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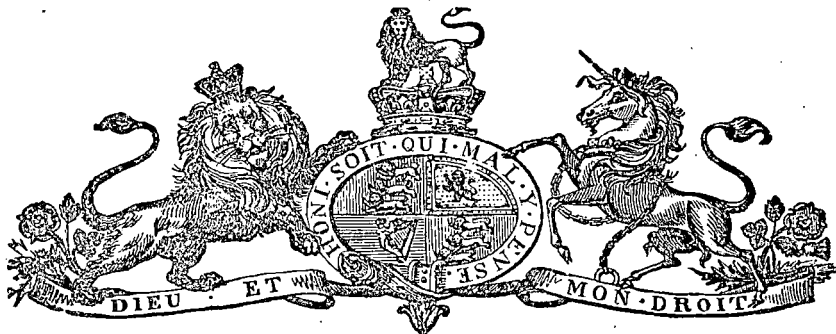
TASMANIA.

C O R O N E R ' S F E E S .

CORRESPONDENCE WITH THE WARDEN OF THE MUNICIPALITY OF GLAMORGAN.

Return to an Order of the House. (Mr. John Meredith, 24 July, 1862.)

Laid upon the Table by Mr. Innes, and ordered by the House to be printed,
6 August, 1862.



CORRESPONDENCE between the EXECUTIVE GOVERNMENT and the WARDEN of the RURAL MUNICIPALITY of GLAMORGAN, respecting the Payment of Fees for the performance of his Duty as Coroner.

Swansea, 17th December, 1861.

SIR,

I HAVE the honor to call your attention to the refusal to pay me Inquest Fees, and to observe that I consider it nothing less than a breach of faith on the part of the Government. When Rural Municipalities were established by the No. 2 Act, the amount of Grant in aid was fixed according to the actual cost of Police; and the various Districts included in the Schedule were invited to take the management into their own hands, to see if more satisfactory results could not be accomplished. I have no hesitation in saying it was no more the intention of the Legislature to throw on the several Districts the expenses of Coroners' Fees than of the Supreme Court Prosecutions; and, in proof of this, I may mention that, ever since the establishment of Rural Municipalities, till within the last four months the Coroners' Fees have been regularly paid by the Government.

I do not think it necessary to enter into the subject at any length, as I feel convinced that, upon re-consideration, you will at once see the impolicy of breaking faith with Rural Municipalities during the Five years for which the agreement was made.

With this, I return my Account, and beg to remind you there is another one remaining unpaid.

I have the honor to be,

Sir,

Your most obedient Servant,

A. GRAHAM, *Warden.*

The Hon. the Colonial Secretary.

Swansea, 14th January, 1862.

SIR,

SOME three or four weeks since, I addressed a letter to you respecting the non-payment of my Fees as Coroner, and in which letter I think I clearly established my right to be paid. Up to this time I have not received a reply; and I hope you will agree with me in thinking I have some cause to complain of the neglect. If the Government intend to adhere to their decision in repudiating the payment of this debt, I should like to be informed of the fact before the Parliament is prorogued.

I have the honor to be,

Sir,

Your most obedient Servant,

A. GRAHAM, *Warden.*

The Hon. the Colonial Secretary.

Swansea, 18th January, 1862.

SIR,

I HAVE this evening received the Cheque for Doctors Willis and Storey for their attendance at the Inquest; but my Fee, as Coroner, did not come. I think the delay must be caused in your Office.

I have the honor to be,

Sir,

Your most obedient Servant,

A. GRAHAM.

The Hon. the Colonial Secretary.

Colonial Secretary's Office, 31st January, 1862.

SIR,

IN reply to your letter of the 17th December last, upon the subject of the non-payment by Government of the Coroners' Fee to the Wardens of Municipalities, I have the honor to inform you that the subject was brought before Parliament when the Estimates for the current year were under consideration, and, after discussion, it was negatived.

Under these circumstances, the Government have decided to authorise the payment of such amounts as may have accrued during the past year but do not feel justified in entertaining any further claims of this character.

I have, &c.,
W. HENTY.

A. GRAHAM, *Esq.*, *Warden Rural Municipality of Glamorgan.*

Swansea, 21st February, 1862.

SIR,

I HAVE the honor to acknowledge the receipt of your letter of the 31st January, in answer to mine of the 17th December last on the subject of Coroners' Fees to Wardens; and, in reply, to inform you that, as you decline to go into the merits of the case, and show by what reasoning the Government has thought proper to commit such a breach of faith towards this Municipality, I shall decline for the future to hold any Inquests, and shall also write to other Wardens recommending them to pursue a similar course. Time alone can prove whether the Government have acted wisely in depriving the Municipalities of any rights they were led to expect would be continued to them when they adopted Municipal action.

I now forward an Account for an Inquest held last week, and will thank you either to forward a cheque for the amount, or send me a positive refusal to pay it.

I have the honor to be,
Sir,

Your most obedient Servant,
A. GRAHAM.

The Hon. the Colonial Secretary.

T A S M A N I A.

Coroner's Inquests.

HER MAJESTY'S GOVERNMENT *Dr.*

To A. GRAHAM, Esq., Coroner.

No.

