

Ir. Rep.]

RE REARDON.

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Patrick Reardon to Richmond Prison for a period of seven days, where he remained still in custody of the Governor of said prison.

*Byrne*, in support of the motion.—According to the practice heretofore prevailing in this country, persons in custody charged with homicide have always been produced at coroner's inquests, under the orders or warrants of the magistrates, granted for that purpose. In this instance, after the discovery of the dead body, the coroner proceeded to hold an inquest, but, in consequence of instructions recently given to the police by the Crown authorities,\* the police did not produce the prisoner at the inquest. He was brought before a police-magistrate, who remanded him for a week. The magistrate, on the opposition of the Crown, refused the application that the prisoner should be transmitted, in the usual course, to the coroner's court; and the Crown authorities, on being asked, refused to apply for a *habeas corpus* to have the prisoner so transmitted. The coroner adjourned the inquest, so that a *habeas corpus* might be applied for. The prisoner himself desires to be present; otherwise, in his absence a verdict of wilful murder may be returned against him. He wishes to hear the evidence affecting him, and it is necessary that he should be present, in order that he himself may be tendered as a witness, or that, even if not sworn, he may make a statement, according to circumstances; † *Hayes*, C.L., 199. For this purpose, the court is asked, in its discretion, to issue the writ in aid of the coroner's court.

*W. Johnson*, Q.C., on behalf of the Crown, *contra*.—We admit that the court has power to issue the writ, in its discretion; but, special circumstances should be shown in order to justify the granting of the writ. Had such special circumstances existed, the Crown would have applied for the issuing of the writ, and so saved the prisoner the expense of doing so; but, no such circumstances have been shown that would have warranted the application. A question of grave importance in the administration of the criminal law then arises, namely, whether, without special circumstances, and as a mere matter of course, a writ of *habeas corpus* is to issue, if a coroner wish to have a prisoner produced before him who is in custody on remand. No precedent is to be found in which a prisoner has been produced before the coroner, on a writ of *habeas corpus*. This was admitted in *Re Cooke* 7 Q.B. 653.† It is not enough that, as stated, an application was made to the magistrate and

refused, to transmit the prisoner. The practice under which the metropolitan magistrates have, heretofore, transmitted prisoners to the coroner's court,\* for some indefinite period, and for an indefinite period, was not warranted by any principle of law; and the law officers of the Crown, having been consulted, gave their opinion that the practice was unwarranted in law, that the person so transmitted would be in illegal custody, and that the persons who had the prisoner in charge during such transmission would be liable to an action for false imprisonment, and, if in attempting to escape he were resisted with violence, serious consequences might be entailed on those who inflicted the injuries.† The duty of a police constable is, the moment he arrests a person on a criminal charge, to take him with all reasonable expedition before a magistrate; and the constable has no power whatever to take the prisoner before a coroner, or to take him from the magistrate to the coroner. The duty of the magistrate is to discharge the prisoner forthwith, if no facts are shown to warrant the prisoner's detention; but, if a *prima facie* case be made against the accused, then the magistrate should either commit him for trial, or, if the case were incomplete, commit him on remand for further inquiry, in order that it may be ultimately decided whether the prisoner should be discharged or committed for trial. Here the magistrate, having been apprised of the opinion of the law officers, concurred in it, and, accordingly, declined to accede to the application to send the prisoner in illegal custody to the coroner. The jurisdiction exercised in the magistrate's court is wholly different from that of the coroner. The magistrate deals with a criminal charge, and either decides summarily upon it, if he has jurisdiction, or, if he has not, puts it in train for further inquiry; while, the office of the coroner is not to arraign or charge a prisoner, but simply to ascertain how and in what manner the deceased person came by his or her death; the person suspected should not be considered in the coroner's court as an accused person, nor is he such until after the verdict is found; and no man's evidence could be excluded at the inquest on the ground that he might criminate himself: *Wakely v. Cooke*, 4 Exch. 511; *Jervis on Coroners*, 253. There is

\* See 7 Ir. L. T. 483, 533.—*REP.*

† In *re Galwey*, 19 L. T. N. S. 262, where an application was made, under 48 Geo. 3, c. 140, s. 1, for a *habeas corpus* for the purpose of bringing a military officer, in prison for debt, before a medical board for examination as to health, Cockburn, C. J., said, "The Court is asked to compel the sheriff to take the additional risk of conveying the prisoner to and from prison, when, if the Court has no authority to direct the writ to issue, he would be liable for an escape. The Court has no authority under this section."—*REP.*

\* See 7 Ir. L. T. 505; *Com. d.* 483, 533.—*REP.*

† See S. C. 14 L. J. M. C. 186, 9 Jur. 369.—*REP.*