Mr. TURNBULL.—How would you advise an accused person when a female juror was about to be empanelled?

Mr. ROSS-EDWARDS.—Women jurors served in the Shepparton Supreme Court for the first time this week. If a woman's name appears on the jury list, she can ask that her name be deleted. It will be interesting to see how many women will serve as jurors. I am inclined to think there will be few because it is typical of some women that they want to be on a jury until they are called. I think about nine-tenths of them will seek to have their names removed.

I am pleased that there has been no interference with the fundamental jury system. It is a great tradition of our system that a man shall be tried by his equals, and although from time to time there has been criticism of juries I believe the system can only improve as the general standard of education improves. My party is happy to support the Bill.

On the motion of Mr. DOYLE (Gisborne), the debate was adjourned.

It was ordered that the debate be adjourned until later this day.

STAMPS BILL.

This Bill was returned from the Council with a message intimating that on consideration of the Bill in Committee it suggested that the Assembly should make certain amendments in the Bill.

It was ordered that the message be taken into consideration later this day.

The sitting was suspended at 6.29 *p.m. until* 8.7 *p.m.*

JURIES BILL.

The debate (adjourned from earlier this day) on the motion of Mr. G. O. Reid (Attorney-General) for the second reading of this Bill was resumed.

Mr. DOYLE (Gisborne).—This Bill, on which I address the House for the first time, presents a unique opportunity to review the law as it relates to juries in this State and trial by jury generally. The measure is a particularly good one, bearing in mind the complexity of the background and tradition of trial by jury, not only as it has operated in this State, but as it operated before the system was adopted here. The Bill fairly represents the time and effort devoted to it by the Law Department and the Attorney-General. It is with some trepidation, not only because this is the first time I have addressed the House, but because I have heard admonitions from the Chair that honorable members should not quote, that I shall take the risk and read one reasonably small passage from Blackstone. Blackstone was one of the fathers of English law and, so far as trial by jury is concerned, it is appropriate that some note should be taken of his words because, upon his sentiments, expressed hundreds of years ago, has been based the great tradition of affection which exists in English law for trial by jury.

With your permission, Mr. Speaker I quote from *Victorian Law Reports*, 1949, and the celebrated case of *King* v. *Brown and Brian* in which was quoted this excerpt from Sir William Blackstone's *Commentaries* (1769)—

> The founders of the English laws have with excellent forecast contrived . . . that the truth of every accusation, whether preferred in the shape of indictment, information, or appeal, should afterwards be confirmed by the unanimous suffrage of twelve of his equals and neighbours, indifferently chosen, and superior to all suspicion, so that the liberties of England cannot but subsist, so long as this *palladium* remains sacred and inviolate, not only from all open attacks (which none will be so hardy as to make), but also from all secret machinations, which may sap and undermine it; by introducing new and arbitrary methods of trial, by justices of the peace, commissioners of the revenue, and courts of conscience.

That is significant because official and unofficial concern has been expressed over the years, right to the present day, as to the relevance of

the whole tradition of trial by jury. I shall refer to this later. It is significant that Sir William Blackstone, so long ago, referred to efforts to undermine trial by jury by indirect means.

> And however convenient these may appear at first (as doubtless all arbitrary powers, well executed, are the most convenient), yet let it be again remembered that delays, and little inconveniences in the forms of justice, are the price that all free nations must pay for their liberty in more substantial matters; that these inroads upon this sacred bulwark of the nation are fundamentally opposite to the spirit of our constitution; and that, though begun in trifles, the precedent may gradually increase and spread, to the utter disuse of juries in questions of the most momentous concern.

Over the centuries which have passed since the concept of trial by jury was introduced, changes in the pattern of its operation and in attitude to the institution have arisen. The changes are very much in accord with the emphases and influences at work on the tradition as it has operated through generations and centuries. There is now a fairly distinct separation of powers between the Judge on the bench and the jurymen in the jury box. This is an interesting development and one which is not in any way supported by any kind of legislation. In point of fact, the Bill makes no direct mention of the burden of duty which rests on jurymen as such.

Clause 27 places an obligation on jurors to "try all issues upon inquest," but it does not name any specific duties other than that. The very precept of trial by jury is a relatively strange one when viewed in the context of to-day's attitude. It would be rather strange for an Act to prescribe that twelve men and women of varying background and ordinary nature without a great knowledge of law should be selected at random in order to bring down decisions which involve questions of complex fact at law. It is notable that the practice which has arisen in our country over the years is not the result of a direct enactment of law but has arisen by tradition—that very tradition gives it a flavour which is a most important consideration when thinking in terms of adaptation or change to this institution which we inherited.