JOHN CLUES, died suddenly on the 15th Feb., 1862, aged 6 weeks; son of John Clues, free, and Sarah Clues, a native of the Colony. Verdict of Jury—"That the said John Clues died from Natural Causes."	For holding an Inquest on the Body of	£	s.	d.
	John Clues at Swansea on the 15th day of February, 1862	2	2	0
	For Travelling			
		£2 2 0		

Amounting to Two Pounds Two Shillings.

A. GRAHAM, *Coroner.*

The Inquisition above mentioned has been duly received and filed in this Office.

Registrar of the Supreme Court.

RECEIVED from F. M. INNES, Esquire, Treasurer, pursuant to Authority of the Governor dated , the sum of Two Pounds Two Shillings, being the amount of the within Account of Particulars.

A. GRAHAM, *Coroner.*

£2 : 2 : 0

Witness to the payment—

Colonial Secretary's Office, 10th March, 1862.

SIR,

I BEG to acknowledge the receipt of your letter of the 21st ultimo, enclosing an Account for Coroner's Fees for an Inquest held by you on the 15th ultimo, and informing me that as I decline to go into the merits of the case and show by what reasoning the Government have thought proper to commit such a breach of

faith towards the Glamorgan Municipality, you will decline for the future to hold any Inquests, and will also write to the other Wardens recommending them to pursue a similar course.

In reply, I beg to refer you to the latter portion of my letter of the 31st January last, as containing the decision of the Government upon the question, and from which they see no reason to depart.

I have, &c.,

F. M. INNES, (*pro Colonial Secretary.*)

A. GRAHAM, *Esq.*, Warden Rural Municipality of Glamorgan.

Swansea, 15th March, 1862.

SIR,

I HAVE the honor to acknowledge the receipt of your letter of the 10th instant in reply to mine of the 21st ultimo, and have, according to your wish, referred to "the latter portion of your letter of the 31st January last," without being able to discover any reason for the breach of faith towards Glamorgan by withholding the payment of Coroner's Fees to the Warden.

If you were dealing with any of your salaried servants you might perhaps say—"We require you to do such and such acts, and shall withhold payment of the usual fees," but I do most positively deny your right to treat me as a subordinate of the Government, and will not submit to any *Executive Regulations* by which I may be deprived of my rights. The *Parliament* offered Municipal Government to the various Districts on *certain terms*. The District of Glamorgan accepted the offer, in the belief that implicit confidence could be placed in the Executive Government in the carrying out of those terms.

I now ask (and beg to refer you to the Parliamentary Papers of Session 23 for an answer) what were the *terms* proposed, and what were the *duties* required in return?

If you can show that Coroners' duties *without payment* were included in that arrangement, I shall cheerfully perform such services without applying for the Fees; but, in the absence of proof to the contrary, I do assert, without fear of contradiction, that we were only asked to perform, and are only paid for performing, the *Police duties* of the District.

It should not be forgotten that, when the Legislature passed "The Rural Municipalities Act," it was permissive, not imperative; that an offer, on *certain terms*, was made for a *fixed period*, which was accepted; and that such agreement cannot be honorably broken without the consent of all parties concerned.

A reference to past Estimates clearly proves my assertion; for it is undeniable that the amount voted for Coroners' Fees has been a separate Estimate, in which a certain sum has been apportioned to each District, exclusive of and in addition to the Police expenditure.

I have, I think, also a right to complain of the manner in which I have been treated in this matter. In the early part of December last I was invited to bring the case fully under the notice of Government, with a view to its reconsideration as far as Rural Municipalities were concerned.

I did so by letter on the 17th of that month, and, after waiting three or four weeks without a reply, I wrote again, and not until the 31st of January last, the day on which the Premier announced His Excellency's intention to prorogue the Parliament, did I receive any answer to my letter.

Until it is clearly shown that it is the duty of Wardens to hold Inquests, as Coroners, *without payment*, I beg distinctly to inform you that I will not hold another, but will leave future Inquests to be holden by a Coroner whose demands for payment cannot be withstood.

You will, I trust, have the goodness to reply to this communication without unnecessary delay.

I have the honor to be,

Sir,

Your obedient Servant,

A. GRAHAM, Warden.

The Hon. the Colonial Secretary.

Colonial Secretary's Office, 26th March, 1862.

SIR,

I BEG to acknowledge the receipt of your letter of the 15th instant, upon the subject of the withholding of Coroners' Fees from the Wardens of Municipalities.

After the opinion expressed by Parliament upon this question, it would be of little avail to enter into a prolonged correspondence respecting the objections taken by you to the performance of a duty attached by

Law to the Office of Warden ; but, in the meantime, I beg to inform you that it is my intention to submit the entire Correspondence, at an early date, for the consideration of the Governor in Council ; and I shall afterwards take an opportunity of again addressing you on the subject.

I have, &c.,
WM. HENTY.

A. GRAHAM, *Esquire, Warden, Glamorgan.*

Colonial Secretary's Office, Hobart Town, 29th March, 1862.

THE accompanying Correspondence relates to the refusal on the part of the Government to pay Coroners' Fees to the Wardens of Rural Municipalities.

The Government decided last year that Stipendiary Magistrates should perform the duties of Coroners without Fee ; and the decision extended to Wardens of Rural Municipalities, inasmuch as they are Coroners by special Enactment.

