging from the discussion was the experience I had in walking along the streets of Canterbury in England to find the Beaney Institute endowed by James George Beaney, of Melbourne. It is a literary institute very much like a mechanics' institute and is evidently discharging a very useful function in his home town. Also in the Cathedral of Canterbury is a memorial plaque dedicated to James George Beaney, of Melbourne, just alongside the memorial to a very eminent man, the Very Reverend Dean Farrar.

I have much pleasure in moving a hearty vote of thanks to our lecturer.

Mr. Rigby: In seconding the vote of thanks, I wish to say that I have had, over a very long period, a considerable practice in the Coroner's Court in more than one notable case. I content myself with saying, in regard to the lecture itself, that I am very strongly against the abolition of the office of coroner, though I agree in many respects with suggestions for reforms that Mr. Sholl referred to, and if time permitted I could give reasons for those views. As the hour is very late I will content myself with saying, on behalf of us all, how thankful we are to Mr. Sholl for his most interesting and instructive lecture. It has given us food for thought, which thought I hope will bear fruit in future.

I will conclude my remarks on the vote of thanks by a personal reminiscence which I will make as short as I can, but it has a bearing on the jurisdiction of the Coroner's Court. There one day came into my office a man who asked me to draw up a legal document; I asked him what was his name and address and he told me, but he said that it was to be treated in confidence. The document was a deed whereby an old woman was given charge of an infant of which this man was the putative father. The man paid £90 to the woman for the purpose of taking care of the child for ever after, clothing it and so on. The child had a disease at its birth from which it died, and I was a witness at the inquest. The Coroner asked me to disclose the name of the putative father and I pleaded privilege and refused to do so. Every paper in Australia took up the matter and the inquest

was adjourned several times. I still refused to disclose the name of my client. I consulted Mr. Bryant, who told me to still refuse, and he said, "If the Coroner sends you to gaol you are made for life." But eventually the name of the man was disclosed by someone else. I have pleasure in seconding the vote of thanks.

Mr. R. R. Sholl: In view of the lateness of the hour I will do no more, Mr. President and gentleman, than thank you very much indeed for the way in which you have passed the vote of thanks which has just been very generously moved by Dr. Latham and seconded by Mr. Rigby. I am pleased, at any rate, to think that I have provoked a certain amount of discussion. I think the purpose of the papers such as those we have in this Society is to provoke discussion and ascertain differences in view on subjects of medical and legal interest.

I was very much interested by Dr. Latham's reference to the late Dr. Beaney's benevolence in Canterbury, England. In the *Argus* obituary notices which I read some months ago, it appeared that Dr. Beaney left £10,000 by his will to his birthplace, Canterbury.

As regards the remarks of Mr. Rigby, I feel that the question of the abolition or non-abolition of the office of coroner is a very debatable one, and it has simply been my desire to place before this gathering some views about it.

Dr. Jones' remarks on the position regarding lunacy cases seemed to me to bear out the value of the suggestion that medical examinations should involve no publicity and no public enquiry at all, and that they should take the place of the present coronial procedure in cases where there is no criminal charge. I do not see how you can ever dispense with post-mortem examinations if we are to have any recorded finding, though it may be a departmental one, as to the cause of death. Post-mortem examinations in the case of patients who die in lunatic asylums, though they are departmental, I think are necessary.

As regards Mr. Purves, His Honour the President mentioned the possibility of Purves having done some medical work in a German university or medical school. The probability of that, I think, is increased by the fact that if one reads the report of the inquest, which Mr. Phillips has obviously read, one finds that he does quote quite a lot from the work of Germany writers on surgery in regard to Lloyd's operation as it was then described.