CORONIAL INQUIRIES

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Delivered at a meeting of the Medico-Legal Society, held on 2nd September, 1961, at 8.30 p.m., at the British Medical Association Hall, 426 Albert Street, East Melbourne.

A PAPER under this title was to have been read to the Society tonight by Dr. K. M. Bowden. Because Dr. Bowden's unique experience would enable him to speak on this subject with an authority which no-one else in this State could match, it is a matter for regret that the Society will not have such a paper by him in its records.

When a lawyer takes up the discussion of this subject he is under a tremendous temptation to immerse himself in the history of coroners and their inquests. Beyond one or two comments, I propose to resist this temptation. All that I wish to say about historical beginnings is that the original function of the coroner was to protect the Crown revenues which arose out of sudden deaths. The community within whose geographical boundaries the death occurred was fined if the killer was not arrested within five days, the felon's property was forfeited and there was also forfeiture of the deodand and a host of fines for procedural omissions. These latter were imposed for non-observance of the complex ritual which surrounded the coroner's inquest. The rules required the finder of the body to raise a hue, required the nearest township to send for the coroner, required the four nearest towns to present the case to the coroner and all the inhabitants of the nearest town to attend before the coroner. The four nearest neighbours of the deceased were also required to attend. All these persons having attended before the coroner were obliged to appear in due course before the Justices in Eyre—possibly in seven years' time—or were obliged to give security to appear. At the Eyre fines were imposed on both individuals and communities for irregularities in attendance *et cetera* before the coroner and for non-attendance at the Eyre and for presenting at the Eyre something which was inconsistent with what appeared on the coroner's roll.

These things have a fascination for the lawyer with historical inclinations but the fact is that in the course of time the

machinery of the coronial inquest was diverted entirely from its original fiscal purposes. To borrow a phrase from an article written by Mr. C. I. Menhennitt in 1936—"The procedure remained, diverted to a new purpose."[1]

In this paper it is proposed to deal without further reference to origins with the coronial system as it now exists in the State of Victoria. By way of narrowing still further the scope of investigation, it is intended to ignore the Common Law power of Justices, who are not appointed coroners, to hold inquests, a power which still exists in this State[2] and to concentrate attention on inquests conducted by coroners appointed under the Coroners Act. The Common Law power of Justices to hold inquests is of no practical importance in modern times, because it is a condition precedent to the right of Justices to hold an inquest that it should be impracticable for a coroner to hold one. Under modern conditions of communication, and under the modern practice pursuant to which all Stipendiary Magistrates are appointed coroners, it is extremely unlikely that Justices' inquests will be held in the future.

Under the Justices Act,[3] a justice may hold an inquest if requested to do so by a coroner or by a police officer in charge of a station, and in holding it may exercise all the powers of a coroner. I am told that in country districts coroners frequently take advantage of this power of delegation in cases where it is unlikely that criminal or civil proceedings will follow. I propose, however, to disregard inquests held by Justices under this provision as not really significant.

In this State, the appointment of coroners is provided for in the Coroners Act, which also contains the broadest possible statement of their duties. They are appointed by the Governor-in-Council and as I have said the practice is to make all Stipendiary Magistrates coroners on appointment without limitation of their appointment to defined localities. No qualifications are prescribed by the Act. Deputy coroners are appointed in the same way from among Justices of the Peace who have forensic experience. Since the main work is done by the Stipendiary Magistrates I do not propose to deal specifically with the deputy coroners. By Section 5 of the Act the duties of coroners are to hold inquests concerning the manner of death of any person

1 *Res Judicatae* 1936, page 114.
2 *R. v. Registrar-General (Ex. parte Lange)* 1950 V.L.R., pages 45 and 307.
3 *Justices Act* 1958 S.31 (1) (h).

slain or drowned or who dies suddenly or in prison or while detained in a mental hospital. They are also under a duty to hold inquests on fires in some circumstances. Such inquests are rare and do not come within the range of the considerations which I propose to discuss.