The subject was brought under the notice of Parliament during the late Session, and the Government were confirmed in the view they had adopted respecting the duties and responsibilities connected with local self-Government, by the refusal on the part of the Legislature to sanction the payment of Coroners' Fees to Wardens.

Mr. Graham, the Warden of Glamorgan, deems the determination of the Government to discontinue the payment of the Fees a breach of faith ; and states that it is his intention not to hold another Inquest, but will leave them to be held by a Coroner whose demands for payment cannot be refused, until it is clearly shown that it is the duty of Wardens to hold Inquests, as Coroners, without payment.

The Ministry feel that one of the principal objects to be attained by the introduction of Rural Municipalities is to relieve the General Government of burdens justly belonging to special localities ; and they feel that, in thus surrendering to the Local Councils the management of their own affairs, aided as they are at the same time by Money Grants from the General Revenue, they are entitled to expect that each District will be prepared to discharge the duties which are thereby entailed.

It becomes a matter for consideration whether, as the Warden of Glamorgan has declined to act as Coroner unless he is paid by the General Government, he should not be informed that, as he is by Law appointed Coroner, any Inquests which may be held by any other Coroner in the Municipality will be paid by the Colonial Treasurer in the usual manner, and the amount deducted from the Grant in aid of the Municipality, unless satisfactory reasons are adduced to prove that it was impracticable for the Warden to perform the duty.

FORWARDED to the Honorable the Attorney-General, with the request that he will give his opinion as respects the obligations of Wardens of Rural Municipalities to perform Coroners' duties without Fee.

B. TRAVERS SOLLY.
7 April, 1862.

I HAVE been in correspondence with Mr. Graham on the subject of Coroner's Fees, and have informed him, and also Mr. Shaw, that, for the future, no Coroner's Fees will be paid to Mr. Shaw unless the Warden is unable to act as Coroner.

Will the Colonial Secretary be good enough to give the necessary instructions to have effect given to this decision.

W. L. DOBSON.
6 May, 1862.

Colonial Secretary's Office, 8th May, 1862.

MEMO.

IN Rural Municipalities, where an Inquest is held by a Coroner other than the Warden, the Governor in Council has decided that the Fee for holding such Inquest shall not be paid, unless it be satisfactorily shown that the Warden was unable to hold it.

By Command,
WM. HENTY.

The Colonial Treasurer.

Attorney-General's Chambers, 14th April, 1862.

SIR,

THE Correspondence with reference to the non-payment to the Colonial Treasurer of the Fees received by the Council Clerk as Registrar of the Court of Requests held at Swansea, and also with reference to your refusal to act as Coroner, has been laid before me.

With reference to the Court of Requests' Fees, I fully concur in the opinion expressed by the Solicitor-General,—that they must be paid into the Colonial Treasury. It is the duty of the Registrar (*i.e.*, the Council Clerk) to account for and pay those Fees; and it is equally the duty of the Government to collect the Revenue arising from those Fees.

Under these circumstances, there is no alternative but to compel the payment of these Fees by an appeal to the Supreme Court,—a course, however, which I trust may even now be avoided.

If the Solicitor-General and I are right in the opinion we entertain, the result must be that the Fees will be recovered in the Supreme Court, and that the heavy costs of the proceedings will fall on the Registrar, unless he is indemnified by those who require him to disregard the Law, and in that case upon those who indemnify him.

If my opinion and that of the Solicitor-General do not satisfy you, may I suggest the propriety of your taking the opinion of some lawyer in whose judgment you may have confidence, in order that, if my view of the Law is the correct one, the governing body of a Municipality, or its Officer, may not appear before the Supreme Court as wantonly setting the Law at defiance after it has been distinctly pointed out.

As to the duty of Coroner, there can be no question that, by virtue of your Office of Warden, you are a Coroner; that the duties of Coroner are thus by Law added to your duties as Warden; and that there is no provision in the Act creating you Coroner either requiring you to be paid out of the General Revenue for the performance of your duties as Coroner or Warden, or making the performance of your duties as Coroner in any way conditional on the payment of Fees to you by the Government.

The Act directly imposes on you the duty of Coroner; and no act or neglect of the Government can relieve you from the performance of those duties, or from the consequences of wilfully neglecting them.

I need hardly point out to you that, to refuse to perform those duties is to contravene the Declaration made by you on taking Office—"I take the Office upon myself, and will duly and faithfully fulfil the duties thereof;" and the contravention of which Declaration is, by "The Municipalities Act," declared to be a Misdemeanor.

Your contention amounts to this: That, because there is a dispute between yourself and the Government as to the payment of certain Fees to which the Government deny you are entitled, and for the payment of which provision was refused by Parliament, you will not perform certain duties which you admit are imposed on you by Act of Parliament.

I cannot believe that, when you consider the matter calmly, you will continue to maintain your present views, which are in direct contravention of the Law, and *can only interfere* with the quiet and good government of your Municipality, and possibly tend to jeopardise the lives and property of its inhabitants.

I know nothing more likely to bring Municipal action, for which you have been so warm an advocate, into contempt and disrepute than the fact that a Warden, whilst knowing the Law, in the execution of his Office wilfully refuses to obey it, and even counsels other Wardens to unite with him in setting the Law at defiance.

