

have before him—the detection of the guilty and the protection of the innocent. No doubt, a public prosecutor in an arbitrary state is very dangerous to the liberties of the people; but a public prosecutor, under the influence of public opinion and Parliamentary responsibility, is, in my opinion, as far as the practical working of it is concerned, the best mode in which the criminal affairs of a country can be conducted. It is impossible to deny that as crimes are crimes against the public, so the public should be at the expense of prosecuting and punishing them. And whatever may be the practical operation of the system in England, of which I say nothing, because I do not know much—whatever may be the practical operation of it, it has no right to leave upon a private prosecutor—who may be supposed to prosecute only for the injury done to himself—the vindication of the great public law, the breach of which is truly at the ground-work of the proceedings. And, accordingly, it has been the desire in England for many years to accomplish, if possible, this most desirable change. Again we are beset, however, with the same difficulties that I have alluded to in speaking of other subjects. We work here upon a small scale—we can keep everything within bounds—the public prosecutor and his deputies are cognisant of every offence that takes place in all parts of the land. He knows the proceedings that have been going on, and therefore he can judge personally for himself, on his personal responsibility, of the things that are done. Well, a great minister of justice in England would find it difficult to undertake the work to this extent; and it is quite true that without direct personal responsibility the office is one unquestionably exposed to danger and risk. Then, again, from the enormous mass of the English population, it would be a very difficult thing to keep within the Crown office, as we do, the whole records of crime—of such crime as requires public prosecution. These are practical difficulties. Again I say I cannot deal with them—I have not even the knowledge or information to suggest how they should be dealt with. At the same time, I think I may say that if the system we have works well here, there must be the means, in one shape or other, of bringing it also unto practical operation in England. Well, there is another question that has been raised. If we are to give a public prosecutor to England, are we to take a coroner's inquest and grand juries from England? I think it is not impossible that a paper, of which I see my friend Mr. Smith has given notice, may propose to deal partly with that question, and therefore I do not think it necessary to enlarge upon it at any length. All I can say is, that if a coroner's inquest is intended for the protection of the subject, if it is intended for the purpose of taking care that the cases shall be investigated and examined, I think that object may be attained without the necessity of importing so large and wide a system from England. For my own part I believe that in no where in Europe is crime more uniformly investigated or more efficiently detected than it is with us.

#### CORONERS' INQUESTS.

But if a coroner's inquest is wished in order to detect crime—if the object is to ascertain and detect occult and latent crimes—I then say I would object to exchange a most efficient and philosophical machine for a very rough and doubtful one, because, if you are only dealing with the detection of the crime, can any man doubt that inquiry which is not public is the best and most efficient mode of detecting it? If you are to send a detective down to a remote county to ascertain the truth as to some act that had been committed in private, you would hardly put an advertisement in the newspaper that you had done so, and you would scarcely tell him, on his arrival, to proclaim at the market cross what he wanted. Quite the contrary, and there can be no doubt that the quiet investigation which goes on in the Crown Office in Scotland is infinitely better adapted to detect facts than the investigation which takes place before a coroner's inquest, which gives warning to the guilty, which throws suspicion upon the innocent, and

which, for the most part, though it has served its turn nobly, as the production of England against arbitrary power—for the most part, I believe, not really to be conducive to the detection of the more secret and difficult crimes. But there is another object—another result which our system accomplishes, which the coroner's inquest was greatly against—I mean the protection of the innocent. I am not at this moment saying that the coroner's inquest should be abandoned in England. It is consonant to the feelings of the English people, and has been productive of good in England. I am only comparing it with our own system, and I say that any man who has experience of the Crown Office work in Scotland will admit that if it is good for the detection of crime, it is very potent in the protection of the innocent—in preventing false rumours from getting about—in discouraging false accusations—in preventing colourable appearances from being tortured by the public gossip into accusations of crime. For all these things I would deprecate the introduction into Scotland of the system of coroners' inquests as it exists in England, leading sometimes as it may to the unhappy man, who is thrown into circumstances of suspicion, having the finger of scorn pointed at him during all his days, and those who hear the accusation may never hear the refutation. But I own I do not very well see how the administration of criminal law can proceed much longer in England without some institution like that of a Minister of Justice. If our experience in Scotland can be of any assistance, I am sure it will be a pleasure for us as well as a duty to afford it.

#### ADMINISTRATION OF THE LAW

The only other matter to which I intend to refer was the large and extensive question of the administration of the law—the mode of conducting cases, their expense, and the rapidity of decision and judgment. But I shall not enlarge on these topics. I thank you very heartily for the attention with which you have listened to me. There is also the question of the assimilation of the law of equity, which to English lawyers is interesting, and which is interesting also to us, but I shall not longer detain the session from its deliberations. Many nations have good systems of laws, but there is a stage and a progress in which we have now to a great extent outstripped the rest of the world. There have been many great and beneficent systems of law announced by despotic rulers—the next stage in a nation's history is the potent, free, and independent administration of them, and for this, more than anything else, have come the bloody wars on which the freedom of nations has been gradually built up; judges rising against the power of the Crown if it required them to decide contrary to the spirit of the constitution and the laws under which they lived. It is to England that we owe it chiefly, and it is a great boon, for which we never can be sufficiently thankful, that even in the very worst of times, and when political principles were forgotten, the noble spirit of her judges stood upright amidst the crash of everything else that was noble and free in that country, and asserted there, for the first time, I believe, in the history of the world, the majesty of the law above every other power in the country. But we are past that stage—the thing is done—we have vindicated the power of administering the law, unawed by terror from any side; and now we stand in the position—and few countries can say the same, happy is the country that can—that in perfect security, the law be it what it may, will be administered with honesty and vigour. We can call such an assembly as this, of those who are lawyers and those who are not—those who have transactions and have to regulate the law by which they proceed—we can call such a meeting as this to deliberate what the law ought to be, in the perfect conviction that if, in the end, public opinion shall come to think that there will be a change, that change will be effected by the most constitutional means.

His Lordship concluded his powerful and talented address amid loud acclamations.