The social or public function of these inquiries is to ensure that the true cause of sudden death is openly ascertained, to prevent the occurrence of undetected crime and in modern times to provide an opportunity for the open examination of matters such as safety precautions. I mention the latter as a separate head because a coroner can only commit a person for trial for murder or manslaughter and not for any other offences, and as inquests into, for example, factory accidents will practically never result in a charge of homicide it is perhaps reasonable to say that the justification for holding inquests in cases where from the start the physical cause of death is known and where it is also known that the circumstances will not found any charge of homicide is that they provide an opportunity for open examination of safety matters in which there is a general public interest. Recent examples of such cases were the inquests at Geelong on waterside workers whose deaths, it was suggested, might have been caused by gas poisoning. One must not lose sight of the fact that inquests of this kind involve inquiry into matters which may involve civil liabilities.

The first question to which I propose to direct comment is the question whether a Stipendiary Magistrate is a proper person for appointment as coroner. It is often suggested that a coroner should be a person who has medical training. In fact, in England, the qualification for appointment is that the appointee should be either a barrister or a solicitor or a legally qualified medical practitioner.

The function of the coroner is to preside at an inquiry which is, both in substance and in point of law, a judicial proceeding. Although an inquiry is essentially different from the trial of a case which must end in a final decision, an inquest is nevertheless a proceeding based upon evidence presented, and is not a personal inquiry by the coroner. The finding of the inquest is not likely to be truly based on the evidence presented if the presiding coroner is technically trained, because his training must inevitably govern his reception or rejection of technical evidence. I have little doubt that lawyers generally would regard it as far more desirable that the coroner should attempt

to resolve conflicts in technical evidence by judicial means, that is to say, by assessing the weight to be attached to the evidence of the various witnesses and by analysing the content of the evidence, than that he should override evidence upon the basis of his own undisclosed knowledge. I therefore advance the view that it is desirable that the coroner should be a judicial officer and, within the organization of judicial officers in this State, the Stipendiary Magistrate is the appropriate officer.

I propose next to offer certain comments on the accepted uses in this State of the coronial system.

The first matter for comment concerns those cases in which police investigation has, before the inquest, revealed information which would justify the police in laying a charge of homicide, on which the accused could be brought before a court of petty sessions for committal. In Victorian practice the task of committing for trial for homicide is generally placed upon the coroner, though frequently, long before the inquest is held, it is clear enough that a particular person, who may even be in custody, will be committed for trial. There are two objections to the present practice of holding an inquest in these cases, and the two objections are inter-related.

The first is that the evidence admitted at the inquest is not limited by any proper standard of relevance to the charge which will ultimately be laid. It need only be relevant to an inquiry touching the death in question. Evidence of statements not made by the accused or in his presence may therefore be given. There seems to be no rule that hearsay evidence may not be received, that is, statements of persons not witnesses may be proved, but in general coroners observe the laws of evidence. In 1936 a departmental committee under Lord Wright recommended that coroners should be bound by the laws of evidence in cases in which a person might be committed. These factors may result in the presentation of prejudicial material which ought not properly to be considered in founding a charge against the person whom the police intend to accuse.

The second objection is that the evidence so given is reported in the Press. This is a relatively modern development. At common law it was probably illegal to publish evidence given at any inquest at which a person *might* be committed for trial and the basis for this rule was that "the tendency of such a publication was to have the case tried, so to speak, in the minds of

persons who might be jurors before they came into Court".[4] The common law is sometimes said to have been modified by the legislation which now appears in the Wrongs Act, Section 4, which prohibits proceedings either by information or action in respect of publications based upon fair and accurate reports of judicial proceedings. The better view, however, seems to be that contempt proceedings may still be taken in respect of publications within this description, but in fact in Victoria inquest evidence is freely published.