The Law, however, is sufficiently strong to vindicate itself, for, to quote the language of high authority on the Law of Coroners, "if, after notice, a Coroner do not arrive in convenient time to view the body and take his inquisition, he may be fined and imprisoned." Neglecting to hold an Inquest is a Misdemeanor, and may be criminally prosecuted like any ordinary Misdemeanor.

I write this letter in no way as a threat. I am only desirous of affording you the benefit of my own opinion on the Law and the facts, if you think it worthy of your attention.

Will you be good enough to favor me with an early reply, both as to the Fees and the Inquests. And may I express a hope that, in re-considering both matters, you will concur with me, that reason and obedience to the Law alike dictate an alteration in the views expressed by you in the Correspondence.

I have the honor to be,
Sir,

Your most obedient Servant,

W. L. DOBSON, *Attorney-General.*

The Warden, Glamorgan.

Swansea, 17th April, 1862.

SIR,
I HAVE the honor to acknowledge the receipt of your letter of the 14th instant, referring to the Correspondence that has passed between the Colonial Secretary, the Colonial Treasurer, and myself, on the questions of General Sessions Fees, and the non-payment of Coroner's Fees to me.

I am glad to find these matters have been handed over to you, for I now think there is some chance of having them settled upon their respective merits.

You say, "With reference to the Court of Requests' Fees, &c." Do you mean to say that our Court of General Sessions is a "Court of Requests?" If so, and we are bound to hand over those Fees to the Government, is the Government not bound to reimburse us in the expenses we are put to in maintaining such Court? I wish to direct your particular attention to this point.

We have also to find the Books and Stationery, as well as Officers. And the other day I received a letter from the Sheriff, telling me that, if any person was committed to Gaol by such Court in default of paying the amount awarded to the Plaintiff, they must be forwarded to Oatlands at *our* expense. Is it possible that the Law throws upon us all these extraordinary expenses, and at the same time takes from us the only source of Revenue we have to meet them?

These are the points I have wished answered by the Colonial Treasurer and Colonial Secretary, but they have both evaded them. I told the Colonial Treasurer, in one of my letters, that I wished the matter fully discussed, in order that we may appeal to Parliament should the present Law be found defective.

I will not allow myself to think for a moment that you held out the terrors of the Supreme Court in any way as a threat; but, at the same time, I cannot help remarking that it would have been better to have first answered my objections, as Law is unquestionably a cheaper commodity with you than with us.

With respect to the duties of Coroner, you say, "The Law does not say that Wardens, as Coroners, *shall* be paid." May I ask, does it say "they shall *not* be paid?" And, if it is silent on the point, is it not as fair to construe it one way as the other? If the Law merely made me Coroner of the District, there would not be so much objection; but it makes me a Coroner of the Territory, and I am liable to be called upon to go to Spring Bay or Falmouth should the Resident Coroner be absent.

I have taken care that no injury should arise to the public through my dispute with the Government, and have told the Superintendent of Police (who is generally the person who sets the Coroner in motion), that whenever Mr. Shaw is from home, to report the death or fire to me.

I have always had great respect for your legal opinion; and, in the hope that you will look carefully through the whole of the Correspondence, and favor me with it on the points raised,

I have the honor to be,
Sir,

Your most obedient Servant,

A. GRAHAM, *Warden.*

The Hon. the Attorney-General.

Attorney-General's Office, 22nd April, 1862.

SIR,

I HAVE the honor to acknowledge the receipt of your letter of the 17th instant, by this morning's post.

In it you say, "Do you mean to say that our Court of General Sessions is a *Court of Requests*?" I unhesitatingly answer yes, except of course in the mere name. The jurisdiction and powers of the one Court and the other are the same, and the *duties of the Officer* (except the Chairman and Commissioner) of both Courts are the same, (Section 9, 24 Vict., No. 6.) The Council Clerk in a Municipality is required to perform the duties of the Registrar (Section 5); and one of the duties of the Registrar is to pay all Fees received into the Colonial Treasury. This train of reasoning must, I think, be obvious even to a layman.

You then enquire if, under the circumstances, the Government is not bound to reimburse you the expenses of maintaining the Court? This raises the very same question as that raised as to Coroners; viz., where an Act declares that certain persons shall perform certain duties, and the Act is silent as to remuneration for the performance of those duties, whether the Government is not bound to pay for their performance out of the General Revenue? I again unhesitatingly answer in the negative. The Act imposes a duty on those persons, *but none on the Government*. And if any remuneration is made to such persons, it cannot legally come out of the General Revenue.

So far for my views of the construction of the *Acts of Parliament*. Into the propriety of legislating, or otherwise, it is hardly necessary for me to enter, as the sole question between yourself and the Government at present is, not what the Law ought to be, but what the Law is; and I do not believe that any difference of opinion can exist on the latter point. I would only remark that, should Legislation take place, I should approve of the whole of the Fees, from whatever source, received within a Municipality going into the Treasury of that Municipality.

I trust, therefore, that you will see the propriety of complying with the Law, which can neither be altered by the Government or yourself: obedience to which is the duty of every good citizen.

