

Procedure at Death Inquiries and Inquests

After discussion with the Attorney-General the Chief Justice has come to the conclusion that Registrar's ~~_____~~ (28) Circular No.10 of 1956 on the above subject was issued under a misunderstanding. It is, accordingly, cancelled.

2. Section 337 of the F.M.S. Criminal Procedure Code provides that a Magistrate holding a death inquiry "shall inquire when, where, how and after what manner the deceased came by his death and also whether any person is criminally concerned in the cause of such death".

3. This does not mean that the Magistrate is required to "lead" the evidence of witnesses. What it does mean is that there are certain questions to which the Magistrate must apply his mind.

4. In the case of every death inquiry there has been an antecedent Police investigation under section 329 and obviously the most convenient course for all concerned is for the Police to produce such witnesses as they have been able to find and to examine them in the ordinary way on the statements that have been taken from them. When this has been done it is, of course, open to the Magistrate to ask such additional questions as he may see fit bearing in mind his duty under section 337 and to permit such relevant questions as he may see fit by any interested party or his legal representative. He may also require additional witnesses to be called.

5. The same procedure should be followed in inquests held in the States of Penang and Malacca.

6. The present opportunity is taken to observe that in death inquiries while the cause of death and so forth must, of course, be gone into as carefully as possible regard must be had to the feelings of the relatives of the deceased and care should be taken to avoid questions being

asked or statements made which are not strictly relevant to the purposes of the inquiry but which might cause pain and distress. In particular, in suicide cases it is desirable to avoid any finding as to the state of mind of the deceased unless there is some substantial evidence on the point. The English practice of Coroners' juries finding temporary insanity in such cases was based on the English law that suicide is a felony and that the goods of a felon were forfeited to the Crown. The finding of temporary insanity was in most cases a charitable subterfuge to avoid the forfeiture of the deceased's property.

Forfeiture for felony was, of course, abolished in England many years ago but in many Coroners' Courts the old practice has lingered on. There has, however, never been any ground whatsoever for such a practice in this country and it should be remembered that in the light of modern thought the effect of finding insanity even temporary unless there be evidence to support such a finding may well be to attach an undeserved stigma to the surviving relatives, particularly children.

S.S. Gill
(S.S. GILL)
Registrar

The Federal Registry,
Supreme Court,
Federation of Malaya,
Kuala Lumpur.
4th December, 1959.

RSC 176/53(47); RSC 39/54

To
All Presidents, Sessions Courts.
All Circuit Magistrates.

c.c.
The Hon'ble the Attorney-General, Fed. of Malaya.