The origins of trial by jury are interesting. First, we might consider the definitions of terminology used. A juror was historically a man compelled by the King to be on his oath or to take an oath, and the derivation of "juror" is that he was a man sworn to tell the truth. The coroner was in fact an officer of the Crown who summoned the jurors or men to be sworn, and the inquest was an inquiry of these men once they were sworn to tell the truth. The Normans were a very practical people, and when they arrived on the shores of England they brought with them this institution of compelling men to tell the truth. The institution had its early historical background before the Norman invasion, but it is convenient to take note of it at that point, because that is where it first clearly appears in English law.

The Normans showed their practical nature when they chose to enlist spiritual aid in compelling earthly results. They used the medieval fear of man's eternal damnation for falsely swearing to elicit the truth from those who might not otherwise be inclined to tell it. The change which has taken place is a change from a group of men who were compelled by law to tell the truth about what they knew in their own areas. Of course, if they knew nothing about the issue being tried, they were not called to the jury. But now the pendulum has swung, and we have the accent on the ability of the jury to assess facts on the information it receives from outside. In the days of Henry II., the development of this tradition was greatly enhanced by the fact that he decided to use this form of trial in the King's courts. He saw in it a convenient way to bring to inquiries within the King's jurisdiction a

method of seeking the truth which was not otherwise available.

Two of the features that have emerged over the years are that there is a distinct separation of duties of Judge and jury. The jury decides questions of fact while the Judge deals with questions of law. This separation is not imposed by legislation but is nevertheless a very important part of the tradition. It is true to say that the Judge uses the jury in order to achieve the correct answer to the matter before him. Whatever verdict the jury brings in is not law until it is supported by the judgment made by the Judge. Another significant fact about trial by jury is that a jury does not have to ascribe reasons for its decision. It is a decision which is either "Yes" or "No"; "Guilty", or "Not Guilty" and, as such, it is not open to any question of ambiguity and is not open to criticism from others who may feel disposed to criticize it.

Before passing from the historical background, it may be of interest to remind the House that certain usages were attached to trial by jury which to-day would seem somewhat less than fair and just. In the days of Henry II., if a man chose to stand on his own decision which differed from that of the other eleven jurors, he was often rewarded for his efforts by a term of imprisonment which nowadays we would regard as going a little too far in the desire to obtain unanimity.

One of the other features was that often the jury had to be comprised of men of fairly strong stomach, because frequently they were locked in until they reached a decision. Indeed, they were starved into making the right one. In the trial of William Penn, who was the founder of the Quakers or Society of Friends—he was on indictment for treasonous activities—one juryman had the temerity to say that the accused was not guilty. He adhered to this decision, despite unjust treatment by the Judge, and it became one of the great traditions that this man, by holding to his decision, was able to sway the entire jury and have reversed the verdict which was desired by the Judge.

The origins of trial by jury in Australia have aroused discussion, because it is often felt that trial by jury was brought here by the first colonists to Australia. The late Dr. Evatt writing in the *Australian Law Journal* of 1936 made reference to the early arrival in this country of trial by jury, in these terms—

> It is established law that the early colonists of Australia did not carry with them the English jury system in civil and criminal cases and that it was adopted here only gradually and with many qualifications.

In 1823 the English Judicature Act was passed, and this was the turning point for trial by jury in this country —or more correctly the colony of New South Wales. When introduced, it had a definite military flavour. The jury comprised seven officers of military service, and it was only over the years that this system was adapted to conform to the historical pattern of trial by jury in the British tradition.

Over the years, many investigations and reports have been made by learned bodies, one of which culminated in the 1897 report of a Commission which was called upon by the then Governor of Victoria, Lord Brassey, to investigate the system of justice and delays in its administration. This has been a perennial problem and has given rise to much difficulty over a long period of time. The report of the Commission was signed by eminent members of this Chamber. I propose to read an extract from that report because it has significance, I think, for the concerns expressed from time to time to which I adverted earlier about the relevance of trial by jury in this day and age, particularly

in civil matters. I know that this Bill makes no provision for curtailment of trial by jury in civil matters, and this is of great concern to those of us who practise the law. Here is a part of the report which was placed before the House in 1897—

> We recommend that no juries should be had for the trial of civil cases, except by consent of all parties or by the order of a Judge.

I should like to comment upon this because, over the few years that I have been involved in legal practice, when I see men who undertake jury service I am impressed by the conscientious manner in which they approach this burden, or privilege, according to the manner in which jury service is viewed. I think the average man regards it as a very important part of his duties as a citizen, and it is not correct to say that jurymen enter upon such service lightly or without proper regard for its importance.