With respect to the Coroner's Fees, I had hoped that what I said in my last letter would have sufficed to induce you to see the propriety of complying with the Law. I can hardly add anything to what I have already said. One question, however, you put, and that is—"may I ask does the Law say they (Coroners) shall not be paid?" The Law is silent as to their receiving any remuneration. They are Wardens, and their salary as such is for the performance of all their duties; *at any rate*, the Law does not require the Government to pay Wardens for acting as Coroners, *but does most distinctly require the Wardens to act as*

Coroners. You do not deny that you are bound by Law to act as Coroner; and the Law does not make your acting as Coroner conditional on being paid by anyone, and yet you refuse to obey the Law.

I cannot do more than point out to you my strong opinion that you are acting illegally; and I think you must yourself admit that you are doing so in refusing to hold Inquests, although in your last letter to me you appear to have avoided, as yet, any express refusal to hold an Inquest.

From your letter, I gather that, in order to evade the Law and to avoid the performance of those duties which you must admit are by Law imposed upon you, you have instructed the Superintendent of Police not to inform you, but to inform Mr. Shaw when a death or fire occurs requiring an Inquest, and you are only to be informed "when Mr. Shaw is from home." It is the undoubted duty of the Superintendent of the Police to report to you at once (as having control of the Police,) any sudden death or fire requiring an Inquest; and I cannot too strongly express my regret that one holding the position of Warden should not only himself evade the Law, but require his subordinates to aid him in doing so.

Mr. Shaw must not expect to be remunerated by the Government if he performs the duties by Law imposed upon you; he must do so gratuitously. And if you exercise your authority as Warden to require your subordinates to formally give notice to Mr. Shaw of any death, &c., requiring an Inquest to be held, so as to render Mr. Shaw criminally liable in case he neglected to hold the Inquest, Mr. Shaw may, if he pleases, intimate to me his desire to cease to be a Coroner, and I will at once cause his Letters Patent to be cancelled, leaving you sole Coroner in the District. If Mr. Shaw is willing to continue to act gratuitously in your place, he may, of course, do so.

I believe, however, that, on reconsideration, you will look upon obedience to the Law as the only dignified and proper course for you, as Warden of Glamorgan, to adopt.

I have written hurriedly, as I leave Town this afternoon for some days.

I have the honor to be,
Sir,

Your most obedient Servant,

W. L. DOBSON.

The Worshipful the Warden, Glamorgan.

Council Chambers, Swansea, 28th April, 1862.

SIR,

I HAVE the honor to acknowledge the receipt of your letter of the 22nd instant, in reply to mine of the 17th instant, and am really glad to find that you fully admit the *justice* of our holding over the disputed Fees; but, at the same time, you state that there is a *legal* difficulty in the way of our doing so.

You also say,—“Should Legislation take place, I should approve of the whole of the Fees, from whatever source, received within a Municipality going into the Treasury of that Municipality.” I accept this declaration as fair and candid on your part, and shall not have any further contention on the point, but recommend the Council, at its first Meeting, to request the Treasurer to remit the amount to the Government,—which I find, on reference to the Books, reaches the sum of Three Pounds sterling for the year 1861.

As you state that our “Court of General Sessions” is a “Court of Requests” in every thing but “name,” you will not, I consider, deny that, *as a Court of Requests, it is entitled to support from the Government,—see Section 25 of 6 Vict., No. 9, which expressly states that the Fees arising from such Courts shall be applied towards the maintenance of Courts of Requests of this Island.*

This Court is not held without expense. No doubt that, being made to a certain extent dependent upon and subordinate to the Council of Glamorgan, the expenses are reduced to the lowest figure. Still there are expenses not necessary for me to detail here, which are *extra Municipal*, and for the payment of which there should be some provision from those receiving the Fees arising *therefrom*. As the Law, even now, assumes that Courts of Requests cannot be held without incurring expense, and provides that such expense shall be paid *by the Government out of the Fees received in those Courts*, I would put it to you, as a Member of the Executive, whether, pending further and more satisfactory Legislation on this question, the point may not be satisfactorily settled by the Government making a small Grant to the Court of General Sessions held in Glamorgan; for surely, if it is just to reimburse us for the future, it must be equally just to do so for the past. Whilst the course I have here indicated would enable the Government to say they had enforced the strict letter of the Law, as laid down by the Attorney-General, it would, at the same time, afford the opportunity of granting an act of justice to the Municipality of Glamorgan.

I now come to the consideration of the Coroner question, and must at once frankly admit that, at first sight, your arguments appear quite irresistible. On calm reflection, however, it seems to me that you have overlooked a few points, which I will now endeavor to bring under your notice; and I flatter myself that I shall succeed in convincing you that the position I have all along maintained is the right one. I admit, in the first place, *that Wardens are, by Law, Coroners of the Territory*,—the same as all other Coroners who receive their appointments by Letters Patent from the Crown. The object in thus constituting Wardens Coroners was not, I would submit to you, to *compel them* to hold Inquests *gratis*, but rather to put the Warden for the time being in a position (as regards the administration of the Law,) *quite equal to that of any private gentleman in the Municipality.*

If the view taken by you were the correct one, the Wardens, as Coroners, most certainly would have only had a *local* jurisdiction.