In many cases the ultimate trial jury probably remembers little or nothing of what it read in the Press of the inquest proceedings, and it will of course be directed to decide the case on the evidence before it. Nevertheless, many of the cases which go from coroner's inquest to criminal court are cases of great public notoriety. In a case like that of Bradley in New South Wales it is possible that members of the jury will begin the trial half at least convinced of the guilt of the accused. In a recent Melbourne case,[5] the police alleged at the inquest a confession by the man who was ultimately committed for trial. The method by which the alleged confession was obtained was the subject of a vigorous attack lasting for some days in the coroner's court, an attack which attracted a good deal of Press publicity. At the trial the prosecution did not tender evidence of the alleged confession but it may well have been the case that some of the jurymen had it in the backs of their minds that they knew or thought they knew that the accused had confessed.

The proposition which I put forward is that the risk that the jury or some of its members may come to the trial with any such preconceptions is one which simply should not be taken. The reform called for is that, in cases where the police have evidence which would justify them in bringing an accused person before a court of petty sessions upon information, the inquest should be adjourned indefinitely and the accused brought before a court of petty sessions. Publication of evidence given at an inquest at which a person might be committed on a charge of homicide should be forbidden as it was at common law.

In England, the Coroner's Rules required the coroner to adjourn his inquest at the request of the police on the ground

[4] *R. v. Parke* 1903 2 K.B. 432 at 438 and cases there cited.
R. v. Fleet (1818) 1 B. & Ald. 379.
Eg. *Halsbury*, 2nd Ed. Vol. 7, page 665.
[5] *R. v. Longley* (Victoria, 1961).

that a person may be charged with homicide, and he must adjourn his inquest if, before his jury gives a verdict, a person is in fact charged. The inquest may be resumed later, but it cannot then result in the committal for trial of a person already acquitted of homicide. If, however, the accused is committed on a lesser charge—e.g. concealing birth, the coroner may resume his inquest and may commit for homicide. This is thought to provide protection against compromise charges by the police. It is of interest to report that since Bradley's Case there has been some movement in the legal profession in New South Wales directed towards prohibiting the publication of inquest evidence.

It will be seen at once that the policy of prohibiting the publication of the inquest evidence may be extended so as to include the prohibition of the publication of evidence at committal proceedings. If it were relevant, I would take the step of saying that in my view there is a strong case for prohibiting publication of evidence given at committal proceedings and this appears to have been the view of the Common Law.[6] It is, however, not quite such a grave question as that of the publication of inquest evidence, because in committal proceedings the issues are defined and the parties are aligned. However, there is a close relationship in this respect between inquests and committal proceedings as may be seen from the fact that all the events in the confession case to which I have referred might easily have occurred in committal proceedings.

Any suggestion of restricting publication of judicial proceedings raises a matter of first-class public importance. It must be remembered, however, that it is not only those things which appear in the Press which are public and both inquests and committal proceedings can continue to be conducted in open court even though publication of the evidence given is prohibited. The Press cultivates the misconception that all that is not published is therefore secret, but there is no reason for adopting this false alternative.

The second matter which I wish to make the subject of comment is the use of the coroner's inquest for the preliminary exploration of civil rights and liabilities. On this I may say shortly that, however odd it may appear that the inquest should

[6] *R. v. Parke* 1903 2 K.B. 432. It is a view in substance adopted by the Report of a Departmental Committee headed by Lord Tucker, presented in 1958.

provide an occasion for the rival interests to sharpen their swords for a battle which will come much later, this is a legitimate use of a public inquiry into the manner of a sudden death. Those who are interested in the death either by blood ties or by financial ties are allowed to come in and ask their questions and, if they wish, lead their evidence and generally to explore the circumstances of the death. This use of the inquest reduces the number of cases in which the dependants of the deceased cannot find out what happened and are by ignorance of the facts prevented from asserting their rights or placed in a position where to attempt to assert their rights involves an unknown degree of risk of defeat and consequent financial loss.

The third matter is whether the present system is adequate to prevent the occurrence of undetected homicide.

This matter must at once be divided into two separate questions. The first of these is whether present law and practice are adapted to bring before the coroner all or most cases in which there is a possibility of homicide. The second question is whether the method of dealing with cases reported to the coroner is adequate to reveal the true facts of those cases.