We also see the concern that is frequently expressed for the inability of jurymen to understand complex issues. That inability will become less and less in the future because educational facilities have now reached all the children of the community. Equality of opportunity is one principle upon which our society is based, and if the complexity of life outstripped juries during the years prior to 1897 or prior to the other reports made, certainly nowadays, jurymen, with knowledge and understanding, are equipped better than they have ever been before to understand the complex issues brought before them. In defence of jurymen, I say that to-day we are probably getting better service from them than we have ever had before.

In 1913 the United Kingdom Government instituted an inquiry under the leadership of Lord Mersey, and he too commented upon the difficulties of trial by jury in civil matters. I quote from that report—

> It is generally admitted that so far as regards criminal cases no alteration is possible in the historical practice of allowing a jury to condemn or acquit, but there is, we think, an almost equal agreement that in the civil sphere some modifications and restrictions might well be introduced.

Similar fears were expressed in the report of the South Australian inquiry on law reform in 1923.

I feel that the Bill before the House has been inspired, in a large measure, not only by the desire of the Government to improve the law relating to juries, but also by the Morris report which was brought before the House of Lords in 1965. A notable paper was prepared for the Attorney-General by the Secretary and Assistant Secretary of the Law Department, and it makes mention of the impetus given to reforms to the law in Victoria on the subject of juries as recommended by the Morris report. The report submitted by those officers of the Law Department is particularly lucid and well documented, and mentions three major recommendations emerging from the Morris report. The first related to the revision of the qualifications of prospective jurors; the second related to the canvassing of prospective jurors by way of questionnaire; and the third related to the use of an electronic computer for the maintenance of jury rolls and selection of jurors.

Paragraph 101 of the Morris report, in dealing with qualifications, recommends—

> That the use of the term "exemption" should be discontinued in its application to jurors and to jury service, and that in relation to those who are otherwise qualified for jury service the following categories should be statutorily established:
>
> (i) Persons who should be ineligible for jury service, either because of their connexion with the administration of law and justice, or for other reasons.

(ii) Persons who should be disqualified from jury service.

(iii) Persons who should have an absolute right to excusal if they choose to exercise it."

On the second category relating to the impetus that was received from the Morris report on the question of canvassing prospective jurors, paragraph 46 states—

> The principal change suggested is prompted by the recommendation in the Morris report that each prospective juror should be sent a questionnaire with a view to ascertaining whether he or she is eligible to serve on a jury panel to be summoned in the near future. We recommend the adoption of that practice in Victoria.

I shall not burden the House with the further recommendations. Once a means of facilitating a system is provided, it becomes obvious that it would be wise and logical to use a computer system, and this is what is intended.

I believe the Bill recommends itself to the House by reason of its logical provisions, but I should like to say that, in the short time that I have been a member of this House, I have been impressed, probably more than anything else, with the degree of dedication, hard work and sheer conscientious application on the part of members not only on the Government side of the Chamber but also on the Opposition side in dealing with proposed legislation. I refer in particular to a committee which assisted the Attorney-General in the preparation of this Bill. I understand that the committee held eight meetings each of approximately three hours' duration, and that on each of those occasions members of the committee dealt with the measure before them as vigorously and conscientiously as one could hope. I believe the ultimate result of these efforts is a Bill which is worthy of passage through the House.

I feel that it is worth while to say that the impression I gained does not apply to that measure only while it was going through its party committee stage. I have been greatly impressed by the degree of dedication that I have seen on the part of members on both sides of the House. I think a false impression is held by some members of the public, who do not understand the complexities and problems involved in representing an electoral area, irrespective of its location in the State. This is a very exacting job. When Bills have been dealt with by the House I have observed the degree of interest taken by honorable members on both sides, and the standard of debate is very high and extremely conscientious. As a new member of the House, I have been greatly impressed by this.

Before concluding these remarks, I should like to emphasize two points. The first is the traditions to which we are heirs, which include trial by jury. These traditions have been developed over many years, indeed centuries, and if any House or Chamber were called upon to adapt or change those traditions in any material way its members should give due and proper regard, not only to the historical background of the traditions, but also to their relevance to the present day. They should subject those traditions to close scrutiny because they have been handed to us as a very valuable part of our background. In my opinion, they have great relevance to our attitude towards our system of law and order to-day. I believe that if we view changes with a light heart we are in some way letting down the people who, without becoming too dramatic, might have bled and died fighting for conditions that we take for granted to-day. Bearing in mind some of the commentaries made in the reports to which I have adverted, I should say that the concern expressed by those notable bodies which have considered the question was not warranted. I believe trial by jury is as important to the community as it has ever been, and I commend the Bill to the House.