The very fact of the Law making Wardens *Coroners* of the *Territory*, the same as all other Coroners, is, to my mind, the most convincing proof that no distinction was intended to be made, either in the nature of their duties to be performed, or the mode of remuneration for the performance of those duties. And in no part of the British Dominions, as far as I can ascertain from the scanty means at my command, do Coroners hold Inquests without being paid either by Fees or a fixed Salary: so essential is the Office considered for the security of life and property.

In the next place, I would refer to the fact that, up to the end of last year, *I, as Coroner, by virtue of my office as Warden, was paid by the Government for every Inquest I held up to that date*; and if the view you take be the correct view of the case, may I enquire how it escaped the notice of the Executive for *Two years*? Why was it not intimated to me, *on the first Inquest I held*, that Wardens were not entitled to Inquest Fees? By the regular payment of the Fees to me by the Government for the time above-named, *a precedent has been established*, and allowed me to draw therefrom the conclusion that your argument on this point is deprived of much of its force.

I admit, secondly, that the Executive have the *power* to require their Stipendiary Magistrates to hold Inquests without Fees, by the same rule as they have the power to make them perform any other duties; viz., by making it conditional upon retention of their Offices. *But* it by no means follows that, because they have the power over their own paid servants, that they must assume *the same control over Wardens, who are perfectly independent of Executive interference*.

The Law very clearly defines a Warden's duties; and, should he neglect them, the power (*i.e.*, the Municipal Council) that places him in Office can easily remove him. I can therefore afford to pass over your complimentary charge of "a desire to evade my duty" without further notice, as I should be sorry indeed, notwithstanding your strong expression of opinion on my conduct, to say one disrespectful word to a gentleman holding your high and important Office. I am pleased to think the dispute between us is not a legal one, as it would be most unseemly in me to be contending with the Attorney-General of the Colony on a point of Law. And, were it a point of Law only, I should of course give way to you at once. *But*, while I have the greatest respect for, and confidence in, your legal opinion, I think I might, without laying myself open to a charge of grave impropriety, venture to differ with you on a Constitutional question, particularly when it so seriously affects the privileges of the Office imposed upon me by Law.

The question is, in my opinion, purely a Constitutional one, and therefore worth some trouble in settling upon a sure and sound basis.

The whole question hinges upon the payment of Fees,—which I contend cannot fairly be taken away, nor the expense thrown upon the Municipality, without the authority of Parliament. If this point is once conceded, what guarantee have we that we shall not be told by the Executive to pay for the preparation of the Jury List, the Stock and Crop List, and the attendance of Witnesses in cases of Petty Larceny? The holding of Coroners' Inquests is quite as important for the interests of the *public at large* as the three matters first named, and has an equal claim upon the General Revenue for payment.

Besides, how could I consistently certify for the payment of Medical Witnesses and for the interment of paupers (I am aware there is a Law for the former,) if the Government did not recognise *my own services*? Would the applicants for such payments not be very likely to be told by the Authorities at the Treasury—"We know nothing of these accounts; they are authorised and certified to by the Warden Coroner of Glamorgan, and we refer you to the Municipal Council thereof for payment?" Since we commenced Local Government, the Legislature has thought proper to impose on Rural Municipalities the expense of preparing their own Valuation Rolls, but it has done so by Enactments (see Clause 3, 25th Vict., No. 25.) It is reasonable, therefore, to suppose that, had it intended to have imposed the payment of Coroners' expenses upon the Municipal Districts, it would have been provided for in the same Bill. Its very title, "An Act to make further provision in respect to Rural Municipalities," shows that no further interference was then intended with the Municipal Funds than what the Act contains.

To that part of your letter in which you say—"you will write to Mr. Shaw and ask him to resign, so as to leave me sole Coroner of the District," I shall make but little comment, beyond expressing a hope that, upon more mature consideration, you will see cause to regret having expressed yourself so hastily. It would, indeed, be a fearful state of things if the Executive, upon a little difference arising between them and an individual in the capacity of Coroner, should act on the principle of writing to other Coroners asking them to resign, in order that they may carry out their policy of coercion, by compelling one person to perform the whole duties of a District.

This would be truly enjoying the blessings of Free Institutions with a vengeance. *But*, whatever Government may be despotic enough to do under such circumstances, I have far too high an opinion of Mr. Shaw, individually, and of the whole of the Coroners of Tasmania, to suppose for one instant they would lend themselves to the accomplishment of such an act of tyranny; for, after all, what does the dispute amount to? Why, simply the payment of a small Fee, which I claim *upon principle*, for holding the Office of Coroner only during my Wardenship,—it can make but little difference to me in a pecuniary point of view.

It would have been far more dignified on the part of the Government, and have spared a great deal of trouble and unpleasant feeling, if, when this question was first mooted (the Law here being silent on the point), they had endeavored to settle it by analogy and custom of other Countries (as Coroners' duties are guided

as much by custom as by Statute), instead of treating the Wardens of Rural Municipalities as their subordinates,—a position which I, for one, will never admit.

It must not be forgotten that I have proved, beyond the possibility of contradiction, that the view I have taken in claiming Inquest Fees is fortified by *precedent in Tasmania* for the years 1861 and 1862.