As to the first question, it is striking that the Coroners Act does not contain any requirement that any person shall report a death to the coroner. The reporting of deaths to the coroner is something in the nature of a by-product of the provisions relating to the registration of deaths and the burial or cremation of bodies.

Under the Registration of Births, Deaths and Marriages Act 1959, the occupier of the house in which a death occurs or the doctor present at the death must give notice of the death to the registrar.[7] In addition to this notice, every person who is present at the death or in attendance during the last illness of the deceased or, if there are no such persons, the occupier of the house where the death occurred must give the particulars required for registration of the death to the registrar. The Act[8] appears to assume that if an inquest is being held registration of the death will not be effected until the coroner has reported his findings to the registrar in a scheduled form.[9]

In addition, under Section 19 of the Act, the doctor who has attended the deceased during his last illness must forward to the registrar a certificate of death showing what he considers

[7] *Registration of Births Deaths and Marriages Act* 1959, S.12.
[8] Ibid. Section 18.
[9] Ibid. Section 18 (2).

to be the cause of death and must either report the death to the coroner or give to the persons supplying the registration particulars a notice that he has certified death. This is an illogical alternative which I shall not pause to examine.

It will be seen that there are apparent difficulties in these provisions. One difficulty is that of deciding whether a doctor comes within the description of attending the deceased during his last illness. It is to noted that the doctor who does come within this description must give a certificate, and the view which at one time at any rate was commonly held that a doctor who suspected foul play should refuse to give a certificate is not justified by the Statute, although it must be admitted that this view finds some support in the existence of what I have described as the illogical alternative that the attending doctor must either notify the person supplying information concerning the death to the Registrar that he has given a certificate or must report the death to the coroner. This seems to carry some implication that if the death is reported the certificate is not given: but in fact the words of Section 19 which require the attending doctor to give a certificate as to the death are quite clear and are mandatory and the form of certificate itself contains provision for a statement that the death has been reported. Another difficulty of construction arises from the fact that the attending doctor must report a death which "has occurred from unnatural causes"—an extremely awkward phrase, and a third difficulty is that the Act nowhere makes it really clear at what point of time or at what point in the procedures under the Act a death is deemed to be registered. It seems to be implicit that the death is not registered until either the particulars usually supplied by the relative or the coroner's findings have been given to the registrar.

Before the passing of a new consolidating Act in 1959 the Registration of Births, Deaths and Marriages Acts used to provide that the registrar should certify that the death had been registered and that if a body were buried or cremated without the issue of such a certificate notice should be given to the registrar by the person burying or cremating the body. These provisions have now been omitted, and one must go to the Cemeteries Act 1958, as amended, to find the rules controlling the disposal of bodies.

Section 19 of this Act[10] provides in substance that no burial

10 *Cemeteries Act* 1958, Section 19 (as amended by Act No. 6564).

shall be carried out unless either the attending doctor's notice that he has certified the death under the Registration of Births, Deaths and Marriages Act or a coroner's order for burial is produced. These documents may be dispensed with upon a statutory declaration by the undertaker that owing to special circumstances it is not possible to produce them. No indication is given as to what might constitute "special circumstances", but if such a declaration is made the Cemetery authorities are required to notify the Minister of Health immediately.

In the case of cremation, by an amending Act not yet brought into operation,[11] the Cemeteries Act provides that no cremation can be carried out unless a scheduled application form is completed and a certificate of the medical attendant and the certificate of a licensed medical practitioner produced. The licensed practitioner is licensed for the purpose of giving certificates authorizing cremation. The corresponding form under earlier legislation could be signed either by the municipal health officer or by a licensed practitioner, but as I understand it there were no licensed practitioners. The reference to the municipal health officer has been omitted in the relevant amendments, but it seems to be contemplated that the municipal health officers will be among those licensed.

The form of application for cremation contains eleven questions. The Act does not say who is to sign it, but if it is signed by a person other than the executor or next of kin reasons must be given. One question which is to be answered is, "Do you know, or have you any reason to suspect, that the death of the deceased was due directly or indirectly, to (a) violence; (b) poison; (c) privation or neglect".