In conclusion, I must say I think you have taken a mistaken view of the duties of Wardens in regard to their holding Coroners' Inquests without pay or emolument; and, however much I might incline *personally* to perform Coroners' duties *without payment*, you will, I am sure, fully indorse the doctrine, that it is my bounden duty to maintain the Office of Warden in its integrity, so as to be enabled to hand it down in its completeness to my successor, even though it may cost me a large amount of labor and a few stern rebukes in the performance of that duty.

I should have replied to your letter by return of post, had you not intimated your intention of being absent from Town for some days.

I have the honor to be,
Sir,

Your most obedient Servant,

A. GRAHAM, *Warden.*

The Hon. the Attorney-General.

Swansea, 2nd May, 1862.

SIR,

ON reading over the Letter-book, I find the Clerk has made a mistake in copying a paragraph near the end of my letter dated 28th April; and, as he made his copy from the book, I presume the same mistake occurs in the letter I sent to you.

The paragraph I allude to is the one speaking of "precedents in Tasmania for the years 1861 and 1862," it should have been "for the years 1860 and 1861."

I have the honor to be,
Sir,

Your most obedient Servant,

A. GRAHAM.

The Hon. the Attorney-General.

Attorney-General's Office, 6th May, 1862.

SIR,

I HAVE the honor to acknowledge the receipt of your letter of the 28th ultimo, which was received by me on the 2nd instant.

I am happy to learn, as to the Court of Request Fees, that you propose to "recommend the Council, at its first Meeting, to request the Treasurer to remit the amount to the Government."

As to your suggestion that the Government should make a small Grant out of the Court of Requests' Fees paid into the Treasury to the Court of General Sessions held at Glamorgan, to reimburse expenses incurred in holding that Court as a Court of Requests, I have to inform you that Parliament alone can give effect to that suggestion.

With reference to Coroners' Fees, I have already expressed my opinion as to the Law. And as to your reference to the intentions of Parliament on the subject, I would remind you (so far as my recollection serves me) that, a Vote having been taken for Coroners' Fees to an estimated amount (excluding from that Estimate any amount for Fees to Wardens when acting as Coroners), the question was, at your own request, again brought specially before the notice of the House of Assembly, and the estimated amount was refused to be increased so as to provide for the payment of Fees to Wardens for holding Inquests.

If I am right in my recollection, and I believe I am, there are no funds out of which the Government *can* pay your Fees as Coroner without over-riding the express decision of the House of Assembly.

It is the duty of the Government to give effect to the decisions of Parliament; and, in order to do so, it now becomes necessary to see that Mr. Shaw is only paid for Inquests held in Glamorgan when you are unable to act as Coroner,—that is according to the express rule stated in Parliament and approved, upon which a smaller Vote was taken for Coroners' Fees than in previous years.

I have accordingly written to Mr. Shaw, and I enclose you a copy of my letter to him.

I do not propose to follow you through the lengthy statements contained in your letter, which do not deny that by Law the duty of Coroner is imposed upon you, but you simply contend that you are entitled to be paid.

If you are by Law entitled to Coroners' Fees, then, if you perform your duty, you have your remedy at Law, and can enforce the payment of those Fees. If you are not by Law entitled to those Fees, then the Government have no power, under the circumstances, to pay those Fees.

Your duty is clear and admitted. That of the Government is disputed by you, and your contention merely amounts to this,—that because you believe the Government is wrong in not paying your Fees, you will therefore do what is clearly wrong, and refuse to perform a duty about the liability on your part to perform which there can be and is no dispute. The soundness of such a position I cannot admit, even when attempted to be supported by the lengthy, and what appears to me for the most part fallacious, reasoning contained in your letter.

One part only of your letter do I deem it necessary to comment upon, not as being any more fallacious than much of the rest, but because I think well that words should not be attributed to me, and placed between inverted commas, as a quotation from my letter, when no such words occur in it. On the second side of your third sheet of foolscap I find as follows:—"To that part of your letter in which you say '*you will write to Mr. Shaw, and ask him to resign, so as to leave me sole Coroner of the District,*' I shall make but little comment, beyond expressing a hope that, upon more mature consideration, you will see cause to regret having expressed yourself so hastily."

I am not willing to believe that such misquotation was designedly made, in order to afford some slight foundation for the tirade which occupies the subsequent side and a half of foolscap; but I suppose it is simply an inaccuracy which has inadvertently crept into your letter.

The steps taken with reference to Mr. Shaw will prevent the Public Revenue from being prejudiced in any way by your refusal to perform your duty as Coroner; and, so long as the administration of public justice does not suffer in consequence of your refusal, my duty to the public will have been discharged, and I shall have no further concern in the matter.

I have the honor to be,
Sir,

Your most obedient-Servant,

The Worshipful the Warden, Glamorgan.

W. L. DOBSON, *Attorney-General.*

Council Chamber, Swansea, 10th May, 1862.

SIR,

I HAVE the honor to acknowledge the receipt of your letter of the 6th instant, in which, amongst other things, you complain of a misquotation in mine of the 28th ultimo. I frankly admit that, on reference to your letter of the 22nd ultimo, the words are wrongfully quoted; although, as far as I am capable of judging, they express precisely the same meaning.

The words used by you are—"Mr. Shaw may, if he pleases, intimate to me his desire to cease to be a Coroner, and I will at once cause his Letters Patent to be cancelled, leaving you sole Coroner of the District."

The quotation, as written by me, runs thus:—"You say you will write to Mr. Shaw, and ask him to resign, so as to leave me sole Coroner in the District."

Here there is a distinction in *words* without a difference in *meaning*; for who could for a moment suppose that Mr. Shaw would send in his resignation, unless invited by you to do so. Your subsequent letter to that gentleman, under date the 6th instant, proves that the impression on my mind was right, although I was somewhat in error in the quotation of your words.

The slight error arose in consequence of your letter being mislaid when I was writing, and I had to depend upon memory only. It must, therefore, be seen that the misquoting was not imported as a foundation for the "*tirade*" (as you are pleased to term it) that follows.

Permit me to apologise for the error I have committed, and to observe that the fault seems somewhat contagious, for you to impute to me the issuing of orders that I have never contemplated.

I am in no way displeased by your characterising my reasoning as "fallacious," as it is natural for two persons taking opposite views, and unable to convince each other of error, to arrive at such a convenient conclusion,—not that I would stigmatize your arguments as "fallacious." I would merely remind you that a question often presents itself in two aspects.

I think you are laboring under a mistake when you say the question of paying Coroners' Fees to Wardens was brought specially before the House of Assembly at *my* request; for I have not the slightest recollection of asking any Member to do so. Such was unquestionably my intention, but *I was prevented, through not receiving an answer to my letter from the Honorable the Colonial Secretary till the day the Parliament was prorogued.*

There is, in my opinion, a great difference between the Executive not placing a sum upon the Estimates, and the Parliament, after discussion, refusing to vote it.

I remember perfectly well the Honorable the Premier *being reported* to have said in his place in the

House, "It is not the intention to pay Wardens Fees as Coroners," but I never looked upon that declaration as the voice of the House.

It appears to me the whole question must come under the review of Parliament during the approaching Session, when I hope to find you amongst the foremost in advocating our just claims for payment for the performance of a very important and (in Country Districts especially) an arduous duty.

Let the matter come fairly before the Legislature for discussion; let our claims be duly considered, and, whatever decision may be arrived at, I shall be perfectly ready and willing to bow to it.

I do not know what course Mr. Shaw will adopt with regard to his resignation or otherwise; but I shall take care, as I stated in a former letter to you, that no inconvenience shall arise with reference to the holding of Coroner's Inquests.

In the meantime, I beg that you will most distinctly understand that I am unconvinced by your argument of any impropriety in the course I have adopted, and that, if I do hold any Inquests before the Meeting of Parliament, I shall demand Fees for so doing, according to ancient usage. The question, in my opinion, is of far too grave a character to be disposed of in the summary manner you propose. It must come before the "Inquest of the Nation."

I have the honor to be,
Sir,

Your most obedient Servant,
A. GRAHAM, *Warden.*

The Hon. the Attorney-General.

Attorney-General's Office, 13th May, 1862.

SIR,

I HAVE the honor to acknowledge the receipt of your letter of the 10th instant by this day's post, and should have deemed the Correspondence closed but for the following paragraph:—"Permit me to apologise for the error I have committed, and to observe that the fault seems somewhat contagious, for you impute to me the issuing of orders which I never contemplated."

On looking through the Correspondence, I presume you must allude to the following paragraph in my letter to Mr. Shaw:—"Mr. Graham has, as I gather from his letter, instructed the Superintendent of Police to report to you, and to keep him in ignorance of, any death or fire requiring an Inquest to be held."

I base the statement made by me in my letter to Mr. Shaw on the following extract from your letter of the 17th April:—"I have taken care that no injury should arise to the public through my dispute with the Government, and have told the Superintendent of Police (who is generally the person who sets the Coroner in motion), that whenever Mr. Shaw is from home, to report the death or fire to me." From this quotation I still gather that the Superintendent of Police, whose duty would ordinarily be to report a fire or death to you at once, is only to report to you when Mr. Shaw is absent: in other words, that you are to be kept in ignorance, except when Mr. Shaw is from home. If I misconstrue your letter I regret it, but it appears to have but one meaning.

I have the honor to be,
Sir,

Your most obedient Servant,
W. L. DOBSON, *Attorney-General.*

The Worshipful the Warden, Glamorgan.

Council Chamber, Swansea, 16th May, 1862.

SIR,

I HAVE the honor to acknowledge the receipt of your letter of the 13th instant, and to inform you that you are quite right in thinking that the portion I refer to, as imputing to me the issuing of orders I never contemplated, is in a paragraph of yours of the 6th instant, to Mr. Shaw, in which you say:—"You gather from my letter that I have instructed the Superintendent of Police to report to him (Mr. S.), and keep me in ignorance of any death or fire requiring an Inquest." All I meant to convey to you in that communication was, that I have told the Superintendent of Police that, in consequence of my dispute with the Government, I would not hold Inquests if Mr. Shaw was at home, and that he was to report to him, as Coroner, any death or fire requiring an Inquest, but I never told him to keep me in ignorance of the circumstances.

The Superintendent knows his duty too well not to report all cases to me in my Magisterial capacity; and I have yet to learn that it is not the practice under ordinary circumstances for the nearest Resident Coroner to be called upon to hold an Inquest.

I have the honor to be,
Sir,

Your most obedient Servant,
A. GRAHAM, *Warden.*

The Hon. the Attorney-General.