The two medical certificates are quite exhaustive. The attendant doctor's certificate runs to eighteen questions and answers, and the certificate of the licensed practitioner authorizing cremation certifies that the eighteen answers have been examined and that the certifying doctor has directed his mind to the possibility of death having been caused by poison, by injury inflicted by the deceased or some other person or by illegal operation and has formed the opinion that there is no reason why the cremation should not proceed.

Whether these new forms will have any practical use will depend on the way in which they are handled by undertakers and by the certifying doctors.

[11] Act No. 6530.

One may be forgiven for suspecting that when the widow, dabbing her eyes with her handkerchief, is sitting face to face with the undertaker's representative who is filling in the necessary forms for her signature, not much time will be spent on the question—"Have you any reasons to suspect violence, poisoning or privation and neglect?"

So far as the two medical certificates are concerned, past practice in relation to the earlier forms now in process of being superseded by the amendment seems to have been that the undertaker presented forms for signature to both the attendant doctor and the municipal health officer and obtained signatures as of course, despite the fact that the municipal health officer was certifying that he had "carefully and separately investigated the circumstances connected with the death". The new form for the attendant doctor is such that his personal attention to its completion will in most cases be necessary. The new form for the licensed doctor requires him to view the body, a matter which I understand has aroused the opposition of some municipal health officers who would prefer to continue the old practice of signing as of course.

I offer these comments upon the statutory requirements which I have tried to summarize.

In the first place, it would seem highly desirable that the attendant doctor should be required to see the body after death in all cases. There is no requirement at present for a view of the body by the attendant practitioner either in burial or cremation cases though this defect is partly covered in cremation cases by the requirements (not yet in force) that the licensed doctor should view the body. The possibilities of death resulting from homicide or suicide at the end of a long illness in which the patient is nearing death are quite real. There will almost always be a gap of hours or days between the last visit and the moment of death, and it is suggested that the attendant doctor should, before certifying, be required to minimize the effect of this gap in his knowledge by viewing the body. No doubt the objection may be raised that viewing the body could cause a good deal of inconvenience to the attendant doctor, who may at the time of death be on holiday or abroad, but such cases should be capable of being provided for by the drafting of appropriate rules.

Secondly, the Registration of Births, Deaths and Marriages Act still gives the attendant practitioner a wide and very loosely

defined discretion whether or not to report a death to the coroner. No doubt the doctor finds himself faced with the unforgiving hostility of the family if he does report the death, and this must be in many cases a cogent factor in the doctor's decision not to report. Another cogent factor must be the constant and natural assumption in the doctor's mind that nice people do not murder their sick relatives, and he may therefore tend to base his decision to report or not to report on a conscious or semi-conscious assessment of character rather than on physical observation of the deceased.

The attendant doctor would be assisted if the community could be educated to accept necropsy as a normal incident of death. This community is very far from so accepting it, but some published figures indicate that in the Counties of London and Middlesex necropsy occurs in 25 and 21 per cent respectively of all deaths in the County. Under these conditions, one would assume that the community was well on the way to accepting necropsy as a normal incident. If this community is to have its present attitude to the subject changed, it is desirable that the matter be taken up in Parliament as a public forum and that the burden of re-educating the public should be thrown upon the practising doctor, as it may well be if the authorities proceed to take steps which result in an increase in the percentage of necropsies merely by changing the forms which practitioners are required to complete.

The last question is that of the efficiency of the investigation carried out in reported cases. I have of necessity little to say about this. There seems to be a rising body of opinion in England against permitting post-mortem examination to be made by general practitioners and against the use of general practitioner evidence in inquest cases.

In this State, as I understand it, necropsy may still be carried out by general practitioners in country districts. One would suppose that this practice will become less frequent with the increase in the number of specializing and consultant practitioners in provincial centres. Similarly, the difficulty of obtaining proper pathological examination in the country may be diminishing with the growth of the larger district and community hospitals. These, however, are matters upon which I can only speculate and there are others present who could speak with knowledge.